

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0585E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR APPROVAL OF ITS 2023 ELECTRIC RESOURCE PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
ADDRESSING INTERVENTIONS; GRANTING, IN PART,
MOTION TO APPROVE EXPEDITED PROCEDURAL
SCHEDULE; ESTABLISHING PROCEDURES,
SCHEDULING EVIDENTIARY HEARING, EXTENDING
STATUTORY DEADLINE FOR A COMMISSION
DECISION; PROVIDING INSTRUCTIONS CONCERNING
EXHIBITS AND PARTICIPATING IN HYBRID
EVIDENTIARY HEARING; GRANTING MOTION FOR
EXTRAORDINARY PROTECTION; AND GRANTING
PRO HAC VICE MOTION**

Mailed Date: February 6, 2024

TABLE OF CONTENTS

I.	STATEMENT.....	2
A.	Procedural Background	2
B.	Interventions	5
C.	Procedural Schedule, Instructions for Participating in Remote Evidentiary Hearing, and Unified Numbering System for Hearing Exhibits	11
D.	Motion for Extraordinary Protection	15
E.	<i>Pro Hac Vice</i> Motion.....	17
II.	ORDER.....	18
A.	It is Ordered That:	18

I. STATEMENT**A. Procedural Background**

1. On December 1, 2023, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed an Application for Approval of its 2023 Electric Resource Plan (ERP) (Application). Contemporaneously with the Application, Tri-State filed Direct Testimony and Attachments of eight Tri-State witnesses; Tri-State Generation and Transmission Association, Inc.'s Motion to Approve Procedural Schedule, Discovery Procedures, Treatment of Confidential Information, Shortened Notice Period, and Request for Expedited Treatment (Motion to Approve Procedural Schedule); and its Motion for Extraordinary Protection of Highly Confidential Information filed by Tri-State Generation and Transmission Association (Motion for Extraordinary Protection).

2. By Decision No. C23-0813-I, issued December 6, 2023, the Commission denied Tri-State's request for shortened notice and intervention period and established an intervention deadline of January 5, 2023.

3. On December 7, 2023, Big Horn Rural Electric Company, Carbon Power & Light, Inc., High West Energy Inc., Wheatland Rural Electric Association, Wyrulec Company, Inc., Niobrara Electric Association, High Plains Power, Inc., and Garland Light & Power Co. (collectively, the Wyoming Cooperatives) timely noticed their intervention as of right.

4. On December 12, 2023, Poudre Valley Rural Electric Association, Inc., Highline Electric Association, K.C. Electric Association, San Isabel Electric Association, Inc., Southeast Colorado Power Association, and Y-W Electric Association, Inc. (collectively, the Colorado Cooperatives) timely noticed their intervention by right.

5. On December 12, 2023, the Natural Resources Defense Council and Sierra Club's ("Conservation Coalition") Motion to Intervene and Response to Tri-State's Motions

(the Conservation Coalition's Motion to Intervene) was filed by the Natural Resources Defense Council and Sierra Club (Conservation Coalition).

6. On December 13, 2023, Mr. Henry F. Bailey filed his Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission (*Pro Hac Vice* Motion).

7. On December 18, 2023, White River Electric Association's Unopposed Motion to Intervene and Entry of Appearance of Counsel (WREA's Motion to Intervene) was filed by White River Electric Association (WREA).

8. On December 19, 2023, the Office of Utility Consumer Advocate (UCA) timely noticed its intervention by right.¹

9. On December 20, 2023, a Motion for Permissive Intervention of Western Resource Advocates (WRA's Motion to Intervene) was filed by Western Resource Advocates (WRA).

10. On December 20, 2023, the Unopposed Motion to Intervene of the Office of Just Transition, or, in the Alternative, for Leave to Participate as Amicus Curiae and Response to the Motion to Approve Procedural Schedule, Discovery Procedures, Treatment of Confidential Information, Shortened Notice Period, And Request for Expedited Treatment (OJT's Motion to Intervene) was filed by the Office of Just Transition (OJT).

11. On January 3, 2024, the Motion to Intervene and Entry of Appearance of the Colorado Independent Energy Association (CIEA's Motion to Intervene) was filed by the Colorado Independent Energy Association (CIEA).

12. On January 4, 2024, the Notice of Intervention as of Right by Trial Staff of the Commission, Entry Of Appearance, Notice Pursuant To Rule 1007(A) and Rule 1401, Request

¹ UCA filed its Revised Notice of Intervention as a Matter of Right, Request for Hearing, and Entry of Appearances of the Office of the Utility Consumer Advocate on the following day, December 20, 2023.

for Hearing, and Trial Staff's Response to Tri-State's Motion to Approve Procedural Schedule, Discovery Procedures, Treatment of Confidential Information, Shortened Notice Period, and Request for Expedited Treatment (Trial Staff's Intervention, Request for a Hearing, Response to Tri-State's Motions) was timely filed by the trial staff of the Colorado Public Utilities Commission (Trial Staff).

13. On January 4, 2024, the Motion for Limited Participation by Colorado Department of Public Health and Environment (CDPHE's Motion to Intervene) was filed by the Colorado Department of Public Health and Environment (CDPHE).

14. On January 5, 2024, the Petition for Permissive Intervention [*sic*] the Interwest Energy Alliance (Interwest's Motion to Intervene) was filed by the Interwest Energy Alliance (Interwest).

15. On January 5, 2024, the Unopposed Motion to Intervene and Request for Hearing of La Plata Electric Association, Inc. And Mountain Parks Electric, Inc. (LPEA/MPE's Motion to Intervene) was jointly filed by La Plata Electrical Association, Inc. and Mountain Parks Electric, Inc. (collectively, LPEA/MPE).

16. On January 5, 2024, CEO timely noticed its intervention by right.

17. On January 5, 2024, the Joint Motion to Intervene and Entry of Appearance of Colorado Solar and Storage Association and the Solar Energy Industries Association was filed by the Colorado Solar and Storage Association and the Solar Energy Industries Association (collectively, COSSA/SEIA).

18. On January 5, 2024, the Unopposed Joint Motion to Intervene, Entry of Appearance, and Response to Motion to Approve Procedural Schedule of Moffat County and the

City of Craig, Colorado (Moffat/Craig's Motion to Intervene) was filed by Moffat County and the City of Craig, Colorado (collectively, Moffat/Craig).

19. On January 9, 2024, Tri-State Generation and Transmission Association's Motion for Leave to Reply and Reply in Support of Tri-State's Proposed Procedural Schedule (Motion for Leave to Reply) was filed by Tri-State.

20. On January 11, 2024, by Decision No. C24-0027-I, the Commission deemed the Application complete for purposes of § 40-6-109.5, C.R.S., granted the Motion for Leave to Reply, set this matter for a hearing, and referred this Proceeding to an Administrative Law Judge for resolution.

B. Interventions

21. Two classes of parties may intervene in proceedings such as this: (a) parties with a legally protected right that may be impacted by the proceeding (intervention of right), and (b) parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).²

22. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is

² Rule 1401(b) and (c), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure; see § 40-6-109(1), C.R.S.; *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

23. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to represent that their interests “would not otherwise be adequately represented” is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties.³ The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative.

24. Further, Rule 1401(c), 4 CCR 723-1, requires that a movant who is a “residential customer, agricultural customer, or small business customer” must set forth in its motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interests of residential ratepayers. The Colorado Supreme Court expressly stated that “if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate.”⁴

³ See *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case’s judgment. See *Denver Chapter of the Colo. Motel Ass’n v. City & County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city).

⁴ *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001)

25. Trial Staff, UCA, CEO, the Colorado Cooperatives, and the Wyoming Cooperatives timely notice their interventions as of right, which no party herein contested. Therefore, the interventions of Trial Staff, UCA, CEO, the Colorado Cooperatives, and the Wyoming Cooperatives are acknowledged.

