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-325E

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 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

WESTERN RESOURCE ADVOCATES'

STATEMENT OF POSITION

February 25, 2010

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INTRODUCTION AND SUMMARY

Western Resource Advocates supports issuance of a Certificate of Public Convenience of Necessity (CPCN) for the proposed San Luis Valley-Calumet-Comanche transmission line project, provided certain limiting conditions accompany the Commission's approval. WRA supports this power line application because the project will transport solar energy generation in the San Luis Valley[1] to the Front Range load centers. The San Luis Valley has 240 GW of solar resource that can be developed.[2] This transmission line will enable the development of that solar renewable energy generation, thereby helping to address the pressing problem of climate change. The WRA conditions are in the public interest, will ensure this power line is used for its stated purpose now and in the future, and will balance construction activities with preservation of Colorado's outstanding and valuable environmental resources.

A Colorado Public Utilities Commission ("Commission") CPCN proceeding is the most appropriate place and time for ensuring the facility's purpose is aligned with Colorado energy policy. In short, the Colorado Commission is ideally suited to perform a cost/benefit analysis of the need for the line and its effect on the environment.

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[1] The San Luis Valley is also referred to as Energy Resource Zone 4. See Exhibit 5, Direct Testimony of Joseph Taylor at page 2, line 9 – page 3, line 9, and the map provided in Exhibit JCT-1. This project will also provide transmission for solar and wind energy development in Public Service's Energy Resource Zone 5, an area South and Southeast of Pueblo.

[2] Exhibit 106. Report of the Colorado Senate Bill 07-091 Renewable Resource Generation Development Areas Task Force. Appendix at 64. See also Hyde cross-examination by Ms. Mandell, Vol. 2, Pages 12-22.

WRA's conditions are aligned with Colorado energy policy, and are within the scope of the Commission's authority to promote the public interest. WRA urges the Commission to include the following conditions with the CPCN:

1. Before construction begins, the Applicants[3] shall demonstrate that at least 280 MW of Section 123 concentrating solar thermal with thermal energy storage resources, that were approved in the Commission's Phase II Decision in Docket No. 07A-447E,[4] will be developed and interconnect with the proposed transmission facilities.
2. The Commission will apply a rebuttable presumption in a future CPCN application against a finding of need for a non-renewable resource that would interconnect with the proposed transmission facilities.
3. When routing, siting and designing the line, Applicants will employ the principles and tools provided by WRA witness Dean Apostol in his Answer Testimony, and the environmental protection impact avoidance and mitigation measures recommended by the environmental consultant firms hired by Public Service.
4. Within three months of receiving the Nexant and Cadmus report on the demand-side management potential in its service territory, Tri-State will report to the Commission its plan on how it will implement the cost-effective measures and programs in the San Luis Valley that are identified in that study. Tri-State will annually update the San Luis Valley report, to ensure that end-use efficiency and other demand-side management efforts are being implemented in the Valley.

[3] The term "Applicants" refers to Public Service Company of Colorado ("Public Service") and Tri-State Generation and Transmission Association, Inc. ("Tri-State").

[4] Decision No. C09-1257, pages 17-21, Docket No. 07A-447E. And see, Exhibit 56, Amended public version of the Public Service Company of Colorado 120-Day Report, page 79. Docket No. 0A7-447E.

THE COMMISSION HAS BROAD AUTHORITY TO ATTACH CONDITIONS TO A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

1. Article XXV of the Colorado Constitution grants the Commission broad authority to regulate the facilities of Colorado public utilities.

Any discussion of the Commission's authority to attach conditions to the certificate of public convenience and necessity of a public utility facility begins with Article XXV of the state constitution, which states:

> In addition to the powers now vested in the General Assembly of the state of Colorado, all power to regulate the facilities, service and rates and charges therefore, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly may designate.
>
> Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, that nothing herein shall affect the power of municipalities to exercise reasonable policy power and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned utilities.

Until the General Assembly restricts the Commission, it has very broad authority to regulate Colorado public utilities under Article XXV, except for municipally owned utilities. "This is a legislative function…and until the General Assembly restricts it, the Commission has as much authority as the legislature possessed prior to the adoption of Article XXV in 1945." Miller Brothers, Inc v. Public Utilities Commission, 525 P. 2d 443, 451 (Colo. 1974). Moreover, "The PUC's authority under article XXV is not narrowly confined but extends to incidental powers which are necessary to enable it to regulate public utilities." Mountain States Tel. and Tel. v. Public Utilities Commission, 763 P. 2d 1020, 1025 (Colo. 1988). The effect of Article XXV is to grant the Commission broad authority under state law to regulate the facilities of public

utilities. Until the legislature restricts the Commission, it may regulate Colorado public utilities' facilities under Article XXV of the Colorado Constitution.

2. Colorado statutes grant the Commission broad authority to require limiting conditions when granting a CPCN for construction of facilities.

Not only has the legislature not restricted the Commission from placing conditions on a CPCN, but it has explicitly directed the Commission to do so. First, C.R.S. 40-5-101 et seq., establishes the Commission's CPCN authority. C.R.S. 40-5-101(1) provides:

> (1) No public utility shall begin the construction of a new facility, plant, or system or of any extension of its facility, plant, or system without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

Next, C.R.S. 40-5-103 et seq., establishes the Commission's authority to attach terms and conditions to the certificate. C.R.S. 40-5-103(1) provides:

> (1) ….Nothing contained in this subsection (1) shall be construed to limit or restrict the power and authority of the commission: To regulate, issue, or refuse to issue certificates of public convenience and necessity for construction of a new facility, plant, or system or of any extension thereof as provided in Section 40-5-101; and to attach to the exercise of the rights granted by such certificate such terms and conditions as in the commission's judgment may be required by the public convenience and necessity.

Therefore, WRA's request that conditions be placed on this CPCN is contemplated by the statutory scheme, and is clearly within the scope of the Commission's jurisdiction.

Tri-State witness Mr. Spiers argued at the hearing that WRA's conditions should not be imposed because it is contrary to the Commission statutes to condition a CPCN with conditions that are not already in existing rules.[5] Not only is this position incorrect, it is illogical, and

[5] Vol. 2, page 287, lines 5 – page 299, line 20. See specifically, Vol. 2, page 287, lines 8-16, Questioning by the ALJ. "Q: It is your position that it is illegal for the Commission—it is your position that it is contrary to statute for the Commission to impose a condition which is not—on a CPCN, which is a condition not already existing in an existing Commission rule? A: Yes. Q: Contrary to statute, I want to be clear that we're talking about the same thing? A: Yeah."

contrary to Colorado case law. If Mr. Spiers' position was the actual state of the law, the Commission would have to somehow conduct a rule-making to craft conditions relevant to a CPCN application that has not even been filed, in anticipation of facility-specific issues and facts that are not known or pending before the Commission. That is impossible and contrary to the Commission's fundamental responsibility to protect the public interest.

3. Public utility facilities must promote safety and health and be efficient.

Furthermore, Colorado law requires that public utility facilities promote safety and health and be efficient. Reasonable limiting conditions, such as those recommended by WRA, that further these statutory objectives should be adopted by the Commission.

Under C.R.S. 40-3-101(2):

> Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respect be adequate, efficient, just and reasonable.

This legislative command to promote safety, health, and efficiency, entrusted to the Commission to enforce under Article XXV, is directly linked to the energy policy and environmental protection restrictions advocated by WRA. Promotion of safety and health encompasses consideration of clean energy resource acquisitions and balancing of environmental concerns. "Efficient" encompasses demand-side management (DSM) and end use efficiency.

Tri-State witness Mr. Spiers argued at the hearing that WRA's conditions should not be imposed because they are "unrelated to the public convenience and necessity."[6] Based solely on the statutory language directly above, Mr. Spiers' understanding of the scope of the Commission's regulatory authority is inaccurate and too narrow. In contrast, both Applicants' chief policy witnesses, Mr. Bladow and Ms. Hyde, acknowledged the Commission's authority to

[6] Vol. 2, pages 8-22.

consider environmental impacts when performing an assessment of the public interest.[7] Also, the unique beauty of the landscape this power line will traverse was acknowledged by Applicants' witnesses.[8]

Tri-State witness Ms. Korbe questioned the relevance of environmental considerations in a CPCN proceeding.[9] Her opinion should not be heeded. First, Ms. Korbe acknowledged on cross-examination that she had zero previous exposure to Commission CPCN proceedings.[10] Second, environmental impact considerations are timely and relevant in a CPCN proceeding. Tri-State's and Public Service Company's originally filed applications contained extensive environmental impact information.[11] It is inherently contradictory for Tri-State to provide clearly relevant,

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[7] Vol. 2, page 193, line 24 – page 194, line 2. Cross-examination of Mr. Bladow by Ms. Mandell. "Q: Would you agree that environment protection is relevant to a determination of what is in the public interest? A: In the public interest, yes."

Vol. 2, page 22, lines 5-14. Cross-examination of Ms. Hyde by Ms. Mandell. "Q: I think I phrased it about three times, but I'll try again. Would you agree with me that when the Commission is reviewing -- or let's just say in this particular docket, when the Commission is looking at the -- at whether or not to grant the CPCN and weighing the costs and benefits of that decision that the environmental impacts are a factor that the Commission should consider? A: I think it's clearly one that they can consider. They have broad authority to look at a number of items in making their determination."

[8] Vol. 2, page 276, lines12-14. Cross-examination of Mr. Spiers by Ms. Mandell. "Q: And do you agree with the position of WRA that that landscape is especially beautiful? A: It's very beautiful. Vol. 4, Cross-examination of Ms. Korbe by Ms. Mandell. Q: Okay. Thank you. Ms. Korbe. Do you agree that the landscape between the San Luis Valley and the Calumet substation is especially scenic and beautiful? A: Yes, I think that a lot of areas in that region of Colorado that are especially scenic and beautiful."

