

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0369G

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF THE SELECTION OF PILOT PROJECTS TO PROVIDE THERMAL ENERGY SERVICE AND APPROVAL TO RECOVER THROUGH THE DEMAND SIDE MANAGEMENT COST ADJUSTMENT THE COMPANY'S COMMUNITY OUTREACH AND PROJECT DESIGN EFFORTS TO DEVELOP SELECTED PILOTS.

**INTERIM DECISION
ADDRESSING INTERVENTIONS; EXTENDING
STATUTORY DEADLINE FOR A COMMISSION
DECISION; ESTABLISHING PROCEDURES,
SCHEDULING EVIDENTIARY HEARING, PROVIDING
INSTRUCTIONS CONCERNING EXHIBITS AND
PARTICIPATING IN REMOTE EVIDENTIARY HEARING;
SCHEDULING A REMOTE PUBLIC COMMENT
HEARING; AND GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Issued Date: October 31, 2024

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I. STATEMENT

A. Procedural Background

1. On August 29, 2024, Public Service Company of Colorado (“Public Service” or the “Company” or “Applicant”) filed its Verified Application of Public Service Company of Colorado for Approval of Its Thermal Energy Network Pilot Development (“Application”). Through the Application, Public Service requests that the Colorado Public Utilities Commission (“Commission”) issue a decision approving the Company’s proposed Thermal Energy Network Pilot Initiative. Contemporaneously with the Application, Public Service filed its Direct Testimony, including attachments thereto,¹ and Public Service Company of Colorado’s First Motion for Extraordinary Protection of Highly Confidential Information (“Motion for Extraordinary Protection”), including attachments thereto.²

2. Through the Notice of Application Filed (“Notice”), filed August 30, 2024, the Commission gave notice of the Application and set an intervention period, and indicated that the Applicant is seeking a Commission decision within 120 days.³

3. On September 12, 2024, the Petition for Leave to Intervene of the City and County of Denver (“Denver’s Motion to Intervene”) was filed by the City and County of Denver, Colorado (“Denver” or “the City”).

4. On September 12, 2024, the Office of Utility Consumer Advocate (“UCA”) timely noticed its intervention as a matter of right.

5. On September 30, 2024, the Colorado Energy Office (“CEO”) timely noticed its intervention as a matter of right.

¹ See Hearing Exhibits 100, 101, and 102, and corresponding attachments CVS-1, CVS-2, CVS-3, CVS-4, CVS-5, and CVS-6.

² See Motion for Extraordinary Protection and corresponding Attachments, A, B, and C.

³ Notice at p. 1.

6. On October 2, 2024, the Trial Staff of the Colorado Public Utilities Commission (“Staff”) timely noticed its intervention as a matter of right.

7. On October 9, 2024, the Commission referred this matter to an Administrative Law Judge (“ALJ”) by minute entry.

B. Interventions

8. Two classes of parties may intervene in proceedings such as this: (a) parties with a legally protected right that may be impacted by the proceeding (intervention of right), and (b) parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).⁴

9. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in

⁴ Rule 1401(b) and (c), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure; *see* § 40-6-109(1), C.R.S.; *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

10. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to represent that their interests “would not otherwise be adequately represented” is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties.⁵ The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative.

11. Further, Rule 1401(c), 4 CCR 723-1, requires that a movant who is a “residential customer, agricultural customer, or small business customer” must set forth in its motion whether the distinct interest of the consumer is either not adequately represented by the UCA, or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interests of residential ratepayers. The Colorado Supreme Court expressly stated that “if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate.”⁶

12. Staff, UCA, and CEO, timely notice their interventions as of right, which no party herein contested. Therefore, the interventions of Staff, UCA, and CEO are acknowledged.

⁵ See *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case’s judgment. See *Denver Chapter of the Colo. Motel Ass’n v. City & County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city).

