

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0131E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE 345 KV SANDSTONE SWITCHING STATION AND ASSOCIATED FINDINGS REGARDING NOISE AND MAGNETIC FIELD REASONABLENESS.

**INTERIM DECISION
EXTENDING STATUTORY TIME PERIOD,
GRANTING UNOPPOSED MOTION TO APPROVE
CONSENSUS PROCEDURAL SCHEDULE,
SCHEDULING EVIDENTIARY HEARING, AND
GRANTING SECOND MOTION FOR EXTRAORDINARY
PROTECTION OF HIGHLY CONFIDENTIAL
INFORMATION**

Issued Date: July 16, 2024

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I. STATEMENT

1. On March 19, 2024, Public Service Company of Colorado (“Public Service” or “the Company”) filed its Verified Application (“Application”) requesting that the Colorado Public Utilities Commission (“PUC” or “the Commission”) grant a Certificate of Public Convenience and Necessity (“CPCN”) to construct the 345 kilovolt (“kV”) Sandstone Switching Station and find that the projected noise and magnetic field levels associated with the Sandstone Switching Station are reasonable and require no further mitigation. Public Service seeks approval of the Sandstone Switching Station as a more cost-effective alternative to the Tundra Switching Station expansion originally approved as part of the Colorado’s Power Pathway 345 kV Transmission Project in Proceeding No. 21A-0096E.

2. On March 20, 2024, the Commission issued a Notice of Application Filed establishing deadlines for the filing of intervention pleadings. Interested persons were ordered to file motions to intervene within 30 days. Trial Staff of the Commission (“Staff”) had seven additional days to file a notice of intervention of right.

3. Two entities intervened as of right:

- a. On April 15, 2024, the Office of the Utility Consumer Advocate (“UCA”) filed its Intervention as a Matter of Right, Request for Hearing, and Entry of Appearance; and
- b. On April 26, 2024, Staff filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing.

4. In addition, two parties moved to permissively intervene in this Proceeding:

- a. On April 18, 2024, Colorado Energy Consumers (“CEC”) filed a Motion to Permissively Intervene; and
- b. On April 19, 2024, Climax Molybdenum Company (“Climax”) filed its Motion to Permissively Intervene.

5. The interventions as of right were acknowledged and recognized by Decision No. R24-0368-I, issued May 31, 2024. Decision No. R24-0368-I also granted the motions for permissive intervention filed by CEC and Climax. The parties to this Proceeding are thus Public Service, Staff, UCA, CEC, and Climax.

6. On May 2, 2024, Public Service filed a Motion for Extraordinary Protection of Highly Confidential Information. Decision No. R24-0368-I granted the motion and afforded extraordinary protection to certain information identified by Public Service.

7. On June 5, 2024, Public Service filed a Second Motion for Extraordinary Protection of Highly Confidential Information (“Second Motion for Extraordinary Protection”). In its Second Motion for Extraordinary Protection, Public Service represents that UCA does not oppose the motion, while Staff, Climax, and CEC take no position.

8. Subsequently, on June 27, 2024, Public Service filed a Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule and Request for Waiver of Response Time. Public Service stated that it had conferred with all parties and that all parties had agreed to the proposed procedural schedule and evidentiary hearing dates.

II. TIME FOR A COMMISSION DECISION

9. Contemporaneously with its Application, Public Service filed the Direct Testimony of three individuals:

- a. Heather C. Brickey, Project Director of the Colorado’s Power Pathway Project for Xcel Energy Services, Inc. (“XES”)¹;
- b. Aaron D. Wilson, Senior Manager, Substation Engineering for XES²; and,
- c. Hari Singh, Consulting Engineer for XES.³

¹ Hearing Exhibit 101, Direct Testimony of Heather C. Brickey, p. 4, lines 3-12.

² Hearing Exhibit 102, Direct Testimony of Aaron D. Wilson, p. 4, lines 1-9.

³ Hearing Exhibit 103, Direct Testimony of Hari Singh, p. 4, lines 1-11.

10. The Commission noted in the Notice of Application Filed issued on March 20, 2024, that Public Service was seeking a final Commission decision within 120 days of the Application being deemed complete.⁴ Pursuant to § 40-6-109.5(1), C.R.S., when an application “is accompanied by the applicant’s supporting testimony . . . the [C]ommission shall issue its decision on the application no later than one hundred twenty days after the application is deemed complete.”

11. However, if the Commission in its discretion finds that additional time is necessary for a decision, the statutory time period may be extended an additional 130 days.⁵

12. In order to facilitate the unopposed procedural schedule to which the parties have agreed, it is found necessary to extend the time for issuance of a Commission decision. The statutory time period shall therefore be extended by an additional 130 days up to and including January 6, 2025.

III. UNOPPOSED MOTION TO APPROVE CONSENSUS PROCEDURAL SCHEDULE

13. Public Service represents that it has conferred with all parties to this Proceeding “and is authorized to state that the parties have reached consensus procedural schedule and agreement regarding hearing format and discovery procedures.”⁶

A. Procedural Schedule

14. In particular, Public Service, Staff, UCA, CEC and Climax agreed to the following proposed procedural schedule:

⁴ Notice of Application Filed, p. 1, filed Mar. 20, 2024.

⁵ See § 40-6-109.5(1), C.R.S.

⁶ Public Services’ Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule and Request for Waiver of Response Time, p. 2, ¶ 6, filed June 27, 2024.

ACTION	DEADLINE
<i>Application Filed</i>	<i>March 19, 2024</i>
<i>Application Deemed Complete</i>	<i>May 1, 2024</i>
Answer Testimony:	July 17, 2024
Rebuttal/ Cross-Answer Testimony:	August 21, 2024
Prehearing Motions and Corrections:	August 23, 2024
Stipulations/Settlement Agreements:	September 6, 2024
Settlement Testimony:	September 12, 2024
Evidentiary Hearing:	September 18-19, 2024
Statements of Position:	October 8, 2024
250-Day Deadline:	January 6, 2025

15. The Administrative Law Judge (“ALJ”) notes that the parties’ proposed procedural schedule does not incorporate a deadline for the submission of a cross-examination matrix. Because the ALJ believes the preparation and submission of a cross-examination matrix will assist the parties and ALJ in narrowing the focus of the evidentiary hearing and ensuring that the hearing runs smoothly and efficiently, the ALJ will incorporate a deadline of September 13, 2024, for the parties to collectively submit a cross-examination matrix.

16. With that addition, the procedural schedule proposed by the parties is found to be reasonable and appropriate. It will therefore be adopted.

B. Evidentiary Hearing

17. Through Public Service’s counsel, the parties requested that the hearing be held fully remotely on September 18 and 19, 2024. The undersigned ALJ will therefore schedule a fully-remote hearing. If at some time in the future the parties desire a different hearing format, they may so request by Motion to be determined by the ALJ.

18. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

19. However, because of a conflict with the ALJ's schedule on September 19, 2024, the evidentiary hearing cannot be scheduled on the two dates the parties have proposed. Rather, after the ALJ informally contacted the parties by email, the parties conferred and determined that the evidentiary hearing can be completed in one day. Having reviewed the issues raised and the record filed thus far, the ALJ agrees. The ALJ will schedule a one-day fully remote evidentiary hearing for **September 18, 2024**.

C. Unified Numbering System for Hearing Exhibits

20. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

Party	Hearing Exhibit Numbers
Public Service	100-199
Staff	200-299
UCA	300-399
CEC	400-499
Climax	500-599

21. The parties are instructed to adhere to this exhibit numbering system for any prefiled testimony filed in this Proceeding, as well as any documentary evidence sought to be offered into evidence at the evidentiary hearing.

22. Because the evidentiary hearing will be accommodating remote participation, the parties are further ordered to follow the guidelines for the electronic presentation of evidence applicable to remote hearings and set out in detail in Attachment B to this Decision.

D. Informal Video-Conference Practice Session

23. The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

24. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

25. The parties will receive information and a link to participate in the informal practice session by email.

E. Advisements

26. The Parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* (“CCR”) 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission’s website (<http://www.dora.colorado.gov/puc>).

27. The parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application.

IV. PUBLIC SERVICE’S SECOND MOTION FOR EXTRAORDINARY PROTECTION OF HIGHLY CONFIDENTIAL INFORMATION

28. Public Service requests an order granting extraordinary protection to “all contract pricing and financial information between Public Service and [NextEra Energy Resources, LLC (NEER)] for which NEER sought and was granted highly confidential treatment in Proceeding No. 22V-0388E.⁷ Public Service seeks to protect “any documents or portions of documents” that discuss the highly confidential information, including “all testimony, discovery requests or responses (including attachments), hearing transcripts, decisions, and any other documents addressing such types of information throughout the pendency of this proceeding.”⁸

29. Public Service argues that this information is “competitively sensitive and contractually protected financial and pricing information” which Staff requested through discovery.⁹ Public Service states that the Commission has “routinely granted requests for extraordinary protection” of this type of commercial contracts and terms, including pricing information, between Public Service and its “vendors or counterparties.”¹⁰

30. To bolster its argument, Public Service points out that the contract pricing and financial information pertaining to its contract with NEER was granted extraordinary protection in Proceeding No. 22V-0388E, by Decision No. C22-0635-I, issued October 21, 2022. There, the Commission found “good cause”¹¹ to provide extraordinary protection to Power Purchase Agreements, “contracts, side letters, pricing, calculations, and other bid information,” after the

⁷ Public Service’s Second Motion for Extraordinary Protection of Highly Confidential Information (“Second Motion for Extraordinary Protection”), p 4, ¶ 4, filed June 5, 2024.

⁸ *Id.* at p. 5, ¶ 6.

⁹ *Id.* at p. 4, ¶ 3.

¹⁰ *Id.* at p. 5, ¶ 7.

¹¹ Decision No. C22-0635-I, in Proceeding No. 22V-0388E, *In the Matter of the Petition of Public Service Company of Colorado for Approval of a Variance from Rule 3615 Related to Modifying Existing Agreements to Acquire More Than 30 MW of Capacity Outside of an Approved Resource Plan*, at p. 5, ¶ 16, issued Oct. 21, 2022.

moving parties represented that the information sought was “confidential, proprietary, and commercially sensitive.”¹²

31. Public Service maintains that because the subject information is so highly sensitive and confidential, the protection afforded confidential information by Rules 1100 and 1101 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, is insufficient.¹³

32. The Company requests that the Commission find that access to this highly confidential information be limited to Commissioners, Commission Advisors, the ALJ assigned to this Proceeding, Staff, and UCA counsel and representatives assigned to this Proceeding who have executed the appropriate Non-Disclosure Agreement(s) (“NDA”).¹⁴

33. Under Rule 1100(b), 4 CCR 723-1, information filed with the Commission is presumed to be a public record, including (1) annual reports; (2) rates, terms and conditions for regulated services; and (3) tariffs and price lists. Yet, Rules 1100 and 1101 recognize that some information must be kept confidential while certain information warrants the extraordinary protection afforded highly confidential information.

34. Rule 1101(b), 4 CCR 723-1, provides the procedure and requirements for filing and seeking highly confidential protections for a document. Rule 1101(c) governs records that are presumed to be public under Rule 1100(b) and allows an entity or person to file a Motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

¹² *Id.* at p. 3, ¶ 6.

¹³ Second Motion for Extraordinary Protection, p. 6, ¶ 9.

¹⁴ *Id.* at p. 6, ¶ 9.

35. In particular, 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.¹⁵

36. Here, no responses or objections have been filed to the Second Motion for Protective Order. The motion will therefore be deemed confessed under Commission rules.¹⁶ Therefore, the ALJ finds that Public Service's Second Motion for Protective Order is unopposed.

37. Public Service provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. Its Second Motion for Extraordinary Protection also includes two proposed forms of nondisclosure agreement for legal counsel and for experts in the subject matter. It has also provided the affidavit of Michael Pascucci, the Director of Regulatory Policy for the Company, identifying persons who work in

¹⁵ Rule 1101(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR"), 723-1.