[9] Korbe Rebuttal Testimony, page 8, lines 11-16. "From Tri-State's perspective, environmental considerations relevant to the Project will be properly addressed though the EIS process and such local government processes. Therefore, the EIS process is relevant to the Commission's consideration of the CPCN applications only in that it assures the Commission that environmental impacts of the Project are being addressed by the appropriate processes and agencies. Furthermore, as mentioned previously, certain intervenors in this docket have commented on the possible environmental impacts of the Project. Therefore, information regarding the EIS process is useful in responding to these comments to the extent the Commission believes that environmental issues are relevant to its CPCN decision at all."

[10] Vol. 4, page 181, line 18 – page 182, line 6.

[11] See MJM-2 attached to Exhibit 16, Direct Testimony of Mark Murray. Tri-State's Alternative Evaluation and Macro Corridor Study, June 2008, is prefaced with a note that states: "Existing data was used in order to determine the important natural, cultural and land use resources for the project area and to determine the corresponding constraints and opportunities for locating a transmission line." MJM-2 also contains 16 resource maps in Appendix A, and cites, at 5-1, Colorado Division of Wildlife, *GIS Data for Wildlife of Colorado*; Natural Diversity Information Source, *Greater Sandhill Crane Species Account*, accessed as early as November 2007; and U.S. Fish & Wildlife Service (USFWS) meeting notes from October 22, 2007, as well as USFWS information, *Sandhill Cranes in the San Luis Valley*, also accessed in November 2007.

detailed environmental protection maps and other substantive information with the application, and at the same time argue that the information is irrelevant and untimely.

Many other state jurisdictions impose environmental preservation conditions on CPCNs for transmission lines. For example, the Minnesota Commission, in a recent decision, adopted conditions designed to ensure a transmission line was used to secure access to renewable resources.[12] The Arizona Commission recently placed several environmentally protection conditions on a transmission line application, including a plan specifying, "the Applicant's plans for construction access and methods to minimize impacts to wildlife and to minimize vegetation disturbance outside of the Project right-of-way particularly in drainage channels and along stream banks, and shall re-vegetate, unless waived by the landowner, native areas of construction disturbance to its preconstruction state outside of the power-line right of way after construction has been completed." [13] These types of conditions that seek to balance environmental considerations with other factors are properly within the scope of the Commission's power and expertise.

Furthermore, as Mr. Apostol explained at the hearing, frequently with large scale public projects, optimal environmental impact avoidance routes are removed too early in the evaluation process because environmental impacts are not allocated the appropriate level of consideration

[12] In the Matter of the Application of Great River Energy, Northern State Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kv Transmission Projects ET-2, E-002, et al./CN-06-1115, August 10, 2009. 2009 WL 2486093 (Minn.P.U.C.)

[13] In the Matter of the Application of the Salt Lake River Project Agricultural Improvement and Power District, in Conformance with the Requirements of Arizona Revise Statutes, Sections 40-360, et seq., for a Certificate of Environmental Compatibility authorizing Construction of a 230 kv Double Circuit Transmission Line, Case No. 148, Docket no. L-00000B-09-0311-00148, Decision No. 71441, December 23, 2009. 2009 WL 5172759 (Ariz.C.C.).

when compared with other factors, such as engineering simplicity or political opposition.[14] When that happens all that is left is tail-end, visual impact mitigation measures, such as pole type, rather than optimal route selection. When environmental considerations are valued early in the transmission planning process, environmental protection efforts are more effective and efficient. Including the conditions urged by WRA as part of the CPCN will help ensure environmental impact considerations are given significant weight as the planning and design process iteratively progresses.

Another reason environmental protection considerations are timely in a CPCN proceeding is because the Commission's statutes provide for cost recovery for prudently incurred costs once a CPCN is granted.[15] If the Commission states clearly in the CPCN order that environmental impact avoidance and mitigation measures are conditions for issuance of the CPCN then Public Service Company[16] has received the necessary assurances and can budget early for those additional costs.[17]

4. <u>The Commission's CPCN rules require implementation of prudent avoidance measures beyond noise and EMF mitigation.</u>

Pursuant to the Commission's regulations at 4 CCR 723-3-3102, a utility seeking to construct and operate a facility under C.R.S. 40-5-101 must file an application for a certificate from the Commission unless such construction and operation is "in the ordinary course of business." The

[14] Vol. 5, page 99, line 6 – page 100, line 17. For example: Re-Direct of Mr. Apostol. "A: So one of the – I guess one of the concerns I would have and one of the reasons I think it's timely to bring these issues up now is to influence the route selection as opposed to just waiting until you are at the tail end and you have got a route and now all you can do is really mitigate."

[15] C.R.S. Section 40-5-101(4)(a) "A public utility shall be entitled to recover, through a separate rate adjustment clause, the costs that it prudently incurs in planning, developing, and completing the construction or expansion of transmission facilities for which the utility has been granted a certificate of public convenience and necessity…"

[16] Exhibit1. See Exhibit B to the Tri-State Application. According to the Draft Term Sheet, Public Service would be responsible for 60% of the costs for the San Luis Valley to Calumet to Comanche portions of the project.

[17] Both Ms. Hyde and Mr. Bladow agree that is better to have costs incorporated earlier, rather than later in the budget. Vol. 2, page 7, lines 8-17. Cross-examination of Ms. Hyde by Ms. Mandell. Vol. 1, page 189, line 14 – page 190, line 25. Cross-examination of Mr. Bladow by Ms. Mandell.

Commission's rules at 4 CCR 723-3-3102(b) require that an application for a CPCN must include, inter alia:

> (VIII) As applicable, information on alternatives studied, costs for those alternatives, and criteria to rank or eliminate alternatives.
>
> (IX) As applicable, **a report of prudent avoidance measures considered and justification for the measures selected to be implemented**.
>
> (X) For transmission construction or extension, the information required by paragraph (c) of this rule.

(emphasis added)

Significantly, Rule 4 CCR 723-3-3102(b)(IX) requires "prudent avoidance measures" above and beyond the specifically described prudent avoidance measures required for noise and EMF in Rule 4 CCR 723-3-3102(c) and (d). Noise and EMF are specifically addressed in Rule 4 CCR 723-3-3102(c) and (d):

> (c) For an application for a certificate of public convenience and necessity for construction or extension of transmission facilities, the applying utility shall describe its actions and techniques relating to cost-effective noise mitigation with respect to the planning, siting, construction, and operation of the proposed transmission construction or extension. The applying utility shall provide computer studies which show the potential noise levels expressed in db(A) and measured at the edge of the transmission line right-of-way. These computer studies shall be the output of utility standard programs, such as EPRI's EMF Workstation 2.51 ENVIRO Program -- Bonneville Power Administration model. The steps and techniques may include, without limitation, the following:
>
> (I) Bundled conductors.
>
> (II) Larger conductors.
>
> (III) Design alternatives considering the spatial arrangement of phasing of conductors.
>
> (IV) Corona-free attachment hardware.
>
> (V) Conductor quality.
>
> (VI) Handling and packaging of conductor.
>
> (VII) Construction techniques.
>
> (VIII) Line tension.

(d) For an application for a certificate of public convenience and necessity for construction or extension of transmission facilities, the applying utility shall describe its actions and techniques relating to prudent avoidance with respect to planning, siting, construction, and operation of the proposed construction or extension. As used in this paragraph, "prudent avoidance" means the striking of a reasonable balance between the potential health effects of exposure to magnetic fields and the cost and impacts of mitigation of such exposure, by taking steps to reduce the exposure at reasonable or modest cost. The steps and techniques may include, without limitation, the following:

(I) Design alternatives considering the spatial arrangement of phasing of conductors.

(II) Routing lines to limit exposures to areas of concentrated population and group facilities such as schools and hospitals.

(III) Installing higher structures.

(IV) Widening right of way corridors.

(V) Burying lines.

A careful reading of the rule demonstrates that, contrary to the Applicants' interpretation of the Commission's rules, "prudent avoidance measures" is not limited to solely noise and EMF mitigation. It is reasonable to interpret the prudent avoidance reporting requirement in 4 CCR 723-3-3102(b)(IX) as additional support for the Commission's authority to review the environmental impacts of potential facilities and ensure corresponding protective measures are implemented.

5. Colorado Supreme Court case law confirms the Commission's expansive CPCN authority.

The court cases provide additional, solid legal support for the Commission's latitude in a CPCN proceeding. The courts confer upon the Commission substantial discretion to interpret the statutes under which they operate. The Colorado Supreme Court in City of Boulder held:

> …while the PUC's interpretations of law do not control our review, when statutes and regulations for which the agency possesses enforcement authorities are ambiguous, we give deference to the agency's interpretations.[18]

Thus, the Court will look to the Commission's interpretation of the statute for guidance. If the Commission determines to consider environmental issues in a CPCN case, the court will accord the Commission's determination great weight. Also, given the breadth of authority conferred on the Commission by Article XXV, there is no doubt that the Commission has the discretion to perform a cost/benefit analysis of a wide variety of public interest factors when defining "need" under the CPCN statutes and rules.

a . Determination of "need" under the CPCN statute

An applicant seeking a CPCN must show that the subject facility is needed. The statute prohibits a public utility from constructing a facility, plant or system unless the Commission finds the "present or future public convenience and necessity require or will require such construction," a very broad policy objective.[19] This transmission project is being built not only for the present convenience and necessity – it must be operational by the summer of 2013 for service of solar resources authorized by the Commission's Phase II Order in the 447E docket[20] – but it is being built to serve anticipated **future** renewable energy development. Since the statute on its face authorizes Commission consideration of the **future** convenience and necessity, there is no question regarding authority to incorporate future anticipated uses when determining whether a CPCN is in the public interest.

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[18] City of Boulder v. Colorado Public Utilities Commission, 996 P.2d 1270, 1274 (2000). See also Public Utilities Commission v. Colorado Motorway, 437 P.2d 44 (1968).

[19] C.R.S. Section 40-5-101(1) "No public utility shall begin the construction of a new facility, plant or system or of any extension of its facility, plant or system without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction."

[20] Decision No. C09-1257, pages 17-21, Docket No. 07A-447E. And see, Exhibit 56, Amended public version of the Public Service Company of Colorado 120-Day Report, page 79. Docket No. 0A7-447E.

The Commission has frequently used its CPCN authority to consider a wide variety of concerns in determining whether to grant an application for a CPCN, and the Colorado Supreme Court has validated such review. In International Union United Mine Workers of America v. the Colorado Public Utilities Commission, 463 P.2d 465 (1970), the issue before the Court was whether the Commission should have granted a CPCN for the Fort St. Vrain nuclear facility. Prior to issuing the CPCN, the Commission had reviewed the economic feasibility and risk to the health and safety of constructing and operating a nuclear facility at Fort St. Vrain. The UMW contended that the evidence adduced before the Commission on these issues was not competent or probative. As to the Commission's consideration of evidence relating to risks to public health and safety, the Court stated:

> From the evidence presented, it appears that provisions have been made for all reasonably foreseeable risks to health and safety. This is the proper standard. It was applied by the Commission in this case.

463P.2d 465, 468.

In City of Boulder, the Court reviewed the evidence the Commission had considered in determining to grant a CPCN requested by PSCo for an upgrade of a turbine at Public Service's Pawnee plant. The evidence included efficiency gains attributable to the upgrade, its consistency with PURPA, whether the CPCN violated the Commission's IRP rules and general benefits to ratepayers on the PSCo system. In upholding the Commission's decision granting a CPCN for this project, the Court stated:

> As we hold that the PUC validly concluded that the Pawnee turbine upgrade project served the public interest, [the Commission's] decision granting a CPCN for the upgrade project did not violate [the Commission's] IRP regulations.

996 P.2d 1270, 1281.

b. Consideration of the "public interest" under the CPCN statute

The second reason for an expansive reading of the Commission's CPCN authority is that the Commission is required to promote the "public interest" in all of its activities. In addition to the passage from City of Boulder at 996 P.2d at 1281, cited above, the Court in that case also made a general statement about the centrality of "public interest" to the Commission's activities:

> The PUC has a general responsibility to protect the public interest regarding utility rates and practices. In fulfilling that function…the PUC has broadly based authority to do whatever it deems necessary to accomplish the legislative functions delegated to it. City of Montrose v. Public Utilities Commission, 629 P.2d 619, 624 (Colo.1981).

996 P.2d1270, 1274. It is clearly in the public interest that the Commission consider the consistency of an application for a CPCN with public safety, health and protection of the environment. Given the deference accorded the Commission, it would violate no law, rule or Colorado Supreme Court case for the Commission to mandate protective conditions that are consistent with the public interest.

Recent Commission decisions continue the tradition of the Commission's broad scope of authority and ability to incorporate facility-specific issues in CPCN cases. Indeed, in its decision to approve a CPCN for the Comanche 3 generation facility, the Commission discussed environmental concerns, whether IGCC was a proven technology, the avoidance of litigation over the facility's air permit resulting from a settlement between Public Service and a group of environmental and community intervenors and reduction of SOx, NOx and mercury emissions at the plant.[21]

Recently, the Commission granted a portion of Public Service's application for approval of the Cameo solar thermal integration project.[22] While Public Service did not formally submit

[21] See Decision No. C05-0049 in consolidated dockets No. 04A-214E, No. 04A-215E and No. 04A-216E, pp. 23-24, December 17, 2004.
[22] See Decision No. C09-0472 in Docket No. 09A-015E.

this project as an application for a CPCN, the Commission treated it as such.[23] In rendering its decision the Commission considered a range of factors, including that the project offers a good learning opportunity for that technology, and that its integration of dispatchable and renewable intermittent resources "is a positive and forward-looking concept."[24]

The Commission's review of a CPCN application should be facility-specific, and responsive to current public policy concerns. While many CPCN cases in the distant past have addressed only duplication of facilities and the principle of regulated monopoly because these were the only issues raised in these cases, it is clear that the Commission has never limited itself to such a narrow reading of the CPCN statute, and given more recent filed applications the Commission has, of necessity, considered other factors.

Fundamentally, the Commission has the authority to consider the environmental impacts of facilities and to impose protective conditions, and a CPCN proceeding is the most obvious, well-designed mechanism for such consideration and conditions.

c. CPCN review should be consistent with current Colorado energy policy

Colorado energy policy has changed significantly in the past ten years,[25] and the conditions advanced by WRA help implement these policies. The interconnection between energy consumption and economic development, international security, and environmental and public health protection are all public policy factors that are now explicitly integrated into energy policy. This is happening at the federal, state and local level. Compliance with the Colorado's renewable energy standard is a contributing factor to the need determination in this docket. Pursuant to new Colorado energy policy, the Commission is authorized to incorporate the risk of

[23] Id., p. 9.
[24] Id., p. 8.
[25] Vol. 2, page 267, line 24 – page 268, line 4. Cross-examination of Mr. Spiers by Ms. Mandell. "Q: Mr. Spiers, would you agree with me that there have been significant changes in energy policy in the State of Colorado in the last ten years, not just for transmission, but for generation and all kinds of areas of the industry? A: Yes, I have."

carbon emission regulation in its analyses.[26] Additionally, the Colorado Commission may consider clean energy technologies and the environmental impacts of utility resources in CPCN cases under C.R.S. 40-2-123(1)(a) and (b)(II). Taken together this evolution in policy provides further support for adoption of the conditions to the CPCN recommended by WRA.

CONDITIONS

The WRA conditions are within the scope of Commission jurisdiction, are in the public interest, and are well aligned with Colorado energy policy. The Applicants' criticisms of the conditions are not of sufficient merit to prevent their adoption. Also, in response to feedback from the Applicants and other parties, the proposed conditions have been modified and contracted.

1. Demonstration of commitment to interconnection of solar resources prior to construction

WRA requests that the following condition be placed on the CPCN: "Before construction begins, the Applicants shall demonstrate that at least 280 MW of Section 123 concentrating solar thermal with thermal energy storage resources, that were approved in the Commission's Phase II Decision in Docket No. 07A-447E,[27] will be developed and interconnect with the proposed transmission facilities."

The unambiguous purpose behind this condition is to provide legal reassurance that the line will be used for its intended purpose, at least in the immediate future. This simple,

[26] C.R.S. 40-2-123(b)(II) directs the Commission to "give full consideration to the likelihood of new environmental regulation and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire resources."

[27] Decision No. C09-1257, pages 17-21, Docket No. 07A-447E. And see Exhibit 56, the amended public version of the Public Service Company of Colorado 120-Day Report, page 79. Docket No. 0A7-447E.

straightforward condition should not be objectionable. This condition protects Colorado ratepayers with a minimal guarantee that the line fulfills it stated purpose and need.

Public Service Company raises the concern that it will lose negotiating leverage upon imposition of this condition.[28] This criticism seems exaggerated. The developer already knows that a transmission line must be built to transport the energy to load.

2. Rebuttable presumption against future non-renewable generation facilities

WRA requests that the following condition be placed on the CPCN: "The Commission will apply a rebuttable presumption in a future CPCN application against a finding of need for a non-renewable resource that would interconnect with the proposed transmission facilities."

WRA supports the development of this facility because the primary rationale for the transmission project is to deliver renewable energy resources.[29] This condition should be adopted

[28] Hyde Rebuttal Testimony at page 33, line 14 – page 37, line 6.

[29] Exhibit 1, Public Service Application at 2: "Additional transmission capacity is required to import significant levels of solar and wind generation from south-central and southeastern Colorado to the Front Range load centers. ERZ 4 is located in the San Luis Valley, and ERZ 5 is in South Central Colorado … Public Service has identified ERZ 4 as having significant solar development potential." See also Exhibit 9, Direct Testimony of Gerald M. Stellern, page 8. "Q. How does the San Luis Valley-Calumet-Comanche transmission project fit in with Public Service's Planning Vision? A. The Project is consistent with our vision of creating a transmission highway for delivering cost effective and environmentally friendly energy resources to Colorado consumers. ERZs 4 and 5 have been identified as having significant potential for the development of wind and solar resources in particular." Exhibit 1, Tri-State Application at 1-2: "As originally conceived, the [project] was intended to improve system reliability and help prevent voltage collapse under peak loads in the San Luis Valley, and provide additional transmission capacity to facilitate renewable energy development in the area." Also, see MJM-2 attached to Exhibit 16, Direct Testimony of Mark Murray. Tri-State's Alternative Evaluation and Macro Corridor Study, June 2008 at 1-1: "This line will provide the power delivery infrastructure to increase the reliability and capacity of the existing transmission system and support proposed renewable energy development in the San Luis Valley area." Also, see Vol. 1, page 186, line19 – page 187, line 6. Cross-examination of Mr. Bladow by Ms. Mandell. "Q: Now a three –a treble, or three times credit for solar, does that impact your---from a transmission planning perspective, does that impact your evaluation of the cost-effectiveness of solar? A: Yes. What we're looking at is from a resource standpoint is we want to build a transmission so that our planners have the option to put that in the future, and that's one of those as you talked about, the other purpose of the project, in your previous question, is reliability, I would call it, the foundation of this project for Tri-State, but what we build upon that foundation is the ability to develop solar in the Valley." Also, see Vol. 1, page 194, lines 3-11. Cross-examination of Mr. Bladow by Ms. Mandell. "Q: Mr. Bladow, would you agree with me that the percentage of this potential—I'll start over. That if this line is built, the percentage of the line's capacity for renewable resources is greater than the percentage of the capacity of the line that's built for reliability purposes? A: I would say in the company's proposal, there's a larger focus on the export of the renewables, correct."

because it is directly tailored to the stated purpose of the power line. Without overreaching, the condition safeguards the Applicants' current intentions into the future. It is not too prescriptive because it is a rebuttable presumption that can be overcome. And, the flexibility and discretion of future commissions is preserved.

Applicants raise several objections to this rebuttable presumption. First, they allege the condition is in violation of the FERC's Open Access Tariff. However, it is carefully crafted not to violate federal law nor disturb FERC policy objectives. The condition maintains FERC jurisdiction over transmission lines and markets, and state commission jurisdiction over CPCNs for generation facilities. Because the condition only addresses future generation facilities, it falls squarely within the Commission's traditional CPCN authority.

The Applicants observe that the rebuttable presumption leaves a loophole for interconnection with fossil-fueled generation from purchased power agreements (PPAs) because a CPCN is not required for those transactions. While we agree that this loophole exists, by adopting this presumption the Commission can at least help overcome the dominance of fossil-fueled generation.[30]

3. Environmental avoidance and mitigation measures

WRA requests that the following condition be placed on the CPCN: "When routing, siting and designing the line, Applicants will employ the principles and tools provided by WRA witness Dean Apostol in his Answer Testimony, and the environmental protection impact

[30] A potential solution to minimize the loophole's effect would be to add an additional condition that includes a rebuttable presumption precluding Public Service Company from entering into PPAs for interconnecting non-renewable resources. This solution removes some of the loophole room, and addresses the Applicants' legal concerns by placing the requirement on the regulated utility.

avoidance and mitigation measures recommended by the environmental consultant firms hired by Public Service for this project."

Additionally, the Commission's order should clarify that Public Service will receive cost recovery for prudently incurred expenditures made in compliance with these conditions.

The evidence demonstrates that much of the area the proposed power line will impact is characterized by high value scenic resources.[31] WRA's condition language is intended to ensure that these rare, unique resources are not irreparably harmed by this project.

There is general agreement from the Applicants that scenic impacts can be partly avoided and otherwise minimized, and conservation values preserved if care is taken in right-of-way selection, corridor design, tower design, and other mitigation measures are employed by project developers. However, WRA is concerned because it is not clear that these environmental protection strategies will be implemented on the San Luis Valley to Calumet portion of the line. The Commission can authorize cost recovery for Public Service Company, but not for Tri-State. Therefore, it is critical that the Commission's order articulate that these analytical tools and measures be required for the most scenic, relatively undisturbed portion of the proposed route.

During the hearing, concerns were raised that there was no upper limit or clear boundary for the costs associated with visual impact mitigation measures. For Public Service Company's cost recovery, the Commission's statutes, adjustment clause review, and other standard procedures provide sufficient protection for ratepayers because the costs must be prudently incurred.[32] Additionally, initial budget estimates for the cost of the project, even though they are subject to a plus or minus 30% qualification, provide a cost recovery floor, and parameters for the

[31] Exhibit 26, Answer Testimony of Dean Apostol and Exhibits. Pages 2,4,5,9,14,15,16,17,18,19.

[32] C.R.S. Section 40-5-101(40(a). "A public utility shall be entitled to recover, through a separate rate adjustment clause, the costs that it prudently incurs in planning, developing, and completing the construction or expansion of transmission facilities for which the utility has been granted a certificate of public convenience and necessity or for which the Commission has determined that no certificate of public convenience and necessity is required."

Commission's review of prudently incurred costs.[33] For Tri-State, the Commission's order must be sufficiently directive to motivate Tri-State to take these remedial actions and incur these types of expenses.

The analytical tools and measures WRA recommends be implemented for this transmission project are:

- Use the south edge of the proposed corridor between Alamosa and Fort Garland.
- Take advantage of micro topography (swales and low hills) to hide the line from key viewpoints to the extent practicable.
- Where possible, co-locate the transmission lines with other telecommunication, transportation, local electrical transmission and/or railroad corridors. Avoid crossing through highly visible undisturbed natural areas.
- Properly weigh the short-term higher costs that may be necessary to mitigate scenic impacts against the longer-term benefits gained by preserving sense of place, high-quality scenic views and the local/regional tourist and recreation economy.
- Keep the line away from the highest quality scenic features.
- Focus mitigation strategies in areas viewed by large numbers of people.
- Choose tower designs that best fit the conditions. Choose low-profile towers where the line is crossing open land, and taller, more slender towers to cross over low forest.

[33] Vol. 5, page 35, line 10 – page 36, line 11. Questioning by Administrative Law Judge of Mr. Darin. "Q: And to be fair, you stated several times that you have not done a study in fact no one that you know has done a study as to what these visual impact mitigation strategies would cost if implemented, correct? A: That's correct. And our discussion reminded me of what Ms. Korbe said yesterday and some of the exhibits to her testimony about the visual simulations; and that she pointed out that several of the things they are considering are similar to what Mr. Apostol recommends. And so that information is feeding in from Ms. Korbe's team and with Mr. Thompson -- and I'm not exactly sure exactly how it works; but it -- at some level, it fed into getting this ballpark 180 million, plus or minus 30 percent. So what I'm trying to elaborate on here is that that gives us more -- that gives us a better answer to the question that, yes, some of these factors have resulted in the 180 million price tag already; and that to the extent that Mr. Apostol may have one or two additional ones, that we're going to be -- you know, again at a high level, we're going to be closer to that range than something like, you know, what Mr. Apostol's proposing is -- would double the cost. I think it's going to be, financially speaking, sort of tweaking around the edges of that 180 million, within that 30 percent."

- Minimize color contrast by using dark, low reflectivity towers and attachments.
- Minimize clearing and ground disturbance, especially in forested areas.
- To the extent that a transmission line can straddle low growing vegetation, massive clearing can be avoided, which also avoids the clear-cut strip effect that is common where power lines cross through tall forest.
- Where possible, eliminate existing local utility poles and lines by consolidating with the new towers.

4. Reporting on DSM and on-site renewable generation

WRA requests that the following condition be placed on the CPCN: "Within three months of receiving the Nexant and Cadmus report on the demand-side management potential in its service territory, Tri-State will report to the Commission its plan on how it will implement the cost-effective measures and programs in the San Luis Valley that are identified in that study. Tri-State will annually update the San Luis Valley report, to ensure that end-use efficiency and other demand-side management efforts are being implemented in the Valley."

From an overarching transmission planning policy perspective, the potential use of energy efficiency and distributed generation should be maximized in order to avoid and delay power lines and their associated environmental impacts. One purpose of this line is to increase reliability in the San Luis Valley, and for this reason the condition WRA proposes is appropriate. This condition is directly linked to that stated purpose. Since Tri-State provides financial incentives to its members for implementation of energy efficiency, reporting should not be burdensome. During the hearing in response to cross-examination questions, Mr. Bladow, Tri-State's Senior Manager of Transmission Planning, acknowledged that DSM could have the

potential to affect how much export capacity is available on the line at peak.[34] Despite the relative MW potential of DSM, in comparison to the MWs of potential solar generation to be carried on the line, this condition addressing end-use efficiency and demand side management efforts should be included.

CONCLUSION

On the basis of the evidence presented and the arguments in this statement of position, WRA urges the Commission to adopt all four conditions. The conditions are consistent with the public interest and Colorado energy policy.

[34] Vol. 8, page 63, lines 17-21, and page 55, line 6 – page 57, line 12. "Q: And do you agree with Mr. Darin's statement that demand response programs lessen future load requirements? A: Yes, I have no problem with that statement. Q: And there has been some discussion about the maximum capacity of the line being sufficient to meet the amount -- the need for the amount of generation that's anticipated to be built; are you aware of that issue in this proceeding? A: Yeah, as you get to higher and higher levels, essentially you run out of transmission capacity, yes. Q: And so would you agree with me that DSM could have some role in the future with regard to that question of the transmission line having sufficient capacity for the nation? A: Yes. In the future, as loads grew, demand -- DSM could have an impact on, you might say, how quickly the export capacity was used up. Q: And you would agree with me that the Commission has the ability in a docket such as this, a CPCN docket, that they can look beyond just a snapshot of time of immediate need, they can look to future need and the future sort of use of the line when looking at the CPCN or possible conditions on the line? A: You know, I am not well versed in exactly everything they look at, but I would assume that they look at a broad range of needs when they are examining a CPCN application. Q: And I think you just agreed with me that DSM could in the future affect the use of the capacity on the line; and so my question is, given the lumpiness of transmission investment, is it possible that the use of DSM in the future in the valley could delay future lumpy investments in transmission with regard to this line? A: In this specific case, I would not agree with that statement. Q: But you do agree that if the line was being used at or near capacity, that DSM and energy efficiency could impact, you know, the maximum amount of capacity being used on the line? A: Yes, it could impact the maximum amount of capacity being used on the line; but I thought your question was, could it forestall or delay additional infrastructure investment? And if I think of -- just in rough numbers -- I'll throw 800 megawatts of generation in the valley; you only have 165 megawatts of load. So if you had 10 percent, 20 percent of demand, DSM -- because the only thing you really are -- the variable you have is load in the valley. So if you used 20 percent of that, you are at the 10, 20 megawatts. As an increment of transmission, you are usually talking hundreds of megawatts. So just in general, I agree with the statement that it can; but in this specific case, given the magnitudes, I don't know that it would influence the next transmission or next set of facilities. But on a day-to-day operations, if you reduced it, that could have a -- you would have the ability, perhaps, to export some more."

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Respectfully submitted,

WESTERN RESOURCE ADVOCATES

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