26. The following parties have moved to permissively intervene in this proceeding: Conservation Coalition, WREA, WRA, OJT, CIAE CDPHE, Interwest, LPEA/MPE, COSSA/SEIA, and Moffat/Craig. All of the parties that have moved to permissively intervene in this Proceeding, with the exception of CDPHE⁵, stated, or otherwise alluded, that: the movants' claims and/or defenses fall within the scope of this Proceeding; the movants are well-positioned to represent the movants' interests, this proceeding may substantially affect the pecuniary or tangible interests of its members; and no party or intervenor in this Proceeding could adequately represent the movants' interest interests. All permissive intervention requests in this Proceeding are unopposed.

27. In the Conservation Coalition's Motion to Intervene, the Conservation Coalition states that "NRDC and Sierra Club seek leave to intervene to protect their members' direct and tangible interests in this proceeding, including health, environmental, and economic interests, that will be affected by Tri-State's electric resource plan."⁶

28. In WREA's Motion to Intervene, WREA states that it is "subject to a wholesale energy purchase requirements contract with Tri-State, and purchases substantially all its wholesale electric power and energy from Tri-State,"⁷ that consequently "the approval and implementation of the ERP will have direct financial rate impacts on WREA and the retail

⁵ As further discussed below, CDPHE is seeking to intervene in a limited capacity a neutral information verifier.

⁶ Conservation Coalition's Motion to Intervene at 4.

⁷ WREA's Motion to Intervene at 2.

electric member-consumers served by WREA.”⁸ WREA further states that certain components of the ERP may uniquely impact WREA and the communities it serves in northwestern Colorado⁹

29. In WRA’s Motion to Intervene, WRA states that “[t]he Commission’s decisions in this proceeding can greatly impact the production of carbon dioxide emissions from the electric generation sector, as well as the state’s ability to achieve its science-based climate goals established in H.B. 19-1261.”¹⁰

30. In OJT’s Motion to Intervene, OJT states that “Tri-State’s application for approval of its ERP directly implicates the timing and location of facility closures and the resulting workforce changes in the coal industry. Through this ERP, parties will address the planned and potential retirement of Craig Unit 3.”¹¹

31. In CIEA’s Motion to Intervene, CIEA states that it “has an interest in participating in this proceeding to ensure that the ERP filing is comprehensive and transparent, that Colorado’s independent power market remains robust, and that the transition to a clean energy economy is cost effective and includes fair and transparent bidding and bid evaluation processes.”¹² CIEA further states that “CIEA, for itself and its members, has a specific interest in advocating for Commission decisions and rules that safeguard, and do not impair, competitive bidding of renewable resources and market participation by [independent power producers].”¹³

32. In CDPHE’s Motion to Intervene, CDPHE states that “there is value to the Commission, Staff to the Commission, intervenors, and the public by providing verification

⁸ *Id.*

⁹ *Id.*

¹⁰ WRA’s Motion to Intervene at 4.

¹¹ OJT’s Motion to Intervene at 3.

¹² CIEA’s Motion to Intervene at 2.

¹³ *Id.* at 3.

reports in this proceeding”¹⁴ and that it should participate “in this proceeding in a limited capacity as a neutral verifier of the projected 2030 emissions reductions and as a technical resource to the Commission, should any technical questions about the projected emissions reductions arise during the proceeding.”¹⁵ CDPHE further states that “it does not envision a need to file any requests for discovery upon any participant in the proceeding...”¹⁶ and “...data reviewed by [CDPHE]... will be available to the PUC and intervenors in this proceeding.”¹⁷

33. In Interwest’s Motion to Intervene, Interwest states that the “...Application directly affects Interwest members’ business and environmental interests in a number of ways.”¹⁸ Interwest further states that “Interwest members have been diligently planning and developing new renewable energy projects in anticipation of Colorado needs in general and Tri-State’s needs in particular, and this ERP signals a significant expansion of Tri-State’s fleet of clean, low-cost renewable energy and storage resources within Colorado.”¹⁹

34. In LPEA/MPE’s Motion to Intervene, LPEA/MPE state that “LPEA and MPE each have a direct, tangible, and pecuniary interest in this proceeding.”²⁰ LPEA/MPE explain that “[if] approved, Tri-State’s 2023 ERP will have a direct and substantial impact on the rates LPEA and MPE pay to Tri-State under their respective [Wholesale Electric Service Contracts], and in turn on LPEA’s and MPE’s members’ electric rates.”²¹

35. In COSSA/SEIA’s Motion to Intervene COSSA/SEIA state that “many COSSA and SEIA members rely on fair and competitive ERP processes to do business in Colorado and,

¹⁴ CDPHE’s Motion to Intervene at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ Interwest’s Motion to Intervene at 3.

¹⁹ *Id.* at 4.

²⁰ LPEA/MPE’s Motion to Intervene at 2.

²¹ *Id.* at 2-3.

thus, have a substantial pecuniary and tangible interest in the outcome of this Proceeding.”²² COSSA/SEIA further state that “[t]he amount of capacity needed in the ERP, as well as the timeline of acquisition, directly impacts the size and scope of COSSA and SEIA’s members’ business presence and opportunities in Colorado.”²³

36. In Moffat/Craig’s Motion to Intervene Moffat/Craig state that “[d]epending on the outcome of this proceeding, Moffat County’s economic status may be greatly impacted by the early closure of [the Tri-State owned and operated] Craig Unit 3 [as requested in the Application]. Likewise, the City of Craig also has a pecuniary or tangible interest in the outcome of this ERP Application which may be substantially affected by the Commission’s actions in this proceeding...”²⁴

37. Therefore, based on the foregoing, and in accordance with Rule 1401 of the Commission Rules of Practice and Procedure, 4 CCR 723-1, the Conservation Coalition’s, WREA’s, WRA’s, OJT’s, CIEA’s, CDPHE’s, Interwest’s, LPEA/MPE’s, COSSA/SEIA’s, and Moffat/Craig’s requests to permissively intervene will be granted, as ordered below.

²² COSSA/SEIA’s Motion to Intervene at 5.

²³ *Id.*

²⁴ Moffat/Craig’s Motion to Intervene at 8.

C. Procedural Schedule, Instructions for Participating in Remote Evidentiary Hearing, and Unified Numbering System for Hearing Exhibits

38. In the Motion to Approve Procedural Schedule, and Tri-State proposes the following procedural schedule:

Procedural Activity	Date
Answer Testimony	March 14, 2024
Rebuttal/Cross-Answer Testimony	April 15, 2024
Stipulations/Settlement Agreements	April 17, 2024
Corrections to Pre-filed testimony and Pre-hearing Motions	April 17, 2024
Witness list, Cross-Examination Estimates, Final Exhibits List	April 22, 2024
Settlement Testimony	May 1, 2024
Evidentiary Hearing	May 6-9, 2024
Statements of Position	May 22, 2024
Tri-State's Requested Commission Decision	May 31, 2024 (30 days after Settlement) or June 12, 2024 (40 days after hearing)

39. Tri-State further proposes that the discovery timelines and procedures contained within Rule 1405(b) and (d) of the Rules of Practice and Procedure, 4 CCR 723-1 shall control, subject to the following modifications:

Discovery requests and responses will be served electronically;

All responses to an individual set of discovery shall be served in a single, combined document to all parties; and

All highly confidential and confidential documents and discovery responses will be served only on the parties that have executed an

appropriate highly confidential non-disclosure agreements, and all nonconfidential requests and responses will be served on all parties.

40. By Decision No. C23-0813-I, issued December 6, 2023, the Commission directed that responses to the Motion to Approve Procedural Schedule be addressed with intervention pleadings. Moffat/Craig are the only intervenors who oppose the procedural schedule proposed by Tri-State. Moffat/Craig's primary argument against the adoption of the procedural schedule proposed by Tri-State is that the procedural schedule "will not promote the public interest in terms of allowing intervening parties to adequately prepare their respective cases by reviewing the entirety of the ERP filings and obtaining information from Tri-State through discovery."²⁵ The ALJ does not find this argument compelling and notes that Moffat/Craig admittedly became aware of Tri-State's proposed "truncated schedule" on December 1, 2023.²⁶

41. Except with respect to the deadline for a Commission decision, Tri-State's proposed procedural schedule and discovery procedures are acceptable and good cause is found for their adoption.

