

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF)
TRI-STATE GENERATION AND TRANSMISSION) DOCKET NO. 09A-324E
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.)

AND

IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF COLORADO) DOCKET NO. 09A-325E
(A) FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR THE)
SAN LUIS VALLEY TO CALUMET TO)
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.)

**TRI-STATE'S RESPONSE TO MOTION OF INTERVENORS BLANCA RANCH
HOLDINGS, LLC AND TRINCHERA RANCH HOLDINGS, LLC FOR
DETERMINATIONS OF LAW AND REQUESTS FOR SHORTENED RESPONSE
TIME, LEAVE TO FILE A REPLY AND EXPEDITED RULING**

Tri-State Generation and Transmission Association, Inc. (Tri-State), by and through undersigned counsel, and pursuant to Decision No. R09-0736-I, hereby submits its Response to the Motion of Intervenors Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC for Determinations of Law and Requests for Shortened Response Time, Leave to file a Reply and Expedited Ruling (the "Motion").

1. Intervenors Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC (collectively “Trinchera Ranch”) assert essentially two arguments in the Motion. First, Trinchera Ranch asserts that Public Service Company (“PSCo”) is not entitled to an expedited consideration of its application in this consolidated docket under the provisions of C.R.S. § 40-2-126, because the company has failed to comply with the procedural requirements of that section and the Stipulation it entered into in connection with Docket No. 07A-421E. Second, Trinchera Ranch asserts that Tri-State is not entitled to “piggyback” onto the PSCo application since it is not a rate-regulated utility and therefore “should not receive the benefits of an expedited proceeding” as allowed by C.R.S. § 40-2-126 (Motion, p. 12).

2. Trinchera Ranch relies on a construction of C.R.S. § 40-2-126 which would defeat the very purpose of the statute, it misconstrues the public utility law with respect to Tri-State, and it ignores the practical and administrative necessity of consolidating the two applications in this case and proceeding in an expedited manner. The Commission should reject the Trinchera Ranch motion to the extent it requests the Commission to find that the expedited process provided for in C.R.S. § 40-2-126 does not apply in this case, and to the extent it requests the Commission to find that Tri-State should not receive a decision on its companion application for this joint project within the same timeframe the Commission issues its decision on PSCo’s application.¹

3. Trinchera Ranch first asserts that the expedited review required by C.R.S. § 40-2-126 (4) does not apply to this consolidated docket because the transmission line CPCN application filed by PSCo in this case was not filed simultaneously with the plans and designations required to be filed by rate-regulated utilities pursuant to C.R.S. §40-2-

126(2)(d). In effect, Trinchera Ranch is arguing that the legislature created a narrow, biennial window of opportunity for rate-regulated utilities to seek expedited review of certain projects. This interpretation is contrary to both the letter and spirit of the statute.

4. The non-statutory legislative declaration included in S.B. 07-100 (referred to herein as “S.B. 100,” the legislation which created C.R.S. § 40-2-126) states as follows:

SECTION 1. Legislative declaration. (1) The general assembly finds, determines and declares that:

- (a) A robust electric transmission system is critical to ensuring the reliability of electric power for Colorado’s citizens;
- (b) Colorado’s vibrant economy and high quality of life depend on the continued availability of clean, affordable, reliable electricity; and
- (c) Therefore, Colorado utilities should continually evaluate the adequacy of electric transmission facilities throughout the state and should be encouraged to promptly and efficiently improve such infrastructure as required to meet the state’s existing and future energy needs.

As described above, the purpose of S.B. 100 was to promote the development of “clean, affordable, reliable electricity” by encouraging electric utilities to “promptly and efficiently improve” the transmission infrastructure in Colorado. To further this purpose, S.B. 100 added two substantive new provisions to the public utility law. First, it added C.R.S. § 40-2-126, the section at issue in this case, which created a process for the designation of energy resource zones and an expedited review process for associated transmission projects. Second, it created a new subsection in the existing “CPCN statute,” C.R.S. § 40-5-101. This new subsection (4) authorizes rate-regulated utilities to implement a transmission rate adjustment clause to recover costs related to the planning and development of transmission facilities, and it also authorizes the “current recovery” of costs associated with construction work in progress for transmission facilities. The Trinchera Ranch argument that limits the ability of a rate-regulated utility to seek expedited review of transmission CPCN applications

¹ Tri-State takes no position with respect to the arguments of Trinchera Ranch concerning the “approval standard” of Senate Bill 100.

is contrary to the clear purpose of the S.B. 100 statutory additions which is to promote the development of electric transmission facilities in Colorado.

5. Trinchera Ranch argues that since Tri-State is not a rate-regulated utility and, therefore, is not subject to C.R.S. § 40-2-126, the Commission cannot consider its application for a CPCN for a transmission project on an expedited basis (the so-called “piggyback” argument). This argument fails, not only as a matter of statutory construction but also as a matter of common sense and prudent utility planning.

6. As for statutory construction, Trinchera Ranch deems it significant that the legislature, in enacting § 40-2-126, did not include a provision “making it applicable to non-rate-regulated utilities in the event of a joint project...”. Of course, neither did the legislature preclude a rate-regulated utility from seeking expedited treatment in the event it participated in a project with a non-rate-regulated utility. The fact that Tri-State is not entitled to expedited treatment under C.R.S. § 40-2-126 does not mean the Commission is prevented from granting such treatment. The Commission has broad statutory authority to “conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice.” (C.R.S. § 40-6-101.) In the absence of a statutory prohibition, the Commission is entitled to determine the most efficient and timely manner in which to consider a CPCN application. In the case of a joint project, “the proper dispatch of business and the ends of justice” are best served by conducting the hearing and entering decisions on the same schedule.

7. The public utility law requires the Commission to issue a decision within one hundred twenty days of the date an application is deemed complete if an applicant files its supporting testimony and exhibits contemporaneously with the application (as is the case here, see C.R.S. § 40-6-109.5(1)). While the Commission is authorized to extend this

deadline up to ninety days, it is clear that the legislature intended that such applications be handled expeditiously. The fact that the Administrative Law Judge has extended the deadline for an initial Commission decision with respect to the Tri-State application (see Decision No. R09-0635-I) does not mean that the Commission is required to wait until the end of this period before issuing its decision. The Commission may issue its decision with respect to the Tri-State application concurrently with its decision with respect to the PSCo companion application on November 10, 2009 if that is the deadline applicable to the PSCo application. In light of the fact that the Tri-State and PSCo applications pertain to the same joint project, and given that these dockets have been consolidated for hearing purposes, administrative efficiency and public policy support the Commission issuing a decision on both applications at the same time.

8. Trinchera Ranch argues further that Tri-State's CPCN application in this case "should be subject to the stricter standards and the extended approval process that affords more transparency for the public and the Commission." (Motion, p. 12.) Trinchera Ranch also argues that Tri-State "should not receive the benefits of an expedited hearing" because it "receives much less Commission oversight than PSCo." (Motion, p. 12.) As the basis for this argument, Trinchera Ranch cites the Commission's order opening the investigatory docket with respect to Tri-State's *resource planning* process (Docket No. 09I-041E). The Trinchera Ranch argument ignores the Commission's Electric Rules and their applicability to Tri-State's transmission development, and the fact that the resource planning process is a separate process from the transmission CPCN approval process. The Commission's comments in the resource planning docket (Decision No. C09-0092) are completely unrelated to transmission planning, and are made solely in the context of the current resource planning

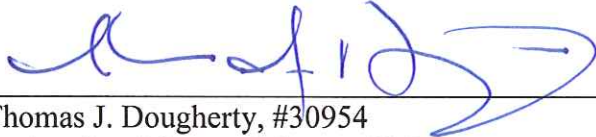
rules.² Tri-State is subject to the same rules as PSCo with respect to applying for and receiving a CPCN for a transmission project (with the exception of C.R.S. § 40-2-126) and the public is afforded ample opportunity to participate in such proceedings before the Commission (as evidenced by the many intervenors in this docket).

9. Tri-State and PSCo have proposed a joint transmission line project for the purpose of providing reliable service to their ratepayers and members in the most cost-effective and efficient manner. The nature of a joint project is that neither company may move ahead with design and construction until such time as the Commission has granted a CPCN for each company's respective participation in the project. For this reason, Tri-State urges the Commission not to bifurcate the CPCN approval schedule as contemplated in Decision No. R09-0723-I. A decision to delay a CPCN approval for Tri-State would cause a similar delay for PSCo. As has been previously indicated by PSCo, this could have a significant impact on PSCo's ability to deliver power from new generation resources that would utilize the proposed transmission line.

10. The Colorado legislature and this Commission have repeatedly expressed their desire that the electric utilities develop additional transmission capacity both for reliability purposes and to provide pathways for renewable generation. That is the purpose of the joint project that has been proposed by Tri-State and PSCo. The arguments put forth by Trinchera Ranch do not advance these objectives but rather appear to be made solely for the purpose of delaying or preventing the proposed project, and the Commission should reject them.

² Rule 3602 (n) of the Commission's resource planning rules defines "resources" as "supply-side resources, demand side management, or renewable resources used to meet electric system requirements."

Respectfully submitted this 16th day of July, 2009.



Thomas J. Dougherty, #30954
Rothgerber Johnson & Lyons LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202
(303) 623-9000

Kent L. Singer, #15234
1801 Broadway, Suite 1100
Denver, CO 80202
(303) 292-0110

Kenneth V. Reif, #10666
Senior Vice President/General Counsel
Tri-State Generation & Transmission Assn., Inc.
P.O. Box 33695
Denver, CO 80233
(303) 452-6111

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response of Tri-State Generation and Transmission Association, Inc. to Motion of Intervenors Blanca Ranch Holdings LLC and Trinchera Ranch Holdings LLC for Determinations of Law and Request for Shortened Response Time, Leave to File a Reply and Expedited Ruling was served on this 16th day of July, 2009, via email on all parties on this service list:

