

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-192E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., P.O. BOX 33695, DENVER, COLORADO FOR A DETERMINATION UNDER 29-20-108(5), C.R.S., THAT THE CONDITIONS IMPOSED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO, ON TRI-STATE'S PROPOSED NUCLA-TELLURIDE 115 KV TRANSMISSION LINE PROJECT WILL UNREASONABLY IMPAIR TRI-STATE'S ABILITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL SERVICE TO THE PUBLIC.

**COMMISSION DECISION GRANTING
APPLICATION WITH CONDITIONS**

Mailed Date: January 26, 2004

Adopted Date: January 7, 2004

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application filed by Tri-State Generation and Transmission Association, Inc. (Tri-State), on May 9, 2003 for a determination, under § 29-20-108(5), C.R.S., that the conditions imposed by the Board of County Commissioners of San Miguel County Colorado (San Miguel County Commissioners or County), on the Nucla-Telluride 115 kV transmission line project (Nucla-Telluride project or project) will unreasonably impair Tri-State’s ability to provide safe, reliable, and economical service to the public. Specifically, Tri-State requests that we review Resolution #2002-12 in

which the San Miguel County Commissioners conditionally approved a Public Utilities Structures Special Use Permit (Special Use Permit) for the Nucla-Telluride project. That Resolution imposed certain conditions on the project, most notably the condition that certain portions of the transmission line be placed under ground.

2. Section 29-20-108(5), C.R.S., in part, provides:

If a local government denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of major electrical or natural gas facilities, or if the local government imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the local government action to the public utilities commission

Tri-State's Application requests that we overturn the conditions imposed on the Nucla-Telluride project in Resolution #2002-12.

3. In accordance with Rule 5.3, 4 *Code of Colorado Regulations* 723-32 (Rules Concerning Appeals of Local Government Land Use Decisions), San Miguel County was joined as an indispensable party to this proceeding. Additionally, after notice of the Application, the Coalition of Concerned San Miguel County Homeowners (Homeowners), the Board of County Commissioners of Montrose County (Montrose County Commissioners), and Trial Staff of the Commission (Staff) intervened in this matter.

4. Pursuant to § 29-20-108(5)(b), C.R.S., we conducted a hearing in Telluride, Colorado on September 18, 2003, and received extensive comment from the public concerning Tri-State's appeal of Resolution # 2002-12.

5. The parties prefiled direct, answer, and rebuttal testimony in accordance with the procedural orders issued in this case. We conducted the evidentiary hearings in this matter on October 20 through 27, 2003.

6. On December 10, 2003, statements of position were filed by Tri-State, the Homeowners, the San Miguel County Commissioners, and the Montrose County Commissioners. Staff filed its statement of position on December 11, 2003.

7. Now being duly advised in the premises, we grant the Application by Tri-State subject to the conditions discussed below. In general, we agree with Tri-State that, to the extent the total costs for underground construction of the transmission line are greater than the total costs for overhead construction and if interested parties (*e.g.*, San Miguel County and the Homeowners) are unwilling to pay the additional costs for underground construction, Tri-State should be permitted to construct the transmission line above ground. Tri-State, with input from interested parties, is directed to obtain total cost information for construction of the transmission line, both for overhead and underground construction, and provide that information to the Commission and the parties.

II. FINDINGS OF FACT AND DISCUSSION

8. In this case, Tri-State proposes to replace an existing overhead 69 kV transmission line from its Nucla Substation in Montrose County to its Sunshine Substation in San Miguel County. The existing line, approximately 48 miles in length, is currently owned by the San Miguel Power Association Inc. (SMPA), one of Tri-State's 44 electric distribution cooperative members, and is used to serve electric loads within SMPA's service territory. Tri-State intends to replace the existing 69 kV line with an overhead 115 kV line. All parties appear

to agree that the proposed 115 kV line will improve reliability of service in southwestern Colorado, including in the Telluride area. Presently, the Town of Telluride is served primarily by Tri-State's Hesperus 115 kV transmission line. The proposed Nucla-Telluride transmission line would provide looped service to Telluride, which, according to Tri-State, is critical in the event of an outage on the Hesperus transmission line.

9. In this case, the Commission is required by § 29-20-108(5)(d), C.R.S., to balance the local government interest with the statewide interest in the location, construction, or improvement of major electrical facilities. The Commission must render a decision that is consistent with § 24-65.1-105, C.R.S., while considering nine specific factors. Each factor is identified and discussed below.

A. § 29-20-108(5)(d)(I), C.R.S., The demonstrated need for the major electrical facility.

10. There is no dispute that there is a compelling need for the Nucla–Telluride 115 kV transmission line project. The Commission has previously addressed the need for this project and granted a Certificate of Public Convenience and Necessity. *See* Decision No. C01-1059.

B. § 29-20-108(5)(d)(II), C.R.S., The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans.

11. Tri-State is proposing to install an overhead 115 kV transmission line using a compact pole design within the existing 69 kV transmission line corridor from Tri-State's Nucla substation to Tri-State's Sunshine substation. San Miguel County has both a Land Use Code (LUC) and a Comprehensive Development Plan (master plan).

12. Tri-State contends that, by approving the project such that some portions of the transmission line are allowed to be installed overhead and other portions are required to be

installed underground, the San Miguel County Commissioners concluded that the proposed facility was not inconsistent with its master plan or LUC. Tri-State asserts that the LUC's requirement that underground construction be "feasible" encompasses not only technical feasibility, but also economic feasibility. Tri-State argues that it has demonstrated that, due to the increased costs, the underground construction required by the Special Use Permit is economically unfeasible.

13. The San Miguel County Commissioners point out that the LUC has a provision that power lines are to be placed underground where feasible. The Final Environmental Impact Statement (FEIS) concluded that undergrounding of the transmission line was technically feasible. According to the San Miguel County Commissioners, SMPA (the local electric service provider) and other businesses routinely comply with the LUC provisions to bury power lines.

14. According to the San Miguel County Commissioners, the master plan applicable to Specie, Wilson, and Sunshine Mesas provides that utilities and utility lines are to be sited in a manner that results in the least possible adverse impact. The County's policy is to try to locate utility lines and utilities on Class 5 priority lands—lands that consist primarily of public lands. It is also the County's policy that any proposal to utilize other priority lands must demonstrate a clear need to do so. Contrary to the County's policies, Tri-State's proposed route for the transmission line project is almost entirely on private lands in San Miguel County.

15. The San Miguel County Commissioners also argue that Tri-State's Application seeking approval for overhead installation of the project was and remains inconsistent with the LUC and the master plan. They further argue that other alternatives before the Commission for

consideration, specifically their proposed compromise (discussion *infra*), are more consistent with the LUC and the master plan.

16. Staff asserts that any conclusion by the County that overhead installation is not consistent with the LUC and the master plan is not supported by the evidence in this proceeding. According to Staff, the master plan is nothing more than the official policy statement of the County's Planning Commission for the development of unincorporated territory. Staff contends that the master plan states the County's preference that utility transmission lines be placed on public lands absent a clear need to utilize higher priority lands. Staff concludes that nothing in the master plan references the undergrounding of transmission lines.

17. Staff contends that the project does conform with the master plan because it will use an existing corridor that is also environmentally preferred in the FEIS. Staff points out that the FEIS concludes that the Norwood-Sunshine alternative would not directly conflict with any of the County's scenic goals or objectives. Furthermore, Staff argues that the Commission is not bound to enforce the master plan. Staff contends that the Commission has authority to order the overhead installation of the transmission line across private lands after a public hearing, so long as such construction is found to be reasonable even if it conflicts with an adopted master plan.

18. According to Staff, the LUC does not mandate that every transmission line be constructed as an underground line. Instead, the LUC requires that construction of an above-ground transmission line not unreasonably impact the physical, economic, or social environment of San Miguel County or this region, including agricultural land and water, and mitigate adverse impacts to San Miguel County. Staff contends that the LUC provides that the benefits of the project must outweigh the unavoidable and immitigable impacts upon the physical, social, and

economic environment of San Miguel County. Staff argues that by use of the compact pole design for an overhead transmission line, and by implementation of the federally imposed mitigation plan, the project is in compliance with the provisions of the LUC.

1. Analysis

19. The County's interpretation of its own LUC and master plan is entitled to some weight. We find, however, that an interpretation that considers only technical feasibility of a project and not economic feasibility is not reasonable. The most reasonable application of the County's LUC and master plan would consider both elements when deciding whether underground construction for a transmission line should be required. As such, we conclude that San Miguel County's LUC and master plan could reasonably be interpreted to prefer but not preclude transmission lines from being installed overhead. In any event, we note that § 29-20-108(5)(d), C.R.S., simply requires that the Commission consider whether a proposed facility is inconsistent with a county's land use code and master plan as one factor in balancing local government interests against the statewide interest in construction of major electrical facilities. The Commission is not bound by the provisions of the County's LUC and master plan.

C. § 29-20-108(5)(d)(III), C.R.S., Whether the proposed facility would exacerbate a natural hazard.

20. The record contains no evidence regarding this factor. The San Miguel County Commissioners contend that improper construction practices might exacerbate a natural hazard and thus, this Commission must uphold the Special Use Permit condition requiring that Tri-State submit a construction plan to the County for review and approval. The record does not contain any evidence that Tri-State uses or will use improper construction practices. Furthermore, the record does not establish that the existing 69 kV transmission line exacerbates a natural hazard. Therefore, we conclude that the 115 kV transmission line would not exacerbate a natural hazard

inasmuch as the 115 kV transmission line will be located on the same corridor in San Miguel County as the existing 69 kV transmission line.

D. § 29-20-108(5)(d)(IV), C.R.S., Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards.

21. Tri-State contends that construction of the project is necessary for SMPA to provide reliable service to its customers and to ensure adequate capacity for the future growth of the region. According to Tri-State, an outage of the Hesperus transmission line, the primary service to Telluride, could threaten the health and safety of Telluride residents. For example, the peak demand for the Telluride area reached 22 MWs in the winter of 1999/2000 and is projected to grow to a level of 35 MWs by 2020. The Hesperus transmission line can deliver up to 32 MW of power. However, the existing 69 kV Nucla-Sunshine transmission line can deliver only 13 MWs of power. Thus, in the event of an outage on the Hesperus transmission line, SMPA could not provide necessary power to the Telluride area at many times of the year, especially at peak load times.

22. San Miguel County Commissioners and the Homeowners both assert that whether constructed overhead or underground there is no significant difference in terms of utility engineering standards, supply adequacy, system reliability, or public safety standards. Both parties contend that an underground transmission line would have less exposure to natural hazards such as wildfires, avalanches, and lightning. The Homeowners argue that cost concerns and Tri-State's policy regarding underground construction of transmission lines (*i.e.*, that Tri-State will not construct transmission lines underground unless interested persons bear the additional costs) do not constitute engineering standards.

23. Staff contends that the applicable engineering standards to be applied here are the least cost planning and the N-1 single outage contingency standards. Staff further contends that least cost planning does not mean lowest cost; instead, a higher cost alternative can be selected so long as it is just and reasonable. For example, a cost increase of 5 percent for a compact pole design is acceptable; a cost increase of ten times for an underground design is not acceptable. Construction, either overhead or underground, will alleviate the risks of an extended power outage on the Hesperus transmission line and meet the N-1 (single contingency criteria), according to Staff.

24. Staff argues that public safety is better served in the event of an outage on an overhead transmission line because repair times for overhead transmission lines are significantly shorter than for underground transmission lines.

1. Analysis

25. We agree that a 115 kV transmission line whether installed overhead or underground meets the same engineering and reliability standards. We conclude that construction of this line will eliminate the existing public safety hazard posed when an outage occurs on the Hesperus transmission line. The testimony establishes that the existing 69 kV line is inadequate to provide reliable backup power to the Telluride area in the event of an outage on the Hesperus transmission line. Moreover, the testimony establishes that the existing 69 kV line experiences outages from lightning primarily because it does not have a static wire. We conclude that if the transmission line is constructed overhead as proposed with a static wire, our concern regarding outages caused by lightning is significantly reduced. Any concern we might have for outages caused by other natural hazards to an overhead line is offset by the length of time

required to repair an underground line—both occurrences, we believe, have a low probability of happening.

E. § 29-20-108(5)(d)(V), C.R.S., The relative merit of any reasonably available, economically feasible alternatives proposed by the public utility, the power authority, or the local government.

26. The San Miguel County Commissioners proposed an alternative (the proposed compromise) memorialized in Resolution #2003-40. This alternative reduces the number of miles to be undergrounded from the 23 miles required by Resolution #2002-12 to 10 miles, by eliminating the requirement to underground across Beaver and Wrights Mesas. This alternative also involves sharing any additional costs associated with undergrounding across Specie, Wilson, and Sunshine Mesas: If the full avoided costs for an overhead line (costs of construction, rights-of-way acquisition, and diminution of property values) are less than the undergrounding costs, the remainder cost would be shared by these parties: 1) affected individual property owners; 2) Tri-State; and 3) SMPA's members who own property in the Telluride R-1 School District. Each party's share would be based on the value of the benefits received by the party. According to the San Miguel County Commissioners, its proposed methodology for allocating the remainder underground costs will require an economic analysis of the monetary benefits to be received by those participating in this cost sharing.

27. The San Miguel County Commissioners contend that the alternative proposed by Resolution #2003-40 is an economically feasible and reasonably available alternative that does not unreasonably impair Tri-State's ability to provide safe, reliable, and economical power to the public.

28. The Homeowners assert that the Commission has the authority under this factor to adopt alternatives such as the one proposed by the County in Resolution #2003-40. The

Homeowners contend that this alternative satisfies the three criteria of this factor: reasonably available, economically feasible, and proposed by San Miguel County, the governmental authority most affected by the transmission line.

29. Tri-State argues that any collateral benefits (*e.g.*, reduction in transmission system losses, increasing power transfer capability in the Four Corners area) that Tri-State would receive from the project does not make underground construction feasible. According to Tri-State: As a public utility, Tri-State uses least-cost planning in its resource development to meet desired reliability and load-serving objectives. Any benefits beyond load-serving and reliability are incidental to the project and not the primary justification for the project. Under the concepts of mutuality and least-cost planning, all Tri-State members share in all costs and benefits of activities undertaken by Tri-State on their behalf. So, for example, even Tri-State members that do not directly or indirectly benefit from the new transmission line will pay for the project under these concepts. There is no basis for requiring Tri-State's members to pay additional amounts for collateral benefits of a new undergrounded line.

30. According to Staff, the all overhead compact pole design proposed by Tri-State and the Resolution #2002-12 alternative that requires portions to be installed underground are reasonably available from a technical perspective. Staff contends that it is impossible based on the record before the Commission to precisely determine the actual cost difference between these two alternatives. Staff further contends that without more accurate cost information, it is premature to conclude that the underground alternative is economically feasible.

1. Analysis

31. There are three alternatives offered to the Commission for consideration: 1) the Tri-State alternative, which proposes that the entire line be installed overhead using a compact

pole design; 2) the Resolution #2002-12 alternative, which requires that the line be installed underground across portions of Beaver, Specie, Sunshine, Wilson, and Wrights Mesas, and requires the overhead portions of the line to be installed using a compact pole design; and 3) the Resolution #2003-40 alternative, which proposes that the line be installed underground across portions of Specie, Sunshine, and Wilson Mesas, and requires the portions of the line to be installed overhead to use a compact pole design. The Commission finds that all three of these alternatives are available (*i.e.*, can be constructed) and proposed by an appropriate entity.

32. Regarding economic feasibility, the Commission agrees with Staff that this record does not contain adequate information to determine the cost difference between the alternatives. Costs for rights-of-way acquisition and diminution of the remainder are not adequately estimated in this record, and testimony suggests that these costs may be significant. Parties also raised concerns over Tri-State's estimates for material and installation. Tri-State, as should have been expected, has refined these estimates as decisions have been made that refine the location of the proposed transmission line. We expect Tri-State will further refine the material and installation estimates for the project.

33. The Commission concludes that it is reasonable for Tri-State to pay any cost associated with material, installation, rights-of-way acquisition, and diminution of the remainder for the lowest cost alternative. We do not agree with the San Miguel County Commissioners that Tri-State should pay all costs for the transmission line project as required by Resolution #2002-12, unless this alternative is the lowest cost alternative. In addition, we also disagree that Tri-State should pay additional costs associated with the collateral benefits of a new undergrounded line as proposed by Resolution #2003-40. Notably, the collateral benefits are the same for all three alternatives. Tri-State's customers would not receive additional benefits if portions of the

line are installed underground instead of overhead. We understand, based on Tri-State's testimony regarding cost sharing, that all of the cost for the lowest cost alternative will be allocated to all of its members. Therefore, it is fair and reasonable that if costs are shared, then benefits should be shared. We conclude that any cost savings that may result from collateral benefits of this project should be shared by all of Tri-State's members. In short, there is no reasonable basis for requiring Tri-State to pay additional costs for undergrounding based on collateral benefits of a new transmission line.

F. § 29-20-108(5)(d)(VI), C.R.S., The impact that the local government action would have on the customers of the public utility or power authority who reside within and without the boundaries of the jurisdiction of the local government.

34. Tri-State states that if the conditions contained in Resolution #2002-12 are not overturned, the project will not be built. Both Staff and Tri-State contend that the impact on the residents of San Miguel County and Montrose County of not building the project is less reliable service, including the possibility of rotating blackouts during an outage of the Hesperus transmission line.

35. In the event the 115 kV transmission line project is not built, Staff asserts that SMPA's customers will suffer adverse impacts—especially the cost of rebuilding the 69 kV transmission line. Staff estimates that this cost would be between \$92 and \$115 per customer on an annual basis for 20 years.

36. The Montrose County Commissioners raise concerns regarding the reliability of electric service to the citizens of Montrose County if the project is not built. The rate impacts from any additional costs associated with the conditions placed by San Miguel County on its Special Use Permit also concern the Montrose County Commissioners.

37. The San Miguel County Commissioners contend that the visual impact of an all overhead transmission line is unacceptable to the residents of the County. The San Miguel County Commissioners further contend that even if the impact of installing portions of the line underground is an electric rate increase, the local community has clearly indicated it is willing to pay a share of the additional costs, if any, of undergrounding.

38. According to the Homeowners, the Resolution #2003-40 alternative would have little or no impact on rates paid by Tri-State's customers. The Homeowners assert that the County's original undergrounding requirement (Resolution #2002-12) would have increased residential rates for Tri-State's customers by only \$3.80 per year. They further contend that the proposed compromise to reduce the length of line to be buried from 23 to 10 miles would diminish this rate impact to approximately \$1.65 per year.

1. Analysis

39. We conclude that the local government action (Resolution #2002-12) likely has a rate impact on Tri-State's customers and may adversely affect system reliability. If Tri-State decides that construction of a 115 kV transmission line is not feasible due to excessive costs, the record indicates that the existing 69 kV line is not capable of providing adequate backup service in the event of an outage of the Hesperus transmission line. The record also suggests that the existing 69 kV line will require rebuild in the near future because it is more than 50 years old and near the end of its expected life. The costs to replace the existing 69 kV transmission line would be paid entirely by SMPA ratepayers. The record does not indicate if a rebuilt 69 kV transmission line would have adequate capacity to provide backup service for an outage of the Hesperus transmission line or to serve additional load growth in the area. Regarding the Resolution #2002-12 requirement that portions of the proposed line be installed underground, the

record is not clear if there would be more of a rate impact on Tri-State's customers than the impact of installing the line entirely overhead using the compact pole design, when costs for rights-of-way acquisition and diminution of values are included. No party suggested that the other conditions placed by the San Miguel County Commissioners on the Special Use Permit would have direct impact on Tri-State's customers.

G. § 29-20-108(5)(d)(VII), C.R.S., The basis for the local government's decision to deny the application or impose additional conditions to the application.

40. According to the San Miguel County Commissioners, one of the bases for Resolution #2002-12 conditioning the Special Use Permit to require that portions of the line be installed underground at Tri-State's expense was to achieve compliance with the LUC and the master plan. Another basis for this Resolution #2002-12 condition was the recommendation in the FEIS--the project went through an extensive federal National Environmental Policy Act of 1969 process--that the Environmentally Preferred Alternative was to underground the line across the mesas. The San Miguel County Commissioners contend that the basis for proposing, in Resolution #2003-40, to reduce the number of miles required to be installed underground and share any additional costs with Tri-State and private property owners is the owners' willingness to contribute a portion of the additional costs associated with undergrounding.

41. Regarding the requirement that the maximum pole height not exceed 60 feet and that Tri-State submit information for review and approval if alternative pole designs must be used, the County contends that this requirement reflects an expectation that Tri-State would adhere to a height limitation that Tri-State itself suggested is reasonable, and to require Tri-State to explain to the County why it should be relieved from complying with that height limitation.

The County contends that this requirement will not unreasonably impair Tri-State's ability to provide safe, reliable, and economical service.

42. The San Miguel County Commissioners suggest that the requirement for Tri-State to submit a construction plan for review and approval mirrors the federal requirements for public lands. According to the County, this requirement will not unreasonably impair Tri-State's ability to provide safe, reliable, and economical service.

43. Regarding the requirement that all of Tri-State's representations made at public hearings be conditions of approval of the Special Use Permit, the County argues that there are official records of these public hearings that can be referenced if necessary to confirm these representations. Therefore, this requirement does not rise to the level that would unreasonably impair Tri-State's ability to provide safe, reliable, and economical service to the public.

1. Analysis

44. The Commission understands that the San Miguel County Commissioners balanced the local interests of their constituents in deciding to impose these conditions on the Special Use Permit. We note that there are three San Miguel County Commissioners and that one commissioner did not vote in favor of Resolution #2002-12.¹ Additionally, we note that, pursuant to § 29-20-108(5), C.R.S., we are charged with balancing both local and statewide interests in this case.

¹ The same San Miguel County Commissioner refused to vote in favor of Resolution #2003-40.

H. § 29-20-108(5)(d)(VIII), C.R.S., The impact the proposed facility would have on residents within the local government's jurisdiction including, in the case of a right of way in which facilities have been placed underground, whether those residents have already paid to place such facilities underground, and if so, shall give strong consideration to that fact.

