

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION)	
OF COLORADO-UTE ELECTRIC)	APPLICATION NO. 36396
ASSOCIATION, INC., FOR AN ORDER)	
AUTHORIZING IT TO ENTER INTO)	ORDER OF THE COMMISSION
CERTAIN SALE AND LEASEBACK)	GRANTING APPLICATION
TRANSACTIONS WITH RESPECT TO ITS)	
CRAIG STATION UNIT NO. 3 AND TO)	
EXECUTE CERTAIN DOCUMENTS RELATING)	
TO SUCH TRANSACTIONS.)	

July 20, 1984

Appearances: L. Christain Hauck, Esq.
Carol A. Curran, Esq.
Montrose, Colorado
For Applicant Colorado-Ute Electric
Association, Inc.

John J. Conway, Esq.
Denver, Colorado
For Tri-State Generation and
Transmission Association

Steven H. Denman,
Assistant Attorney General
Denver, Colorado
For the Staff of the Commission

PROCEDURE AND RECORD

On June 22, 1984, Colorado-Ute Electric Association, Inc. ("Colorado-Ute" or "the Applicant") filed with the Commission the above-entitled Application for authority:

(1) to enter into Sale and Leaseback Transactions with respect to its Craig Station Unit 3 and certain facilities constructed in connection with Craig Station Unit 3 which are to be used by Craig Station Unit 3 in common with one or more generating units at Craig Station;

(2) to execute, enter into and perform under the following documents: the Participation Agreement, a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to Merrill Lynch Leasing Inc., a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to IBM Credit Leasing Corporation, a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to BATUS Inc. (which has subsequently determined that it would take title in one of its wholly owned subsidiaries, Brown & Williamson Tobacco Corporation), a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to Potomac Leasing Company (which has subsequently changed its name to Potomac Leverage Leasing Company) and a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to DKF Leasing, Inc., the Lease

Agreements among Colorado-Ute and each of the above-named Lessors, and each of the Support Agreements, the tax Indemnification Agreements and any other documents necessary or expedient of the consummation of such Transactions; and

(3) if such authorization be necessary, to arrange for loans to be made by National Cooperative Services Corporation to each of the above-named Lessors, which loans will be secured by the Leases and the rental payments to be made by Colorado-Ute thereunder. The Application also requested that the commission enter findings that:

(1) Craig Station Unit 3 will be leased directly to Colorado-Ute under a net lease and will be employed by Colorado-Ute in its operation as a public utility company;

(2) the Commission has jurisdiction over Colorado-Ute's wholesale electric rates charged to its Members and the wholesale electric service provided by Colorado-Ute to its Members;

(3) the initial term of each Lease is 25 years; and

(4) rent to be paid under the Leases will not include any amount based, directly or indirectly, on revenues or income of Colorado-Ute.

The proposed Sale and Leaseback Transactions with respect to Colorado-Ute's Craig Station Unit 3 are alternative financing techniques for that Unit. Colorado-Ute would, under the terms of the Participation Agreement, execute and deliver a Deed and Bill of Sale representing each Lessor's undivided interest in Craig Station Unit 3 to each Lessor, its successors and assigns, and would in turn lease back from each Lessor, its successors and assigns, under a net lease, such Lessor's undivided interest in that Unit for a base term of 25 years. The rents to be paid to each Lessor under the leases would not include any amount based, directly or indirectly, on revenue or income of Colorado-Ute Craig Station Unit 3. Colorado-Ute would employ Craig Station Unit 3 in its operation as a public utility company.

This matter was consolidated with Application No. 36397 and was set for a hearing after due and proper notice to be held on July 16, 1984 at 9:00 AM, in the Hearing Room of the Commission, 500 State Services Building, 1525 Sherman Street, Denver, Colorado, and was there heard by Hearings Examiner Robert E. Temmer, to whom the matter was assigned.

No petitions were filed in opposition to the Application and no one appeared at the hearing opposing the authority sought in said Application. Tri-State Generation and Transmission Association appeared at the hearing in support of the application, and moved to intervene in Application No. 36396, which motion was granted.

Girts Krumins, Applicant's President; Alan D. Marks, Vice President and Manager of Short-Term Tax-Exempt Financing Group of Smith Barney, Harris Upham & Co. Incorporated; and J. Scott Magrane, Jr., Senior Vice President of the Project and Specialty Finance Group of Paine Webber Capital Markets, the investment banking subsidiary of Paine Webber Incorporated, testified in support of the Applications. Witness Krumins testified concerning both Applications. Witness Magrane testified primarily concerning Application No. 36396. Witness Marks testified primarily concerning Application No. 36397.

Exhibits A through C, and 1 through 45 inclusive, were admitted into evidence. Exhibits A, and 1 through 17 relate to both Applications. Exhibits B, 18 through 30, and 43 through 45 relate primarily to Application 36396. Exhibits C, and 31 through 42 relate primarily to Application 36397.

At the conclusion of the hearing, the Application was taken under advisement.

D I S C U S S I O N

Colorado-Ute has previously made application to this Commission (Application No. 33043-Securities) and been granted Commission authority (Decision No. C80-1715, dated September 3, 1980) to enter a financing arrangement with the Federal Financing Bank (the "FFB") which authorized the borrowing of sufficient funds to construct the third generating unit at Colorado-Ute's Craig Station in Craig, Colorado (hereinafter known as "Craig 3") including the pollution control facilities for such plant. Colorado-Ute subsequently made application to this Commission (Application No. 34790-Securities) and was granted authority (Decision No. C82-896 dated June 15, 1982) to enter into a financing agreement with Moffat County which authorized the issuance of interim pollution control bonds to finance construction of the pollution control facilities at or for Craig Station Unit 3. Colorado-Ute made application to this Commission to refund the interim pollution control bonds with more traditional long-term pollution control bonds in Application No. 36322-Securities and that Application was granted on June 5, 1984 by Decision No. C84-455. In Decision No. C84-831, entered concurrently herewith, and dated July 20, 1984, in Application No. 36397 the Commission has authorized Colorado-Ute to use alternative financing techniques to refund the interim pollution control bonds and has withdrawn the authority granted in Application No. 36322-Securities.

The proposed Sale and Leaseback Transactions are an alternative financing technique for Craig Station Unit 3. The proceeds from the sale will be used to repay construction financing for that Unit. Rental payments under the Leases will, in effect, substitute for debt service payments on those construction loans.

The Participation Agreement provides that Colorado-Ute will execute a deed and bill of sale for its Craig Station Unit 3 and certain related facilities (Craig Station Unit 3) to each of the Owner Participants, i.e., a deed and bill of sale for its undivided interests to Merrill Lynch Leasing, Inc., a deed and bill of sale for its undivided interests to IBM Credit Leasing Corporation, a deed and bill of sale for its undivided interests to Brown and Williamson Tobacco Corporation, a deed and bill of sale for its undivided interests to Potomac Leverage Leasing Company, and a deed and bill of sale for its undivided interests to DKF Leasing, Inc. The Owner Participants would purchase their respective undivided interests at prices which, in the aggregate, will approximate \$525,000,000.

Concurrently with the execution by Colorado-Ute of such deeds and bills of sale pursuant to the Participation Agreement, Colorado-Ute will enter into several Lease Agreements ("Leases") between it, as lessee, and each Owner Participant (a "Lessor") pursuant to which each Lessor will lease its entire respective undivided interest in the Facility to Colorado-Ute. Each Lease will be for a basic term of 25 years with Colorado-Ute having an option to extend the term of each such Lease for an additional fixed term up to 10 years, and thereafter, depending upon the then-appraised economic life remaining in Craig Station Unit 3. The undivided interests sold to the Lessors and leased back to Colorado-Ute would aggregate 100% of the Unit. The rents to be paid under the Leases will not include any amount based, directly or indirectly, on revenues or income of Colorado-Ute. Each of the Leases would be a "net" lease, i.e., Colorado-Ute will assume all costs of operating, maintaining, repairing and insuring Craig Station Unit 3 and all fees, expenses, taxes and other charges incurred in connection with the construction, acquisition, ownership, operation, possession and use of Craig Station Unit 3, other than taxes measured on the net income of the Owner Participants.

The consideration paid by each Lessor for its undivided interest in Craig Station Unit 3 would be provided by (1) an equity investment in an amount equal to approximately 40% of its purchase price, (2) the nonrecourse assumption by each Lessor of a pro rata portion of Colorado-Ute's obligations under a Financing Agreement between the County of Moffat and Colorado-Ute (the "Financing Agreement"), pursuant to which the proceeds of a series of bonds (the "Refunding Bonds") proposed to be issued by the County for the purpose of refunding the 1982 Series bonds will be deposited in escrow with the 1982 Trustee in consideration of the issuance by Colorado-Ute to the County of a note (the "Colorado-Ute Note") and (3) a nonrecourse borrowing for the balance of its purchase price from National Cooperative Services Corporation ("NCSC").

To evidence its assumption of the obligations of Colorado-Ute under the Financing Agreement and certain other documents relating to the Refunding Bonds, each Lessor will enter into an Assumption Agreement with the county and the trustee for the refunding Bonds and will issue a nonrecourse note (a "Pollution Control Lessor Note") to the county, which, in turn, will be pledged and assigned to the trustee for the refunding Bonds, under a Trust Indenture, Security Agreement and First Deed of Trust (a "Lease Indenture") between such Lessor and a bank or trust company acting as trustee under the Lease Indentures (the "Lease Indenture Trustee"), and Colorado-Ute would be discharged from any further obligation under the Financing Agreement and the Colorado-Ute Note.

To evidence its borrowing from NCSC, each Lessor would issue a nonrecourse note (an "NCSC Lessor Note") to the Lease Indenture Trustee pursuant to its Lease Indenture. The NCSC Lessor Note of each Lessor would have a stated term of approximately 20 years. It is expected that each such NCSC Lessor Note would bear interest during the first 60 months of its term at a rate equal to NCSC's borrowing costs plus an administrative fee. If the NCSC Lessor Notes were not refunded in the first 60 months of their term, the interest costs thereon would increase, as specified in such NCSC Lessor Note, to reflect long-term rates. The NCSC Lessor Notes would be prepayable at any time without penalty or premium.

The Pollution Control Lessor Notes and the NCSC Lessor Notes, together with all other notes which may be issued under the Lease Indentures, are referred to herein as "Lessor Notes." Each Lessor Note issued under a Lease Indenture would be a nonrecourse obligation of the Lessor payable from, and secured on parity basis under a Lease Indenture by a first lien on and security interest in such Lessor's undivided interest in Craig Station Unit 3 and an assignment by such Lessor to the Lease Indenture Trustee of payments received from Colorado-Ute under its Lease.

Each Lease would be a net lease under which Colorado-Ute would be absolutely and unconditionally obligated to pay rentals which would at all times be at least sufficient to provide for the payment of debt service on the Lessor Notes issued under the Lease Indentures without any right of counterclaim, setoff, deduction or defense on the part of Colorado-Ute.

Additional security for the Lessor Notes would be provided by each Lessor's assignment of certain rights under support agreements consisting of (1) a Common Facilities Agreement, pursuant to which Colorado-Ute will contract for the use of certain facilities which are common to Craig Station Unit 3 and the other generating units adjacent thereto and certain common facilities which form part of the Craig Station Unit 3 would be made available for the use of such other units,

(2) an Assignment of Common Facilities Agreement, pursuant to which Colorado-Ute will assign its rights under the Common Facilities Agreement to the Lessors, (3) an Operating Agreement between the Lessors and Colorado-Ute, which contains the agreement of the parties in respect to the operation of Craig Station Unit 3 after the respective Leases have been terminated, (4) a Ground Lease and Easement Agreement, pursuant to which each Lessor will obtain a leasehold interest in the ground beneath Craig Station Unit 3 and an easement with respect to certain land adjacent to Craig Station Unit 3, (5) a Ground Sublease Agreement, pursuant to which the Lessors will sublease their respective leasehold interests in the ground beneath Craig Station Unit 3 to Colorado-Ute, (6) a Construction Contracts Assignment, pursuant to which Colorado-Ute will assign certain of its rights under existing construction contracts to the Lessors, (7) a Water Rights Agreement, pursuant to which Colorado-Ute will assign certain of its contract rights for an adequate water supply for Craig Station Unit 3, and (8) a Transmission Agreement under which Colorado-Ute will agree to provide transmission and transformation services to the lessors in respect of electrical power produced at Craig Station Unit 3 (collectively, the "Support Agreements").

Pursuant to separate Tax Indemnification Agreements with each Lessor, Colorado-Ute will agree to indemnify the lessors against income taxes which may be imposed should certain tax assumptions, in reliance on which the Lessors have calculated the rentals to be paid by Colorado-Ute, prove not to be true.

Pursuant to a Consent and Partial Release between Colorado-Ute and the Mortgagees, the Mortgagees will consent to Colorado-Ute's entering into the Sale and Leaseback Transactions and release Craig Station Unit 3 from the lien of the REA Mortgage to the extent necessary for the consummation of such Transactions. Pursuant to a Consent, to be executed by the trustee for the Refunding Bonds, the trustee will release Colorado-Ute from its obligations under the Financing Agreement in consideration of, among other things, the delivery to such trustee of the Pollution Control Lessor Notes in accordance with the Assumption Agreement.

The proposed Sale and Leaseback Transactions will have a strengthening effect on Colorado-Ute's financial status in that they will afford significant reductions in costs associated with the use of Craig Station Unit 3.

The proceeds derived by Colorado-Ute from the Sale and Leaseback Transactions will be applied primarily to the repayment of construction financing for Craig Station Unit 3, which Unit will be employed by Colorado-Ute in its operations as a public utility. The Lessors will also assume, on a nonrecourse basis, the obligations of Colorado-Ute in respect of the Refunding Bonds, although Colorado-Ute will indirectly remain obligated for such Bonds through its obligation to pay rent under the Leases.

Colorado-Ute will account for the Leases as capital leases on its Balance Sheet and as operating leases on its Statement of Operations.

Applicant has already made application to the Commission for authority to issue securities to finance all aspects of the construction of Craig Station Unit 3 and related facilities (Application No. 33043) which application was approved by the Commission on September 3, 1980. The Applicant made application to the Commission for authority to issue the 1982 Series of interim pollution control bonds to finance the pollution control facilities at or for Craig Station Unit 3, which application was granted by the Commission in Decision No. C82-896, Application No. 34790. The Applicant made application to the Commission for authority to issue Refunding Bonds for the 1982 Series bonds, which

Application was granted by the Commission in Decision No. C84-455. Because of a substantial change in the structure of the Refunding Bonds, Applicant made application for a separate order of the Commission authorizing it to issue the new Refunding Bonds, which application was granted by the Commission in Decision No. C84-831, Application No. 36397, entered concurrently herewith.

The rental payments will not be determined until the interest rate on the Refunding Bonds and the NCSC loan to the Lessors is determined. The costs to Colorado-Ute for the financing are estimated to approximate \$3.5 million, representing the fee for placement of equity, fees for Attorneys, Accountants, Printers, Trustees, and Management fees. The proposed Sale and Leaseback Transactions will, in effect, reduce Applicant's overall interest cost.

FINDINGS OF FACT

Based on the evidence of record, it is found as fact that:

1. Applicant, Colorado-Ute Electric Association, Inc., is an electric cooperative association and is engaged in the generation and transmission of electric power and energy to its fourteen members located within the State of Colorado.

2. Applicant herein is a corporation organized under the laws of the State of Colorado and copies of its Articles of Incorporation and all amendments thereto, properly certified, are on file with this Commission.

3. Applicant needs the proceeds from the Sale and Leaseback Transactions to repay construction loans for Craig Station Unit 3.

4. The Board of Directors of Colorado-Ute has approved the filing of this Application.

5. The financial position of the Applicant and its ability to serve will not be impaired by the Sale and Leaseback Transactions.

6. Craig Station Unit 3 will be leased directly to Colorado-Ute under a net lease and will be employed by Colorado-Ute in its operation as a public utility company.

7. The Commission has jurisdiction over Colorado-Ute's wholesale electric rates charged to its members and the wholesale electric service provided by Colorado-Ute to its Members.

8. The initial term of each Lease is 25 years.

9. Rent to be paid under the Leases will not include any amount based, directly or indirectly, on revenues or income of Colorado-Ute.

10. The Discussion portion of this Decision is incorporated herein by reference.

11. The Commission is fully advised in the premises.

12. Since Chapter 40-1-104, C.R.S., as amended, requires that security applications be disposed of within thirty days, the Commission finds that due and timely execution of its functions imperatively and unavoidably requires that a Recommended Decision of the Hearings Examiner be omitted.

CONCLUSIONS ON FINDINGS OF FACT

1. Based upon the foregoing Findings of Fact, the Commission concludes that the authorization as sought in the instant Application should be granted as hereinafter set forth.

2. Applicant, Colorado-Ute Electric Association, Inc., is a public utility as defined in 40-1-103, C.R.S., as amended.

3. The Commission has jurisdiction over the Applicant and subject matter of this Application. The Commission does not, however, have any jurisdiction over the issuance of securities by any Owner Participant to fund its pro rata share of the purchase price of Craig Station Unit 3 or any improvements to that Unit, or any refunding of such securities.

4. Pursuant to 40-6-109(6), C.R.S., as amended, this Decision should be the initial decision of this Commission.

5. The Commission concludes that the following is not inconsistent with the public interest, and the purpose or purposes thereof are permitted by and are consistent with the provisions of C.R.S. 40-1-104 and 40-5-105, as amended:

- A. To enter into the Sale and Leaseback Transactions with respect to its Craig Station Unit 3 and certain facilities constructed in connection with the construction of Craig Station Unit 3 which are to be used by Craig Station Unit 3 in common with one or more generating units at Craig Station; and
- B. To execute, enter into and perform under the following documents: the Participation Agreement; a Deed and Bill of Sale representing the sale of an undivided interest in Craig Station Unit 3 to Merrill Lynch Leasing Inc., its successors and assigns; a Deed and Bill of Sale representing the sale of an undivided interest in Craig Station Unit 3 to IBM Credit Leasing Corporation, its successors and assigns; a Deed and Bill of Sale representing an undivided interest in Craig Station Unit 3 to Brown & Williamson Tobacco Corporation, its successors and assigns; a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to Potomac Leverage Leasing Company, its successors and assigns; and a Deed and Bill of Sale representing the sale of an undivided interest in the Facility to DKF Leasing, Inc., its successors and assigns (which sales would in the aggregate amount to 100% of Colorado-Ute's interest in Craig Station Unit 3); the Lease Agreements among Colorado-Ute and each of the above-named Lessors, and any successors or assigns; and each of the Support Agreements, the Tax Indemnification Agreements and any other documents necessary or expedient in the consummation of such Transactions.

and should be authorized and approved.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The following are authorized and approved for the Applicant, Colorado-Ute Electric Association, Inc.:

- A. To enter into the Sale and Leaseback Transactions with respect to Craig Station Unit 3 and certain facilities constructed in connection with Craig Station Unit 3 which are to be used by Craig Station Unit 3 in common with one or more generating units at Craig Station; and
- B. To execute, enter into and perform under the following documents: the Participation Agreement; a Deed and Bill of Sale representing the sale of an undivided interest in Craig Station Unit 3 to Merrill Lynch Leasing Inc., its successors and assigns; a Deed and Bill of Sale representing the sale of an undivided interest in Craig Station Unit 3 to IBM Credit Leasing Corporation, its successors and assigns; a Deed and Bill of Sale representing an undivided interest in Craig Station Unit 3 to Brown & Williamson Tobacco Corporation, its successors and assigns; a Deed and Bill of Sale representing the sale of an undivided interest in Craig Station Unit 3 to Potomac Leverage Leasing Company, its successors and assigns; and a Deed and Bill of Sale representing the sale of an undivided interest in Craig Station Unit 3 to DKF Leasing, Inc., its successors and assigns (which sales would in the aggregate amount to 100% of Colorado-Ute's interest in Craig Station Unit 3), the Lease Agreements among Colorado-Ute and each of the above-named Lessors, and any successors or assigns, and each of the Support Agreements, the Tax Indemnification Agreements and any other documents necessary or expedient in the consummation of such Transactions.

2. Within 120 days of the execution of the instruments authorized herein, Colorado-Ute Electric Association, Inc., shall file with the Commission one conformed copy of the executed instruments made and entered into in connection herewith and a notice of the initial rental payments to be made under the Leases.

3. In the event that the execution of the instruments authorized herein is not effected within 120 days following the effective date of this Order, Colorado-Ute Electric Association, Inc. shall advise the Commission in writing of said fact.

4. Nothing herein contained shall be construed to imply any recommendation or guarantee of, or any obligation with regard to, any such securities or instruments on the part of the State of Colorado.

5. The authority granted herein shall be exercised from and after the date of this Order and the Order herein contained shall be effective forthwith.

6. The Commission retains jurisdiction of this proceeding to the end that it may make such further order or orders as to it may seem proper or desirable.

7. Upon completion of the Sale and Leaseback Transaction, Colorado-Ute Electric Association, Inc. shall furnish the Commission with copies of all accounting entries made by the Association relating to Craig Station Unit 3.

8. The within Decision and Order shall be the initial Decision and Order of the Commission as provided for in 40-6-109(6), C.R.S. as amended.

DONE IN OPEN MEETING the 20th day of July, 1984.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

EDYTHE S. MILLER

RONALD L. LEHR

Commissioners

COMMISSIONER ANDRA SCHMIDT ABSENT

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Harry A. Galligan, Jr.
Executive Secretary

jw:2148A