

Decision No. C20-0921

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0531E

IN THE MATTER OF ADVICE LETTER NO. 1844 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO REVISE THE CAPACITY AND ENERGY PAYMENT RATE APPLICABLE TO QUALIFYING FACILITIES TO BECOME EFFECTIVE JANUARY 1, 2021.

**COMMISSION DECISION GRANTING MOTION FOR
EXTRAORDINARY PROTECTION OF
HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: December 29, 2020

Adopted Date: December 23, 2020

I. STATEMENT

A. Motion for Extraordinary Protection

1. By this Decision, we grant the Motion for Extraordinary Protection of Highly Confidential Information (Motion) filed on December 1, 2020, by Public Service Company of Colorado (Public Service or the Company).

2. On December 1, 2020, the Company filed an advice letter proposing to revise capacity and energy payment rates for calendar year 2021 applicable to QFs with a design capacity of 100 kW or less. The payment rates are derived based on the methodology approved by the Commission in Proceeding No. 13AL-0958E. In Decision No. C14-1153, two conditions were ordered regarding the use of the PLEXOS® model: (1) with each annual filing, the Company is to provide the PLEXOS® diagnostic run for the coming calendar year; and (2) with each annual advice letter filing, the Company is to provide the inputs used in the PLEXOS® base case for the coming calendar year.

3. Public Service seeks extraordinary protection pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1101(b) of the Commission's Rules of Practice and Procedure in this Motion for certain PLEXOS® modeling input and output data as described therein (Highly Confidential Information). The Highly Confidential Information described in the Motion is divided into two categories: (1) PLEXOS® modeling input data; and (2) PLEXOS® modeling output data. Public Service notes the Commission has afforded substantively similar data extraordinary protection in previous proceedings.¹

4. The referenced PLEXOS® modeling input data categories include the following:

- a. Highly Confidential Contract Data pertaining to generator fuel contract information, such as price, term and transport cost and Power Purchase Agreements (PPAs) information such as price, term, and capacity;
- b. Highly Confidential Generation Unit Performance Data including heat rate, ramp up and down times, variable operating and maintenance costs, and generator maintenance schedules;
- c. Highly Confidential Transmission Market Access Data including data pertaining to the Company's future access conditions across transmission systems that has not been publicly posted on OASIS;
- d. Highly Confidential Generation Unit Operating Characteristics Data including information on the extent to which particular generating units constitute baseload (*i.e.*, is considered "must-run" or "economic" to run, referred to as the "commit" variable), mean repair times, forced outage and maintenance rates, and start cost time data;
- e. Highly Confidential Price Stream Data identifying the Company's purchase or sales entry into the wholesale energy markets;
- f. Highly Confidential Hourly System Load Data forecasted for 2021 and broken down by region that provides insight into peaks and valleys (on/off peaks); and
- g. Highly Confidential Wind and Solar Capacity Data including forecasted hourly capacity data for 2021 for each generator.

¹ Proceeding No. 19AL-0687E by Decision Nos. R20-0121-I and R20-0169-I; Proceeding No. 20A-0345E by Decision No. C20-0756-I; Proceeding No. 19AL-0668E by Decision No. C19-1017; in Proceeding No. 18AL-0851E by Decision No. C18-1175; and Proceeding No. 17AL-0816E by Decision No. C17-1090.

5. Public Service states that for the Highly Confidential Information in categories 5(a) through (c) of the PLEXOS® modeling input data, it requests an order restricting party access to: (1) the Commissioners; (2) Commission advisors and Commission advisory counsel; (3) the Administrative Law Judge (ALJ); (4) Commission Staff and its attorneys; and (5) the Office of Consumer Counsel (OCC) staff and its attorneys (Restricted Access).

6. For categories 5(d) through (g) of the PLEXOS® modeling input data, Public Service requests an order limiting access to parties other than Staff and OCC to a reasonable number of attorneys and a reasonable number of subject matter experts representing a party to this proceeding (Limited Access).

7. The PLEXOS® modeling output data for which Public Service seeks extraordinary protection includes the following:

- a. Highly Confidential Hourly System Marginal Cost Data forecasting hourly system marginal cost for each hour of 2021;
- b. Highly Confidential Hourly Generation Data forecasting the energy each Company-owned generating unit will produce each hour throughout 2021;
- c. Highly Confidential Hourly System Average Cost forecasting average system cost data for each hour throughout 2021 in dollars per MWh; and
- d. Highly Confidential Hourly System Total Cost forecasting total system cost data for each hour throughout 2021 in total dollars.

8. For the Highly Confidential Information in categories 6(a) and (b) of the PLEXOS® modeling output data, Public Service requests an order restricting party access to: (1) the Commissioners; (2) Commission advisors and Commission advisory counsel; (3) the ALJ; (4) Commission Staff and its attorneys; and (5) the OCC staff and its attorneys.

9. For the remaining categories of the PLEXOS® modeling output data, 6(c) and (d), Public Service requests an order limiting access to parties other than Staff and OCC to a reasonable number of attorneys and a reasonable number of subject matter experts representing a party to this proceeding.

10. The Company states individuals accessing any of the Highly Confidential Information described in its Motion, with the exception of the Commissioners, the ALJ, Commission counsel, and Commission Staff, would be required to execute an appropriate highly confidential non-disclosure agreement, provided as Attachment A (counsel) and Attachment B (subject matter expert) to its Motion.

11. Public Service asserts the PLEXOS® modeling input and output data is commercially sensitive information that is used in the Company's daily trading operation and elsewhere in the Company's business operations that should not be supplied to potential vendors or competitors of Public Service. According to Public Service, since the information is used by the Company to sell and to buy wholesale energy in the short-term markets in Colorado, a vendor to, or competitor of, Public Service should not receive the information. The Company further asserts this information it claims is highly confidential includes the incremental running costs of select Company-owned generators, and independent generators that have contracted to give dispatch control to Public Service, at various points along their individual heat rate curves. It also includes the most recent fuel costs, unit characteristics, and energy transaction information.

12. The Company claims this same input information is used in associated tools to provide Public Service's operations personnel a projection of the next hour's cost to sell energy (incremental cost) or the projected costs that will be saved by purchasing energy instead of running

the Public Service controlled generators, or decremental cost. The Company stresses that because this Highly Confidential Information is used by Public Service's system operators to try to maximize savings for customers - sell at prices over the incremental cost and buy at prices below the decremental cost - this information is commercially sensitive and highly confidential.

13. Public Service concludes disclosure of this data would provide a potential supplier to, or competitor of, Public Service with significant business intelligence, in a highly granular form, of the costs Public Service incurs for generating power under numerous system conditions. According to the Company, revelation of this information to a supplier or competitor of Public Service could severely hamper its trading operations to the harm of its customers.

14. Public Service also provides the specific form of nondisclosure agreement for counsel and subject matter experts, an affidavit signed by Brooke A. Trammell for Xcel Energy Services, Inc. identifying all persons with access to the Highly Confidential Information and the period of time for which the information must remain subject to highly confidential protection.

B. Findings and Conclusions

15. As the party seeking a determination that the subject information of its Motion is highly confidential and extraordinary protection and therefore access should be limited to specific individuals under stated conditions, Public Service bears the burden of establishing that the Commission should grant the requested relief. § 24-4-105(7), C.R.S.; Rules 4 CCR 723-1-1101(b) and 4 CCR 723-1-1500.

16. Under Rule 1101(b) a party seeking extraordinary protection of materials filed in Commission proceedings is required to file a motion justifying such extraordinary treatment.² Under the Rule, the motion must: include a detailed description and/or representative sample of the information for which extraordinary protection is sought; state the specific relief requested and the grounds for seeking the relief; advise all other parties of the request and the subject matter of the information at issue; 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; be accompanied by a specific form of nondisclosure agreement requested; 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 include an exhibit filed in accordance with Rule 1101(a) containing the information for which highly confidential protection is requested.

17. We find that the information Public Service seeks to protect contains highly confidential and competitive energy pricing information and should be given extraordinary protection under our rules. We thus find Public Service has satisfied its burden of proof and we will grant the Motion.

18. At the Commissioners' Weekly Meeting on December 23, 2020, we allowed Public Service's Advice Letter No. 1844 - Electric and proposed tariff page to go into effect by operation

² "If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection." 4 CCR 723-1-1101(b)

of law on the proposed effective date of January 1, 2021. As there are no parties to this Proceeding, no persons or entities other than the Commissioners, Commission advisors and advisory counsel, and Commission Staff and its attorneys shall have access to the highly confidential information as described by Public Service and set out in Exhibits 2 and 3 to Advice Letter No. 1844 Electric.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extraordinary Protection of Highly Confidential Information filed on December 1, 2020, by Public Service Company of Colorado, is granted.
2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 23, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners