

Decision No. C11-0492

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-526E

IN THE MATTER OF THE PROPOSED RULES RELATED TO ELECTRIC TRANSMISSION FACILITIES PLANNING, 4 CODE OF COLORADO REGULATIONS 723-3.

**ORDER DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: May 9, 2011
Adopted Date: April 27, 2011

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application for Rehearing, Reargument, or Reconsideration (Application for RRR) filed on April 12, 2011 by Black Hills/Colorado Electric Utility Company, L.P., doing business as Black Hills Energy; Public Service Company of Colorado; and Tri-State Generation and Transmission Association, Inc. (collectively, the Utilities) to Commission Decision No. C11-0318 issued March 23, 2011. On April 22, 2011, the Colorado Independent Energy Association (CIEA) filed a Motion for Waiver of Commission Rule 1308(a) and for Waiver of Response Time to Allow a Response to the Application for RRR (Motion). CIEA also filed a response to the Application for RRR of the Utilities. Being fully advised in the matter and consistent with the discussion below, we address the Application for RRR and the response.

B. CIEA Motion

2. In its Motion, CIEA requests that the Commission waive Rule 4 *Colorado Code of Regulations* 723-1-1308(a), Rules of Practice and Procedure, to enable it to file a response to

the Utilities' Application for RRR. CIEA states that the proposal for rule language made by the Utilities in their Application is a new proposal and, as such, no party has had an opportunity to consider and comment on the new language. CIEA argues that it should be allowed to respond to the Application for RRR for equity reasons. CIEA also requests that response time to its Motion be waived to expedite the Commission's decision.

3. We agree with CIEA that the proposal made in the Utilities' Application was not raised in this rulemaking proceeding prior to their Application filing. Our decision will be better informed by hearing CIEA's comments. Therefore, we waive response time to the Motion, grant CIEA's request to waive Rule 1308(a), and allow CIEA to respond to the Application for RRR.

C. Application for RRR

4. In their Application for RRR, the Utilities state that they believe the proposed rules on transmission planning are workable, but have concluded that there is one aspect of the rules that should be modified. The Utilities assert that the rules should contain more specific language regarding the treatment of confidential third-party data. The information developed for base case reports is prepared through the Colorado Coordinated Planning Group (CCPG) using Western Electricity Coordinating Council (WECC) data along with CCPG additions. The Utilities point out that WECC has a process in place to safeguard this third-party confidential information through its Data/Information Availability Policy, as attached to the Application for RRR.

5. The Utilities agree that the WECC policy allows for this confidential information to be used in regulatory proceedings, but they want to avoid disputes over access to the

information in the future. The Utilities propose that we add the following language to Rule 3627(a):

(IV) A utility may seek confidential or highly confidential treatment for information that may be included in its filing pursuant to Rule 1100. Where the filing includes confidential information that the utility has obtained from the Western Electricity Coordinating Council (“WECC”), a filing utility may first require that a party seeking access to WECC data obtain appropriate authorization from the WECC.

Application for RRR at p. 3.

6. The Utilities assert that this language will enable the Utilities to ensure that they are giving appropriate confidential treatment to the information obtained from WECC and not a lower standard created by the Commission.

7. In its response, CIEA states that it opposes the addition of this new language. CIEA states that it participated at each stage of this proceeding and objects to the new proposal being presented at this late stage. CIEA asserts that this request could have been proposed and discussed by the parties during the course of the rulemaking when all parties had the opportunity to respond and provide comments.

8. CIEA is also concerned that the proposed rule will present a formidable barrier to the parties’ ability to access confidential information which they need to effectively participate in the Commission’s biennial transmission planning proceedings. CIEA submits that it would be appropriate for the utilities involved to obtain whatever authority for parties to review confidential WECC information and make that information available pursuant to the Commission’s confidentiality provisions. Further, CIEA asserts that parties to the Commission’s docket should not be subjected to the requirement to seek further approval to review confidential information beyond that provided for by the Commission’s Rules of Practice and Procedure.

9. We agree with the issues raised by CIEA and therefore deny the Utilities' Application for RRR. The Utilities' concerns are best handled through the provisions of Rule 1100(a)(III). Specifically, when filing a motion for extraordinary protection

The motion shall include a showing that the information for which extraordinary protection is sought is highly confidential; that the protection afforded by the Commission's rules governing confidentiality provide insufficient protection for the highly confidential information; and that, if adopted, the extraordinary protections proposed by the movant will afford sufficient protection for the highly confidential information. The motion shall be accompanied by the specific form of nondisclosure agreement requested by the party.

10. Any party may make such a motion and request the specifics of the nondisclosure agreement. Further, we note that the WECC Data/Information Availability Policy states that "This policy does not supercede (*sic*) Federal, State, or Provincial law, including public disclosure laws." We balance the stakeholders' need for this information with the avoidance of disputes in the future and err on the side of disclosure until specific arguments are made.

D. Adopted Rules

11. We make no changes to the proposed rules adopted from Decision No. C11-0318, and as attached to this Order.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration to Commission Decision No. C11-0318 filed on April 12, 2011 by Black Hills/Colorado Electric Utility Company, L.P., doing business as Black Hills Energy; Public Service Company of Colorado; and Tri-State Generation and Transmission Association, Inc., is denied.

2. The Motion for Waiver of Commission Rule 1308(a) filed by the Colorado Independent Energy Association is granted and response time is waived.

3. The Commission adopts the rules attached to this Order as Attachment A, consistent with the above discussion.

4. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

5. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

6. A copy of the rules adopted by this Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 27, 2011.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JAMES K. TARPEY

MATT BAKER

Commissioners

CHAIRMAN RONALD J. BINZ
RESIGNED EFFECTIVE APRIL 8, 2011.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

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[indicates omission of unaffected rules]

3206. Construction or Extension of Transmission Facilities.

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[indicates omission of unaffected rules]

(h) Any application for a CPCN or any filing made pursuant to paragraph (d) of this rule for a transmission line project shall explain how the proposed project is consistent with the utility's ten-year transmission plan filed with the Commission pursuant to rule 3627. In its CPCN application, the applicant may rely substantively on the information contained in its most recent ten-year transmission plan and the Commission's decision on the review of the plan to support its application.

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[indicates omission of unaffected rules]

3619. – ~~362449.~~ [Reserved]

[new rule]

TRANSMISSION PLANNING

3625. Applicability.

This rule shall apply to all electric utilities in the state of Colorado except municipally owned utilities and cooperative electric associations that have voted to exempt themselves from regulation pursuant to § 40-9.5-103, C.R.S.

3626. Overview and Purpose.

The purpose of these rules is to establish a process to coordinate the planning for additional electric transmission in Colorado. The Commission endorses the concept that planning should be done on a comprehensive, transparent, state-wide basis and should take into account the needs of all stakeholders.

3627. Transmission Planning.

- (a) No later than February 1, 2012 and February 1 of each even year thereafter, each electric utility shall file a ten-year transmission plan and supporting documentation pursuant to this rule.
- (I) Each ten-year transmission plan shall meet the following goals:
- (A) The proposed projects do not negatively impact the system of any other transmission provider or the overall transmission system in the near-term and long-term planning horizons;
- (B) The proposed projects avoid duplication of facilities;
- (C) The proposed projects reflect the development of joint projects where a proposed project services the mutual needs of more than one transmission provider and/or stakeholder; and
- (D) The proposed projects are coordinated with all transmission providers in Colorado.
- (II) The plan shall identify all proposed facilities 100kV or greater.
- (III) If any of the information required to be filed pursuant to this rule is available on a utility or utility maintained website, then it is sufficient for purposes of this rule to include in the filing a web address that provides direct access to that specific piece of information. This address must remain active until the next biennial filing.
- (b) Each ten-year transmission plan shall demonstrate compliance with the following requirements:
- (I) The efficient utilization of the transmission system on a best-cost basis, considering both the short-term and long-term needs of the system. The best-cost is defined as balancing cost, risk and uncertainty and includes proper consideration of societal and environmental concerns, operational and maintenance requirements, consistency with short-term and long-term planning opportunities, and initial construction cost.
- (II) All applicable reliability criteria for selected demand levels over a range of forecast system demands, including summer peak load, winter peak load and reduced load when renewable generation is maximized.
- (III) All legal and regulatory requirements, including renewable energy portfolio standards and resource adequacy requirements.
- (IV) Consistency with applicable transmission planning requirements in the Federal Energy Regulatory Commission (FERC) Order 890.
- (c) Each ten-year transmission plan shall contain the following information:
- (I) The methodology, criteria and assumptions used to develop the transmission plan. This includes the transmission facility rating methodology and established facility ratings; transmission base case data for all applicable power flows, short circuit and transient stability analyses; and utility specific reliability criteria.

- (II) The load forecasts, load forecast reductions arising from net metered distributed generation and utility sponsored energy efficiency programs, and controllable demand side management data including the interruptible demands and direct load control management used to develop the transmission plan.
 - (III) The generation assumptions and data used to develop the transmission plan.
 - (IV) The methodology used to determine system operating limits, transfer capabilities, capacity benefit margin, and transmission reliability margin, with supporting data and corresponding established values.
 - (V) The status of upgrades identified in the transmission plan, as well as changes, additions or deletions in the current plan when compared with the prior plan.
 - (VI) The related studies and reports for each new transmission facility identified in the transmission plan including alternatives considered and the rationale for choosing the preferred alternative. The depth of the studies, reports, and consideration of alternatives shall be commensurate with the nature and timing of the new transmission facility.
 - (VII) The expected in-service date for the facilities identified in the transmission plan and the entities responsible for constructing and financing each facility.
 - (VIII) A summary of stakeholder participation and input and how this input was incorporated in the transmission plan.
- (d) No later than February 1, 2012 and February 1 of each even year thereafter, each utility shall file all economic studies performed pursuant to FERC Order 890 since the last biennial filing. Such studies generally evaluate whether transmission upgrades or other investments can reduce the overall costs of serving native load. These studies are conducted for the purpose of planning for the alleviation of transmission bottlenecks or expanding the transmission system in a manner that can benefit large numbers of customers, such as the evaluation of transmission upgrades or additions necessary to build or acquire new generation resources. The report shall identify who requested the economic study and shall identify all economic studies requested but not performed.
- (e) No later than February 1, 2014 and February 1 of each even year thereafter, each utility shall file conceptual long-range scenarios that look 20 years into the future. These conceptual long-range scenarios shall analyze projected system needs for various credible alternatives, including, at a minimum, the following:
- (I) Reasonably foreseeable future public policy initiatives;
 - (II) Possible retirement of existing generation due to age, environmental regulations or economic considerations;
 - (III) Emerging generation, transmission and demand limiting technologies;
 - (IV) Various load growth projections; and
 - (V) Studies of any scenarios requested by the Commission in the previous biennial review process.
- (f) Amended filings made pursuant to this rule are permitted at any time for good cause shown.

- (g) Government agencies and other stakeholders shall have an opportunity for meaningful participation in the planning process.
- (I) Government agencies include affected federal, state, municipal and county agencies. Other stakeholders include organizations and individuals representing various interests that have indicated a desire to participate in the planning process.
- (II) During the development of the ten-year transmission plan when objectives and needs are being identified, each utility shall actively solicit input from the appropriate government agencies and stakeholders to identify alternative solutions.
- (III) Once a utility has evaluated the alternative solutions and has prepared recommendations for inclusion in its ten-year transmission plan, the utility shall notify the government agencies and stakeholders of these recommendations.
- (IV) The outreach anticipated in subparagraphs (g)(II) and (g)(III) shall occur in a timely manner prior to the filing of the ten-year plans.
- (V) Each utility shall concurrently provide copies of the filings made pursuant to this rule to all government agencies and other stakeholders that participate in the planning process.
- (h) After the ten-year transmission plans have been filed by utilities, the Commission will consolidate the plans in one proceeding. In this proceeding, the Commission will solicit written comments and will hold a workshop(s) and/or a hearing(s) on the plans for the purpose of reviewing and rendering a decision regarding the adequacy of the utilities' filed transmission plans and process used in formulating the plans. The Commission, on its own motion or at the request of others, may request additional supporting information from the utilities or the commenters. The Commission will review the plans and supporting information, the written comments, and the information obtained at the workshop(s) or hearing(s), and will issue a written decision regarding compliance with these rules and the adequacy of the existing and planned transmission facilities in this state to meet the present and future energy needs in a reliable manner. In this decision, the Commission may also provide further guidance to be used in the preparation of the next biennial filing.
- (i) Utilities shall make reference to the most recently filed ten-year transmission plan in any subsequent CPCN application for individual projects contained in that plan. Given sufficient documentation in the biennial ten-year transmission plan for the project under review and if circumstances for the project have not changed, the applicant may rely substantively on the information contained in the plan and the Commission's decision on the review of the plan to support its application. The Commission will take administrative notice of its decision on the plan. Any party challenging the need for the requested transmission project has the burden of proving that, due to a change in circumstances, the Commission's decision is no longer applicable or valid.

3628. – 3649. [Reserved]

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[indicates omission of unaffected rules]