

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0059E

IN THE MATTER OF THE VERIFIED APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR APPROVAL OF THE RETIREMENT OF THE NUCLA STATION, AND REQUEST FOR WAIVER OF RULE 3103(d).

**UNOPPOSED UNANIMOUS STIPULATION FOR SETTLEMENT AND
UNOPPOSED MOTION TO VACATE PROCEDURAL SCHEDULE**

Tri-State Generation and Transmission Association, Inc. ("Tri-State"), Trial Staff of the Colorado Public Utilities Commission ("Staff"), the Colorado Office of Consumer Counsel ("OCC"), and the Town of Naturita, Colorado, the Town of Nucla, Colorado, and the County of Montrose, Colorado (collectively the "Local Governments"), by and through their respective undersigned counsel, pursuant to Commission Rules of Practice and Procedure 1400, 1403, and 1408 and Decision No. R20-0504-I, submit this Unopposed Unanimous Stipulation for Settlement and Unopposed Motion to Vacate Procedural Schedule and, as grounds therefor, state:

BACKGROUND

1. On February 14, 2020, Tri-State filed its Verified Application and Request for Waiver of Rule 3103(d) requesting that the Commission: (a) approve the retirement of the Nucla Station and the abandonment or discontinuation of such facilities without equivalent replacement; and (b) waive the notice requirements of Commission Rule 3103(d) of the Rules Regulating Electric Utilities (the "Application").

2. The procedural history of this proceeding through July 14, 2020 is summarized in the Interim Decision of Administrative Law Judge ("ALJ") Conor F. Farley

Extending Deadline, Addressing Interventions, Establishing Prehearing Schedule, Setting Remote Hearing, and Addressing Electronic Exhibits, Decision No. R20-0504-I (the “Interim Decision”).

3. The following are parties in this proceeding: Tri-State, Staff, OCC, and each of the Local Governments (the “Parties”). Interim Decision, § II.A.3.

4. In support of its Application, Tri-State filed its Direct Testimony on February 14, 2020, and filed its Supplemental Direct Testimony on May 29, 2020. Pursuant to the Interim Decision, Staff and OCC filed their respective Answer Testimony on July 15, 2020. The Local Governments did not file Answer Testimony. Tri-State filed its Rebuttal Testimony on August 10, 2020.

5. A remote evidentiary hearing in this proceeding is presently scheduled for August 27-28, 2020. Interim Decision, § I.E.

STIPULATION FOR SETTLEMENT

I. Application to Retire Nucla Station

6. In general, Tri-State must demonstrate that it is in the public interest for it to abandon or discontinue the Nucla Station without equivalent replacement. Commission Rule 3103(a). In satisfaction of this requirement, Tri-State has filed its Application, Direct Testimony, Supplemental Direct Testimony, and Rebuttal Testimony in this proceeding.

7. In its Interim Decision Referring Application to an Administrative Law Judge, the Commission directed the ALJ:

to investigate the following issues: (1) the reclamation of the coal mine associated with Nucla Station, to the extent that the cost of such mine reclamation is a relevant expense that should be included in the scope of the total financial impact of the Nucla Station’s retirement; (2) how any disposition of water rights that Tri-State owns in connection with the Nucla Station’s operations will be in the public interest; (3) a detailed cost

estimate and timeframe for the Nucla Station's decommissioning; (4) a precise description of all facilities that are included in the Nucla Station's decommissioning; and (5) the ongoing monitoring and environmental compliance that will be necessary at the site.

Decision No. C20-0282-I, ¶ 7.

8. Tri-State has addressed each of the Commission's issues as follows:

(a) Coal Mine Reclamation Costs – Ingold Supplemental Direct Testimony, 14:15-16:2; Ingold Rebuttal Testimony, 2:20-4:24.

(b) Water Rights – Ingold Supplemental Direct Testimony, 9:19-11:16; Ingold Rebuttal Testimony, 6:8-13.

(c) Decommissioning Cost Estimate and Time Frame – Nelson Direct Testimony, 4:21-5:6; Nelson Supplemental Direct Testimony, 14:15-17:2.

(d) Precise Description of Facilities to be Decommissioned – Nelson Direct Testimony, 3:21-4:3; Nelson Supplemental Direct Testimony, 7:8-10:6; Ingold Rebuttal Testimony, 6:5-7; Nelson Rebuttal Testimony, 3:9-4:3.

(e) Ongoing Monitoring and Environmental Compliance – Nelson Direct Testimony, 5:7-11; Nelson Supplemental Direct Testimony, 10:7-14:14.

9. In addition to the issues identified by the Commission, the ALJ directed Tri-State to address in its Supplemental Direct Testimony "why it did not file the Application before: (a) it announced in July 2019 that the Nucla Station would cease operations when it exhausted its remaining on-site fuel supply; and (b) the Nucla Station exhausted its on-site fuel supply on September 9, 2019." Decision No. R20-0329-I, ¶ 17.

10. Tri-State has addressed the ALJ's additional issues as follows:

(a) Application Prior to Announcement – Ingold Supplemental Direct Testimony, 6:22-7:7.

(b) Application Prior to Fuel Supply Exhaustion - Ingold Supplemental Direct Testimony, 7:8-18.

11. In its Notice of Intervention, Staff identified the following issues it intended to investigate and address:

- a. Whether Tri-State has provided adequate evidence that it will have adequate generating resources to meet future needs;
- b. Whether Tri-State provided adequate evidence that the retirement of Nucla Station will not result in any reduction in system reliability;
- c. Whether Tri-State provided adequate information regarding its workforce transition plans pursuant to § 40-2-133, C.R.S.;
- d. Whether Tri-State has provided adequate information regarding its decommissioning and removal plans such that the community of Nucla is not exposed to the long-term blight created by an abandoned generation facility; and
- e. Any and all other issues not raised herein that, after investigation and analysis, are worthy of consideration by the Commission, are in the public interest, and are likely to assist the Commission to render its decision in this proceeding.

Staff's Notice of Intervention ¶ 2; see *also* Answer Testimony of Staff Witness Gribb 7:2-16 (marked HE 400).

12. "Staff [was] satisfied with the testimony and evidence Tri-State provided regarding adequacy of generating resources to meet future needs and system

reliability. Staff [was] also satisfied with the information Tri-State provided regarding its workforce transition efforts.” Answer Testimony of Staff Witness Gribb 8:4-7. Staff requested that Tri-State provide more information regarding the fourth issue (see ¶ 11.d above).

13. More specifically, Staff ‘s Answer Testimony recommends two conditions for approval of Tri-State’s Application:

- a. the Commission clearly and specifically confirm that a transfer of water rights is not in the normal course of business for a public utility, and as such, if Tri-State were to transfer of any water rights owned in connection with Nucla Station then Tri-State would first need prior authorization by the Commission pursuant to § 40-5-105, C.R.S. and Commission Rule 3104; and
- b. the Commission deny Tri-State’s application to decommission and remove the facilities at the Nucla site unless the Company adequately provides in rebuttal “a precise description of all facilities that are included in the Nucla Station’s decommissioning.”

Answer Testimony of Staff Witness Gribb 14:8-15:2.

14. With regard to Staff’s first recommended condition, Tri-State agrees that at such time as it decides to transfer, sell, abandon, or dispose of its water rights associated with the Nucla Station, it will file an application with the Commission for approval of the same pursuant to § 40-5-105, C.R.S., or for a determination that no such approval is required given the specific circumstances of the proposed transaction. See Ingold Supplemental Direct Testimony, 11:15-16; Ingold Rebuttal Testimony, 6:8-13. With

regard to Staff's second recommended condition, Tri-State's rebuttal testimony includes detailed information concerning all facilities included in the decommissioning of Nucla Station. See Ingold Rebuttal Testimony, 6:5-7; Nelson Rebuttal Testimony 3:9-4:3.

15. In its Notice of Intervention, OCC stated it may address the following issues:
 - a. whether Tri-State's proposed \$17 million estimated cost to decommission the Nucla Station is reasonable;
 - b. what is the basis for and the activity included in the proposed \$17 million cost estimate;
 - c. whether Tri-State should file periodic reports with the Commission showing the Company's expenditures related to this decommissioning project;
 - d. whether the decommissioning costs will be allocated to all members identified in Attachment E to the its Application;
 - e. how the decommissioning costs will be allocated among all members identified in Attachment E to the its Application;
 - f. whether the proposed dismantling and remediation of the Nucla Station is adequate and sufficient from an environmental perspective;
 - g. whether Tri-State adequately evaluated the impact of the retirement on system capacity and reliability;
 - h. whether Tri-State adequately evaluated the impact of the retirement on system costs, including replacement power and changes in transmission infrastructure;

- i. whether Tri-State acted in the public interest by financially delaying retirement until the fuel source was exhausted;
- j. whether Tri-State's proposed treatment of the impacted workers and communities is a just and reasonable workforce transition plan;
- k. whether Tri-State is seeking a ruling on its proposed decommissioning costs; and
- l. whether any assets associated with the Nucla Station will be transferred and subject to §40-5-105, C.R.S.

OCC's Notice of Intervention, ¶ 5.

16. Based on the information provided by Tri-State, "The OCC does not oppose the retirement of the Nucla Station and does not take a position on the Commission's final decision." Pereira Answer Testimony, 5:13-15.

17. In their Joint Motion to Intervene, the Local Governments explained that they are "directly impacted by the retirement of the Nucla Station in the form of sales and property tax revenues as well as the displacement and relocation of their citizens who were and are employed by Tri-State." Joint Motion to Intervene, ¶ 4. The Local Governments also identified their interest in the diversion of water from the San Miguel River. *Id.* At the Prehearing Conference held on June 11, 2020, the Local Governments further explained their economic interests and their interest in the water rights associated with the Nucla Station. The Local Governments did not file Answer Testimony and have not raised any other issues in this proceeding.

18. With regard to the Local Governments' economic interests, Tri-State has donated \$500,000 to the West End Pay It Forward Trust, and continues to coordinate with

Montrose County, the Town of Nucla, and the Town of Naturita to assist them in applying for those funds. Ingold Rebuttal Testimony, 7:17-20. Additionally, Tri-State has communicated to the Local Governments its willingness to continue outside of this proceeding discussions related to a just transition for the Nucla Station employees and the communities represented by the Local Governments.

19. With regard to the Local Governments' interest in the water rights associated with the Nucla Station, the ALJ has found that these water rights are not at issue in this proceeding. Interim Decision, ¶¶ 27 and 31. Tri-State acknowledges the ALJ's encouragement to involve the Local Governments and non-parties Western Resource Advocates ("WRA") and the Colorado Co-operative Company ("CCC") in the process of determining what to do, if anything, with the water rights associated with the Nucla Station. Interim Decision, ¶ 32. Tri-State has communicated to the Local Governments and WRA its willingness to engage in such discussions and is similarly willing to discuss this issue with CCC.

II. Request for Waiver of Rule 3103(d)

20. Tri-State has requested a waiver of Rule 3103(d) with respect to notice of the Application. Application, ¶ VII.b. Tri-State explained that service to Tri-State's Members and to their member-customers will not be affected by the grant of the Application. Tri-State further explained that it had previously engaged in outreach to counties and municipalities that may be affected by the retirement of Nucla Station. *Id.*

21. Read in conjunction with Rule 3103(c), the notice provisions of Rule 3103(d) could be interpreted to require notice consistent with the requirements of Rule 3002(d)(I)-

(XII) be issued prior to the retirement of Nucla Station.¹ Given that Nucla Station operations ceased in September 2019, it was not possible for Tri-State to provide such notice in connection with the subsequently filed Application. Accordingly, Tri-State requested that the Commission waive the relevant requirements of Rule 3103(d) to the extent the rule requires notice be provided prior to the termination of operations at Nucla Station. See Unopposed Motion Regarding Request for Waiver, Additional Notice, and Limited Extended Intervention Period, ¶¶ 3-6.

22. To address this issue, and in addition to its prior communications with affected local governments, Tri-State requested and was granted leave to provide notice to the towns of Nucla, Naturita, and Norwood, and to Montrose, Mesa, Delta, and San Miguel counties consistent with Rules 3103(d) and 3002(d)(I)-(XII). See Decision No. R20-0329-I, ¶ 14. Such notice was provided on May 7, 2020. See Confirmation of Notices to Local Governments, ¶ 2.

23. The ALJ previously concluded “that it would be inappropriate to decide the question before any such new intervenors are given the opportunity to weigh-in.” Decision No. R20-0329-I, ¶ 15. Following Tri-State’s additional notice to multiple local governments, the Local Governments that are parties to this proceeding have had such opportunity. The Local Governments take no position on the specific issue of whether Rule 3103(d) required Tri-State to provide notice consistent with the requirements of Rules 3103(d) and 3002(d)(I)-(XII) before termination of operations at Nucla Station.

¹ Not all parties agree with this analysis. However, Tri-State issued the additional notice described by paragraph 22 after Staff requested it be provided, and Staff agrees that additional notice justifies granting Tri-State’s specific request for variance or waiver of Commission Rule 3103(d) in this case.

III. Stipulation

24. Based upon the foregoing and the written testimony filed in this proceeding, all Parties agree that Tri-State has demonstrated that it is in the public interest to retire and decommission the Nucla Station as set forth in the Application and Tri-State's supporting testimony. Specifically:

a. On the basis of Tri-State's evidence and representations in Rebuttal Testimony, Staff agrees that the Application should be granted. Staff finds that the description of facilities to be included in Nucla Station's decommissioning are sufficiently detailed.² And Tri-State has committed itself to seek prior Commission review before any loss of its existing water rights, be it through a sale or some other conveyance of Tri-State's water right interests.³ Relying on the information and assurances in Tri-State's Rebuttal Testimony, as well as all other prefiled written testimony and attachments submitted by the parties to this proceeding, Staff concludes that the Commission should grant Tri-State's application to amend its CPCN for Nucla Station to discontinue and dismantle its Nucla Station facility without replacement.

b. The OCC agrees that the Application should be granted because the only substantive request is that "the Commission approve the retirement of the Nucla Station and the abandonment or discontinuation of such facilities without equivalent replacement," and there is no approval of the issues OCC or the Commission raised on the decommissioning process, costs, water or any other utility asset transfers or rights, etc. The OCC also withdraws the request for hearing included in its Notice of Intervention.

² See Answer Testimony of Staff Witness Gribb (HE 400) 6:1-4; Rebuttal Testimony of Tri-State Witness Nelson (HE 109) 3:9-6:22.

³ See Answer Testimony of Staff Witness Gribb (HE 400) 6:5-8; Rebuttal Testimony of Tri-State Witness Ingold (HE 103) 6:8-13.

c. On the basis of Tri-State's commitment to seek prior Commission review before any transfer of its existing water rights and the assurances of Tri-State to Montrose County, the Town of Nucla, and the Town of Naturita that Tri-State will continue discussions outside of this proceeding related to a just transition for the Nucla Station employees and the impacted communities, the Local Governments agree the Application should be granted.

25. Parties further agree that under the limited circumstances presented here good cause exists to grant, for this Application only, Tri-State's request for a waiver from the notice provisions Commission Rule 3103(c) & (d), or, in the alternative, a variance from that rule. Although Tri-State requested a waiver in the Application, the Commission may deem a variance to be the more appropriate relief at this time because, as explained in paragraphs 20-23 above, Tri-State has complied with Commission Rule 3103(c) & (d) in a manner that potentially differs from what is required by that Rule. Therefore, in accordance with Rule 1003(c), Tri-State provides that:

- (I) The requested waiver or variance is from the notice provisions of Commission Rule 3103(c) & (d) and only applies to the Application;
- (II) The requested waiver or variance allows Tri-State to provide notice "to the Board of County Commissioners of each affected county, and to the mayor of each affected city, town, or municipality" consistent with Commission Rule 3002(d)(I)-(XII) within seven days of Decision No. R20-0329-I;
- (III) See paragraphs 22-23 of this Stipulation for a statement of facts relied upon to demonstrate that the requested waiver or variance will not cause prejudice to any party or non-party;

- (IV) The duration of the requested waiver or variance is permanent, as to the Application only, and there is no specific end date for the requested waiver or variance; and
- (V) The requested waiver or variance is partial and applies only to the extent that Commission Rule 3103(c) & (d) required prior notice of the retirement of Nucla Station.

26. Given the nature of the Application and the issues addressed in this proceeding, no settlement agreement is necessary to memorialize the resolution of issues outside of what has been addressed in the pre-filed written testimony. Furthermore, the Parties agree that the pre-filed written testimony provides adequate facts demonstrating that the Application, as supplemented by the information and representations contained in Tri-State's supporting testimony, meets the applicable standards and is in the public interest.

27. By this Stipulation, the Parties attest that they are not aware that the Application, as supplemented by the information and representations contained in Tri-State's supporting testimony, violates any applicable laws.

**MOTION TO VACATE PROCEDURAL SCHEDULE AND
TO DETERMINE UNCONTESTED APPLICATION**

28. In light of the Parties agreement that Tri-State has demonstrated that it is in the public interest to abandon or discontinue the Nucla Station without equivalent replacement, the Parties agree that, from their perspective, there are no remaining issues to be resolved or issues to be further developed through an evidentiary hearing. Accordingly, the Parties jointly request that the Commission vacate the scheduled

evidentiary hearing in this proceeding, and decide this matter based on the pre-filed written testimony and this Stipulation.

29. In the event the ALJ has questions or believes there are issues requiring further investigation, the Parties propose that one of the originally scheduled hearing dates may be used to hear from the Parties' counsel or witnesses with respect to such issues.

30. Given that the Application is uncontested, OCC has withdrawn its request for an evidentiary hearing, and the Application and supporting testimony were accompanied by sworn statements verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing, the Parties request that the Application be determined without a hearing and without further notice as permitted by Commission Rule 1403(a).

WHEREFORE, the Parties request that the Administrative Law Judge:

- (a) accept this Stipulation;
- (b) vacate the evidentiary hearing scheduled for August 27-28, 2020;
- (c) issue a Recommended Decision on Tri-State's Application based on the pre-filed written testimony in this proceeding and grant such Application;
- (d) grant a waiver or, in the alternative, a variance from the local government notice timing requirements set forth in Commission Rule 3103(c) & (d); and
- (e) grant such additional relief as may be appropriate.

Respectfully submitted this 17th day of August, 2020.

s/ Thomas J. Dougherty

Thomas J. Dougherty, #30954
Lee L. Ewing, #20PPA0557*
Lewis Roca Rothgerber Christie LLP
1200 17th Street, Suite 3000
Phone: 303-623-9000
Email: tdougherty@lrrc.com
lewing@lrrc.com

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

*Practice temporarily authorized
pending admission under C.R.C.P.
205.6

s/ Martha P. Whitmore

Marth P. Whitmore, #8696
Montrose County Attorney
317 South 2nd Street
Montrose, CO 81401
Telephone: 970-252-4534
mwhitmore@montrosecounty.net

s/ Sarah Bachman

Sara Bachman, #50363
Attorney for Town of Naturita
Bachman Law, LLC
P.O. Box 158
140 E. Main Street
Naturita, CO 81422
970-865-2440
sara@bachmanlawllc.com

THE TOWN OF NUCLA, COLORADO

/s/ *Brandon Dittman*

Brandon Dittman, 47583

Attorney for the Town of Nucla, Colorado

Kissinger & Fellman, P.C.

3773 Cherry Creek N. Dr.

Unit 900

Denver Colorado, 80209

Telephone: (303) 320-6100

Email: brandon@kandf.com

PHILIP J. WEISER
Attorney General

/s/Charlotte M. Powers
Anne K. Botterud, 20726*
First Assistant Attorney General
Charlotte M. Powers, 47909*
Assistant Attorney General
Revenue and Utilities Section

Attorneys for Trial Staff of the
Public Utilities Commission

Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th Floor
Denver, Colorado 80203
Telephone: (720) 508-6334 (Botterud)
Telephone: (720) 508-6331 (Powers)
Fax: (720) 508-6038
Email: anne.botterud@coag.gov
Email: charlotte.powers@coag.gov

*Counsel of Record

PHILIP J. WEISER
Attorney General

BY: s/ Thomas F. Dixon
Thomas F. Dixon, Colo. Reg. No. 500
First Assistant Attorney General
Dana L. Showalter, Colo. Reg. No. 52522
Assistant Attorney General
Office of Consumer Counsel
1300 Broadway, 7th Floor
Denver, CO 80203
dana.showalter@coag.gov / (720) 508-6195
thomas.dixon@coag.gov / (720) 508-6214

*ATTORNEYS FOR THE COLORADO
OFFICE OF CONSUMER COUNSEL*

AGREED ON BEHALF OF:

COLORADO OFFICE OF CONSUMER
COUNSEL

s/ Cindy Schonhaut
Cindy Schonhaut
Director
Colorado Office of Consumer Counsel
1560 Broadway, Suite 200
Denver Colorado 80202
cindy.schonhaut@state.co.us / 303-894-2224