

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Docket No. 09A-324E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SAN LUIS VALLEY-CALUMET-COMANCHE TRANSMISSION PROJECT, (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE, AND (C) FOR APPROVAL OF OWNERSHIP INTEREST TRANSFER AS NEEDED WHEN PROJECT IS COMPLETED.

Docket No. 09A-325-E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SAN LUIS VALLEY-CALUMET-COMANCHE TRANSMISSION PROJECT, (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE, AND (C) FOR APPROVAL OF OWNERSHIP INTEREST TRANSFER AS NEEDED WHEN PROJECT IS COMPLETED.

APPLICANTS' JOINT MOTION TO STRIKE HEARING TESTIMONY

Pursuant to ALJ Jennings-Fader's Order and Rule 1400 of the Rules of Practice and Procedure of the Colorado Public Utilities Commission (the "Commission"), Tri-State Generation and Transmission Association, Inc. ("Tri-State") and Public Service Company of Colorado ("Public Service")(collectively the "Applicants") submit this Joint Motion to Strike Hearing Testimony in the above-referenced proceeding. In support thereof, the Applicants state:

INTRODUCTION

Mr. Morey Wolfson, Transmission Program Manager at the Colorado Governor's Energy Office ("GEO"), prefiled Corrected Testimony in this proceeding in which, among other things, he expressed certain positions of the GEO concerning the ongoing

Environmental Impact Statement ("EIS") process and its implications to this CPCN proceeding. Before Mr. Wolfson testified at the proceeding's evidentiary hearing, counsel for Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC (collectively "Trinchera Ranch") questioned Tri-State and Public Service witnesses about the GEO's positions. Counsel for Colorado Open Lands ("COL") also questioned a COL witness on GEO's positions.

The GEO, however, subsequently withdrew the part of Mr. Wolfson's Corrected Testimony on which Trinchera Ranch and COL relied to question the witnesses. With those portions of the Corrected Testimony no longer part of the record, Tri-State moved to strike as irrelevant the testimony of witnesses that was based on Mr. Wolfson's withdrawn testimony. Public Service joined the motion. The Judge granted the motion and requested that the Applicants file a motion identifying the testimony that should be stricken from the record. The Applicants have identified the following testimony as testimony that was based on Mr. Wolfson's withdrawn testimony and move that this testimony be stricken:

1. Mr. Joel Bladow's cross-examination testimony at Tr. I, 170:23-172:13, 173:4-21, 175:8-20, 175:25-177:6, attached as Exhibit A.
2. Ms. Karen Hyde's cross-examination testimony at Tr. I, 335:17-336:20, attached as Exhibit B.
3. Ms. Nicole Korbe's cross-examination testimony at Tr. IV, 168:24-170:20, attached as Exhibit C.
4. Mr. Daniel Pike's redirect examination testimony at Tr. V, 175:23-177:2, attached as Exhibit D.

5. Colloquy between the Judge and counsel for Western Resource Advocates ("WRA") at Tr. I, 16:25-18:15, attached as Exhibit E.

BACKGROUND

On October 29, 2009, Mr. Wolfson prefiled Answer Testimony in this proceeding on behalf of the GEO. (*See* Hearing Ex. 28.) Mr. Wolfson's Answer Testimony set forth the position of the GEO concerning Tri-State's and Public Service's applications for Certificates of Public Convenience and Necessity (the "Applications") for the San Luis Valley-Calumet-Comanche Transmission Project (the "Project"). On January 25, 2010, Mr. Wolfson prefiled Corrected Testimony. The Corrected Testimony sought to clarify statements Mr. Wolfson made in his Answer Testimony concerning the siting of the transmission lines. (*See* Hearing Ex. 29, 2:12-3:17.)¹ Mr. Wolfson explained that the GEO knew an EIS was currently under way and that the EIS will include an analysis of various potential routes for the transmission lines. (*Id.* at 2:21-23.) Mr. Wolfson furthered stated that it was the opinion of the GEO that the Commission should allow the EIS process to conclude before making a determination concerning the preferred routes for the Project:

The GEO recommends that the Commission consider bifurcating the CPCN determination. We recommend that the Commission first find that the public interest is served by expanding transmission capacity to deliver substantial blocks of renewable energy out of the San Louis Valley, while simultaneously improving the reliability in the Valley. We recommend that the Commission issue a separate determination that addresses the routing subject, pending the outcome of the Environmental Impact Statement.

(*Id.* 3:8-14.)

At the evidentiary hearing, counsel for Trinchera Ranch referenced Mr. Wolfson's Corrected Testimony and questioned Tri-State witnesses Mr. Bladow and Ms. Korbe, and

¹ In addition, Mr. Wolfson's Corrected Testimony sought to clarify his original testimony concerning the generation capacity of the Project. (*See* Ex. 29, 2:6-11.)

Public Service witness Ms. Hyde, about the GEO's position regarding the EIS and its relevance to this proceeding. (See Exhibit A, 170:23-172:13, 173:4-21, 175:8-20, 175:25-177:6; Exhibit B, 335:17-336:20; Exhibit C, 168:24-170:20.) Counsel for COL also referenced Mr. Wolfson's Corrected Testimony and questioned Mr. Daniel Pike on the same topic. (See Exhibit D, 175:23-177:2.) Additionally, counsel for WRA referenced Mr. Wolfson's Corrected Testimony in a preliminary matter with the Judge. (See Exhibit E, 16:25-18:15.)

When Mr. Wolfson took the stand, the GEO moved to withdraw the portions of Mr. Wolfson's Corrected Testimony that counsel for Trinchera Ranch and COL had used as a basis for the examination of the witnesses. (See Tr. VII, 11:3-25; attached as Exhibit F.) After GEO's request to withdraw such testimony was granted, Tri-State moved to strike as irrelevant the testimony of the witnesses that referenced Mr. Wolfson's withdrawn testimony. (*Id.* at 13:6-14.) The GEO supported Tri-State's motion. (*Id.* at 17:5-12 ("It is our position that in light of the withdrawn testimony questions about that previously are now irrelevant as is his withdrawn testimony."))

The Judge granted Tri-State's motion and ordered that testimony which used as its basis for examination the withdrawn testimony of Mr. Wolfson be stricken from the record:

That then leaves me with Mr. Dougherty's request with respect to striking testimony which used *as its basis* for examination the testimony now withdrawn by Mr. Wolfson. The motion is granted.

(*Id.* at 20:1-4 (emphasis added).) The Judge requested that the Applicants file the current motion identifying the testimony to be stricken. (See Tr. VIII, 180:2-181:8, attached as Exhibit G.)

ARGUMENT AND AUTHORITY

A. The Judge Acted Within Her Discretion in Striking Testimony that Was Based on Mr. Wolfson's Withdrawn Testimony.

The Judge acted within her discretion in ordering stricken the testimony which was based on the withdrawn testimony of Mr. Wolfson. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. C.R.E. 401; *see also* Rule 1501(a) of the Public Utilities Commission Rules of Practice and Procedure (rules of evidence of district courts applicable in Commission hearings).

A trial court has broad discretion over evidentiary matters, including the admissibility of testimony. *See Heritage Village Owners Ass'n, Inc. v. Golden Heritage Investors, Ltd.*, 89 P.3d 513, 516 (Colo. App. 2004) ("Rulings on the relevancy of proffered evidence are within the sound discretion of the trial court[.]"). Absent an abuse of discretion, evidentiary rulings will not be disturbed. *Id.* An ALJ has the same discretion over evidentiary matters. *See, e.g., Rice v. Dep't of Corrections*, 950 P.2d 676, 681 (Colo. App. 1997) ("The admission of rebuttal testimony is within the sound discretion of the ALJ and will not be disturbed absent an abuse of that discretion."). Once Mr. Wolfson's testimony was withdrawn, other evidence specifically referencing any portion of Mr. Wolfson's withdrawn testimony, or which used as its basis for examination the testimony withdrawn by Mr. Wolfson, is no longer of consequence to the determination of this proceedings and, therefore, should be stricken as not relevant.

B. Testimony Based on Mr. Wolfson's Withdrawn Testimony Should Be Stricken as Ordered By the Judge.

The testimony of the following witnesses should be stricken because it references Mr. Wolfson's withdrawn testimony and uses the withdrawn testimony as the basis for examination.

1. Testimony Concerning the Witnesses' Familiarity With the Opinions of the GEO and Whether They Agree With It Should Be Stricken.

As a foundation, counsel for Trinchera Ranch asked witnesses for Tri-State and Public Service whether they were familiar with the positions of the GEO. (*See* Exhibit A, 170:23-25 (questioning Mr. Bladow); Exhibit B, 335:17-22 (questioning Ms. Hyde); (Exhibit C, 168:24-169:4 (questioning Ms. Korbe).) After establishing the witnesses' familiarity, counsel for Trinchera Ranch proceeded to read portions of the withdrawn testimony into the record and ask the witnesses if they agreed with the GEO's position that the EIS analysis on potential routes should be allowed to conclude before the Commission made a determination on the Applications. (*See* Exhibit A, 171:1-172:13 (questioning Ms. Bladow); Exhibit B, 335:23-336:12 (questioning Ms. Hyde); Exhibit C, 169:5-15 (questioning Ms. Korbe).) Similarly, counsel for COL asked Mr. Pike whether he too agreed with the opinion of the GEO concerning the EIS and this proceeding. (*See* Exhibit D, 175:23-177:2.)

The questions by counsel for Trinchera Ranch and COL were based on and directly quote from Mr. Wolfson's withdrawn testimony. Thus, the testimony in Exhibit A, 170:23-25, 171:1-172:13; Exhibit B, 335:17-336:12; Exhibit C, 168:24-169:15; and Exhibit D, 175:23-177:2 should be stricken from the record consistent with the Judge's ruling.

2. Testimony Concerning Whether the Witnesses Believed the GEO's Position Had Merit Should Be Stricken.

In addition to questioning witnesses for Tri-State and Public Service on whether they agreed with the GEO's positions, counsel for Trinchera Ranch asked questions intended to elicit the witnesses' opinion on whether they believed that the GEO's positions had merit. That is, whether they believed, consistent with the withdrawn testimony, that the results of the EIS would be of benefit to the Commission in deciding to grant or deny the Application.

For example, counsel for Trinchera Ranch asked Mr. Bladow several times whether it would be beneficial to have the results of the EIS of the proposed project before the Commission makes its decision in this case. (*See* Exhibit A, 173:4-7, 173:12-16 ("Q. . . . wouldn't there be a benefit to having the information gathered as part of that environment [sic] impact statement prior to the time the commission determines that your proposed route from San Luis Valley to Calumet is needed?"); 175:8-12 (same); 175:25-176:2 (same); 176:6-8 (same); 177:2-4 (same).) Counsel for Trinchera Ranch asked Ms. Hyde the same question. (*See* Exhibit B, 336:13-17 ("Q. And do you agree that it would be beneficial to have the results of the evaluation of the Environmental Impact Statement before the Commission makes a determination that the companies can build a line from San Luis Valley to Calumet?").)

The questions asked by counsel for Trinchera Ranch clearly are based on the withdrawn testimony of Mr. Wolfson, and the responses of the witnesses directly relate to Mr. Wolfson's withdrawn testimony. Thus, the testimony at Exhibit A, 173:4-21, 175:8-20, 175:25-177:6 and Exhibit B, 336:13-20 should be stricken from the record consistent with the Judge's ruling.

3. Colloquy Between the Judge and Counsel for WRA Pertaining to Mr. Wolfson's Withdrawn Testimony Should Be Stricken

At the commencement of the evidentiary hearing, counsel for WRA raised a preliminary matter concerning the prefiled Corrected Testimony of Mr. Wolfson. (*See* Exhibit E, 16:24-17:4.) Specifically, counsel suggested that Mr. Wolfson's Corrected Testimony was, in essence, a motion for bifurcation and inquired as to whether the Commission would treat it as such and whether the Commission was, in fact, considering a bifurcation of the proceeding. (*Id.* at 17:5-12, 18:2-10.)

The colloquy between the Judge and counsel for WRA concerned the recommendation of the GEO that the Commission bifurcate this proceeding. This recommendation has been withdrawn. (*See* Ex. 29, 2:12-3:17; Ex. F, 11:3-25.) Thus, the colloquy at Exhibit E, 16:25-18:15, was based on Mr. Wolfson's withdrawn testimony and should, therefore, be stricken from the record consistent with the Judge's ruling.

C. Trinchera Ranch's Position Regarding the Testimony To Be Stricken Is Inconsistent with the Judge's Ruling.

After granting the motion to strike testimony, the Judge asked that the parties affected confer on the testimony to be designated for deletion. (*See* Exhibit G, 180:2-181:8.) The Applicants, Trinchera Ranch, and WRA met and conferred.² Trinchera Ranch indicated that it disagreed with part of the Applicants' designation of testimony in Exhibit A, Exhibit B, and Exhibit C.³ (*See id.* at 181:3-8.)

² Counsel for COL received notice of the Commission's ruling granting the motion to strike, and was informed of the testimony the Applicants have identified for deletion. (*See* E-mail from ALJ Jennings-Fader to Anthony E. Velarde, *et al.* (Feb. 11, 2010, 18:15:00 MST), and E-mail from E. Martin Enriquez, attorney for Tri-State, to Bill Levis, *et al.* (Feb. 10, 2010, 22:09:57 MST) attached as Exhibit H.) The Applicants, however, have not yet heard from COL and do not know its position concerning the testimony identified for deletion.

³ WRA reviewed the testimony that the Applicants identified to be stricken and agrees with the Applicants' designation. (*See* Exhibit G, 181:2-3.)

Trinchera Ranch suggested that only testimony specifically related to the GEO's recommendation for bifurcation should be stricken. Contrary to Trinchera Ranch's suggestion, Mr. Wolfson's withdrawn testimony is not limited to the bifurcation recommendation by the GEO. The recommendation is only a part of the testimony that Mr. Wolfson withdrew. (*See* Ex. 29, 3:8-9.) The remaining portions of Mr. Wolfson's withdrawn testimony relate to the position of the GEO concerning the purported benefits to the Commission of waiting for the EIS results. (*See id.* at 2:12-3:17.) The testimony the Applicants identified for deletion directly followed from, or used as a basis for examination, Mr. Wolfson's withdrawn testimony. (*Compare id. with* Exhibit A, 170:23-172:13, 173:4-21, 175:8-20, 175:25-177:6; Exhibit B, 335:17-336:20; and Exhibit C, 168:24-170:20.)

Trinchera Ranch suggests that some of the testimony the Applicants identified for deletion should not be stricken because the examination could have been done independently from Mr. Wolfson's withdrawn testimony. The examination of those witnesses, however, was not done in a vacuum but rather in the context of Mr. Wolfson's withdrawn testimony. Trinchera Ranch's suggestion simply ignores the Judge's ruling that all testimony which "*used as its basis*" for examination the withdrawn testimony of Mr. Wolfson should be stricken. (Exhibit F, 20:1-4 (emphasis added).)

The testimony the Applicants identified for deletion took place in the context of a discussion on the subjects that are now Mr. Wolfson's withdrawn testimony. The testimony of the witnesses is inextricably intertwined with Mr. Wolfson's withdrawn testimony. As such, the testimony of the witnesses is, in essence, the fruit of the poisonous tree and, thus, should be stricken.

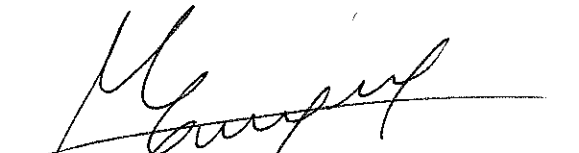
CONCLUSION

For the foregoing reasons, the Applicants respectfully requests that the Judge strike the following hearing testimony consistent with her ruling:

1. Mr. Bladow's testimony at Exhibit A, 170:23-172:13, 173:4-21, 175:8-20, 175:25-177:6.
2. Ms. Hyde's testimony at Exhibit B, 335:17-336:20.
3. Ms. Korbe's testimony at Exhibit C, 168:24-170:20.
4. Mr. Pike's testimony at Exhibit D, 175:23-177:2.
5. Colloquy between the Judge and counsel for WRA at Exhibit E, 16:25-18:15.

Anything less would defeat the purpose of the GEO in withdrawing those portions of Mr. Wolfson's testimony and would be inconsistent with the Judge's prior ruling.

Dated this 16th day of February, 2010.



Thomas J. Dougherty, #30954
Tamara F. Goodlette, #35775
E. Martín Enriquez, #38886
Rothgerber Johnson & Lyons LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202
(303) 623-9000
Facsimile: 303-623-9222
Email: tdougherty@rothgerber.com
Email: tgoodlette@rothgerber.com
Email: menriquez@rothgerber.com

Kenneth V. Reif, #10666
Tri-State Generation & Transmission
Association, Inc.
P.O. Box 33695
Denver, Colorado 80233
(303) 452-6111
Facsimile: 303-254-6007
Email: kreif@tristategt.org

***Attorneys for Applicant Tri-State Generation
and Transmission Association, Inc.***

/s/ Gregory E. Sopkin

Gregory E. Sopkin, #20997
Squire, Sanders & Dempsey L.L.P.
1600 Stout Street, Suite 1550
Denver, Colorado 80202
Telephone: 303-623-1263
Facsimile: 303-623-3442
E-mail: gsopkin@ssd.com

David W. McGann, #34521
Assistant General Counsel
Xcel Energy Services, Inc.
1225 17th Street, Suite 900
Denver, Colorado 80202
Telephone: 303-294-2035
Facsimile: 303-294-2988
E-mail: david.w.mcgann@xcelenergy.com

***Attorneys for Public Service Company of
Colorado***

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANTS' JOINT MOTION TO STRIKE HEARING TESTIMONY** was served on this 16th day of February, 2010, via email on all parties on this service list:

Gregory E. Sopkin
Squire, Sanders and Dempsey L.L.P.
gsopkin@ssd.com

Paula Connelly
Robin Kittel
David McGann
Xcel Energy Services Inc.
bill.dudley@xcelenergy.com
paula.connelly@xcelenergy.com
robin.kittel@xcelenergy.com
david.w.mcgann@xcelenergy.com

William Levis, Director
Frank Shafer, Financial Analyst
Office of Consumer Counsel
bill.levis@dora.state.co.us
frank.shafer@dora.state.co.us

Chris Irby
Stephen W. Southwick
Office of Attorney General
chris.irby@state.co.us
stephen.southwick@state.co.us

Victoria Mandell
Lowrey Brown
Penny Anderson
Steve Michel
John Nielsen
Western Resource Advocates
lbrown@westernresources.org
vmandell@westernresources.org
penny@westernresources.org
smichel@westernresources.org
jnielsen@westernresources.org

Mark Davidson
Michelle Brandt King
Thorvald A. Nelson

Kathleen O'Riley
Louann Jamieson
Judith Johnson
Holland & Hart LLP
madavidson@hollandhart.com
mbking@hollandhart.com
tnelson@hollandhart.com
koriley@hollandhart.com
ljamieson@hollandhart.com
jajohnson@hollandhart.com

Stan Gray
Babcock Brown
stan.gray@patternenergy.com

George W. Hardie
Babcock Brown
George.Hardie@patternenergy.com

David Hettich
Gary Energetics
david@samgaryjr.com

Thomas T. Farley
Petersen & Fonda, P.C.
tfarley@petersen-fonda.com

Betsy Mecom
Bar Nothing Ranches
betsy@barnothingranch.com

Timothy J. Flanagan, Esq.
Fowler Schlimberg & Flanagan PC
t_flanagan@fsf-law.com

Sarah W. Benedict
Russell W. Kemp
James J. Killean
Ireland, Stapleton, Pryor & Pascoe, P.C.
sbenedict@irelandstapleton.com

rkemp@irelandstapleton.com
jkillian@irelandstapleton.com

Timothy R. Macdonald
Holly E. Sterrett
Jacek A. Wypych
Matthew J. Douglas
Arnold & Porter LLP
timothy.macdonald@aporter.com
holly.sterrett@aporter.com
jacek.wypych@aporter.com
matthew.douglas@aporter.com

Craig Cox
Interwest Energy Alliance
cox@interwest.org

Ronald Lehr
rllehr@msn.com

Elizabeth Tormoen Hickey
lisahickey@coloradolawyers.net

Charles R. Sisk
Colorado Springs Utilities
Kenneth J. Burgess
Brett A. Johnson
Deputy City Attorney - Utilities Division
csisk@csu.org
kburgess@csu.org
bajohnson@csu.org

Matt Futch
Jeff Lyng
Morey Wolfson
Governor's Energy Office
matt.futch@state.co.us
jeff.lyng@state.co.us
morey.wolfson@state.co.us

Jerry W. Goad, Sr. Ass't Attorney General
Natural Resources/Environmental Section
jerry.goad@state.co.us

Michael J. Santisi
Office of the Attorney General
michael.santisi@state.co.us

Melvenna Rhetta-Fair
Business & Licensing/Dept. of Law
[melvena.rhetta-fair@state.co.us](mailto:melvenna.rhetta-fair@state.co.us)

Richard P. Noland
James E. Guy
richard.noland@sutherland.com
james.guy@sutherland.com

Derek A. Dyson
Seth T. Lucia
Duncan Weinberg Genzer & Pembroke PC
dad@dwgp.com
stl@dwgp.com

Isaac H. Kaiser
ikaiser@bw-legal.com

Thomas Barenberg
c/o Split Rail Fence Co.
tbarenberg@splitrailfenceco.com

Bruce G. Smith
Darling Milligan Smith & Lesch PC
bsmith@dmsl-law.com

Daniel Pike
Colorado Open Lands
dpike@coloradoopenlands.org

William M. Silberstein
Christopher S. Jensen
Isaacson Rosenbaum, P.C.
wsilberstein@ir-law.com
cjensen@ir-law.com

Ron D. Velarde
ron.velarde@state.co.us

Anthony E. Velarde
anthonyvelarde@msn.com

Dale Hutchins
dale.hutchins@state.co.us

Chere Mitchell

chere.mitchell@dora.state.co.us

Inez Dominguez
Public Utilities Commission Staff
inez.dominguez@dora.state.co.us

Becky Quintana, PUC Advisory Staff
John Reasoner, PUC Advisory Staff
becky.quintana@dora.state.co.us
john.reasoner@dora.state.co.us

A handwritten signature in blue ink, appearing to read "Susan Mitchell". The signature is written in a cursive style with a large initial "S" and "M".

EXHIBIT A

1 identifies it and does some programmatic-level
2 screening. Each individual project must still have to
3 have project-level EIS analysis, and that normally
4 takes the bulk of the time in the projects we work on.
5 So I'm not sure how much time or energy one would save
6 on that type of a designation.

7 Q Well, but that's the purpose of the
8 designation, isn't it, to establish procedures under
9 the federal agencies to expedite the application
10 process for energy-related projects within
11 Section 368-designated corridors?

12 A And it also says that -- in my
13 understanding, is that you have to do a full NEPA
14 process for it, just like you would if it wasn't a
15 designated corridor.

16 Q Okay. But that wasn't my question. My
17 question is, isn't the purpose of the Section 368
18 designation, that the federal agencies will then
19 expedite the application process for energy-related
20 projects within Section 368 designated corridors?

21 A The ones that are designated. Of course,
22 that isn't a designated corridor, it's a proposed.

23 Q Have you reviewed the corrected testimony
24 of the governor's energy office witness, Morey Wolfson?

25 A I have read it once.

1 Q Let's take a look at that. That's
2 Exhibit 29 for identification.

3 A 29. I don't know if I've got that book.
4 Yeah, it's in here.

5 Q All right. Let's take a look at Page 2,
6 Line 21 of Exhibit 29. Mr. Wolfson states, An
7 environment impact statement process is currently
8 underway, and the EIS will include an analysis of
9 various potential route determinations. Do you see
10 that?

11 A Yes, I do.

12 Q Do you agree with that?

13 A Yes, I do.

14 Q He goes on to say, It is the GEO's
15 position that those findings shall be allowed to
16 conclude prior to a final determination by the PUC of a
17 preferred route. Do you see that?

18 A I see that.

19 Q Do you agree with that?

20 A No.

21 Q All right. Well, further down on Page 3,
22 starting at Line 8, Mr. Wolfson states, The GEO
23 recommends that the commission consider bifurcating the
24 CPCN determination. We recommend that the commission
25 first find that the public interest is served by

1 expanding transmission capacity to deliver substantial
2 blocks of renewable energy out of the San Luis Valley,
3 while simultaneously improving the reliability in the
4 valley. Do you see that?

5 A Yes.

6 Q We recommend the commission issue a
7 separate determination that addresses the routing
8 subject pending the outcome of the environmental impact
9 statement. Do you see that?

10 A Yes.

11 Q Do you agree with that recommendation by
12 Mr. Wolfson?

13 A No.

14 Q The environmental impact statement will
15 be an intensive evaluation of the environmental impacts
16 of the proposed project; is that accurate?

17 A Those are your words. It will be an
18 evaluation, a very thorough evaluation of the project
19 and the corridors.

20 Q You don't think it's going to be an
21 intensive evaluation?

22 A I guess those are your words. It will be
23 intensive, I guess.

24 Q What about in depth? Do you agree that
25 it will be an in-depth environmental review of the

1 project?

2 A It will follow the regulations through
3 RUS, and that's a very thorough process, in my opinion.

4 Q So wouldn't it be beneficial to have the
5 results of that thorough evaluation of the
6 environmental impacts of the proposed project before
7 the commission makes it's decision in this case?

8 A You're asking for a routing and siting
9 NEPA decision to drive the decision of the commission
10 on whether the CPCN should be granted? Is that what
11 you're saying?

12 Q No. I'm saying, wouldn't there be a
13 benefit to having the information gathered as part of
14 that environment impact statement prior to the time the
15 commission determines that your proposed route from San
16 Luis Valley to Calumet is needed?

17 A The CPCN determines need for the proposed
18 project, not routing of the proposed project, so I'm
19 confused as to why you would benefit by having a
20 routing discussion in the CPCN process to the level
21 you're going to have in the environmental assessment.

22 Q Well, you've proposed a route that
23 connects from the San Luis Valley substation to the
24 Calumet substation as part of this project, right?

25 A Yes, we have.

1 project.

2 Q I think we can get on the same page here,
3 because I think you would agree that your CPCN
4 application is a request for approval to connect point
5 A to B, A being the San Luis Valley substation, B being
6 the Calumet substation, right?

7 A Yes.

8 Q And my question is, wouldn't it be a
9 benefit to get the results of an EIS review of the
10 proposed environment impacts of the project before the
11 commission decides whether A to B is actually the best
12 and the needed project, as opposed to A to C?

13 A I see them as two separate processes. If
14 the commission in the normal course of business
15 determined routing and siting every time a transmission
16 line was built, I think that information would be
17 beneficial, whereas in this case, we have a proposed
18 project, and we have a process for approving the
19 purpose and need. That's what I thought the CPCN was
20 about.

21 Q But you agree that once the CPCN is
22 issued, you're only authorized to build from A to B,
23 not from A to C, right?

24 A That's my understanding.

25 Q But you don't think it would be of

1 benefit to get a review of what the impacts are of
2 connecting A to B?

3 A Those will be evaluated in the local
4 siting by those officials, and it will be evaluated by
5 RUS and the NEPA. So they will be evaluated.

6 Q But you don't think it would be helpful
7 for the commission to have that same information when
8 deciding whether A to B is needed?

9 A Well, A to B, if it is needed, is based
10 on the electrical needs of the system, and that's the
11 purpose and need. It's not based on is there an
12 environmental impact of building A to B. The other
13 process is identified at and are the ones that make the
14 determination of what the minimal -- how to minimize
15 the impact, what's the best siting alternatives, the
16 local county officials, those folks have, the ones that
17 give us those local permits.

18 Q So you don't think the commission can
19 consider the environmental impacts of your proposed
20 solution, versus other alternatives, in deciding
21 whether or not to grant the CPCN in this case?

22 A Oh, I didn't say they couldn't consider
23 it, I just don't think that having a NEPA process,
24 waiting for a purpose and need to be approved based on
25 a NEPA process for that individual project makes any

1 sense.

2 Q If the commission can consider
3 environment impacts, then isn't it some benefit for
4 them to have the results of the EIS?

5 A I don't see it as being a benefit to them
6 for what they are looking at.

7 Q Mr. Bladow, do you recall that you had an
8 ex parte meeting with Commissioner Tarpey on April 21st
9 of 2009?

10 MR. DOUGHERTY: Objection, Your Honor.
11 This goes beyond the scope of Mr. Bladow's direct
12 testimony.

13 MR. DOUGLAS: Your Honor, I don't believe
14 it does. The issue of the ex parte meetings is an
15 issue in this case for the commission to determine.
16 This witness has personal knowledge about that. He
17 testified about this project. He's the person who
18 sponsors all of the witnesses' testimony from
19 Tri-State, and whether or not, or if, in fact, he had
20 an ex parte meeting with one of the commissioners is
21 relevant to the determination of these issues.

22 MR. DOUGHERTY: If Trinchera Ranch wanted
23 an evidentiary hearing with regard to the motion to
24 dismiss, they should have asked for one. That is a
25 separate matter. This is an evidentiary hearing on

EXHIBIT B

1 the line is from San Luis Valley over La Veta Pass to
2 Calumet; is that right?

3 A I believe that that is true.

4 Q Might be 100 feet one way or 100 feet
5 another, but it's in that area, from San Luis Valley
6 over La Veta Pass to Calumet?

7 A I think it's much broader than 100 feet
8 one way or the other.

9 Q Five or 600 feet?

10 A Maybe. I don't know how many, but it's a
11 pretty broad area.

12 Q Measured in feet, not in tens of miles.
13 Would you agree with that?

14 A I am not the expert on that. You will
15 have to talk to, potentially, Ms. Korbe or I guess
16 Mr. Thompson.

17 Q Are you aware that Mr. Wolfson of the
18 Governor's Energy Office file corrected testimony in
19 this case?

20 A Yes.

21 Q And have you read that?

22 A I have.

23 Q And in particular the Governor's Energy
24 Office recommends that the Environmental Impact
25 Statement be completed before a decision is made by the

1 PUC as to the route of the line?

2 A Yes.

3 Q Okay. And the Governor's Energy Office
4 then recommends that the proceeding should be
5 bifurcated so a separate determination on the routing
6 could be issued after the decision on the Environmental
7 Impact Statement?

8 A Yes. That's what I understand his
9 testimony to say.

10 Q And do you agree with that recommendation
11 of the Governor's Energy Office?

12 A No.

13 Q And do you agree that it would be
14 beneficial to have the results of the evaluation of the
15 Environmental Impact Statement before the Commission
16 makes a determination that the companies can build a
17 line from San Luis Valley to Calumet?

18 A No. I think that the testimony before
19 the Commission in this docket is sufficient for them to
20 make a ruling in the CPCN.

21 Q Before Senate Bill 100 was enacted, do
22 you agree that Public Service developed a grid in
23 response to specific transmission and interconnection
24 requests from new generators?

25 A I believe that there was a period of time

EXHIBIT C

1 Counsel.

2 CROSS-EXAMINATION

3 BY MR. FLANAGAN

4 Q Good afternoon, ma'am.

5 A Good afternoon.

6 Q Well, Mr. Thompson set you up. Why don't
7 you tell us what the interaction is between the NEPA
8 process that you're in charge of and this CPCN process.

9 A Well, really, I don't know that I see
10 much interaction between -- typically, between the NEPA
11 process and the CPCN process. To my knowledge, the
12 CPCN process is there to help determine that there is a
13 need for the proposed project that the applicants have
14 filed their application for, and that the NEPA process
15 is entirely separate from that.

16 Q So there really is no linkage, is what
17 you're saying?

18 A No. I said in my testimony that we have
19 filed information for this case regarding the NEPA
20 process, just to help inform the commission that there
21 is an environmental process going on that will evaluate
22 impacts, because some of the intervenors have brought
23 those matters into this case.

24 Q And I presume you're aware of the
25 corrected testimony of Mr. Wolfson from the governor's

1 energy office that has suggested that the commission
2 defer any discussion in this matter on routing until
3 the EIS process is completed.

4 A I'm aware of that testimony, yes.

5 Q Is Tri-State willing to do that?

6 A I don't know that it's a motion for
7 Tri-State, it's for the commission.

8 Q Well, and I suppose it's not a bad idea
9 if there's no language between the two, right?

10 A I'm not sure I'm following.

11 Q Well, is Tri-State willing to abide by
12 the end result of the EIS process before this
13 commission makes a determination as to a certificate of
14 public convenience and necessity, as suggested by the
15 governor's office, energy office?

16 MS. GOODLETTE: Your Honor, I'm going to
17 object, as this is part of -- what Mr. Wolfson filed is
18 not part of what was included in her testimony, either
19 the direct testimony of Mr. Murray or the -- that she
20 adopted or the rebuttal testimony.

21 MR. FLANAGAN: Well, I understand that,
22 but we've been told this is a NEPA expert, so that's
23 why I thought it would be an appropriate question,
24 since that's her area of responsibility, as testified
25 to by Public Service.

1 MR. MCGANN: Your Honor, may I offer --

2 A.L.J. JENNINGS-FADER: Counsel may do
3 what he -- yeah.

4 MR. MCGANN: I just want to offer a
5 clarification as to what I asked Mr. Thompson, and I
6 believe the record will show this. I asked
7 Mr. Thompson whether Ms. Korbe could be deferred
8 questions concerning the integration of the NEPA
9 process and the siting process, not the CPCN process,
10 which is the way I believe Mr. Flanagan has begun his
11 series of questions. So I don't believe what we
12 attempted to defer to Ms. Korbe was what Mr. Flanagan
13 is asking Ms. Korbe about.

14 A.L.J. JENNINGS-FADER: No, I agree with
15 that, Counsel, that is to say, that I understood the
16 question having to do with the interaction between the
17 NEPA process and the siting process, not the
18 commission's process, so we'll have to try another
19 tack.

20 MR. FLANAGAN: All right.

21 Q (By Mr. Flanagan) It is true, isn't it,
22 that the corridors that were originally proposed to
23 the rural -- to the R- -- yeah, the rural electric
24 service were five routes chosen by Tri-State as the
25 beginning of this -- as the beginning of the RES

EXHIBIT D

1 open for all sorts of different entries, whether it's
2 minerals or exploration or -- just all sorts of public
3 uses. And forest service land specifically is
4 considered multiple-use lands, and so it's available
5 for mineral-entry permitting of different things. At
6 one point in time, I permitted cell towers on forest
7 service land. And so there's different degrees of
8 protection, and not all public land is set aside for
9 protection.