⁶ *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001)

13. In Denver's Motion to Intervene, the City states that:

Denver purchases steam and chilled water services from [Public Service], as do its residents and businesses[;] City-owned buildings account for around 30 percent of the steam system's revenue, and the entirety of the steam system exists within Denver's jurisdictional boundaries[;] Denver is concerned that the steam system is unsustainable and that steam customers may elect to convert to natural gas service, which would result in an expansion of gas infrastructure and an increase in natural gas usage and associated greenhouse gas emissions[;] Denver maintains a substantial interest in avoiding the expansion of natural gas service and views the conversion of the steam and chilled water systems to a lower carbon thermal energy service as an important potential solution that ought to be explored, as represented in Proceeding No. 22A-0382ST[;] Denver aims to eliminate 100 percent of the City's greenhouse gas emissions by 2040, which includes all new buildings and homes performing as net zero energy by 2030, and all existing buildings and homes performing as net zero energy by 2040[;] Denver's building performance policy, which requires buildings over 25,000 square feet to reduce their energy usage by 30% by 2030, applies to 78 of the 96 customers that currently receive steam service from [Public Service][; and] Denver routinely participates in proceedings involving [Public Service]'s operations, including proceedings related to electric and gas system planning, the reduction of greenhouse gas emissions, and equity. Denver is currently an intervening party in multiple proceedings concerning applications filed by [Public Service] including: Proceeding No. 24A-0296E, Proceeding No. 23A-0392EG, Proceeding No. 23A-0589EG, and Proceeding No. 22A-0382ST.⁷

Denver further states that it executed with Public Service a memorandum of understanding related to a District Steam Conversion project and has entered into a settlement agreement with Public Service that commits Public Service to include the District Steam Conversion project in this compliance filing under Section 40-4-121(3), C.R.S.⁸ Finally, Denver states that it seeks to intervene in this Proceeding to explore Public Service's project evaluation and scoring criteria, evaluation and scoring of the District Steam Conversion project, evaluation and scoring of other

⁷ Denver's Motion to Intervene at ¶¶ 3-6.

⁸ *Id.* at ¶ 8.

Denver projects, and list of recommended projects for Commission approval to move into the next phase of site evaluation.⁹

14. The ALJ finds and concludes that Denver stated good cause for its request to intervene. Therefore, and in accordance with Rule 1401 of the Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1, Denver’s requests to permissively intervene will be granted, as ordered below.

C. Procedural Schedule, Extension of Statutory Deadline for a Commission Decision, Instructions for Participating in Remote Evidentiary Hearing, and Unified Numbering System for Hearing Exhibits

15. Through informal email correspondence dated October 25, 2024, the parties, as acknowledged and found in this Decision, indicated to the undersigned ALJ that: all parties prefer that the evidentiary hearing in this Proceeding will be held in a fully remote format, Rule 1405(b) 4 CCR, 723-1 would govern the discovery procedures in this Proceeding, the parties do not have a need for a prehearing conference, and the parties propose the following consensus procedural schedule (“Consensus Procedural Schedule”):

Procedural Activity	Date
Answer Testimony	January 13, 2025
Rebuttal & Cross-Answer Testimony	February 20, 2025
Stipulations/Settlement Agreements	February 28, 2025
Settlement Testimony	March 5, 2025
Pre-Hearing Motions	March 6, 2025
Cross-Examination Matrix	March 6, 2025

⁹ *Id.* at ¶ 9.

Procedural Activity	Date
Corrections to Pre-filed Testimony & Exhibits	March 6, 2025
Two-Day Virtual Hearing Commencement	March 13, 2025
Statements of Position	April 3, 2025

The informal email correspondence further indicates that CEO requests that the ALJ schedule at least one public comment hearing, preferably soon after the proposed Answer Testimony deadline.

16. If the Commission finds that additional time is required, the period within which a commission decision is to be issued may be extended an additional 130 days.¹⁰

17. The ALJ finds that the adoption of the Consensus Procedural Schedule requires that the deadline for a Commission decision in this Proceeding be extended. Therefore, pursuant to §40-6-109(1), C.R.S., the deadline for the Commission to issue its decision will be extended by 130 days, as ordered below.

18. The ALJ further finds and concludes that the Consensus Procedural Schedule was agreed to by all parties, is mostly reasonable, and will be adopted subject to modification, as ordered below. In order to allow the parties, administrative staff of the Commission, and the ALJ sufficient time to prepare for the evidentiary hearing, the proposed deadlines for the Stipulations/Settlement Agreements, Pre-Hearing Motions, Cross-Examination Matrix, and Corrections to Pre-filed Testimony & Exhibits deadlines will be modified by up to seven days, as ordered below.

¹⁰ Section 40-6-109(1), C.R.S.

19. As agreed by the parties, a fully-remote evidentiary hearing will be scheduled, as ordered below. This Decision and Attachments A and B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow.

20. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room.

21. The evidentiary hearing will be conducted via videoconference using the Zoom platform. Attachment A to this Decision provide information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

22. 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:

- Public Service is assigned hearing exhibit numbers 100 to 199;
- Staff is assigned hearing exhibit numbers 200 to 299;
- UCA is assigned hearing exhibit numbers 300 to 399;
- CEO is assigned hearing exhibit numbers 400 to 499; and
- Denver is assigned hearing exhibit numbers 500 to 599.

D. Public Comment Hearing

23. The ALJ further finds and concludes that CEO's request to schedule a public comment hearing, preferably soon after the proposed Answer Testimony deadline, is reasonable and otherwise consistent with the substance and current procedural posture of this Proceeding. The undersigned ALJ's informal correspondence with the parties was silent on any opposition to CEO's request to hold a public comment hearing. Therefore, a public comment hearing will be on January 21, 2025 scheduled, as ordered below.

24. The public comment hearing will be held virtually and hosted via the Zoom video-conferencing service. The hearing will take place from 4:00 p.m. until no later than 6:00 p.m. The hearing will conclude upon the completion of the public comments, but no earlier than 5:15 p.m.

25. Members of the public who wish to attend and submit a verbal public comment are required to register through the following registration link:

https://us06web.zoom.us/meeting/register/tZUuduGorTgtGtcgxqJU7OU8_ygdmuiGi194

26. For questions about the virtual public comment hearing, please contact the Colorado Public Utilities Commission's ("Commission") Communications Director, Megan Castle, at megan.castle@state.co.us.

27. To ensure a clear record and orderly hearing progression, interested persons are strongly encouraged to participate in the virtual public comment hearing by videoconference. Nevertheless, interested persons have the option to participate by telephone only without video.

28. During the virtual public comment hearing, the ALJ will take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants are requested to: (a) mute their microphone during the

hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; (c) not connect to the hearing using multiple devices located in the same room (which causes audio feedback); and (d) input their full name into Zoom when prompted to do so. Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak. Participants are encouraged to use a computer, smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera.

29. Attachment C to this Decision provides step-by-step technical instructions and requirements to participate in the public comment hearing by videoconference using a computer. This is intended to ensure that the remote hearing proceeds efficiently. Hence, it is important that videoconference participants carefully review and follow all requirements in this Decision and Attachment C.

30. Consistent with Commission practice, the virtual public comment hearing will be webcast on the Commission's YouTube channel. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the rulemaking hearing and need not join the hearing by telephone or videoconference. To observe the hearing by webcast, you may do so online on the Commission's YouTube channel at:

<https://www.youtube.com/@COPublicUtilitiesCommission/>.

31. The Commission strives to accommodate all members of the public at its hearings by providing services for foreign language users and persons with disabilities upon receipt of a reasonable accommodation request. Interested persons requesting an accommodation for the public comment hearing should complete the Language Access Form under the "How to Make Comments" tab at <https://puc.colorado.gov/how-to-participate> at least one week prior to the

hearing. Requests for accommodation can also be made directly by contacting Holly Bise at 303-894-2024, or holly.bise@state.co.us.

32. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

33. Interested persons are encouraged to submit written comments through either:

a. Using the Commission's Electronic Filing System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>;

b. Submitting a comment via online form on the Commission's website at:
<https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link;

c. Mailing comments to the Commission's offices at:
Colorado Public Utilities Commission, 1560 Broadway, Suite 250,
Denver, CO 80202; or

d. Leaving a voicemail at (303) 869-3490 (English and Spanish options).

e. Please reference this Proceeding (No. 24A-0369G) when submitting a comment.

E. Motion for Extraordinary Protection

34. The Motion for Extraordinary Protection is unopposed.

35. Public Service seeks extraordinary protection for certain customer information that is protected by Rules 1105 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") and 3033(b) of the Rules Regulating Electric Utilities, 4 CCR 723-3.¹¹

¹¹ Motion for Extraordinary Protection at 1.

36. In support of its request for extraordinary protection, Public Service states: “Extraordinary protection is warranted because disclosure would violate the letter and spirit of the Commission’s data privacy rules, which were promulgated to protect customers from unauthorized disclosure of personal information and customer-specific information.”¹²

37. Public Service requests that the “Commission issue an order granting highly confidential treatment for the personal information and customer-specific information provided in Direct Testimony or otherwise produced in this Proceeding that does not comport with the Commission’s Rules”.¹³

38. Public Service attached to the Motion for Extraordinary Protection a proposed nondisclosure agreement for legal counsel,¹⁴ a proposed nondisclosure agreement for subject matter experts,¹⁵ and an affidavit signed by Michael V. Pascucci, Public Service’s Director, Regulatory and Strategic Analysis (“Affidavit”).¹⁶

39. In the Affidavit, the affiant, Mr. Michael V. Pascucci, identifies the categories of persons with access to the highly confidential information for which extraordinary protection is sought¹⁷ and the period of time (two years) for which the protection for the confidential information must remain in place.¹⁸

40. Under Rule 1100(b) of the Rules of Practice and Procedure, 4 CCR 723-1, information filed with the Commission is presumed to be a public record. Rule 1100(d) specifies

¹² *Id.* at 3.

¹³ *Id.* at 4-5.

¹⁴ See Attachment A to the Motion for Extraordinary Protection.

¹⁵ See Attachment B to the Motion for Extraordinary Protection.

¹⁶ See Attachment C to the Motion for Extraordinary Protection.

¹⁷ Affidavit at 2.

¹⁸ *Id.*

that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

41. Rule 1101 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) 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. 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.

42. 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").

43. The ALJ finds and concludes that the Company stated good cause for its requested relief and complied with the requirements set forth in Rule 1101, 4 CCR 723-1. Therefore, the Motion for Extraordinary Protection will be conditionally granted, as ordered below.

II. ORDER

A. It is Ordered That:

1. Consistent with the discussion above, the interventions of the trial staff of the Colorado Public Utilities Commission, Office of Utility Consumer Advocate, and the Colorado Energy Office are acknowledged.

2. Consistent with the discussion above, the Petition for Leave to Intervene of the City and County of Denver, filed by the City and County of Denver, Colorado on September 12, 2024, is granted.

3. The Deadline for a Commission Decision is extended by 130 days.

4. The following Procedural Schedule is adopted to govern this proceeding:

Procedural Activity	Date
Answer Testimony	January 13, 2025
Rebuttal & Cross-Answer Testimony	February 20, 2025

Procedural Activity	Date
Stipulations/Settlement Agreements	February 27, 2025
Pre-Hearing Motions	February 27, 2025
Cross-Examination Matrix	February 27, 2025
Corrections to Pre-filed Testimony & Exhibits	February 27, 2025
Settlement Testimony	March 5, 2025
Two-Day Virtual Hearing Commencement	March 13, 2025
Statements of Position	April 3, 2025

5. A remote evidentiary hearing in this matter shall be conducted at the following dates, time, and place:

DATE: March 13-14, 2025

TIME: 9:00 a.m., daily

PLACE: Join by videoconference using Zoom at the link to be provided in an email from the Administrative Law Judge¹⁹

6. The parties and witnesses in the evidentiary hearing may not distribute the Zoom link and access code to anyone not participating in the remote evidentiary hearing.

7. All participants in the evidentiary hearing must comply with the requirements set forth in Attachments A and B to this Decision, which are incorporated herein.

8. The parties shall use the hearing exhibit blocks, as set forth in paragraph 22 of this Decision.

¹⁹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

9. A remote (virtual) public comment hearing on the Verified Application of Public Service Company of Colorado for Approval of Its Thermal Energy Network Pilot Development, filed by Public Service Company of Colorado (“Public Service”) on August 29, 2024, is scheduled as follows:

DATE: Tuesday, January 21, 2025

TIME: 4:00 to 6:00 p.m.²⁰

PLACE: By video conference: using the Zoom web conferencing platform at a link in the calendar of events on the Commission's website, available at <https://puc.colorado.gov/>.

10. All participants in the public comment hearing must comply with the requirements set forth in Attachments C to this Decision, which is incorporated herein.

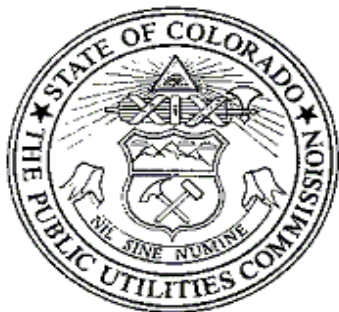
11. No one should appear in-person for the public comment and/or the evidentiary hearing(s).

12. Consistent with the discussion above, Public Service Company of Colorado’s First Motion for Extraordinary Protection of Highly Confidential Information, filed by Public Service on August 29, 2024, is granted.

²⁰ Please note that the hearing will conclude upon completion of public comments, but no earlier than 5:15 p.m.

13. 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

Rebecca E. White,
Director