Gregory E. Sopkin
Squire, Sanders and Dempsey L.L.P.
1600 Stout Street, Suite 1550
Denver, Colorado 80202-3160
gsopkin@ssd.com

William Dudley
Paula Connelly
Robin Kittel
Xcel Energy Services Inc.
1225 17th Street, 9th Floor
Denver, Colorado 80202
bill.dudley@xcelenergy.com
paula.connelly@xcelenergy.com
robin.kittel@xcelenergy.com

William Levis, Director
Frank Shafer, Financial Analyst
Office of Consumer Counsel
1560 Broadway, Suite 200
Denver, Colorado 80202
bill.levis@dora.state.co.us
frank.shafer@dora.state.co.us

Chris Irby
Stephen W. Southwick
Office of Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
chris.irby@state.co.us
stephen.southwick@state.co.us

Victoria Mandell
Lowrey Brown
Penny Anderson
Tom Darrin
Steve Michel
John Nielsen
Western Resource Advocates
2260 Baseline Road, Suite 200

Boulder, Colorado 80302
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
555 17th St., Suite 3200
Denver, Colorado 80202
madavidson@hollandhart.com
mbking@hollandhart.com
tnelson@hollandhart.com
koriley@hollandhart.com
ljamieson@hollandhart.com
jajohnson@hollandhart.com

Stan Gray
Babcock Brown
800 NE Tenney Road, Suite 110-132
Vancouver, Washington 98685
stan.gray@patternenergy.com

George W. Hardie
Babcock Brown
5307 E. Mockingbird Lane, Suite 710
Dallas, Texas 75206
George.Hardie@patternenergy.com

David Hettich
Gary Energetics
1560 Broadway, Suite 2100
Denver, Colorado 80202
david@samgaryjr.com

Thomas T. Farley
Petersen & Fonda, P.C.
215 West 2nd Street
Pueblo, Colorado 81003
tfarley@petersen-fonda.com

Betsy Mecom

Scott Wilson
Bar Northing Ranches
6916 Broad Acre Road
Avondale, Colorado 81022
betsy@mecom.cc
scott@mecom.cc

Timothy J. Flanagan, Esq.
Fowler, Schlimberg & Clanagan PC
1640 Grant Street, Suite 300
Denver, Colorado 80203
t_flanagan@fsf-law.com

Sarah W. Benedict
Russell W. Kemp
James J. Killean
Ireland, Stapleton, Pryor & Pascoe, P.C.
1675 Broadway, Suite 2600
Denver, Colorado 80202
sbenedict@irelandstapleton.com
rkemp@irelandstapleton.com
jkillen@irelandstapleton.com

Timothy R. Macdonald
Holly E. Sterrett
Jacek A. Wypych
Matthew J. Douglas
Arnold & Porter LLP
370 17th St., Suite 4500
Denver, Colorado 80202
timothy.macdonald@aporter.com
holly.sterrett@aporter.com
jacek.wypych@aporter.com
matthew.douglas@aporter.com

Craig Cox
Interwest Energy Alliance
7725 Malamute Trail
Evergreen, Colorado 80439
Post Office Box 272
Conifer, Colorado 80433
cox@interwest.org

Ronald Lehr
4950 Sanford Circle West
Englewood, Colorado 80113
rlehr@msn.com

Charles R. Sisk
Colorado Springs Utilities
121 South Tejon St., 4th Floor
Colorado Springs, Colorado 80903
csisk@csu.org

Kenneth J. Burgess
Brett A. Johnson
Deputy City Attorney - Utilities Division
121 South Tejon St., 4th Floor
Colorado Spring, Colorado 80903
kburgess@csu.org
bajohnson@csu.org

Matt Futch
Jeff Lyng
Governor's Energy Office
1580 Logan Street, Suite 100
Denver, Colorado 80203
matt.futch@state.co.us
jeff.lyng@state.co.us

Jerry W. Goad
Senior Assistant Attorney General
Natural Resources and Environmental Section
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
jerry.goad@state.co.us

Michael J. Santisi
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
michael.santisi@state.co.us

Melvenna Rhetta-Fair
Business & Licensing/Dept. of Law
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
melvena.rhetta-fair@state.co.us

Richard P. Noland
James E. Guy
701 Brazos Street, Suite 970
Austin, Texas 78701
richard.noland@sutherland.com
james.guy@sutherland.com

Kenneth V. Reif
Tri-State Generation & Transmission Association, Inc.
P. O. Box 33695
Denver, Colorado 80233
kreif@tristategt.org

Kent L. Singer
1801 Broadway, Suite 1100
Denver, Colorado 80202
kentsinger@aol.com

Dale Hutchins
dale.hutchins@state.co.us

Chere Mitchell
chere.mitchell@dora.state.co.us

Inez Dominguez
Jeff Hein
Colorado Public Utilities Commission Staff
1560 Broadway, Suite 250
Denver, Colorado 80202
inez.dominguez@dora.state.co.us
jeff.hein@dora.state.co.us

Becky Quintana, PUC Advisory Staff
John Reasoner, PUC Advisory Staff
Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202
becky.quintana@dora.state.co.us
john.reasoner@dora.state.co.us