10 Q Now, when it comes to degrees of
11 protection, where does the conservation easement rank
12 in there?

13 A Well, even though it's private, in many
14 ways, it's probably the strongest protection there is,
15 because Congress mandated that in order to have a
16 qualified conservation easement, it has to be in
17 perpetuity. You have to protect the conservation
18 values on the easement in perpetuity, and they have the
19 IRS enforcing those provisions. You know, you could
20 certainly say a Congressional designation of a
21 wilderness area is a strong protection, but that could
22 be removed.

23 Q Mr. Pike, could you put Exhibit 29 in
24 front of you, please?

25 A Which one is that?

1 Q It should be in the blue binder.
2 Exhibit 29 is titled corrected testimony of Morey
3 Wolfson on behalf of the governor's energy office.

4 A I have it.

5 Q Now, you answered a line of examination
6 regarding whether you would disagree to certain
7 positions that the governor's office took in some
8 publications. Do you recall that?

9 A Yes.

10 Q Well, let me read from Page 2, and if you
11 could follow along as I read out loud on Lines 8
12 through 9 -- 8 through 14, I apologize. Let me read it
13 now. "The GEO recommends that the Commission consider
14 bifurcating the CPCN determination. We recommend that
15 the Commission first find that the public interest is
16 served by expanding transmission capacity to deliver
17 substantial blocks of renewable energy out of the San
18 Luis Valley, while simultaneously improving the
19 reliability in the Valley. We recommend that the
20 Commission issue a separate determination that
21 addresses the routing subject, pending the outcome of
22 the Environmental Impact Statement." Do you see what I
23 read?

24 A Yes.

25 Q Do you have any reason to disagree with

1 that statement from the governor's office?

2 A No.

3 Q Now, there was a line of questions
4 regarding the restriction on airstrips on the portion
5 of the property -- portion of the property that's
6 subject to the easement that's Exhibit 85. Do you
7 recall that testimony?

8 A Yes.

9 Q Now, are you aware -- I think you wanted
10 to clarify your statement regarding the airstrip.

11 A Simply, that I said I wasn't aware of it.
12 I have not seen the airstrip; I've been told there is
13 one there. That airstrip is on the Blanca piece of
14 property, which is -- I'd like to clarify, which is not
15 subject to the conservation easement; therefore, if
16 there is any implication it's a violation of the
17 easement, it is not.

18 Q Thank you. Now, if you could put
19 Exhibit 85 in front of you, which is the copy of the
20 easement.

21 A Yes.

22 Q Now, there was a line of examination
23 regarding what you can construct on the property when
24 it comes to residential improvements. Do you recall
25 that testimony?

EXHIBIT E

1 MR. LEHR: That's what I understand.

2 MR. HICKEY: Yes, ma'am.

3 I was part of the communication, yes.

4 And counsel for Tri-State and Public Service have
5 agreed that Friday might work.

6 A.L.J. JENNINGS-FADER: I'll have to look
7 at that.

8 Mr. Dougherty, you had something to say
9 with respect to --

10 MR. DOUGHERTY: Not on this matter, Your
11 Honor.

12 A.L.J. JENNINGS-FADER: Okay.

13 Based on at least the witness list and
14 estimate of cross-examination provided, filed in this
15 case, it appears that Mr. Blue's estimate of
16 cross-examination is approximately three quarters of an
17 hour. So we'll look to adding him to the Friday
18 schedule which would be the 5th of February.

19 MR. HICKEY: Thank you very much.

20 A.L.J. JENNINGS-FADER: Was there
21 anything further, Mr. Lehr?

22 MR. LEHR: No.

23 A.L.J. JENNINGS-FADER: Thank you.

24 Ms. Mandell.

25 MS. MANDELL: Yes, I would like to raise

1 a preliminary matter concerning the corrected testimony
2 of Mr. Morey Wolfson, filed on behalf of the Governor's
3 Energy Office a week ago.

4 A.L.J. JENNINGS-FADER: Yes.

5 MS. MANDELL: In that testimony,
6 Mr. Wolfson proposes that this matter be bifurcated;
7 and it's the position of WRA that that is in essence a
8 motion for bifurcation of the proceeding and was not
9 appropriately filed as, quote, unquote, corrected
10 testimony. And we're opposed to bifurcation of the
11 proceeding and would be happy to make a statement
12 regarding the reasons.

13 A.L.J. JENNINGS-FADER: Mr. Goad, before
14 we proceed --

15 MR. GOAD: Thank you, Your Honor.

16 The Governor's Energy Office did not
17 intend that testimony as a motion, but rather as a
18 suggestion of a possible way to address the issue of --
19 the Environmental Impact Statement, for example,
20 informing the decision of the Commission on the CPCN.

21 A.L.J. JENNINGS-FADER: Thank you.

22 Ms. Mandell, with that clarification, is
23 that helpful to you or do you wish still -- if the
24 proponent of the testimony says that that's not a
25 motion, does that change your view with respect to the

1 testimony?

2 MS. MANDELL: It would change -- well,
3 the question is whether or not this -- whether Your
4 Honor is considering bifurcating the proceeding. And
5 if it is, I propose that we take oral argument on that
6 question. If that's not at issue, then we don't need
7 to discuss it.

8 But if it is at issue, I think it is in
9 the nature of a motion and we would need to have the
10 opportunity to address that.

11 A.L.J. JENNINGS-FADER: Based on the
12 representations of Mr. Goad, I do not consider it a
13 motion; therefore I will not take it up as a motion.

14 MS. MANDELL: Thank you, Your Honor.

15 A.L.J. JENNINGS-FADER: Certainly.

16 (Discussion off the record.)

17 A.L.J. JENNINGS-FADER: Mr. Dougherty.

18 MR. DOUGHERTY: Your Honor, I would just
19 like clarification on your first instruction this
20 morning with regard to documents referenced in
21 testimony that they are not part of the record unless
22 they are admitted as an exhibit, particularly with
23 regard to decisions in other dockets, statutes, things
24 of that nature. I understand obviously we have to have
25 copies for the court reporter and the witness; and if

EXHIBIT F

1 clarification, Exhibit No. 28 is admitted.

2 BY MR. GOAD:

3 Q Mr. Wolfson, if you could find Exhibit 29
4 in that notebook.

5 A I have that.

6 Q Does that appear to be a true and correct
7 copy of corrected testimony that you prefiled in this
8 case?

9 A Yes, it is.

10 Q Do you have any corrections to that
11 testimony?

12 A I do have corrections to this testimony.

13 Q And what are those corrections or
14 changes?

15 A We -- I would like to draw your attention
16 to page 2 of Exhibit 29, starting on line 12, and
17 continuing through page 3, line 17. It is the
18 Governor's Energy Office's interest in removing that
19 from your testimony. We want to withdraw those -- that
20 material from our corrected testimony.

21 A.L.J. JENNINGS-FADER: Could you state
22 the page and line number, the beginning and end point.

23 THE WITNESS: It was page 2, line 12, and
24 ending on page 3, line 17.

25 A.L.J. JENNINGS-FADER: Thank you.

1 A.L.J. JENNINGS-FADER: Exhibit No. 29 as
2 modified is admitted.

3 MR. GOAD: Thank you, Your Honor.

4 Mr. Wolfson is available for
5 cross-examination.

6 MR. DOUGHERTY: Your Honor, a matter with
7 regard to the record, in light of Mr. Wolfson's
8 withdrawn testimony -- I don't know if you want to
9 address it now, but there were previous questions in
10 the examination of other witnesses that referred to the
11 portions of what is now withdrawn from Mr. Wolfson's
12 testimony. And applicants would move that those
13 portions of the record be stricken because that is no
14 longer in the record.

15 A.L.J. JENNINGS-FADER: Counsel?

16 MR. FLANAGAN: Your Honor, we would
17 resist that; however I, too -- to follow up on Mr.
18 Dougherty's suggestion, I don't know, if lining that
19 out, one can read what has been stricken; but I would
20 propose that the first set of corrected testimony -- I
21 would like to offer that as an exhibit in this
22 proceeding so that one can tell what the difference is
23 between the testimony of the Governor's Office on
24 January 25th versus -- or I guess versus what was the
25 testimony on February 10 or 9th.

1 questions of the witnesses early in the docket
2 concerning whether or not they supported that
3 testimony, just for clarification.

4 A.L.J. JENNINGS-FADER: Thank you, ma'am.

5 MR. GOAD: Your Honor, Jerry Goad on
6 behalf of the Governor's Energy Office.

7 It is our position that in light of the
8 withdrawn testimony questions about that previously are
9 now irrelevant as is his withdrawn testimony.

10 If there are going to be any questions
11 about that testimony, I will object as irrelevant and
12 probably privileged.

13 A.L.J. JENNINGS-FADER: Mr. Flanagan,
14 anything further?

15 MR. FLANAGAN: Your Honor, I think the
16 only thing at this point is my request to mark as an
17 exhibit what was filed with this Commission as
18 corrected testimony on January 25th, before it was
19 recorrected. That's all I'm asking for at the this
20 point.

21 A.L.J. JENNINGS-FADER: Yes, sir. Do you
22 have anything in support of why you are asking for it
23 or why it might be relevant or probative or otherwise
24 of interest?

25 MR. FLANAGAN: Certainly, certainly. As

1 That then leaves me with Mr. Dougherty's
2 request with respect to striking testimony which used
3 as its basis for examination the testimony now
4 withdrawn by Mr. Wolfson. That motion is granted.

5 But I am unable at this precise
6 historical moment to give you citations to the
7 testimony that is withdrawn.

8 So, Mr. Dougherty.

9 MR. DOUGHERTY: We will accept
10 responsibility for that, Your Honor, and present that
11 tomorrow morning as a preliminary matter.

12 A.L.J. JENNINGS-FADER: Yes, sir, you
13 will. Thank you so much. Thanks for the offer because
14 that's exactly where I was going. We'll need to have
15 something on the record with that for tomorrow.

16 Thank you.

17 Now, where are we?

18 Mr. -- and had I admitted Mr. Wolfson's
19 corrected testimony -- yes. So with that,
20 cross-examination.

21 I believe Trinichera Ranch has indicated
22 that it has some questions.

23 MR. FLANAGAN: Your Honor, could I
24 approach?

25 A.L.J. JENNINGS-FADER: You may.

EXHIBIT G

1 from counsel for Colorado Open Lands, so we do not know
2 their position. WRA has reviewed the proposed
3 deletions and agrees with that recommendation. We have
4 conferred with counsel for Trinchera, because they were
5 the questioning party with regard to the Bladow
6 portions of the testimony. We have been unable to
7 reach agreement with regard to certain aspects of that
8 testimony which Tri-State has recommended be deleted.

9 At this time, Your Honor, we can either
10 take this up and you can hear from the parties, and I'm
11 prepared to give you the list of the pages and lines,
12 as well as the relevant copies of the testimony for
13 your review, or we can handle this some other way, if
14 you would like.

15 A.L.J. JENNINGS-FADER: Well, given that
16 Colorado Open Lands, one of the affected parties, is
17 not present, but --

18 MR. DOUGHERTY: Were advised.

19 A.L.J. JENNINGS-FADER: -- were advised.
20 But nonetheless, we have no information with respect to
21 that. At the risk of, you know, putting more burden on
22 the applicant, I request that you all file a motion
23 specifying -- stating, obviously, the basis, and
24 specifying, as you apparently already have, identifying
25 the witness, page and line numbers that you believe

EXHIBIT H

From: Jennings-Fader, Mana [mailto:Mana.Jennings-Fader@dora.state.co.us]

Sent: Thursday, February 11, 2010 6:15 PM

To: Anthony E. Velarde; Brett A. Johnson; Bruce G. Smith; Christopher Irby; Christopher S. Jensen; David W. McGann; E. Martin Enriquez; Elizabeth Tormoen Hickey; Gregory E. Sopkin; Holly E. Sterrett; Isaac H. Kaiser; Jacek A. Wypych; James E. Guy; James J. Killean; Jerry W. Goad; Kenneth J. Burgess; Kenneth V. Reif ; Mariya Barmak; Mark A. Davidson ; Matthew J. Douglas; Michael J. Santisi; Michelle Brandt King; Paula M. Connelly; Richard P. Noland; Ron D. Velarde ; Ronald Lehr; Russell W. Kemp; Sarah W. Benedict; Seth T. Lucia; Stephen W. Southwick ; Goodlette, Tami; Dougherty, Thomas J.; Thomas T. Farley; Thorvald A. Nelson; Timothy J. Flanagan; Timothy R. Macdonald ; Victoria Mandell; William Dudley; William M. Silberstein

Cc: Reasoner, John

Subject: Testimony pertaining to Mr. Wolfson's withdrawn testimony - Dkts. No. 09A-324E and No. 09A-325E

Importance: High

Counsel and Parties:

When Mr. Morey Wolfson appeared as a witness on behalf of the Governor's Energy Office, he withdrew the portion of his prefiled testimony (Hearing Exhibit No. 29) found at 2:12 to 3:17. This prompted the Applicants to request the striking from the record of testimony (whether written or oral) of other witnesses that pertained to Mr. Wolfson's withdrawn testimony. I agreed that such testimony ought to be stricken and requested Applicants to prepare a list of the testimony (by witness, date, page, and line) that they suggested be stricken. At the hearing on 11 February 2010, Applicants reported that they had prepared a list of testimony; had contacted the affected parties in an attempt to reach agreement on the testimony that ought to be stricken from the record; and were unable to reach agreement with all affected parties on this issue. Consequently, the matter remained unresolved at the conclusion of the evidentiary hearing on 11 February 2010.

No later than **close of business on 16 February 2010**, Applicants shall file a motion to strike testimony and shall identify those portions of the written and oral testimony that they seek to strike based on Mr. Wolfson's withdrawn testimony. On or before **NOON on 18 February 2010**, the other parties each shall file its response to the motion. If a party does not respond to the motion by noon on 18 February 2010, the party will be deemed to have conceded the motion and the requested striking of testimony as specified in the motion.

Applicants are directed to provide me with an electronic copy of the motion when it is served on the other parties. *Parties which file a response to the motion* are directed to provide me with an electronic copy of the response no later than noon on 18 February 2010. In view of the fact that statements of position are to be filed on or before 25 February 2010, I will rule on the motion to strike testimony by close of business on 18 February 2010 and will inform Parties of my ruling by electronic mail.

A written Order will follow.

2/16/2010

Mana L. Jennings-Fader
Administrative Law Judge

Public Utilities Commission
Administrative Hearings
Colorado Department of
Regulatory Agencies
1560 Broadway, Suite 250
Denver, Colorado 80202
Telephone: 303.894.2842
Facsimile: 303.894.2065
E-mail address: mana.jennings-fader@dora.state.co.us

From: Enriquez, E. Martin

To: 'bill.levis@dora.state.co.us' <bill.levis@dora.state.co.us>; 'frank.shafer@dora.state.co.us' <frank.shafer@dora.state.co.us>; 'chris.irby@state.co.us' <chris.irby@state.co.us>; 'stephen.southwick@state.co.us' <stephen.southwick@state.co.us>; 'vmandell@westernresources.org' <vmandell@westernresources.org>; 'penny@westernresources.org' <penny@westernresources.org>; 'smichel@westernresources.org' <smichel@westernresources.org>; 'jnielsen@westernresources.org' <jnielsen@westernresources.org>; 'madavidson@hollandhart.com' <madavidson@hollandhart.com>; 'mbking@hollandhart.com' <mbking@hollandhart.com>; 'tnelson@hollandhart.com' <tnelson@hollandhart.com>; 'koriley@hollandhart.com' <koriley@hollandhart.com>; 'ljamieson@hollandhart.com' <ljamieson@hollandhart.com>; 'jjohnson@hollandhart.com' <jjohnson@hollandhart.com>; 'George.Hardie@patternenergy.com' <George.Hardie@patternenergy.com>; 'david@samgaryjr.com' <david@samgaryjr.com>; 'farley@petersen-fonda.com' <farley@petersen-fonda.com>; 'betsy@mecom.cc' <betsy@mecom.cc>; 'scott@mecom.cc' <scott@mecom.cc>; 't_flanagan@fsf-law.com' <t_flanagan@fsf-law.com>; 'sbenedict@irelandstapleton.com' <sbenedict@irelandstapleton.com>; 'rkemp@irelandstapleton.com' <rkemp@irelandstapleton.com>; 'jkillian@irelandstapleton.com' <jkillian@irelandstapleton.com>; 'timothy.macdonald@aporter.com' <timothy.macdonald@aporter.com>; 'holly.sterrett@aporter.com' <holly.sterrett@aporter.com>; 'jacek.wypych@aporter.com' <jacek.wypych@aporter.com>; 'matthew.douglas@aporter.com' <matthew.douglas@aporter.com>; 'cox@interwest.org' <cox@interwest.org>; 'rllehr@msn.com' <rllehr@msn.com>; 'csisk@csu.org' <csisk@csu.org>; 'kburgess@csu.org' <kburgess@csu.org>; 'bajohnson@csu.org' <bajohnson@csu.org>; 'matt.futch@state.co.us' <matt.futch@state.co.us>; 'jeff.lyng@state.co.us' <jeff.lyng@state.co.us>; 'jerry.goad@state.co.us' <jerry.goad@state.co.us>; 'morey.wolfson@state.co.us' <morey.wolfson@state.co.us>; 'michael.santisi@state.co.us' <michael.santisi@state.co.us>; 'paula.connelly@xcelenergy.com' <paula.connelly@xcelenergy.com>; 'robin.kittel@xcelenergy.com' <robin.kittel@xcelenergy.com>; 'richard.noland@sutherland.com' <richard.noland@sutherland.com>; 'james.guy@sutherland.com' <james.guy@sutherland.com>; 'dale.hutchins@state.co.us' <dale.hutchins@state.co.us>; 'chere.mitchell@dora.state.co.us' <chere.mitchell@dora.state.co.us>; 'melvena.rhetta-fair@state.co.us' <melvena.rhetta-fair@state.co.us>; 'dad@dwgp.com' <dad@dwgp.com>; 'stl@dwgp.com' <stl@dwgp.com>; 'ikaiser@bw-legal.com' <ikaiser@bw-legal.com>; 'tbarenberg@splitrailfenceco.com' <tbarenberg@splitrailfenceco.com>; 'bsmith@dmsl-law.com' <bsmith@dmsl-law.com>; 'dpike@coloradoopenlands.org' <dpike@coloradoopenlands.org>; 'bsilberstein@ir-law.com' <bsilberstein@ir-law.com>; 'cjensen@ir-law.com' <cjensen@ir-law.com>; 'anthonyvelarde@msn.com' <anthonyvelarde@msn.com>; 'ron.velarde@state.co.us' <ron.velarde@state.co.us>; 'lisahickey@coloradolawyers.net' <lisahickey@coloradolawyers.net>; 'inez.dominguez@dora.state.co.us' <inez.dominguez@dora.state.co.us>

Cc: Dougherty, Thomas J.; Enriquez, E. Martin; Goodlette, Tami; 'Lehman, Grant' <glehman@tristategt.org>; 'William.W.Wright@XCELENERGY.COM' <William.W.Wright@XCELENERGY.COM>

Sent: Wed Feb 10 22:09:57 2010

Subject: Tri-State and Public Service proposed testimony to be stricken from the record

On behalf of Tri-State and Public Service, please find below the testimony in the record that relates to the withdrawn testimony of Mr. Wolfson and that Tri-State and Public Service believe should be stricken from the record per today's ruling by A.L.J. Jennings-Fader:

- Vol. 1, 16:25-18:15;
- Vol. 1, 170:23-172:13;
- Vol. 1, 173:4-21;
- Vol 1, 175:8-20;
- Vol 1, 175:25-177:6;
- Vol. 1, 335:17-336:20;
- Vol. 4, 168:24-170:20; and
- Vol. 5, 175:23-177:2.

If you do not have a copy of the transcripts Vol. 1, 4, or 5, I will have copies of the above-referenced testimony for your review in the morning.

Kind regards,

E. Martin Enriquez

E. Martin Enriquez, Attorney-at-Law

Rothgerber Johnson & Lyons LLP | One Tabor Center, Suite 3000 |
1200 Seventeenth Street | Denver, CO 80202 |

Direct 303.628.9585 | Main 303.623.9000 | Fax 303.623.9222

E-mail: menriquez@rothgerber.com | Website: www.rothgerber.com