42. Because Tri-State filed testimony with the Application, pursuant to § 40-6-109.5(1), C.R.S., the Commission is required to issue its decision within 120 days of the Application being deemed complete by the Commission. Thus, barring any extension of the statutory deadline, the Commission's decision in this proceeding must be issued by May 10, 2024. Tri-State proposes either May 31, 2024 or June 12, 2024 as the deadline for a Commission Decision.

43. If the Commission finds that additional time is required, the period within which a commission decision is to be issued may be extended an additional 130 days.²⁷

²⁵ Moffat/Craig's Motion to Intervene at 11.

²⁶ *Id.* at 11.

²⁷ Section 40-6-109(1), C.R.S.

44. The ALJ finds that the adoption of the procedural schedule proposed by Tri-State requires that the deadline for a Commission decision in this Proceeding be extended. Therefore, pursuant to §40-6-109(1), C.R.S., the deadline for the Commission to issue its decision will be extended by 130 days up to and including September 17, 2024,²⁸ as ordered below.

45. To accommodate the large number of participants, anticipated to testify in this Proceeding, a fully-remote evidentiary hearing will be scheduled, as ordered below. This Decision and Attachments A and B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow.

46. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room.

47. The evidentiary hearing will be conducted via videoconference using the Zoom platform. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

²⁸ Pursuant to Rule 1203(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the deadline for a Commission decision will be extended by an additional day.

48. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Tri-State is assigned hearing exhibit numbers 100 to 199;
- Staff is assigned hearing exhibit numbers 200 to 299;
- UCA is assigned hearing exhibit numbers 300 to 399;
- CEO is assigned hearing exhibit numbers 400 to 499;
- The Wyoming Cooperatives are assigned hearing exhibit numbers 500 to 599;
- The Colorado Cooperatives are assigned hearing exhibit numbers 600 to 699;
- The Conservation Coalition are assigned hearing exhibit numbers 700 to 799;
- WREA is assigned hearing exhibit numbers 800 to 899;
- WRA is assigned hearing exhibit numbers 900 to 999;
- OJT is assigned hearing exhibit numbers 1000 to 1099;
- CIEA is assigned hearing exhibit numbers 1100 to 1199;
- CDPHE is assigned hearing exhibit numbers 1200 to 1299;
- Interwest is assigned hearing exhibit numbers 1300 to 1399;
- LPEA/MPE are assigned hearing exhibit numbers 1400 to 1499;
- COSSA/SEIA are assigned hearing exhibit numbers 1500 to 1599; and
- Moffat/Craig are assigned hearing exhibit numbers 1600 to 1699.

D. Motion for Extraordinary Protection

49. The Motion for Extraordinary Protection is unopposed.

50. Tri-State seeks extraordinary protection for the following categories of documents and information and specific documents:

Fixed Operation and Maintenance (“O&M”) Expenses;

Variable O&M Expenses;

Fuel contract pricing and forward curves (gas and coal);

Unit specific capital balances, depreciation, amortization, impairment, and decommissioning;

Forecasted data at the Utility Member System Level;

Heat rate curves;

Contract/power purchase agreement (“PPA”) Energy Rate;

Contract/PPA Capacity Rate;

Performance or Operating Output guarantees and any associated pricing adjustments included in Tri-State’s PPAs;

Assumptions regarding costs related to early contract termination in connection with retirement of Springerville Unit 3 and potential replacement energy sales;

Resource assumptions for generic 10-hour batteries, molten salt long-term storage resources, iron air multi-day storage resources, geothermal resources, and blue hydrogen resources;

The Benchmarking Analysis conducted by Black and Veatch;

Modeled proxy sales related to Tri-State Utility Member exits;

Any information protected by a confidentiality clause of a contract or PPA;

The Reliability Evaluation of the IRA Scenario conducted by Astrape Consulting;

Information regarding the GHG reductions calculated for Tri-State’s New ERA submittal using the United States Department of Agriculture (“USDA”) Achievable Reduction (“ART”) tool; and

Information regarding other parties' participation in the USDA New ERA process.²⁹

51. In support of its request for extraordinary protection, Tri-State states:

The first 13 categories for which Tri-State requests extraordinary protection include commercially sensitive information or data that can be used to derive commercially sensitive information. Disclosure of this information could cause irreparable harm to Tri-State's trading operations and its ability to solicit and obtain cost-effective resources. Fixed and variable O&M expenses, unit-specific accounting information, fuel contract pricing and forward curves, heat rate curves, generic resource assumptions for innovative technologies, benchmarking data, and forecast data at the Utility Member system level... are competitively sensitive data that could harm trading operations or negotiations with counterparties if disclosed.

Additionally, certain provisions of Tri-State's PPAs, including Performance or Operating Output guarantees, associated pricing adjustments, energy rates, and capacity rates, are commercial sensitive information that, if disclosed, would hinder exits from Tri-State represent commercially valuable information that would advantage Tri-State's competitors and/or contract counterparties if disclosed. The continued confidentiality of this information is necessary to allow Tri-State to fulfill its supply obligations at the lowest cost for its Members.

The 14th category for which Tri-State requests extraordinary protection includes provisions of Tri-State's existing PPAs that are subject to a confidentiality clause. In general, such confidentiality clauses require Tri-State to keep confidential data with respect to specific projects and the producer's performance under the PPA.

The final three categories of information for which Tri-State requests extraordinary protection relate to its application to the USDA for federal funding in connection with the IRA scenario. Tri-State is in competition with other entities for a limited amount of federal funding and must keep confidential information that could provide a competitive advantage to these other entities. Disclosure of this information would therefore cause substantial harm to Tri-State.³⁰

52. Tri-State requests that the Commission issue an order prohibiting access to the categories of highly confidential information identified in the Motion for Extraordinary

²⁹ Motion for Extraordinary Protection at 2-3.

³⁰ *Id.* at 4-5.

Protection prohibiting Tri-State's competitors and all other parties to this Proceeding.³¹ With respect to the non-competitor parties, Tri-State requests that "the Commission limit access to a 'reasonable number of attorneys' and a 'reasonable number of subject matter experts.'"³²

53. Tri-State attached to the Motion for Extraordinary Protection a proposed nondisclosure agreement³³ and an affidavit signed by Lisa Tiffin, Tri-State's Vice President Planning & Analytics (Affidavit).³⁴

54. In the Affidavit, the affiant, Ms. Lisa Tiffin, identifies the categories of all persons with access to the highly confidential information for which extraordinary protection is sought.³⁵ Despite the Motion for Extraordinary Protection stating that the Affidavit identifies "the period of time for which the information must remain subject to highly confidential protection,"³⁶ the Affidavit does not so identify. While the Motion for Extraordinary Protection and Attachments A and B thereto generally state good cause for the requested relief, the Affidavit is not compliant with Rule 1101(b) of the Rules of Practice and Procedure, 4 CCR 723-1. Therefore, the Motion for Extraordinary Protection will be conditionally granted, subject to Tri-State's filing of a supplemental affidavit identifying the period of time for which extraordinary protection is sought, as ordered below.

E. Pro Hac Vice Motion

55. Rule 21(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, provides that a party to a proceeding may, in the

³¹ *Id.* at 6-7.

³² *Id.* at 7, citing Rule 3614(b) of the Rules Regulating Electric Utilities, 4 CCR 723-3.

³³ See Attachment A to the Motion for Extraordinary Protection.

³⁴ See Attachment B to the Motion for Extraordinary Protection.

³⁵ Affidavit at

³⁶ Motion for Extraordinary Protection at 6.

Commission's discretion, be represented by an attorney currently in good standing before the highest tribunal of another state.

56. As grounds for the *Pro Hac Vice* Motion, Counsel Henry Bailey, Jr. states that: he is a member in good standing of the Bar on the State of Wyoming; he is in good standing in all Bars, wherever admitted, and has not been subject to any order of discipline or disability by any Bar, or had any request for *pro hac vice* admission denied or revoked.³⁷

57. The ALJ finds that Counsel Henry Bailey, Jr. filed a copy of the *Pro Hac Vice* Motion with the Colorado Supreme Court and paid the required filing fee as required by Colo. R. Civ. Pro. 205.3 (1) (iii) and (iv).³⁸

58. Having shown good cause therein, the *Pro Hac Vice* Motion will be granted, as ordered below.

II. ORDER

A. It is Ordered That:

1. Consistent with the discussion above, the interventions of the trial staff of the Colorado Public Utilities Commission, Office of Utility Consumer Advocate, the Colorado Energy Office, Big Horn Rural Electric Company, Carbon Power & Light, Inc., High West Energy Inc., Wheatland Rural Electric Association, Wyrulec Company, Inc., Niobrara Electric Association, High Plains Power, Inc., Garland Light & Power Co., Poudre Valley Rural Electric Association, Inc., Highline Electric Association, K.C. Electric Association, San Isabel Electric Association, Inc., Southeast Colorado Power Association, and Y-W Electric Association, Inc. are acknowledged.

³⁷ *Pro Hac Vice* Motion at 1-2.

³⁸ See filing dated 12/21/2023 by the Staff of the Colorado Public Utilities Commission regarding proof of *Pro Hac Vice* registration by Henry Bailey Jr.

2. Consistent with the discussion above, the requests to permissively intervene in this Proceeding by the Natural Resources Defense Council, Sierra Club, White River Electric Association, Western Resource Advocates, Office of Just Transition, the Colorado Independent Energy Association, Colorado Department of Public Health and Environment, Interwest Energy Alliance, submitted on December 18, 2023, December 20, 2023, January 3, 2024, January 4, 2024, and January 5, 2024, respectively, are granted.

3. Tri-State Generation and Transmission Association, Inc.'s Motion to Approve Procedural Schedule, Discovery Procedures, Treatment of Confidential Information, Shortened Notice Period, and Request for Expedited Treatment, filed by Tri-State Generation and Transmission Association, Inc. (Tri-State) on December 1, 2023, is granted, in part consistent with the discussion above.

4. The following Procedural Schedule is adopted to govern this proceeding:

Procedural Activity	Deadline
Answer Testimony	March 14, 2024
Rebuttal/Cross-Answer Testimony	April 15, 2024
Stipulations/Settlement Agreements	April 17, 2024
Corrections to Pre-filed testimony and Pre-hearing Motions	April 17, 2024
Witness list, Cross-Examination Estimates, Final Exhibits List	April 22, 2024
Settlement Testimony	May 1, 2024
Evidentiary Hearing	May 6-9, 2024
Statements of Position	May 22, 2024

5. A hearing in this matter shall be conducted at the following dates, time, and place:

DATE: May 6-9, 2024

TIME: 9:00 a.m., daily

PLACE: Join by videoconference using Zoom at the link to be provided in an email from the Administrative Law Judge³⁹

6. The parties shall conduct discovery in accordance with Rule 1405 of the Rules of Practice and Procedure, except that:

Discovery requests and responses will be served electronically;

All responses to an individual set of discovery shall be served in a single, combined document to all parties; and

All highly-confidential and confidential documents and discovery responses will be served only on the parties that have executed appropriate highly confidential non-disclosure agreements, and all nonconfidential requests and responses will be served on all parties.

7. The Deadline for a Commission Decision is extended by 130 days through September 17, 2024.

8. Consistent with the discussion above, Tri-State's request for Extraordinary Protection is conditionally-granted, subject to Tri-State's filing of a supplemental affidavit identifying the time period for which extraordinary protection is sought by Tri-State. Upon Tri-State's filing of an appropriate supplemental affidavit, Tri-State's request for extraordinary protection will be granted for the period of time requested in Tri-State's supplemental affidavit.

9. The Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission, filed December 13, 2023, by Mr. Henry F. Bailey Jr., is granted.

10. This Decision is effective immediately.

³⁹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director