¹⁶ Rule 1401(b), 4 CCR, 723-1.

several Xcel or Public Service departments who have access to the highly confidential information, as well as the Company's legal counsel, and certain upper management executives and the Financial Council.¹⁷ However, Public Service has not provided confidential or public versions of the documents it seeks to protect because the highly confidential information will be provided in response to discovery. Highly confidential information disclosed in response to discovery requests "shall not be filed with the Commission."¹⁸

38. Based upon good cause shown for the unopposed request, the undersigned finds that Public Service has met its burden of proof to show 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 Public Service will afford sufficient protections for the highly confidential information.

39. The highly confidential protections will be granted, conditioned upon an exception that the highly confidential information may also be accessed pursuant and subject to Rule 1100(i), 4 CCR 723-1. Public Service did not seek a waiver of the rule and did not provide any grounds as to why it should not be applicable to the highly confidential information.

V. ORDER

A. It Is Ordered That:

1. Pursuant to § 40-6-109.5(1), C.R.S., the applicable period for issuance of a Commission decision is extended by an additional 130 days, up to and including January 6, 2025.

¹⁷ Affidavit of Michael Pascucci, Attachment C to Second Motion for Extraordinary Protection, p. 2, ¶ 3.

¹⁸ Rule 1101(e), 4 CCR 723-1.

2. A **fully-remote** evidentiary hearing is scheduled as follows:

DATE: September 18, 2024

TIME: 9:00 a.m.

LOCATION: By video conference or telephone using the Zoom web conferencing platform at a link emailed to all those who register to participate in the public comment hearing.

METHOD: By videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

All parties and witness must participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.¹⁹

3. **Video-Conference Participation.** Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

5. The ALJ will hold an informal Zoom practice session upon request.

6. The Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule filed by Public Service Company of Colorado (“Public Service”) on June 27, 2024, is granted, with the exception that the evidentiary hearing sought to be scheduled for September 18 and 19, 2024, will instead be scheduled for one day, on September 18, 2024, consistent with the discussion above.

¹⁹ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

7. The following procedural schedule is adopted:

ACTION	DEADLINE
<i>Application Filed</i>	<i>March 19, 2024</i>
<i>Application Deemed Complete</i>	<i>May 1, 2024</i>
Answer Testimony:	July 17, 2024
Rebuttal/ Cross-Answer Testimony:	August 21, 2024
Prehearing Motions and Corrections:	August 23, 2024
Stipulations/Settlement Agreements:	September 6, 2024
Settlement Testimony:	September 12, 2024
Cross-examination Matrix	September 13, 2024
Evidentiary Hearing:	September 18, 2024
Statements of Position:	October 8, 2024
250-Day Deadline:	January 6, 2025

8. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be conducted remotely with participation by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

9. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1 (*e.g.*, Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

10. The parties shall adhere to the following numbering system for their respective exhibits and prefiled testimony:

Party	Hearing Exhibit Numbers
Public Service Company of Colorado	100-199
Commission Trial Staff	200-299
Office of Utility Consumer Advocate	300-399
Colorado Energy Consumers	400-499
Climax Molybdenum Company	500-599

11. Public Service's Second Motion for Extraordinary Protection of Highly Confidential Information, filed on June 5, 2024, is granted consistent with the discussion above.

12. Any documents or portions of documents containing contract pricing and financial information between Public Service and NextEra Energy Resources, LLC ("NEER") for which NEER sought and was granted highly confidential treatment in Proceeding No. 22V-0388E, including all testimony, discovery requests or responses (including attachments), hearing transcripts, decisions, and any other documents addressing such types of information throughout the pendency of this proceeding, are highly confidential.

13. In addition to Commissioners, the ALJ assigned to this Proceeding, Commission Staff, Commission advisory counsel, and Commission staff counsel permitted to access the highly confidential information pursuant and subject to Rule 1100(i), 4 CCR 723-1, access to the highly confidential information is limited to UCA counsel and representatives assigned to this Proceeding who have executed the appropriate Non-Disclosure Agreement(s) ("NDA").

14. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director