

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0296E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2025-2027 WILDFIRE MITIGATION PLAN, WILDFIRE MITIGATION ADJUSTMENT, PUBLIC SAFETY POWER SHUTOFF PLAN, AND THE RECOVERY OF ITS 2023 WILDFIRE MITIGATION PLAN DEFERRAL.

**INTERIM DECISION GRANTING APPLICANT’S SECOND
UNOPPOSED MOTION FOR EXTRAORDINARY
PROTECTION**

Issued Date: January 6, 2024

I. STATEMENT

A. Relevant Procedural Background

1. On June 27, 2024, Public Service Company of Colorado (“Public Service”) filed an Application for approval of its 2025-2027 Wildfire Mitigation Plan and Public Safety Power Shutoff Plan.

2. On September 23, 2024, the Commission issued Decision No. C24-0687-I that, among other things, referred all discovery disputes and motions for extraordinary protection to an Administrative Law Judge (“ALJ”). The limited referral was subsequently assigned to the undersigned ALJ. According to Decision No. C24-0687-I, the parties to this Proceeding are: Public Service, Staff of the Commission (“Staff”), the Utility Consumer Advocate (“UCA”), the City of Boulder, Colorado Energy Consumers, Climax Molybdenum Company, Comcast Cable Communications Management, LLC, the Colorado Solar and Storage Association and the

Coalition for Community Solar Access, the City and County of Denver, and Western Resource Advocates.

3. On September 13, 2024, Public Service filed an Unopposed First Motion for Extraordinary Protection “for certain competitively sensitive and highly confidential customer-specific information protected by the Commission’s data privacy rules, including Rule 1101, *et. seq.* and Rule 3025, *et. seq.*” (“First Unopposed Motion”).¹

4. On September 27, 2024, the ALJ issued Decision No. R24-0706-I granting the First Unopposed Motion.

5. On December 20, 2024, Public Service filed an Unopposed Second Motion for Extraordinary Protection for “certain proprietary, non-public, and otherwise highly sensitive electric infrastructure information, including detailed geographic, technical, engineering, and design information.” (“Second Unopposed Motion”).²

B. Second Unopposed Motion

6. In the Second Unopposed Motion, Public Service seeks highly confidential protection for: (a) “[s]pecific geographic information regarding the Company’s electric infrastructure that is provided in tandem with detailed attribution information that is included in the GIS that is non-public and proprietary;” (b) “[i]nformation about technical details of electric facilities, including specific facilities and their technical specifications (i.e. circuits, conductors, poles, fuses, etc.); and” (c) “[d]ocuments, studies, or information that could be used to describe or locate the above-described information.”³

¹ Unopposed Motion at 1.

² Unopposed Second Motion at 1.

³ *Id.* at 3-4.

7. Public Service argues that the information described above is subject to highly confidential protection because the request seeks “highly confidential and sensitive detailed locational and technical infrastructure information about the Company’s existing electric infrastructure,”⁴ the public disclosure of which “would increase the risk that this critical infrastructure information would fall into the hands of bad actors seeking to attack the grid.”⁵

8. Public Service requests that highly confidential protection be afforded so that access to the information will be limited to

the Commission, State Agencies, Colorado municipalities/counties, environmental advocates who routinely practice before the Commission, and authorized representatives of trade associations. For trade associations, the Company requests to limit access to attorneys and subject matter experts directly engaged in the proceeding and that the Highly Confidential Information not be provided to individual members. Of course, in compliance with Commission Rules, counsel and the party representatives permitted access to this information may use it only for purposes of this Proceeding.⁶

Public Service has submitted form nondisclosure agreements for subject matter experts and attorneys for parties (other than Staff and UCA) to execute before having access to the highly confidential information.

9. No party opposes the Second Unopposed Motion.⁷

C. Analysis

10. Under Rule 1100(b) of the Commission’s Rules of Practice and Procedure,⁸ information filed with the Commission is presumed to be a public record. Rule 1101 provides the procedure and requirements for the designation of certain documents or information as highly

⁴ *Id.* at 3.

⁵ *Id.* at 5.

⁶ *Id.* at 4.

⁷ *Id.* at 3.

⁸ 4 *Code of Colorado Regulations* 723-1.

confidential, thus limiting access to such documents and information. Under Rule 1101(b), a motion seeking highly confidential treatment:

- (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.

11. Here, Public Service's Second Unopposed Motion includes proposed forms of nondisclosure agreements for retained subject matter experts and attorneys, and an affidavit stating that a limited number of employees have access to the highly confidential information and stating that extraordinary protection sought for the information must remain in place "indefinitely."⁹ Respondents did not file unredacted highly confidential versions of the documents for which it seeks highly confidential protection because they "contain[] highly sensitive information . . . and

⁹ Unopposed Second Motion, Attached Affidavit at 2.

[] the information is being produced pursuant to a discovery request rather than for admission into the evidentiary record.”¹⁰ However, Public Service has described the information with sufficient detail to allow the ALJ to make a judgment about the requested relief.

12. In addition, Public Service identified the grounds for seeking highly confidential protection for the information identified in the Second Unopposed Motion. Specifically, Public Service stated that the information is protectable as highly confidential material because public release of it “would increase the risk that this critical infrastructure information would fall into the hands of bad actors seeking to attack the grid.”¹¹ To demonstrate that its concerns are not speculative, Public Service identified a criminal complaint filed by the Federal Bureau of Investigations against a defendant alleging that the defendant took numerous concrete steps in support of a plan to “take down” the electrical grid in the Denver area.¹² Public Service also noted that the same or similar information has been afforded highly confidential protections in multiple other Commission proceedings.¹³

13. The ALJ agrees with Public Service’s conclusion that the information identified in the Second Unopposed Motion is highly confidential. The ALJ also concludes that the protection afforded by the Commission’s rules addressing confidential information provide insufficient protection for the highly confidential information identified by Public Service, and that, if adopted, the highly confidential protections proposed by Public Service will afford sufficient protection for the identified highly confidential information.

14. Finally, as noted above, no party opposes the Second Unopposed Motion.¹⁴

¹⁰ Unopposed Second Motion at 13.

¹¹ *Id.* at 5.

¹² *Id.* at 5-6.

¹³ *Id.* at 9-11.

¹⁴ *Id.* at 3.

15. Based on the foregoing, the ALJ finds and concludes that Respondents have satisfied their burden under Rule 1101(b).

II. ORDER

A. It Is Ordered That:

1. Response time to the Unopposed Second Motion for Extraordinary Protection filed by Public Service Company of Colorado on December 20, 2024 (“Second Unopposed Motion”) is waived.

2. The Second Unopposed Motion is granted consistent with the discussion above.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director