

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
DENYING WITHOUT PREJUDICE MOTION FOR
EXTRAORDINARY PROTECTION, GRANTING MOTION
TO MODIFY THE PROCEDURAL SCHEDULE, AND
GRANTING MOTION TO CLARIFY
PROCEDURAL DEADLINES**

Mailed Date: March 5, 2024

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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 (Application).

2. By Decision No. R24-0080-I, issued February 6, 2024, the undersigned Administrative Law Judge (ALJ), among other things, established procedures herein.

3. By Decision No. R24-0085-I, issued February 8, 2024, the undersigned ALJ, among other things, established additional procedures herein.

4. On February 8, 2024, the Second Motion for Extraordinary Protection of EnCompass Files Filed by Tri-State Generation and Transmission Association (Motion for Extraordinary Protection) was filed by Tri-State.

5. On February 22, 2024, the Joint Response in Opposition to Tri-State's Second Motion for Extraordinary Protection (Response to Motion for Extraordinary Protection) was filed by the Colorado Solar and Storage Association (COSSA), Natural Resources Defense Council, Sierra Club (together with the Natural Resources Defense Council, Conservation Coalition), Solar Energy Industries Association (together with COSSA, COSSA/SEIA), the Utility Consumer Advocate (UCA), and Western Resource Advocates (WRA) (together, the joint parties opposing the Motion for Extraordinary Protection).

6. On February 23, 2024, the Joint Motion to Revise the Procedural Schedule (Motion to Revise Procedural Schedule) was filed by the Colorado Energy Office (CEO) Office of Just Transition (OJT), UCA, Trial Staff of the Public Utilities Commission (Staff) and Tri-State (collectively, the movants requesting to revise the procedural schedule).

7. On February 23, 2024, the Unopposed Motion to Clarify by the Colorado Department of Public Health and Environment (Motion Requesting Clarification) was filed by the Colorado Department of Public Health and Environment (CDPHE).

B. Motion for Extraordinary Protection

8. In the Motion for Extraordinary Protection, Tri-State states that Colorado Independent Energy Association, OJT, WRA, COSSA, Conservation Coalition, UCA, La Plata Electric Association, Moffat County (Moffat), the City of Craig (Craig), Mountain Parks Electric Association, Poudre Valley Rural Electric Association, Highline Electric Association, and Y-W Electric Association oppose the Motion for Extraordinary Protection.

9. In the Motion for Extraordinary Protection, Tri-State further states that: (a) it is requesting extraordinary protection of the input files Tri-State used to conduct its Phase I modeling within the EnCompass modeling software (EnCompass Files);¹ (b) the EnCompass Files should be subject to Tri-State's Highly Confidential Nondisclosure Agreement and access to Tri-State's EnCompass Files should be limited to parties with software licenses consistent with Commission practice;² (c) "the EnCompass Files are technical in nature and that Tri-State uses a particular computing configuration and setup to run its modeling[;]"³ (d) Tri-State's proposes a Highly Confidential Nondisclosure Agreement (NDA), which is provided as Attachment B to the Motion for the Motion for Extraordinary Protection;⁴ (e) Tri-State has filed a copy of the Motion for Extraordinary Protection, which includes a description of the highly-confidential nature of the EnCompass Files;⁵ (f) "Attachment C to [the Motion for Extraordinary Protection] is an affidavit, signed by Lisa Tiffin, Tri-State's Vice President Planning & Analytics, identifying all persons with access to the highly-confidential information within the EnCompass Files and the period of time for which the information must remain subject to highly-confidential protection;"⁶ (g) [g]iven the nature and volume of the information for which highly-confidential treatment is

¹ Motion for Extraordinary Protection at 2-3.

² *Id.* at 3-4.

³ *Id.* at 5.

⁴ *Id.* See also Attachment B to the Motion for Extraordinary Protection.

⁵ *Id.* at 6.

⁶ *Id.* at 6.

requested, it would be overly burdensome and impractical to include such information as an exhibit to [the Motion for Extraordinary Protection];”⁷ (h) “Tri-State requests that all parties and their counsel destroy the EnCompass Files provided to them during the course of this proceeding at its conclusion;”⁸ and (i) “Tri-State received a discovery request seeking access to the EnCompass Files on January 30, 2024 and is therefore seeking appropriate protections in this Motion.”⁹

10. In the response to the Motion for Extraordinary Protection, the joint parties opposing the Motion for Extraordinary Protection state: (a) the Motion for Extraordinary Protection should be denied because it fails to comply with Rule 1101(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 in that Tri-State failed to include a showing ““that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection...[:];””¹⁰ (b) “Tri-State did not provide a legitimate justification for limiting EnCompass Files access to parties with a current EnCompass License; and (c), Tri-State’s reliance on cases wherein the Commission previously granted motions for extraordinary protection is misplaced because the facts and circumstances in those cases may not be analogous to the case at hand.”¹¹

11. Pursuant to Rule 1101(b)(IV) of the Rules of Practice and Procedure, 4 CCR 723-1, a motion requesting highly confidential protection.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.* at 8.

¹⁰ Response to Motion for Extraordinary Protection at 2, *citing* Rule 1101(b)(IV) of the Rules of Practice and Procedure, 4 CCR 723-1.

¹¹ *Id.* at 5.

shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information[.]

12. Pursuant to Rule 1101(d) of the Rules of Practice and Procedure, 4 CCR 723-1, “[t]he person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection.”

13. Pursuant to Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1, “[t]he burden of proof... shall be on the party that is the proponent of a decision...”

14. Therefore, as the proponent of a Commission decision seeking protection of its EnCompass Files, Tri-State bears the burden of proving that such files are deserved of highly-confidential protection.

15. The ALJ finds and concludes that Tri-State failed to meet the burden of proof with respect to the showing required by Rule 1101(b)(IV) of the Rules of Practice and Procedure, 4 CCR 723-1. Specifically, Tri-State failed to meet the burden of proof with respect to a showing that the information contained in the EnCompass Files is highly confidential; that the protection afforded by the Commission’s rules for furnishing confidential information provides insufficient protection for the highly-confidential information contained in the EnCompass Files; and that, if adopted, the highly-confidential protections proposed by Tri-State will afford sufficient protection for the highly-confidential information contained in the EnCompass Files. Therefore, the Motion for Extraordinary Protection will be denied without prejudice, as ordered below.

C. Procedural Schedule

16. Decisions No. R24-0080-I and R24-0085-I established the following Procedural deadlines for 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
Non-testimonial Hearing Exhibits	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

17. The Motion to Revise Procedural Schedule states that CEO, OJT, UCA, Staff, and Tri-State state that Tri-State, Moffat, the City of Craig, CEO, UCA, and OJT began a facilitated process with Great Plains Institute in July 2023.¹² This facilitated process is ongoing and its purpose is to identify community assistance opportunities in Moffat County and the City of Craig to be included in a report called the Informational Community Assistance Plan (ICAP).¹³ The facilitated process is expected to conclude in June 2024, and the ICAP to be filed in a

¹² *Id.* at 2, citing Hrg. Ex. 108, Direct Testimony of Chad Orvis, at 12:5-13.

¹³ *Id.* at 2-3.

separate proceeding by September 2024.¹⁴ The movants requesting to revise the procedural schedule note that [t]hough “the ICAP will be filed outside this proceeding, some parties may wish to request that the Commission consider the results of the facilitated community process when making its decision about the retirement of Craig Unit 3.”¹⁵ The Motion to Revise Procedural Schedule further states that Tri-State’s preferred portfolio is predicated on Tri-State receiving United States Department of Agriculture (USDA) funding, through Tri-State does not yet know whether it will be asked to apply for funding.¹⁶ The movants requesting to revise the procedural schedule further states that “[i]f Tri-State is invited to apply, it has 60 days to submit its application to the USDA.”¹⁷ Tri-State explains that if the funding received by Tri-State were to significantly vary from Tri-State’s requested funding, Tri-State may need to conduct additional scenario modeling and that “[s]uch modeling may result in a necessary delay in the procedural schedule for Phase 1.”¹⁸ Tri-State further explains that it had only recently become aware that USDA application invitations are expected to be sent by the end of the first quarter of 2024, as opposed to the prior expected deadline of November or December 2023.¹⁹ Lastly, the Motion to Revise Procedural Schedule states that §§ 3.3 and 3.4 of the Stipulation filed as Attachment 1 to the Application, contemplate the potential need for modifications to Tri-State’s preferred portfolio, the IRA Scenario.²⁰ Based on the forgoing, the movants requesting to revise the procedural schedule request delaying the previously-approved procedural schedule by approximately 70 days, as follows:

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.*, citing Hrg. Ex. 101, Direct Testimony of Lisa Tiffin, at 28:11-12, 29:7-9.

¹⁷ *Id.* at 4.

¹⁸ *Id.*, quoting Hrg. Ex. 101, Direct Testimony of Lisa Tiffin, at 29:7-10.

¹⁹ *Id.*

²⁰ *Id.* at 3, 4.

Procedural Activity	Deadline
Tri-State Supplemental Filing, if necessary	April 22, 2024
Answer Testimony	May 22, 2024
Rebuttal/Cross-Answer Testimony	June 24, 2024
Stipulations/Settlement Agreements	June 26, 2024
Corrections to Pre-filed testimony and Pre-hearing Motions	June 26, 2024
Witness list, Cross-Examination Estimates, Final Exhibits List	July 1, 2024
Settlement Testimony	July 11, 2024
Evidentiary Hearing	July 16-19, 2024
Statements of Position	August 1, 2024
Decision Deadline	Sept 17, 2024

Lastly, the movants requesting to revise the procedural schedule state that because the nearest filing deadline is March 14, 2024, time is of the essence, and the waiver of response time to the Motion is warranted pursuant to Rule 1308(c) of the Rules of Practice and Procedure 4 CCR 723-1.

18. In the Motion Requesting Clarification, CDPHE states that “an appropriate timeline for submission of the Phase I Verification Report would be seven (7) calendar days prior to the deadline for Answer Testimony, in order to give intervenors time to incorporate this information into their testimony.”²¹ CDPHE further states that it

²¹ Motion Requesting Clarification at 3.

believes that Phase II Verification Report should be submitted thirty (30) days after Tri-State submits its ERP Implementation Report to align data submissions in an efficient way for the Commission, intervenors, and Tri-State. Accordingly, the Department requests that any procedural order entered concerning Phase II identify the date by which the Department is to submit this Verification Report and adjust that date with any subsequent orders amending that schedule.²²

19. The ALJ finds and concludes that the movants requesting to revise the procedural schedule state good cause for the waiver of response time, and therefore, the same will be granted, as ordered below.

20. The ALJ finds and concludes that the movants requesting to revise the procedural schedule stated good cause for their requested relief. Therefore, the procedural schedule herein will be amended as requested by movants requesting to revise the procedural schedule, as ordered below. The ALJ notes, however, that the previously-established procedural deadline for the submission of non-testimonial hearing exhibits²³ was omitted from the new procedural schedule proposed by the movants requesting to revise the procedural schedule. Therefore, the same will be incorporated in the procedural schedule, as ordered below.

21. The ALJ finds and concludes that no harm will come to any party as a result of granting of the relief sought by CDPHE in the Motion Requesting Clarification. Therefore, response time to the Motion will be waived *sua sponte*, as ordered below.

22. The ALJ finds and concludes that CDPHE stated good cause for the relief requested in the Motion Requesting Clarification. Therefore, subject to the additional procedural deadlines adopted herein and Rule 3605(h) of the Rules Regulating Electric Utilities, 4 CCR 723-3, the relief requested in the Motion Requesting Clarification will be granted, as ordered below.

²² *Id.*

²³ See Decision No. R24-0085-I at 6.

II. ORDER

A. It is Ordered That:

1. Consistent with the discussion above, the Second Motion for Extraordinary Protection of EnCompass Files Filed by Tri-State Generation and Transmission Association (Motion for Extraordinary Protection), filed February 8, 2024 by Tri-State Generation and Transmission Association, Inc. (Tri-State) is denied without prejudice.

2. Response time to the Joint Motion to Revise the Procedural Schedule (Motion to Revise Procedural Schedule), filed February 23, 2024 by the Colorado Energy Office, Office of Just Transition, Utility Consumer Advocate, Trial Staff of the Public Utilities Commission, and Tri-State, is granted, consistent with the discussion above.

3. Consistent with the discussion above, the Motion to Revise Procedural Schedule is granted.

4. Response time to the Unopposed Motion to Clarify by the Colorado Department of Public Health and Environment (Motion Requesting Clarification), filed February 23, 2024 by the Colorado Department of Public Health and Environment (CDPHE) is waived *sua sponte*, consistent with the discussion above.

5. Consistent with the discussion above, the Motion Requesting Clarification is granted.

6. The Procedural deadlines established by Decisions No. R24-0080-I and R24-0085-I are vacated and the following procedural schedule is adopted:

Procedural Activity	Deadline
Tri-State Supplemental Filing, if necessary	April 22, 2024
CDPHE' Phase I Verification Report	May 15, 2024
Answer Testimony	May 22, 2024
Rebuttal/Cross-Answer Testimony	June 24, 2024
Stipulations/Settlement Agreements	June 26, 2024
Corrections to Pre-filed testimony and Pre-hearing Motions	June 26, 2024
Non-testimonial Hearing Exhibits	June 26, 2024
Witness list, Cross-Examination Estimates, Final Exhibits List	July 1, 2024
Settlement Testimony	July 11, 2024
Evidentiary Hearing	July 16-19, 2024
Statements of Position	August 1, 2024

7. The hearing scheduled for May 6-9, 2024 is vacated, and the following hearing shall be conducted at the following dates, time, and place:

DATE: July 16-19, 2024

TIME: 9:00 a.m. on July 16 and 18-19, 2024; and 10:30 a.m. on July 17, 2024

PLACE: Join by videoconference using Zoom at the link to be provided in an email from the Administrative Law Judge²⁴

8. CDPHE shall submit a Phase II Verification Report to the Commission 30 days after Tri-State submits its ERP Implementation Report, the date of which will be determined based on the progress of this Proceeding and consistent with Rule 3605(h) of the Rules Regulating Electrical Utilities, 4 *Code of Colorado Regulations* 723-3.

9. This Decision is effective immediately.

(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

²⁴ 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>.