

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0607E

IN THE MATTER OF THE JOINT APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. AND UNITED POWER, INC. FOR AN ORDER APPROVING THE TRANSFER OF CERTAIN TRANSMISSION ASSETS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FROM TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. TO UNITED POWER, INC.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING TRANSFER OF
TRANSMISSION ASSETS AND CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

Mailed Date: February 16, 2024

Adopted Date: January 31, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application filed jointly by Tri-State Generation and Transmission Association, Inc. (Tri-State) and United Power, Inc. (United Power) (together, Joint Applicants) on December 15, 2023, for approval of the transfer of certain transmission assets and a single Certificate of Public Convenience and Necessity (CPCN) for the Greenhouse Substation and associated 230 kV transmission circuits.

2. The Commission provided notice of this Application on December 18, 2023, to all interested persons, firms, and corporations. No Petition to Intervene or Notice of Intervention has been filed, and thus the Application is uncontested. As such, the Application will be determined without a formal hearing in accordance with § 40-6-109(5), C.R.S., and Rule 1403,

4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure.

B. Background

3. On December 15, 2023, Joint Applicants filed their Joint Application pursuant to § 405-105, C.R.S., Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1303 of the Commission's Rules of Practice and Procedure, and Rules 4 CCR 723-3-3002 and 3104 of the Commission's Rules Regulating Electric Utilities, jointly requesting an order approving the transfer of certain transmission assets and certificates of public convenience and necessity (CPCN) from Tri-State to United Power as described in the Joint Application. According to the Joint Application, Joint Applicants seek this asset transfer to facilitate United Power's withdrawal from Tri-State membership.

4. The parties entered into a Purchase and Sale Agreement, dated December 8, 2023, to effectuate the transfer of the assets that are the subject of this application¹ and provided a list of the specific assets proposed to be transferred including transmission substations, transformers, and transmission lines.² The Joint Applicants assert that approval of the Joint Application is in the public interest and should therefore be approved by the Commission.

5. Additionally, Joint Applicants provide accounting information that summarizes Tri-State's accounting treatment for the assets subject of the Joint Application to be transferred to United Power. According to Joint Applicants, the proceeds for the assets subject to the Joint Application are \$75 million. Joint Applicants represent that the amounts set forth in Attachment

¹ The Purchase and Sale Agreement is attached to the Joint Application as Attachment E.

² The list of transmission assets is attached to the Joint Application as Attachment H.

F are estimated as of the anticipated closing date of May 1, 2024, and are based on the best available information as of the date of filing.

6. A statement by United Power showing accounting entries, under the Uniform System of Accounts, including any plant acquisition adjustment, gain, or loss proposed on the books before and after the transaction, which is the subject of this Joint Application, was attached as Attachment G to the application.

7. Attachment H sets out the CPCN status of each asset. Joint Applicants state that no CPCN was required for certain assets, so there is no CPCN to be transferred from Tri-State to United Power in conjunction with the transfer of those assets. Most of the remaining assets listed in Attachment H, according to Joint Applicants, were originally transferred by the Commission from United Power to Tri-State under Board Policy. A single generating asset, the Greenhouse Transmission Substation and associated 230 kW double circuit transmission line, was granted a CPCN in Decision No. C14-1482 in Proceeding No. 14A-0896E.

C. Discussion of the Application

8. In support of the requested transfer approval, the application explains that 1) the assets exclusively serve United Power, 2) the asset transfer will result in minimal, if any, difference in the kinds and costs of service rendered to Tri-State's remaining members before and after the asset transfer, 3) United Power does not anticipate an impact on its members from the transfer, as it simply effectuates United Power's access to the bulk electric system, and 4) the facilities being transferred will continue to be in service for the same general purposes they are used for currently, with the only change being that United Power will become the owner and operator of assets and facilities it uses to provide service to its members.

9. Further, the application states that “Pursuant to Section 203 of the Federal Power Act, Tri-State intends to file an application for authorization for the conveyance of applicable assets to United Power at the Federal Energy Regulatory Commission (“FERC”) by the end of 2023 with a request for expedited treatment on similar timing to what is requested in this Joint Application. Tri-State also anticipates filing the Membership Withdrawal Agreement with FERC upon execution. As of the date of the filing of this Joint Application, the Membership Withdrawal Agreement has not yet been executed.”³

10. Joint Applicants maintain that the transfer of ownership of these transmission assets and CPCN to United Power is in the public interest.

D. Findings and Conclusion

11. Pursuant to § 40-5-105(1), C.R.S. “[t]he assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe ...”

12. Commission Rule 3002 provides the requirements for a party to file an application with the Commission, including the elements necessary for the Commission to consider the application.

13. Commission Rule 3104 provides the requirements for a utility seeking authority to transfer a CPCN or transfer assets subject to the jurisdiction of the Commission outside the normal course of business.

³ Footnote 1 to the Application.

14. Joint Applicants represent that the Joint Application was filed pursuant to these provisions and all requirements have been met, including the information required in Rules 3002(b) and 3002(c) as pertinent to each party to the transaction. We find Joint Applicants, through the Joint Application and attendant attachments provided the information required in conformance with Commission Rules in order for us to render a decision.

15. We find that the proposed application for transfer of transmission assets is complete.

16. Under the provisions of § 40-6-109(5), C.R.S. the Commission may consider an application that is uncontested or unopposed through modified proceedings “by affidavit or otherwise without the necessity of a formal oral hearing.” As this proceeding is unopposed, we find it appropriate to consider the Joint Application on the pleadings and affidavits filed.

17. The Joint Applicants provided what was described as: “[a] list of the assets to be transferred from Tri-State to United Power that are subject to Commission jurisdiction” as Attachment H; the “Purchase and Sale Agreement” that “provides the definitive terms and conditions of the asset transfer;” and “[a] one-line diagram depicting the relevant portion of the transmission and distribution system and the functions of the assets to be transferred that are the subject of this Joint Application” as Attachment J.

18. Commission Staff conducted a thorough analysis of the assets proposed to be transferred. Based on its research, analysis and recommendation, we find the transfer of assets to be in the public interest. United Power’s withdrawal from Tri-State is complete. We are satisfied that the transfer of assets will allow United Power to continue to provide safe, reliable and affordable power and transmission services to its members in the North-central front range area of Colorado. We are additionally satisfied that the transfer of assets will not adversely affect

Tri-State's ability to continue to provide safe, reliable, and affordable power and transmission services to its remaining member systems.

19. Consequently, we approve the transfer of the transmission assets and the Greenhouse Substation and associated 230 kV double circuit transmission line CPCN as described in detail in the Joint Application. By this approval, we authorize United Power to succeed to the electric utility rights, title and interest in the applicable Tri-State utility plant and facilities, and to all consents and permits relating to the ownership and operation of such plant and facilities, as fully delineated and described in the Joint Application and attendant attachments.

II. ORDER

A. The Commission Orders That:

1. The Joint Application of Tri-State Generation and Transmission Association, Inc. and United Power, Inc. for an Order Approving the Transfer of Certain Transmission Assets and Certificates of Public Convenience and Necessity from Tri-State Generation and Transmission Association, Inc. to United Power, Inc. is granted consistent with the discussion above.

2. United Power, Inc. is authorized to succeed to all of Tri-State Generation and Transmission Association, Inc.'s electric utility rights, title and interest in the utility plant and facilities subject to the Joint Application, and to all consents and permits relating to the ownership and operation of such plant and the facilities associated with and subject to the Joint Application.

3. The Certificate of Public Convenience and Necessity associated with the Greenhouse Substation and associated 230 kV transmission circuits as identified in Attachment

H to the Joint Application is transferred with all rights and duties to United Power, Inc. consistent with the discussion above.

4. The authority granted by approval of this transfer shall be exercised from and after the effective date of this Decision.

5. The 20-day period provided by § 40-6-114, C.R.S., to file an Application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 31, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners