

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23D-0591E

IN THE MATTER OF THE COLORADO COMMUNICATION AND UTILITIES ALLIANCE, THE TOWN OF MORRISON, AND THE CITIES OF ARVADA, AURORA, CENTENNIAL, NORTHGLENN, AND WHEAT RIDGE'S PETITION FOR A DECLARATORY ORDER REGARDING PUBLIC SERVICE COMPANY OF COLORADO'S CUSTOMER OWNED LIGHTING TARIFF AND PAYMENT RESPONSIBILITY FOR STATE AND INTERSTATE HIGHWAY STREETLIGHTING.

**INTERIM DECISION WAIVING RESPONSE TIME AND
GRANTING UNOPPOSED MOTION FOR
EXTRAORDINARY PROTECTION OF HIGHLY
CONFIDENTIAL CUSTOMER INFORMATION**

Issued Date: October 9, 2024

I. PROCEDURAL BACKGROUND¹

1. On December 4, 2023, the Colorado Communication and Utilities Alliance (“CCUA”), the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge (“Local Governments”) filed a Petition for Declaratory Order (“Petition”) initiating this Proceeding. In the Petition, the Local Governments request that the Colorado Public Utilities Commission (“Commission” or “PUC”) resolve uncertainty regarding which entities are responsible for the maintenance and illumination of streetlights within their municipal boundaries.

2. On December 21, 2023, the Public Service Company of Colorado’s Notice of Intervention as of Right, Unopposed Alternative Motion for Permissive Intervention, and Request for Waiver of Response Time was filed by Public Service Company of Colorado (“Public Service” or “the Company”).

¹ Only the procedural history necessary to understand this Decision is included.

3. On December 21, 2023, the Colorado Department of Transportation's Notice of Intervention as of Right and Alternative Motion for Permissive Intervention was filed by the Colorado Department of Transportation ("CDOT").

4. By Decision No. C24-0079-I, mailed February 7, 2024, the Commission, among other things, establish a 30-day notice and intervention period for Local Governments' Petition, acknowledged the Company's intervention as of right, granted CDOT's permissive intervention, and assigned this matter to an Administrative Law Judge ("ALJ").

5. On September 3, 2024, Public Service filed its Unopposed Motion for Extraordinary Protection of Highly Confidential Customer Information ("Motion").

II. MOTION

6. In the Motion, Public Service seeks to protect highly confidential customer information that is produced, filed, or otherwise presented or relied on throughout this proceeding.² The information for which Public Service seeks highly confidential protection includes individual or aggregated customer information that does not comport with Commission Rule 3033(b), the "15/15 Rule".³

7. Because the Motion is unopposed, the Company requests that the Commission waive response time pursuant to Commission Rule 1308(c).⁴

8. In the Motion, Public Service identifies the information for which it seeks extraordinary protection as "individual or aggregated customer-specific information"⁵ which Public Service intends on producing in response to discovery requests propounded by the

² Motion at 1.

³ *Id.* at 2.

⁴ *Id.* at 1, 7.

⁵ *Id.* at 4.

Local Governments.⁶ The applicable discovery requests seek information on “past billing records, electric service classifications associated with street lights on interstate highways, communications with the Local Governments and CDOT regarding their electric service, and other similar matters that implicate customer data that does not comport with the 15/15 Rule.”⁷

9. Public Service states that the Local Governments First Set of Discovery Requests on Public Service request the production of individual or aggregated customer-specific information that does not comply with the 15/15 Rule because they contain data on customers’ electric service and corresponding billing records.⁸ Public Service explains that some of the Company’s rate classes have fewer than 15 customers and, as such, certain data does not comport with the 15/15 Rule.⁹

10. Public Service further states that the Commission granted a similar request for extraordinary protection in the Company’s last Phase I electric rate case.¹⁰

11. Public Service further states that the requested extraordinary protections strike the appropriate balance between the need for disclosure and the need to protect the interests of Public Service and its customers, and ordinary confidential protection will be inadequate, and greater protection of the information is required.¹¹

12. Based on these representations, Public Service seeks an order imposing highly confidential protections for the above-listed Highly Confidential Information. Based upon extraordinary circumstances, Public Service requests that access be restricted to the Commissioners, any ALJs, the Commission’s advisory staff and advisory attorneys, and a

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 5, *citing* to Decision No. R21-0535-I, issued on September 1, 2021, in Proceeding No. 21AL-0317E.

¹¹ *Id.*

reasonable number of attorneys and subject matter experts for each party to this case that have filed an appropriate Highly Confidential NDA into this proceeding.¹²

13. In the Motion, Public Service further states that it “has not filed the Highly Confidential Information with the Commission because it is being provided in response to discovery” in accordance with Rule 1101(e).¹³

14. In accordance with Rule 1101(b)(VI), 4 *Code of Colorado Regulations* (“CCR”) 723-1, the Motion is accompanied by a specific form of nondisclosure agreements (“NDAs”) Public Service requests be used in this Proceeding, as Attachments A (for attorneys) and B (for subject matter experts).

15. Public Service represents that the Motion for Extraordinary Protection is unopposed and, indeed, no objections to the Motion for Extraordinary Protection have been filed. To the contrary, on September 6, 2024, the Local Governments filed their respective fully-executed Attorney Nondisclosure Agreements for Highly Confidential Information, confirming that they will oversee the processes used by any subject matter expert to whom they have authorized access to highly confidential information in order to assure that extraordinary confidentiality provisions are properly implemented and maintained identifying those on its staff that would have access to the highly confidential information.

16. Under Rule 1100(b) of the Rules of the Rules of Practice and Procedure, 4 CCR 723-1, information filed with the Commission is presumed to be a public record. Rule 1101 of the Rules of the Rules of Practice and Procedure, 4 CCR 723-1, sets forth the procedure for filing information claimed to be confidential or highly confidential in a proceeding. Rule 1101(b)

¹² *Id.* at 5.

¹³ *Id.* at 6.

of the Rules of the Rules of Practice and Procedure, 4 CCR 723-1, sets forth the technical requirements for the filing of a motion for extraordinary protection by a person who believes that certain information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality. Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

17. Rule 3033(b), 4 CCR 723-3 provides:

At a minimum, a particular aggregation must contain at least fifteen customers; and, within any customer class no single customer's customer data or premise associated with a single customer's customer data may comprise 15 percent or more of the total customer data aggregated per customer class to generate the aggregated data report (the "15/15 Rule").

18. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential protection:

(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;

(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.

19. As pertinent herein, Rule 1101(e), 4 CCR 723-3 provides that “[i]nformation which is subject to highly confidential protection and that is provided in response to discovery or in response to Commission staff audit shall not be filed with the Commission.”

20. The ALJ finds and concludes that the information for which Public Service seeks highly confidential protection cannot be aggregated pursuant to the requirements set forth in Rule 3033(b) of the Rules Regulating Electric Utilities, 4 CCR 723-3, because some of the Company’s rate classes have fewer than 15 customers.

21. The ALJ further finds and concludes that in the Motion, Public Service provided a sufficiently detailed description of the information for which it seeks protection and included a showing that 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. The Motion includes proposed nondisclosure agreements to be signed by individuals who may encounter the highly confidential information during this Proceeding. Also attached to the Motion for Extraordinary Protection is the Affidavit of Jason J. Peuquet, Director of Regulatory Administration for Public Service, which identifies the individuals and departments within Public Service that have access to the information it describes as highly confidential.

22. The undersigned ALJ further finds and concludes that absence of a filing by Public Service of the confidential information for which it seeks highly confidential protection is appropriate and otherwise consistent with Rule 1101(e) of the Rules of Practice and Procedure, 4 CCR 723-1.

23. Because the Motion is unopposed, the Company's request to waive response time to the Motion will be granted, as ordered below.

24. Public Service has thus satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the confidential information for which it seeks highly confidential protection. Accordingly, Public Service's Motion for Extraordinary Protection will be granted and the response time waived, as ordered below.

III. ORDER

It is Ordered That:

1. The response time to Public Service Company of Colorado's Unopposed Motion for Extraordinary Protection of Highly Confidential Customer Information ("Motion") filed on September 3, 2024, is waived.

2. The Motion is granted.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director