45. The San Miguel County Commissioners and the Homeowners assert that the proposed facility would have an adverse and unacceptable impact on the scenic quality of the Telluride region. According to the parties: The County's visual resources are critical to its tourist economy. The proposed transmission line would cross the mesas at points offering some of the most spectacular scenery in the state (*e.g.*, panoramic views of Wilson Peak, El Diente, Dolores Peak, Lone Cone, and the Lone Cone Sheep Mountains). In the environmental review process, the involved federal agencies recognized that the quality of the scenery in San Miguel County attracts many tourists and is a prime asset for the Telluride tourism economy. The views on the mesas are enjoyed not only by the landowners there, but by the general public as well. For example, the mesas are the gateway to various recreational attractions such as wilderness areas, mountains, campgrounds, and hiking trails. Both visitors and residents of the County place a high value on protecting the area's scenery. At the public hearing, numerous residents emphasized the importance of protecting the scenic quality of the mesas. Additionally, local officials pointed out that the County has devoted significant resources to preserving its scenic resources. Tri-State's proposed line, even with a compact pole design, would be significantly more conspicuous than the existing line. The line would comprise substantially more and larger and taller poles, and larger conductors. As such, the proposed line poses a significant threat to the County's visual resources.

46. Tri-State contends that the proposed facility would improve reliability of service and increase capacity for load growth. Tri-State further contends that the visual impact of the

proposed line is moderate and affects only a limited number of private landowners on the mesas. According to Tri-State: Visual impacts of its proposed compact pole design will be limited geographically and are only incremental as compared to the present impacts of the existing 69 kV transmission line. Tri-State's witness on visual impacts of the proposed line, Christine Keller, is more credible than witnesses for the County or the Homeowners, given her long experience in such issues and given her involvement in this specific project. Notably, Ms. Keller's assessment of visual impacts was based, in part, upon the multi-year EIS process. Ms. Keller's testimony indicates that the project will not result in widespread, material visual impact. As such, Tri-State disputes the County's and the Homeowners' contention that the visual impact of the project will be harmful to the region and its tourist economy.

47. Staff argues that the proposed facility is not likely to impact tourism in the region (*e.g.*, ski, recreation) and not likely to significantly impact recreational opportunities on the mesas themselves any more than the existing 69 kV transmission line.

1. Analysis

48. We do not consider the criteria regarding payment made to place facilities underground relevant since the residents have not paid to place any portion of the existing 69 kV transmission line underground. We agree with the County and the Homeowners that the areas in which the proposed transmission line will be installed are exceptionally scenic. We also agree that the transmission line will have a greater visual impact than the existing 69 kV transmission line. In fact, the proposed facility will have larger, taller structures and larger conductors than the existing 69 kV line. We acknowledge that the mesas offer limited opportunities to locate structures and conductors to eliminate or reduce the visual impact of an overhead line. Additionally, we acknowledge that the local community is greatly concerned with the potential

visual impacts of a new overhead line. The public hearing in Telluride, and the County's and Homeowners' testimony have impressed upon us the importance of this issue to the local community. However, we must also consider the ramifications on the local community itself of mandating a substantially higher cost facility and the real possibility that Tri-State would not undertake the project. As noted above, the public health, safety, and welfare of the Telluride region require new transmission facilities. We also point out that the County's position, that Tri-State pay the additional costs of undergrounding, would require ratepayers outside the region--indeed outside the state--to pay added costs for facilities that do not directly (or even indirectly) benefit them. Moreover, the benefits associated with any additional costs of undergrounding itself (*e.g.*, eliminating visual impacts of an overhead line) accrue mainly (if not entirely) to the local region, and not to Tri-State customers outside that region. For the mesas identified in Resolution #2003-40, this decision provides the local community, including the County and the Homeowners, an opportunity to have the line undergrounded if they are willing to pay the additional costs, if its cost is less than the cost of the overhead line, we believe this best balances the conflicting interests and mandates undergrounding.

I. § 29-20-108(5)(d)(IX), C.R.S., The safety of residents within and without the boundaries of the jurisdiction of the local government.

49. Tri-State contends that if the project is built, current health and safety concerns will be alleviated. Staff asserts that, absent this transmission line upgrade, the reliability of electric supply for those served off the existing 69 kV transmission line will only get worse. Staff further asserts that public safety will be placed unnecessarily at risk if the existing transmission line is not upgraded.

50. The record indicates that many safety concerns exist if the line is not upgraded. The Commission notes that safety concerns as related to reliability would be addressed by all three alternatives.

J. Tri-State's Application

51. Tri-State requests that the Commission reverse the following conditions in Resolution #2002-12:

that the transmission line be installed and placed underground across those portions of Beaver, Specie, Wilson, and Sunshine Mesas as identified in the November 2001 FEIS Environmentally Preferred Alternative; and

that the transmission line be placed underground within Norwood Gardens, the Fitts Hillside Subdivision and those areas on Wrights Mesa identified in Section 3.10 Visual Resources in the FEIS where the proposed transmission line is assessed as having moderate to potential high visual impacts.

52. The record establishes that the cost for material and installation of the transmission line as conditioned by Resolution #2002-12 would be significantly greater than the cost for material and installation of an all overhead transmission line using a compact pole design.

53. We conclude that it would not be fair or reasonable for Tri-State to pay those increased costs for undergrounding. Tri-State testified that all of its costs are recovered through rates paid, not only by SMPA customers, but also by rates paid by all of its customers in Colorado and three other states. Treatment of the costs for this project should be consistent with the treatment of costs for other Tri-State transmission line projects.

54. The Commission also finds that it would not be fair or reasonable for Tri-State to pay a portion, as suggested by Resolution #2003-40, of increased costs for undergrounding. Because Tri-State's costs for a project are shared by all of its customers, it is only fair that any

cost savings realized from that project also be shared by all of its customers. Further, we note that the collateral benefits of a new transmission line would be the same for all three alternatives proposed by the parties.

55. For these reasons, we reverse the Resolution #2002-12 requirement that portions of the transmission line be installed underground and that Tri-State pay all costs.

56. Testimony from San Miguel County Commissioners, the Homeowners, and the public (during the public hearing held in Telluride) indicates a strong preference that the transmission line be installed underground across the mesas.

57. We agree with Staff that the Commission cannot determine from the present record what the actual cost difference is for installing this line underground versus installing it overhead across the mesas. Tri-State acknowledges that the total cost for the project includes not only material and installation costs, but also the costs for rights-of-way acquisition and for diminution of the remainder. The record suggests that the costs for rights-of-way and diminution of property values on the mesas may be significant. Accurate estimates for these costs may establish that undergrounding the line across a particular mesa is economical. The record indicates that the San Miguel County Commissioners no longer advocate that the line be installed underground across Wrights and Beaver Mesas as required by Resolution #2002-12. According to its statement of position, the Homeowners agree.

58. Therefore, the Commission directs Tri-State to obtain accurate total cost estimates including amounts for all necessary rights-of-way and any diminution of the remainder for: 1) installation of the transmission line underground; and 2) installation of the transmission line

overhead across each portion of Specie, Wilson, and Sunshine Mesas as identified in the November 2001 FEIS Environmentally Preferred Alternative.

59. Doubts have been raised over the accuracy of cost estimates previously provided by Tri-State. Tri-State has refined these estimates as better information on the location of the transmission line developed. We would expect further refinements of these estimates including, as now appropriate, estimates for rights-of-way acquisition and diminution of property values. Testimony by the Homeowners establishes that experts may derive different assessments for the values of rights-of-way easements and diminution of the remainder. Affected landowners, the County, and the Homeowners may provide input to Tri-State regarding estimated costs for both overhead and underground installation of the transmission line across the specified mesas. Understanding that some costs may be in dispute, the Commission encourages the parties to mediate or arbitrate disputes, if necessary, to establish which cost estimates are most reasonable. Tri-State shall provide individual estimates of total cost for installation of the transmission line both underground and overhead across those portions of Specie, Wilson, and Sunshine Mesas as identified in the November 2001 FEIS Environmentally Preferred Alternative to the Commission and all parties to this case by September 1, 2004. These estimates shall be filed in this docket and the filing shall inform the Commission whether the County and the Homeowners agree with these estimates. Any party may request that the Commission resolve any remaining disputes regarding these cost estimates by filing an appropriate pleading with the Commission on or before September 10, 2004.

60. To ensure that the most economically feasible alternative is constructed, we require Tri-State to install the transmission line underground across Specie, Wilson, or Sunshine Mesas as identified in the November 2001 FEIS Environmentally Preferred Alternative where

the total cost estimate for underground installation across a mesa is the same or lower than the total cost estimate for overhead installation.

61. Finally, to alleviate concerns raised by the Homeowners that Tri-State's undergrounding policy would allow Tri-State to decline underground installation even if the landowner agrees to pay the additional cost, the Commission directs Tri-State to install portions of the line underground provided that interested parties pay the additional cost to underground (assuming the total cost estimate for underground installation is higher than the total cost estimate for overhead installation across Specie, Wilson, or Sunshine Mesas as identified in the November 2001 FEIS Environmentally Preferred Alternative). Tri-State shall not be required to contribute any more towards installation costs than the amount estimated to be incurred had the transmission line been installed overhead. The Commission expects interested parties to enter into a payment agreement with Tri-State for the additional cost. If such a payment agreement cannot be reached by December 31, 2004, we direct Tri-State to proceed with overhead installation of that portion of the transmission line.

62. Tri-State requests relief from the following condition in Resolution #2002-12:

that Tri-State's proposed compact pole design, with a maximum pole height not to exceed 60 feet, shall be used for those sections of the transmission line that are not placed underground, except in those specific locations where it is demonstrated to the reasonable satisfaction of the county planning director that the installation of such compact poles is unfeasible, in such locations alternative pole designs, such as H-frame pole structures may be employed, subject to county planning director review and approval.

63. Tri-State testified that it has not encountered similar requirements for ongoing review and approval of engineering design in other counties in which it conducts business. Tri-State also objects to the 60-foot pole height limitation.

64. The San Miguel County Commissioners explain that Tri-State is required to obtain a development permit authorizing specific construction activities for the project. The County asserts that this requirement is merely an expectation that Tri-State adhere to a height limitation that Tri-State itself suggested is reasonable, and to explain to the County why Tri-State should be relieved of that height limitation. The County contends that Tri-State has not demonstrated that this requirement is onerous or that it unreasonably impairs Tri-State's ability to provide safe, reliable, and economical service to the public.

65. We conclude that this requirement may impair Tri-State's ability to provide safe service to the public. Tri-State must construct the facility according to acceptable engineering standards to ensure the safety of the public. The 60-foot maximum height requirement and, in particular, the requirement that the County planning director approve any alternative pole designs where required for specific locations may compromise the ability for the design of this line to meet accepted engineering standards. We agree with the San Miguel County Commissioners that it is reasonable for Tri-State to provide information that identifies the location and the reasons why the compact pole design will not be used (*e.g.*, where poles will exceed the 60-foot height limitation). We reverse the portion of Resolution #2002-12 that the County planning director should review and approve any alternative pole designs, since Tri-State will diverge from the compact pole design only where accepted engineering standards require such divergence.

66. Therefore, we modify this Resolution #2002-12 condition as follows:

that Tri-State's proposed compact pole design, with a maximum pole height not to exceed 60 feet, shall be used for those sections of the transmission line that are placed overhead except in locations where the installation of such compact poles is unfeasible, according to accepted engineering standards. In such locations alternative pole designs, such as H-frame pole structures may be employed. Tri-State shall provide San Miguel County and the Colorado Public Utilities

Commission with a list identifying where the compact pole design will not be used and an explanation as to the reasons why.

67. Tri-State also requests relief from the following condition in Resolution #2002-12:

that the applicant prepare and submit a Construction Plan identifying the specific construction and activities required to implement the mitigation, environmental protection measures and best management practices for review and approval by the county planning director prior to the County's authorizing any transmission line system construction activities or issuing any Development Permits for this project (the review and approval of this Construction Plan should be coordinated with the Forest Service and BLM).

68. The San Miguel County Commissioners represent that this condition would extend to private lands the same requirement that Tri-State has to meet for public lands. The San Miguel County Commissioners contend that Tri-State has not demonstrated that this requirement unreasonably impairs Tri-State's ability to provide safe, reliable, and economical service to the public.

69. The record substantiates that Tri-State has to submit a construction, operation, and maintenance plan for approval to the Bureau of Land Management (BLM) and the United States Forest Service (Forest Service). We agree with the County that Tri-State has not demonstrated that this requirement would result in unreasonable impairment for Tri-State. We clarify that the Commission expects the County requirement, as represented by the San Miguel County Commissioners in their statement of position, to impose no more requirements on Tri-State than imposed by the BLM and the Forest Service with respect to those portions of the line located on public lands. We require that Tri-State submit a Construction Plan to San Miguel County at the same time as it submits construction, operation, and maintenance plans to the BLM and the Forest Service. If the County fails to approve the Construction Plan within five business days of when the BLM and the Forest Service issue approval of their construction, operation, and

maintenance plans, then Tri-State's Construction Plan for San Miguel County shall be deemed approved.

70. Finally, Tri-State requests relief from the following condition in Resolution #2002-12:

that all representations made by the applicants presented at public meetings or included in the application shall be conditions of approval except to the extent that any such representations are inconsistent or in conflict with the terms and conditions of approval set forth in this resolution.

71. Tri-State testified and we agree that this requirement is impermissibly vague. If the County expected Tri-State to comply with specific directives in constructing the project, it was obligated to specify those directives. Tri-State should not be expected to speculate about what actions are required by the County. We believe this condition unreasonably impairs Tri-State's ability to provide safe, reliable, and economical service to the public because the unknown requirements may unreasonably affect the safety, reliability, or economics of the project. The Commission eliminates this condition.

K. Administrative Notice of Resolution #2003-40

72. In its statement of position, the County requested that we take administrative notice of San Miguel County Resolution #2003-40 (Attachment A to statement of position). Tri-State filed its objection to this request on December 17, 2003. The County and the Homeowners filed their responses to Tri-State's objection on December 19, 2003. Tri-State argues that it is improper to take notice of the new Resolution because the Resolution constitutes new evidence offered after the close of the evidentiary hearing in this case. Tri-State suggests that it has not had sufficient opportunity to examine this new evidence, and, therefore, taking notice of the Resolution would violate its rights to due process.

73. We grant the County's request. Notably, Resolution #2003-40 merely formalizes the positions taken by the County in its prefiled testimony in this proceeding. The Resolution simply restates the proposed compromise offered in testimony by County Commissioners Goodtimes and Fischer. As such, the Resolution states no new positions by the County, and Tri-State has had adequate opportunity to examine and respond to the positions stated in the Resolution.

L. Other Motions

74. We previously ruled upon a number of motions by the parties at the Commissioners' Deliberations Meeting on October 17, 2003, and the parties were notified of those rulings at the hearing on this matter. We now memorialize those rulings here:

a) **Motion for Leave to File Supplemental Testimony**-- Tri-State's Motion for leave to File Supplemental Testimony of Stephen A. Fausett filed on October 10, 2003 is granted with oral rebuttal of that testimony allowed at the hearing.

b) **Motion to Strike Cross-Answer Testimony of Thomas E. Feiler**--Tri-State's Motion to Strike Cross-Answer Testimony of Thomas E. Feiler on Behalf of the Coalition of Concerned San Miguel County Homeowners filed on October 10, 2003 is denied with oral rebuttal of that testimony allowed at the hearing.

c) **Motion to Remand**--On October 10, 2003, the County and the Homeowners filed their Motion to Remand this Matter to the County. Tri-State and Staff filed responses opposing the motion. In essence, the motion argues that Tri-State, in this Commission proceeding to review the County's action on Tri-State's proposed project, has submitted substantial information and evidence which was not provided to the County as part of its review process. The parties

argue that Tri-State's failure to provide this information during the County proceedings subverts the orderly and appropriate review process before the County. According to the motion, § 29-20-108, C.R.S., which authorizes this proceeding before the Commission, establishes that the Commission's review is an "appeal" of the County's action. And, as an appeal, this proceeding is limited to a review of the information presented to the County in its review. The motion requests that we remand this matter to the County to allow it to make a new determination based upon all the analyses and information that Tri-State has presented to the Commission. We deny the motion.

d) As Tri-State and Staff point out in their responses, although § 29-20-108(5), C.R.S., refers to these kind of proceedings as "appeals" of local government actions, the statute clearly indicates that the Commission is not limited to reviewing the record before the local government body. The statute (§ 29-20-108(5)(b), C.R.S.) provides that, in these appeals, the Commission is to conduct a "formal evidentiary hearing" "in accordance with the procedural requirements of § 40-6-109...." Section 40-6-109, C.R.S., provides for full evidentiary hearings before the Commission. In addition, we observe that the new information presented by Tri-State here is largely a refinement of information presented to the County in its review. Therefore, the County was presented with a full and fair opportunity to consider Tri-State's proposals before the filing of this action with the Commission. To the extent Tri-State has presented new information in this proceeding, the County, as a party to this case, has had a full opportunity to respond to that information.

III. ORDER**A. The Commission Orders That:**

1. The Application by Tri-State Generation and Transmission Association, Inc., for a determination under § 29-20-108(5), C.R.S., that the conditions imposed by the Board of County Commissioners of San Miguel County, Colorado on Tri-State Generation and Transmission Association, Inc.'s proposed Nucla-Telluride 115 kV transmission line project will unreasonably impair Tri-State Generation and Transmission Association, Inc.'s ability to provide safe, reliable, and economical service to the public is granted consistent with the above discussion.

2. The conditions in San Miguel County Resolution #2002-12 that require the transmission line be installed underground across those portions of Beaver, Specie, Wilson, and Sunshine Mesas as identified in the November 2001 Final Environmental Impact Statement Environmentally Preferred Alternative and within Norwood Gardens, the Fitts Hillside Subdivision and those areas on Wrights Mesa identified in Section 3.10 Visual Resources in the Final Environmental Impact Statement and that Tri-State Generation and Transmission Association, Inc., pay all costs are reversed.

3. Tri-State Generation and Transmission Association, Inc., shall obtain accurate total cost estimates including amounts for all necessary rights-of-way acquisition and any diminution of property values for: 1) installation of the transmission line underground; and 2) installation of the transmission line overhead across each portion of Specie, Wilson, and Sunshine Mesas as identified in the November 2001 Final Environmental Impact Statement Environmentally Preferred Alternative.

4. Tri-State Generation and Transmission Association, Inc., shall provide individual estimates of total cost for installation of the transmission line both underground and overhead

across those portions of Specie, Wilson, and Sunshine Mesas² to the Commission and all parties to this case by September 1, 2004. These estimates shall be filed in this docket and the filing shall inform the Commission of whether San Miguel County and the affected landowners agree with the estimates. Any party may request that the Commission resolve any remaining disputes regarding these cost estimates by filing an appropriate pleading with the Commission on or before September 10, 2004.

5. Tri-State Generation and Transmission Association, Inc., shall install the transmission line underground across Specie, Wilson, or Sunshine Mesas as identified in the November 2001 Final Environmental Impact Statement Environmentally Preferred Alternative where the total cost estimate for underground installation across a mesa is the same or lower than the total cost estimate for overhead installation.

6. Tri-State Generation and Transmission Association, Inc., shall install any portion of the transmission line underground provided that interested parties pay the additional cost to underground that portion, if the total cost estimate for underground installation is higher than the total cost estimate for overhead installation across Specie, Wilson, or Sunshine Mesas as identified in the November 2001 Final Environmental Impact Statement Environmentally Preferred Alternative. Tri-State Generation and Transmission Association, Inc., shall not be required to contribute any more towards the installation cost than the amount that would be incurred had the transmission line been installed overhead. Interested parties shall enter into a payment agreement with Tri-State Generation and Transmission Association, Inc., for the additional cost required to be paid under this Order. If such a payment agreement cannot be

² The cost estimates shall be performed separately for each of the three mesas.

reached by December 31, 2004, Tri-State Generation and Transmission Association, Inc., shall proceed with overhead installation of that portion of the transmission line.

7. The condition in San Miguel County Resolution #2002-12 that limits pole heights to 60 feet and requires Tri-State Generation and Transmission Association, Inc., to obtain specific approval to use alternative pole design from the San Miguel County planning director is modified as follows:

that Tri-State's proposed compact pole design, with a maximum pole height not to exceed 60 feet, shall be used for those sections of the transmission line that are placed overhead except in locations where the installation of such compact poles is unfeasible, according to accepted engineering standards. In such locations alternative pole designs, such as H-frame pole structures may be employed. Tri-State shall provide San Miguel County and the Colorado Public Utilities Commission with a list identifying where the compact pole design will not be used and an explanation as to the reasons why.

8. The condition in San Miguel County Resolution #2002-12 that requires Tri-State Generation and Transmission Association, Inc., to submit a Construction Plan for review and approval is clarified. Tri-State Generation and Transmission Association, Inc., shall submit a Construction Plan to San Miguel County at the same time as it submits construction, operation, and maintenance plans to the Bureau of Land Management and the United States Forest Service. If San Miguel County fails to approve the Construction Plan within five business days of when the Bureau of Land Management and the United States Forest Service issue approval of their construction, operation, and maintenance plans, whichever is later, then Tri-State Generation and Transmission Association, Inc.'s Construction Plan for San Miguel County is deemed approved.

9. The following condition in San Miguel County Resolution #2002-12 is eliminated:

that all representations made by the applicants presented at public meetings or included in the application shall be conditions of approval except to the extent that any such representations are inconsistent or in conflict with the terms and conditions of approval set forth in this resolution.

10. The Board of County Commissioners of San Miguel County's request that we take administrative notice of San Miguel County Resolution #2003-40 (Attachment A to the statement of position) is granted.

11. Tri-State Generation and Transmission Association, Inc.'s Motion for Leave to File Supplemental Testimony of Stephen A. Fausett filed on October 10, 2003 is granted with oral rebuttal of that testimony allowed at the hearing.

12. Tri-State Generation and Transmission Association, Inc.'s Motion to Strike Cross-Answer Testimony of Thomas E. Feiler on Behalf of the Coalition of Concerned San Miguel County Homeowners filed on October 10, 2003 is denied with oral rebuttal of that testimony allowed at the hearing.

13. The Motion to Remand this Matter to the County filed on October 10, 2003, by the Board of County Commissioners of San Miguel County and the Coalition of Concerned San Miguel County Homeowners is denied.

14. 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 Mailed Date of this Decision.

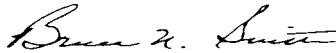
15. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
January 7, 2004.**

(SEAL)



ATTEST: A TRUE COPY



Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners