

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

IN THE MATTER OF THE INVESTIGATION OF )  
ELECTRIC TRANSMISSION ISSUES AND THE ) Docket No. 08I-227E  
OPENING OF AN INVESTIGATORY DOCKET. )

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**TRI-STATE'S COMMENTS IN RESPONSE TO INTERIM ORDER AND  
IN CONNECTION WITH MARCH 30, 2009 WORKSHOP**

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Tri-State Generation and Transmission Association, Inc. ("Tri-State"), by and through its undersigned counsel, submits the following comments in response to the Interim Order of Hearing Commissioner James K. Tarpey Concerning March 30, 2009 Workshop (Decision No. R09-0269-I, the "Interim Order").

**A. General Comments**

As set forth in the Commission's Preliminary Statement of Goals in this docket, "A reliable, optimized western transmission system will allow for greater transfers of electrical energy within and between regions. This will create access to diverse generation resources, improving system reliability, reducing reserve requirements and providing electric service at reasonable costs." (Attachment to Decision No. C08-0607). To that end, Tri-State is working and will continue to work with both jurisdictional and non-jurisdictional utilities to plan and implement additions and improvements to its interconnected, multi-state transmission system. Tri-State is currently planning approximately \$1.6 billion in transmission system projects over the next ten years which will enable Tri-State to better serve the increasing loads of its 44 member distribution cooperatives and public power districts, improve the reliability of its transmission system, and enable the integration of renewable and clean energy resources into the transmission system.

Notwithstanding this aggressive transmission system improvement plan, the Certificate of Public Convenience and Necessity ("CPCN") process remains an administrative impediment to expediting the build-out of many proposed transmission projects. While Tri-State does not dispute the importance of the Commission's responsibility to consider the public need in connection with proposed transmission projects, Tri-State does believe that it is prudent, and necessary, to consider means to expedite the review and approval of proposed transmission projects. In that regard, Tri-State commends the Commission's efforts to consider "whether it is possible to develop one or more administrative processes to shorten the time necessary for Commission review of, and decision on, transmission applications." (Attachment to Interim Order at 1).

As discussed in further detail below, Tri-State believes the Commission should focus its present efforts in two areas: (1) development of clear criteria defining those transmission projects that are to be deemed "in the ordinary course of business" and not requiring CPCN approval, and (2) development of a streamlined CPCN application, review, and approval process for all transmission projects not deemed to be "in the ordinary course of business" and regardless of the "category" of project.

**B. Comments in Response to "Questions for March 30, 2009 Workshop"**

The following comments are submitted in response to the "Questions for March 30, 2009 Workshop" included as an Attachment to the Interim Order.

1. Process for applications for transmission facilities that are "in the ordinary course of business."

a. Tri-State submits that, other than the guidance provided in Commission Rule 3206(b), there is presently no clear definition of what constitutes "in the ordinary course of business" for purposes of determining whether a specific transmission project requires a CPCN. While the current Rules define what is not "in the ordinary course of business" (i.e., Rule

3206(b)(I)-(III)), the Rules provide only that transmission projects not falling within that definition are "in the ordinary course of business." Tri-State submits that such a reverse definition is neither helpful to the Commission or applicants, nor is it consistent with the Commission's oft-stated goal of streamlining and expediting the transmission CPCN process. Tri-State recommends that the Commission specifically define those transmission projects that are considered "in the ordinary course of business" and, furthermore, that the Commission include within this definition all projects that do not have a substantial contribution to the bulk power system in Colorado.

Tri-State recommends that, for purposes of Commission Rule 3206, the following transmission projects should be defined as being "in the ordinary course of business" and not requiring issuance of a CPCN:

- all transmission lines having an operating voltage less than 230 kV – such lines do not generally constitute a significant part of the bulk power system and are used primarily for local power deliveries with only minor system through-flows;
- all radial transmission lines regardless of voltage or length – such lines are built to serve a specific load or to connect generation to the bulk power system;
- all transmission lines, regardless of voltage, rebuilt on existing rights of way meeting reasonable noise and EMF criteria as discussed below.

Tri-State recommends that this definition should apply to both new transmission facilities and modifications of existing transmission facilities.

b. As discussed above, Tri-State recommends that the Commission promulgate rules setting forth specific criteria, consistent with the above recommendations, to be used to determine whether a proposed transmission facility is "in the ordinary course of business."

c. Tri-State does not believe that the conceptual "fast track process" outline in paragraph 1.c. of the Interim Order is advisable or would result in expedited review and approval of transmission projects. To the contrary, Tri-State believes that such a process would likely result in additional delays due to the notice, intervention, and timing aspects of the "fast track process" concept. Tri-State submits that the Commission's existing Rule 3206, combined with the above-recommended new criteria defining "in the ordinary course of business" and other possible minor modifications, provides an appropriate procedure for evaluating proposed transmission projects.

Under the current Rule 3206, utilities submit to the Commission each year a filing including certain specified information (see Rule 3206 (c)-(e)) for a determination of which of the utility's proposed new construction or extension of transmission facilities for the next three calendar years are necessary in the ordinary course of business and which require a CPCN prior to construction. The Commission then provides notice to potentially interested persons and a 15 day comment period. (See Rule 3206(f)) Thereafter, Staff comments are submitted and a final Commission decision is rendered by June 30 or October 31, depending upon the year in which the proposed project is scheduled to begin construction. (See Rule 3206(g)-(h))

Tri-State believes the information currently required to be submitted as part of the initial Rule 3206 filing is appropriate. Furthermore, Tri-State believes that the submittal of information should include a statement of the utility's position regarding whether the proposed project(s) meet the definition of "in the ordinary course of business" together with the factual basis for such statement, consistent with the recommended definition of "in the ordinary course of business" as proposed above. Tri-State believes that a specific definition of "in the ordinary course of business" combined with clear criteria implementing this definition will enable the Commission

to directly approve certain proposed transmission projects without the need for Staff Comments or notice and comment by third parties.

Tri-State recognizes, however, that there may be some transmission projects which may not clearly fall within the proposed definition of "in the ordinary course of business" but which the Commission may, nonetheless, believe do not necessarily warrant full CPCN review and approval. In such cases, Tri-State recommends that the Commission retain the current Rule 3206 procedure so that its decision may be informed by and benefit from Staff comments and possibly third party comments. This procedure would still yield a Commission decision within 60 days of filing for those transmission projects scheduled to begin construction in the same calendar year as the Rule 3206 filing.

Tri-State notes that while the existing Rule 3206 contemplates possible comments from interested persons, it does not necessarily contemplate formal intervention by such persons as is suggested in the conceptual "fast track process" outlined in the Interim Order. Tri-State believes that in order to achieve the Commission's goals of expediting transmission projects, interested third parties should be limited to providing comments only or, if intervention is to be permitted, the intervenor should be required to provide specific information explaining the basis for the requested intervention as well as specific information concerning how the project does or does not meet the definition and criteria for "in the ordinary course of business."

d. As stated above, Tri-State believes the information currently required to be submitted as part of the initial Rule 3206 filing is appropriate but should be supplemented by requiring additional information consistent with the above recommended definition and criteria for "in the ordinary course of business." Tri-State also believes that the Commission should consider eliminating requirements related to project costs for projects proposed by non-rate regulated utilities (see, e.g., Rule 3206(c)(II)(concerning overall project costs and financing)).

Where there is no need for a prudency determination as a precursor to subsequent cost recovery requests, such information is not relevant to the Commission's determination of public convenience and necessity. Elimination of this filing requirement would further streamline the CPCN approval process.

Finally, Tri-State reserves the right to provide additional comments concerning transmission planning information submitted as part of the CPCN process which will be the subject of the June 22, 2009 transmission rules workshop.

2. Process for CPCN applications filed pursuant to § 40-2-126(4), C.R.S.

Colorado Revised Statute § 40-2-126(4) pertains to CPCN applications for transmission projects proposed pursuant to Senate Bill 07-100. As a non-rate regulated utility, Tri-State is not required to submit proposed plans, designations, and CPCN applications for SB-100 transmission projects. (See C.R.S. § 40-2-126(2)) Accordingly, Tri-State does not offer specific comments concerning the process applicable to CPCN applications for such projects.

Nevertheless, to the extent the Commission determines that any proposed transmission project is not "in the ordinary course of business" and requires CPCN approval, Tri-State encourages the Commission to apply the same expedited treatment to such projects as is applicable to SB-100 transmission projects. As required by statute, the Commission must issue a final order within 180 days after the CPCN application or the application shall be deemed approved. The Commission's Rules applicable to SB-100 CPCN applications, as may be amended as a result of this docket, demonstrate that the Commission can gather the information it requires to make a CPCN determination within six months. Tri-State believes that the same procedures and timeframe can be applied to all other transmission projects not deemed to be "in

the ordinary course of business" so as to streamline the CPCN approval process and expedite the construction of much needed transmission system improvements throughout Colorado.<sup>1</sup>

3. Process for CPCN applications for transmission facilities that are backbone transmission facilities.

As an initial matter, Tri-State disagrees with the proposed use of the term "backbone transmission facilities" in the rules. Tri-State recommends that the Commission adopt the term "bulk electric system (BES)," as contained in the NERC Reliability Standards.<sup>2</sup> The term "bulk electric system" is defined by the Regional Reliability Organization as "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition." Tri-State does not advocate that all proposed non-radial transmission projects above 100-kV in the State of Colorado require a CPCN. As proposed earlier, most, if not all, transmission lines operated below 230 kV would be considered within the "ordinary course of business". Non-radial, bulk electric system elements 230-kV and higher listed in Rule 3206 filings would require further consideration as to whether a CPCN was required. Tri-State believes that given the applicability of national and regional reliability standards, it is prudent for the Commission to apply a consistent definition for Rule 3206 and CPCN purposes as well.

As a practical matter, Tri-State defines the demarcation between the bulk electric system and the distribution system as occurring at the transformer where the voltage is stepped down from the bulk electric system, or where a radial line branches off from the bulk electric system to feed a specific load.

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<sup>1</sup> Tri-State is aware that §40-6-109.5, C.R.S., grants the Commission up to 210 days to issue a decision on an application, however, Tri-State believes that the Commission may by rule shorten the statutory timeline.

<sup>2</sup> North American Electric Reliability Corporation, "Reliability Standards for the Bulk Electric Systems of North America", July 21, 2008.

Notwithstanding the above recommended definition of bulk electric system and the practical point of demarcation between the bulk electric system and the distribution system, Tri-State does not believe there is a benefit in differentiating between proposed transmission projects that are part of the bulk electric system and those that are not. Rather, Tri-State believes that by adopting a clear definition of and criteria for transmission projects that are "in the ordinary course of business", together with an expedited CPCN process for all other transmission projects as discussed above, the Commission's goal of expediting transmission project approval and construction can be accomplished without further delineation between categories of transmission projects.

4. Process for CPCN applications for transmission facilities not in the foregoing categories.

As discussed above, Tri-State recommends that the Commission consider only two categories of transmission projects: those that are in the ordinary course of business, and those that are not. For all transmission projects determined not to be in the ordinary course of business, Tri-State recommends that the Commission employ the same expedited CPCN process as is currently applied to SB-100 transmission project applications. Tri-State believes that this expedited process, combined with more specific requirements applicable to requests for intervention and appropriate controls to ensure that issues raised by intervention are truly related to the public convenience and necessity, will accomplish the Commission's goal of expediting transmission project approval and construction without the need for creating different CPCN processes for different types of transmission projects.

5. Process for applications that seek both a CPCN for transmission facilities and a reasonableness finding for transmission line noise, for electromagnetic field (EMF), or for both.

Tri-State has not previously sought a reasonableness determination for transmission line noise or EMF in connection with a transmission project CPCN application. Nevertheless, Tri-



State recognizes that there may be a need to seek such a reasonable determination in connection with some future transmission project. To that end, Tri-State believes that it is in the interest of both the Commission and applicants to promulgate a rule that establishes reasonable projected noise and EMF levels for a proposed transmission project.

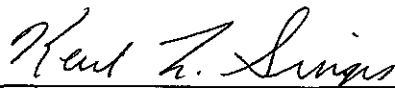
As the Commission is aware from its experience with various recent transmission project CPCN applications, there is a substantial overlap between issues related to public convenience and necessity and those related to noise and EMF mitigation. This is particularly true when considering engineering and design issues as they relate to trade-offs between possible mitigation measures and project costs. Tri-State believes that the Commission should promulgate rules that clearly establish reasonable noise and EMF levels which can then be considered by the utility when initially designing the project. If the project is designed to be within these levels, and adequate information demonstrating such design and performance is submitted to the Commission as part of the CPCN application, the Commission may expeditiously consider both "traditional" CPCN issues as well as noise and EMF reasonableness issues. To the extent that any third party believes that there are unique circumstances that warrant a departure from these established standards, such concerns can be raised in an appropriately supported request for intervention.

Tri-State does not believe that a rebuttable presumption of reasonableness accomplishes the Commission's goals. A rebuttable presumption would only serve to invite intervention for the purpose of arguing such presumption. Given the essentially inextricable relationship between project design and noise/EMF issues, such a procedure would only result in further delay of the CPCN determination itself. By establishing clear reasonableness levels for EMF and noise, the utility-applicant and the Commission can proceed with certainty and alacrity in resolving both the CPCN and noise/EMF issues.

**C. Representative for March 30, 2009 Workshop**

As an owner and operator of transmission facilities located within the state of Colorado and extending from Colorado into adjacent states, Tri-State is an "interested person" for purposes of the issues under consideration in this docket. As such, Tri-State desires to participate in the workshop scheduled for March 30, 2009. Tri-State hereby designates Mr. Joel K. Bladow, Senior Vice President, Transmission, as its representative for the upcoming workshop.

Submitted this 23rd day of March, 2009.

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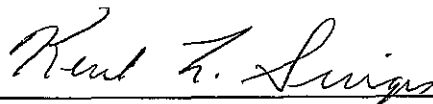
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## CERTIFICATE OF SERVICE

I hereby certify that on this twenty-third day of March, 2009, I served the original and seven copies of the foregoing **TRI-STATE'S COMMENTS IN RESPONSE TO INTERIM ORDER AND IN CONNECTION WITH THE MARCH 20, 2009 WORKSHOP** on the Colorado Public Utilities Commission by handing to and leaving the same with the Executive Director of the Commission, Mr. Doug Dean, along with a CD containing the same, and that copies were e-mailed to the following:

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