

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0005E

IN THE MATTER OF THE YEAR 2023 FILINGS BY COLORADO ELECTRIC UTILITIES IN ACCORDANCE WITH RULE 4 CCR 723-3-3206 FOR THE DESIGNATION OF ELECTRIC UTILITY TRANSMISSION FACILITIES WHETHER THE FACILITIES ARE IN THE NORMAL COURSE OF BUSINESS OR AN APPLICATION TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED.

**COMMISSION DECISION REGARDING
CERTIFICATION OF TRANSMISSION FACILITIES**

Mailed Date: December 8, 2023
Adopted Date: November 22, 2023

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I. BY THE COMMISSION

A. Statement

1. Paragraph 3206(d) of the Colorado Public Utilities Commission’s (Commission) Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 723-3 (Electric Rules), requires each Colorado electric utility to file with the Commission, no later than April 30 of each

year, information on proposed new construction or extensions of transmission facilities for the next three calendar years.

2. The following utilities filed Rule 3206 reports into this proceeding:

- Public Service Company of Colorado (Public Service)
- Black Hills Colorado Electric, LLC (Black Hills)
- Tri-State Generation and Transmission Association, Inc. (Tri-State)
- CORE Electric Cooperative (CORE)

3. Subparagraph 3206(d)(II)(A) of the Electric Rules states that the Commission will give notice of each Rule 2306 report and that any interested person may file comments regarding the proposed facilities by June 15 of the year in which the report was filed.

4. Commission Decision No. C23-0305-I, issued May 12, 2023, provided notice of the filings, informed parties that specific information of each utility's filings was on file with the Commission, and established an opportunity for interested parties to file comments on or before June 15, 2023.

5. On May 22, 2023, Staff of the Colorado Public Utilities Commission (Staff) filed a copy of a letter sent to Public Service, Black Hills, Tri-State, and CORE requesting that each provide (1) a "Ten-Year Look Back" for projects previously addressed by the Commission in similar Rule 3206 proceedings and (2) a "Project Management Completion Review" for all new future projects identified in the Rule 2306 reports filed in this proceeding. Staff filed a copy of a second version of essentially the same letter sent to Public Service, Tri-State, and CORE on May 31, 2023.

6. On June 7, 2023, Tri-State filed a copy of its response to Staff's letter. Tri-State notes that Staff's requests are not contemplated under Rule 3206, which Tri-State equates with a

discovery or similar process to propound information requests. Tri-State further argues that the information Staff seeks in its letter “goes well beyond the scope of what is required by the Rule in seeking broad categories of information.”

7. On June 15, 2023, the Colorado Office of the Utility Consumer Advocate (UCA) filed comments addressing Public Service’s report. UCA notes that Public Service did not include information about major upgrades in its 2023 report (*i.e.*, a “Section G”), whereas Public Service included such information in its 2023 report pursuant to Decision No. C22-0140.¹ UCA also provided comments on the following projects: the San Luis Valley-Poncha (Line 9811) Major Line Rebuild; the Weld-Ennis Line; the Voltage Control project; the High Point Substation; the Alut-Clover transmission line; and the Leetsdale-Monroe-Elati Underground Line.

8. On June 20, 2023, CORE filed a letter explaining that its Rule 3206 report for 2023 was submitted for informational purposes only and clarified that CORE is not requesting any findings from the Commission related to its report.

9. Subparagraph 3206(d)(II)(B) of the Electric Rules states that Commission staff shall review each report and the comments received and shall make recommendations to the Commission by July 1 of the year in which the report was filed.

10. Commission Decision No. C23-0434, issued July 6, 2023, waived the July 1, 2023 deadline pursuant subparagraph 3206(d)(II)(B), and established August 9, 2023, as the new date for recommendations from Commission staff. The deadline for recommendations from Commission staff was again modified to September 27, 2023 by Commission Decision No. C23-0525, issued August 8, 2023.

¹ Decision No. C22-0140, issued on March 8, 2022, Proceeding No. 21AL-0514E.

11. On September 27, 2023, Staff filed a copy of a letter setting forth recommendations regarding the Rule 3206 reports filed in this proceeding.² Staff states that it cannot “interpret projects that can be reasonably expected to be over budget and/or placed in service after the expected date as ‘[t]ypical, everyday occurrences’ or ‘ordinary,’” and therefore does not view the projects listed in the Rule 3206 reports to be in the ordinary course of business. Staff presents three options to the Commission in light of its recommendation: (1) make no findings until Staff has received and reviewed the information requested in its letters, (2) determine that all projects are not in the ordinary course of business and require the utilities to submit application for formal determinations whether a Certificate of Public Convenience and Necessity (CPCN) is required, or (3) find all projects to be in the ordinary course of business “pending the submittal of a Staff-approved Project Management Work (“PMW”) plan for each project within 60 days of issuing an order in the proceeding. Staff further singles out Public Service’s Sun Mountain Interconnection Facilities project and suggests that the Commission determine the project is part of the Commission-approved Preferred Colorado Energy Plan Portfolio as reviewed in Proceeding No. 16A-0396E and is therefore outside of the scope of this proceeding.

12. Commission Decision No. C23-0689, issued October 13, 2023, and corrected by an Errata Notice issued October 16, 2023, set an October 19, 2023 deadline for responses to Staff’s letter.

13. On October 19, 2023, Black Hills, Public Service, Tri-State, and UCA each filed a response to Staff’s letter with recommendations.

² The letter was refiled on September 29, 2023 after it was removed from E-Filings due to administrative difficulties.

14. Black Hills observes that Staff's letter does not mention any problem or concern specific to Black Hills' Rule 3206 report, or the projects included in the report. Black Hills further states that it had raised concerns with Staff about its use of audit to obtain information under the rubric of Rule 3206 when the information is not required under Rule 3206, or any Commission orders related to Rule 3206 proceedings. Black Hills argues that if Staff is proposing new information that must be included for Rule 3206 filings, the legal and proper method to impose such new standards is rulemaking. Black Hills also argues that the information requested in Staff's recommendations does not appear to be relevant to the purpose of Rule 3206 filings, which is to determine whether a CPCN should be required for a project, or a determination that no CPCN is needed for the project. Black Hills requests that the Commission reject Staff's recommendations and evaluate its projects under the standards contained in Rule 3206.

15. Public Service explains that it provided additional information in its 2023 Rule 3206 reports as compared to past filing, such as "higher-confidence cost estimates" for planned transmission projects and relevant information about its project management processes. Public Service also references audit responses it submitted to Staff. Public Service argues that Staff's recommendations are not supported by the Commission's rules in that they impose new standards and requirements not found in Rule 3206. Public Service also raises concerns about how Staff's actions and recommendations in this proceeding reflect Staff's advocacy in past and currently pending litigated proceedings. Public Service further points to the pre-rulemaking repository proceeding in which the Commission is seeking information, in part, concerning the Rule 3206. Public Service argues that the pre-rulemaking is the proper forum for the discussion of potential new standards and requirements and an evaluation of the purpose and effectiveness of Rule 3206. Public Service asks that the Commission reject the recommendations in Staff's letter and instead

decide that no CPCN is required for the two specific projects it identifies for such a determination in its Rule 3206 filing (*i.e.*, the Sun Mountain Interconnection Facilities and the Metro Water Recovery Transmission Service Facilities).

16. Tri-State argues that the adoption of any of Staff's recommendations would be inconsistent with Rule 3206(d), which instead contemplates only one finding, namely, that "[b]y submitting the proper information, the report may request a decision that projects are in the ordinary course of business and do not require a CPCN." Tri-State further argues that the estimated budgets and in-service dates for projects reported in Tri-State's past Rule 3206 reports are not at issue in this proceeding. Tri-State also explains that any suggestion that the Commission approves costs and in-service dates as part of the Rule 3206 process is misplaced. Tri-State argues that Commission has never substantively approved or disapproved estimated costs or in-service dates as part of a Rule 3206 annual report proceeding.

17. UCA states that it will work with Staff and the utilities to obtain more information to make further recommendations on whether the proposed projects should require CPCNs or may be constructed within the ordinary course of business. UCA recommends that the Commission delay issuing a decision in this matter for up to 60 days.

B. Discussion

18. New projects in 2023 reported by the utilities pursuant to Rule 3206 are described below:

Black Hills Colorado Electric, LLC

- Fowler-South Fowler 69/115 kV Conversion. Black Hills intends to rebuild the 69 kV line from Fowler to South Fowler to 115 kV (3.5 miles) and convert the Fowler Substation to 115 kV with a 115kV bay expansion at South Fowler. The estimated cost is \$11.6 million. Construction is planned to commence in 2025 and to be complete in

2026. Black Hills requests that the Commission find the project to be in the ordinary course of business.

- West Station-Canon West 115 kV Line Rebuild. Black Hills intends to rebuild the 115 kV lines from West Station to Canon West to 221 MVA (41 miles). The estimated cost is \$25.8 million. Construction is planned to commence in 2023 and be complete in 2024. Black Hills requests that the Commission find the project to be in the ordinary course of business.

Public Service Company of Colorado

- Metro Water Recovery Transmission Service. Public Service intends to fulfill Metro Water Recovery's request to convert from distribution to transmission service to meet increased load requirements. The project includes tapping and looping the existing 115kV overhead line (0.2 miles) in and out of a new switching station. The new switching station will be located on land currently owned by the customer to be deeded to Public Service at no cost. The project further includes remote end line terminal upgrades at the existing Cherokee and Thornton Substations and the extension of optical ground wire from Cherokee to the line. The customer will fund 100 percent of the \$16 million estimated cost. Construction will begin in March 2023 and be completed in January 2025. Public Service requests that the Commission determine that no CPCN is needed as the project is in the ordinary course of business.
- Sun Mountain Interconnection Facilities. Public Service intends to construct a new generation interconnection at the Comanche 230 kV Substation, including: a new 230 kV transmission circuit breaker; relaying for the new circuit breaker and transmission line; dead-end structures and a turning structure for the new transmission line; two spans of transmission line rated at 575 MVA; communication and SCADA for the new interconnection; and other supporting materials and equipment, such as foundations, conduit, and cable. The cost of the project was \$1.7 million and construction was completed in 2022. Public Service requests that the Commission determine that no CPCN is needed as the project does not fall within the purview of Rule 3206 as it is normal course of business. The Company also requests that to the extent necessary, the Commission grant a full and permanent variance from paragraph 133 of Decision No. C18-0761, which directed Public Service to file a CPCN application for certain transmission investment.
- Public Service presents no new construction or extension projects that may require a CPCN.

Tri-State Generation and Transmission Association, Inc.

- Big Sandy-Burlington 230 kV Line Uprate. Tri-State intends to complete structure replacements on the line (81 miles) to increase the line's capability to a maximum 75 degree C conductor operating temperature. The estimated cost of the project is \$6.8 million. Construction will start in 2025 and be complete in 2028. Tri-State considers this project to be in the ordinary course of business because, under Rule 3206(c) the structure replacements will not cause the facility to be operated at a higher voltage, nor will they result in noise or magnetic fields above the thresholds described in Rule 3206(e) and (f).
- Arapahoe 115/24.9 kV T1 Transformer Replacement. Tri-State intends to install a 115-24.9 kV 12.5 MVA 3-phase distribution transformer to replace the existing 110-24.9 kV 14 MVA transformer. The estimated cost of the project is approximately \$2 million. The project will be completed in 2024. Tri-State considers the project to be in the ordinary course of business under Rule 3206(b) because the facilities will be designed for 115 kV and below and will not exceed the noise and magnetic field levels in Rule 3206(e) and (f).
- Rolling Meadows 115/24.9 kV Delivery Point. Tri-State intends to tap the Geesen-Lorson Ranch 115 kV lines and construct a deliver point facility that will include one 114/12.47 kV 40 MVA transformer, associated structures, circuit breaker, metering control building, and 12.47 kV distribution circuits. The estimated cost of the project is approximately \$6.5 million. The project will commence in 2023 and be complete in 2025. Tri-State considers the project to be in the ordinary course of business under Rule 3206(b) because the facilities will be designed for 115 kV and below and will not exceed the noise and magnetic field levels in Rule 3206(e) and (f).
- Waanibe 115/24.9 kV Transformer Replacement. Tri-State intends to install a 115-24.9 kV 12.5 MVA 3-phase distribution transformer to replace the existing 110-24.9 kV 14 MVA transformer. The estimated cost of the project is approximately \$2 million. The project will be completed in 2024. Tri-State considers the project to be in the ordinary course of business under Rule 3206(b) because the facilities will be designed for 115 kV and below and will not exceed the noise and magnetic field levels in Rule 3206(e) and (f).

C. Findings and Conclusions

19. Paragraph 3206(d) of the Electric Rules allows utilities to request a decision that certain projects are in the ordinary course of business and do not require a CPCN.

20. Pursuant to Commission rules, the Commission finds that Black Hill's Fowler-South Fowler 69/115 kV Conversion and West Station-Canon West 115 kV Line Rebuild projects are in the ordinary course of business and therefore do not require a CPCN.

21. Pursuant to Commission rules, the Commission finds that Tri-State's Big Sandy-Burlington 230 kV Line Uprate, Arapahoe 115/24.9 kW T1 Transformer Replacement, Rolling Meadows 115/24.9 kV Delivery Point, and the Waanibe 115/24.9 kV Transformer Replacement projects are in the ordinary course of business and therefore do not require a CPCN.

22. Pursuant to Commission rules, the Commission finds that Public Service's Metro Water Recovery Transmission Service and Sun Mountain Interconnection Facilities projects are in the ordinary course of business and do not require a CPCN. We grant Public Service's request for a variance from Decision No. C18-0761 specific to the Sun Mountain Interconnection Facilities, to the extent necessary. Notwithstanding these determinations, we generally agree with the concerns expressed by both Staff and the UCA in this proceeding in regard to numerous instances where the actual incurred costs for Public Service's new infrastructure were much higher—sometimes double—initial estimates, even in situations where the facility was later reviewed through a full CPCN proceeding. These concerns appear to stem from the Commission's current approaches to transmission planning and cost recovery. While the Commission has initiated pre-rulemaking outreach with the intention to comprehensively review and potentially modify the transmission-related provisions in the Electric Rules in a forthcoming rulemaking³, potential modifications and additions to the rules may not fully resolve our concerns regarding Public Service's current transmission projects, including those that have received a CPCN. We

³ Decision No. C23-0640, issued on September 28, 2023, Proceeding No. 23M-0472E.

therefore find good cause to grant UCA's request to require Public Service to file "Section G" information on major upgrades in its future Rule 3206 reports.⁴

23. Although we share Staff's and UCA's serious concerns about Public Service's transmission projects, we nevertheless agree with the utilities that Staff's recommendations in its September 27, 2023 letter do not comport with Rule 3206 and are inconsistent with the Commission's prior decisions regarding Rule 3206. We also affirm that Commission determinations made in this proceeding differ significantly from the process by which a utility receives a CPCN for a transmission project, and therefore, do not require the presentation of the detailed information required in a CPCN proceeding.

II. ORDER

A. The Commission Orders That:

1. The Fowler-South Fowler 69/115 kV Conversion and West Station-Canon West 115 kV Line Rebuild projects presented by Black Hills Colorado Electric LLC in its report filed pursuant to paragraph 3206(d) of the Colorado Public Utilities Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, on April 28, 2023, are in the ordinary course of business and therefore do not require a Certificate of Public Convenience and Necessity (CPCN).

2. The Metro Water Recovery Transmission Service and Sun Mountain Interconnection Facilities projects presented by Public Service Company of Colorado (Public Service) in its report filed pursuant to 723-3-3206(d) on April 28, 2023, are in the ordinary course of business and therefore do not require a CPCN.

⁴ We recognize that this finding differs from the Commission's previous determination that the projects described in "Section G" fall outside the scope of Rule 3206 because those projects are not extensions to or construction of transmission. Decision No. C22-0438, issued on August 2, 2022, Proceeding No. 22M-0005E.

3. Public Service’s request for a variance from Decision No. C18-0761 for the Sun Mountain Interconnection Facilities is granted, to the extent necessary.

4. In future reports pursuant to 723-3-3206(d), Public Service shall file information on projects conducted in the ordinary course of business, in accordance with the information included in “Section G” of its 2022 report, consistent with the discussion above and until further order.

5. The Big Sandy-Burlington 230 kV Line Uprate, Arapahoe 115/24.9 kV T1 Transformer Replacement, Rolling Meadows 115/24.9 kV Delivery Point, and the Waanibe 115/24.9 kV Transformer Replacement projects presented by Tri-State Generation and Transmission Association, Inc. in its report filed pursuant to 723-3-3206(d) on May 1, 2023, are in the ordinary course of business and therefore do not require a CPCN.

6. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 22, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners