

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0061E

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF PUBLIC SERVICE COMPANY OF COLORADO'S AGGREGATOR VIRTUAL POWER PLANT PROGRAM AND TARIFF, ALONG WITH ASSOCIATED PROGRAM BUDGET AND COST RECOVERY METHODOLOGY.

**INTERIM COMMISSION DECISION ADDRESSING
MOTION FOR EXTRAORDINARY PROTECTION AND
GRANTING PRO HAC VICE MOTION**

Issued Date: April 1, 2025
Adopted Date: March 19, 2025

I. BY THE COMMISSION

A. Statement

1. On January 31, 2025, Public Service Company of Colorado (“Public Service” or the “Company”) filed this Application for Approval of an Aggregated Virtual Power Plant (“VPP”) (“Application”).

2. By this Decision, the Commission grants the Out of State Counsels Verified Motion Requesting *Pro Hac Vice* Admission, filed by Solar United Neighbors on February 21, 2025.

3. We also grant in part and deny in part the Motion for Extraordinary Protection filed by Public Service on January 31, 2025.

B. Background

4. Public Service filed its Application pursuant to § 40-2-132.5, C.R.S., which requires Public Service to file, by February 1, 2025, an Application to implement a virtual power

plant (“VPP”) program, including a tariff for performance-based compensation for a qualified VPP. The Company is required, among other things, to consider the role that VPPs can play in modeling and meeting system needs in the resource planning process and eligibility requirements for distributed energy resource (“DER”) aggregators and technologies. The Company must also establish requirements for DER aggregators including communication, dispatch, measurement and verification, and settlement of performance-based compensation. Public Service may set a cap for individual resource capacity and minimum aggregation capacity for participation in the VPP program. Concurrent with its Application, the Company filed a Motion for Extraordinary Protection.

5. Through Decision No. C25-0155-I, the Commission deemed the Application complete and granted the requests for permissive intervention filed by Colorado Energy Consumers Group (“CEC”); Pivot Energy Inc. (“Pivot”); the City of Boulder (“Boulder”); Western Resource Advocates (“WRA”); Advanced Energy United (“AEU”); the Colorado Solar and Storage Association (“COSSA”) the Solar Energy Industries Association (“SEIA”) the Coalition for Community Solar Access (“CCSA”) (jointly “COSSA/SEIA/CCSA”); Colorado Renewable Energy Society (“CRES”); Mr. William Althouse; and Solar United Neighbors (“SUN”) and acknowledged the notices of intervention of right filed by Trial Staff of the Commission (“Staff”), the Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”). Concurrent with its motion for intervention, SUN filed a *pro hac vice* Motion for Mr. Argetsinger and Mr. Snyder.

6. Also through Decision No. C25-0155-I, the Commission set response time to the Motion for Extraordinary Protection filed by Public Service concurrent with its Application.

7. On March 10, 2025, the Commission received responses to the Motion for Extraordinary Protection from WRA, SUN, and COSSA/SEIA/CCSA and AEU, jointly.

C. Discussion, Findings, and Conclusions

1. *Pro Hac Vice* Motion

8. Concurrent with its Motion for Intervention, Solar united Neighbors (“SUN”) filed two motions for *pro hac vice* admission for (1) Beren Argetsinger, an attorney in good standing in New York, and (2) Grant Snyder, an attorney in good standing in Illinois. Both attorneys list Mark Valentine of Keys & Fox LLP as their sponsoring attorneys.

9. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in this Proceeding. Rule 1201(a) of the Commission’s *Rules of Practice and Procedure 4 Code of Colorado Regulations* (“CCR”) 723-1, govern the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure (“CRCP”) 205.4, which itself expressly incorporates CRCP 205.3.

10. As pertinent here, CRCP 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- a. File a Verified Motion with the administrative agency requesting permission to appear;
- b. Designate an Associate Attorney who is admitted and licensed to practice law in Colorado;
- c. File a copy of the Verified Motion with the Clerk of the Supreme Court Office of Attorney Regulation at the same time the verified motion is filed with the administrative agency;
- d. Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Regulation; and
- e. Obtain permission from the administrative agency for such appearance.

11. Mr. Argetsinger and Mr. Snyder meet the requirements of CRCP 205.4. We therefore grant each request to appear *pro hac vice*.

2. Public Service's Motion for Extraordinary Protection

12. Concurrent with its Application, Public Service filed a Motion which contained a request for extraordinary protection of highly confidential information pursuant to Commission Rules 1101(b) and 1400 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. Public Service seeks an order granting highly confidential treatment of proprietary, non-public, commercially, and otherwise highly sensitive vendor pricing and cost estimates associated with the Company's VPP program (this includes but is not limited to workpapers supporting Attachment DEE-2 to the Direct Testimony of Company witness Deborah E. Erwin, which presents the proposed budget for the first five years of the VPP program). Public Service requests the Commission issue an order limiting access to: (1) Commissioners; (2) Commission Advisors and Commission Advisory Counsel; (3) Administrative Law Judges; (4) Trial Staff and its counsel; (5) the UCA and its counsel; and (6) CEO and its counsel. The Company claims that the documents contain information that was prepared by third-party vendors or that relate to contracts with third-party vendors generally subject to confidentiality provisions. The Company asserts the information is highly confidential because disclosure of the information could harm the Company's competitive position as it relates to negotiating and implementing vendor solutions for the VPP program, potentially raising the costs of the VPP program and, in turn, the services provided to the Company's customers.

13. By Decision No. C25-0155-I, the Commission set response time to March 10, 2025. The Commission received responses from WRA, SUN, and COSSA/SEIA/CCSA and AEU, jointly.

14. In its Response, WRA does not challenge the designation of the information as highly confidential. Instead, WRA requests only that the Commission deny the Company's

specific request for relief and instead order the Company to extend access to the highly confidential information to non-government agency intervenors, including WRA, that do not operate as vendors in the virtual power plant industry and are not considered competitors of Public Service.¹ WRA argues that the information related to VPP vendor pricing is highly relevant and cost estimates are highly relevant, so excluding access to all permissive intervenors impacts intervenors rights of due process.² WRA argues this information is necessary for it to understand the assumptions, calculations, and other information underlying the proposed budgets. WRA argues that Public Service presents no evidence to demonstrate how the existing ethical rules, and the nondisclosure agreements proposed to be executed by parties who access this information, will not protect it from being disclosed outside of this proceeding and that the Company failed to meet its burden to demonstrate why access cannot be extended to non-competitive, non-governmental intervenors.³

15. SUN also opposes the Company's Motion and requests an order allowing SUN the ability to access information marked by Public Service as highly confidential. In the alternative, SUN argues the Commission should require Public Service to demonstrate, on a case-by-case basis, that information produced in this Proceeding is highly confidential to avoid unnecessary litigation and protect the due process rights of permissive intervenors.⁴ SUN argues that it does not pose the risk of harm that the Company seeks to protect against because SUN does not provide VPP vendor services or represent such vendors. It also argues that the Company's request is overly broad and vague and as such should be required to prove on a case-by-case basis that the

¹ WRA Response, p. 2.

² *Id.* at p. 3.

³ *Id.* at p. 5.

⁴ SUN Response, p. 1.

information is highly confidential, and not be granted such a broad protection now that leaves too much discretion to the Company.⁵

16. COSSA/SEIA/CCSA and AEU each support the Response to the Company's filed by SUN and further state that they are concerned the Motion is overly restrictive and does not provide access to authorized representatives from trade associations.⁶ They state that although some members of COSSA, SEIA, CCSA and/or AEU may have commercial interests in the outcome of this proceeding, the Commission has recognized, in allowing representatives of trade groups to access highly confidential information, that "there is also a difference between the individual members and [trade groups] as a whole."⁷

17. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted. Rule 1101(d) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, allows the Commission to "enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision."

18. We find that we need more information before determining whether the relief sought in the Motion is appropriate. Specifically, we are concerned with several unanswered questions raised primarily by WRA in response to this Motion. We do not find that the Company has carried its burden to justify why WRA or other similar non-competitive intervenors should be

⁵ *Id.* at p. 6.

⁶ COSSA/SEIA/CCSA Response, p. 1.

⁷ *Id.* at p. 2, citing Proceeding No. 10A-905E, Decision No. C11-0029 at ¶ 11 (issued January 11, 2011).

barred from this information—information that does appear to be extremely relevant to their ability to present their case in this Proceeding. Similarly, trade associations state that they have historically been given access, as long as its members do not receive access. Public Service has also not explained why that cannot work for this Proceeding. We request that Public Service file a response to why WRA, COSSA/SEIA/CCSA and similar intervenors should not receive access to the information covered by the Motion. Public Service shall supplement its Motion no later than seven days from the Issue Date of this Decision.

II. ORDER

A. The Commission Orders That:

1. Public Service Company of Colorado shall make a filing with the Commission clarifying its request for extraordinary protection of information, consistent with the discussion above, as soon as possible, and no later than seven days after the Issue Date of this Decision.
2. The Out of State Counsels Verified Motion Requesting *Pro Hac Vice* Admission, filed by Solar United Neighbors on February 21, 2025, is granted, consistent with the discussion above.

3. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners