

Decision No. C19-0708

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19M-0460E

IN THE MATTER OF TRI-STATE'S NEW MEMBER(S) AND THE PUBLIC UTILITIES
COMMISSION'S JURISDICTION.

**DECISION OPENING A MISCELLANEOUS
PROCEEDING AND ORDERING TRI-STATE
GENERATION AND TRANSMISSION ASSOCIATION,
INC. TO RESPOND TO QUESTIONS**

Mailed Date: August 23, 2019

Adopted Date: August 21, 2019

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Public Utilities Commission (Commission or PUC) opens a proceeding to answer certain critical questions raised by Tri-State Generation and Transmission Association, Inc.'s (Tri-State) July 23, 2019 filings with the Federal Energy Regulatory Commission (FERC). The Commission also orders Tri-State to respond in good faith to the questions presented below by September 11, 2019.

A. Background

2. On July 23, 2019, Tri-State made filings at FERC indicating that it would shortly add a new member and thereby become "a public utility regulated under Part II of the [Federal Power Act]." Put simply, the result of adding that new member is that to some extent Tri-State will be regulated by FERC and less regulated by this Commission.

3. This Commission intervened and protested Tri-State's FERC filings. Among other things, we pointed out that Tri-State had not addressed the complicated jurisdictional

questions its filings raise, many of which are unsettled under Colorado law. We also noted that Tri-State has not yet responded to the many jurisdictional questions we posed to it in the ongoing Tri-State Electric Resource Plan (ERP) rulemaking. Ultimately, we argued that Tri-State should respond to the questions posed in the rulemaking and this Commission should have satisfactory answers to the state law questions raised by Tri-State's possible move to FERC regulation before Tri-State adds the new member contemplated by its FERC filings.

B. Discussion

4. Tri-State's FERC filings raise two immediate questions: (1) whether this Commission must approve the addition of Tri-State's new member; and (2) what jurisdictional consequences would flow from that addition. This Commission is also concerned that Tri-State's actions could undermine the state's clean energy policy referenced in § 40-2-125.5, C.R.S.A.—in particular, the requirement that certain utilities (including Tri-State) develop Commission-approved clean energy plans to meet Colorado's clean energy targets. To that end, we open this miscellaneous proceeding under Rule 1307 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, and order Tri-State to respond to the following inquiries:

- Identify and describe the new member referenced in Tri-State's FERC filings. What steps has Tri-State taken to develop, design, or create an entity that will become a member? Within the last six months from the date of this Decision, has Tri-State negotiated with an existing entity to become a member? If so, identify that entity and whether negotiations are currently ongoing.
- Describe the process and transactions(s) by which the new member will accede to Tri-State membership.
- How does the new member Tri-State seeks to add affect Tri-State's revenues and expenses and the revenue requirement used to set rates?
- Describe, providing a legal and factual basis for your position, whether Tri-State or the "New Member(s)" must make any filing with the PUC

regarding, or seeking PUC approval for, any part of the membership accession process or any transaction related thereto.

- Describe how Tri-State can ensure its compliance with Colorado's state energy goals reflected in House Bill 19-1261, Senate Bill 19-236, and Executive Order B 2019 002 if FERC regulates its rates.
- If FERC regulates Tri-State's rates, describe to what extent Tri-State will be bound by Phase I or Phase II decisions as they are currently proposed in the Notice of Proposed Rulemaking in Proceeding No. 19R-0408E. Can Tri-State comply with PUC decisions that modify Tri-State's ERP?
- How can the legislative intent behind § 40-2-134, C.R.S.A. (requiring the Commission to approve Tri-State's ERP) be honored if FERC regulates Tri-State's rates?
- What are the total costs to Tri-State of its efforts to move to FERC regulation (including amounts spent to date and planned expenditures) and how will these costs affect Tri-State's payments into Colorado's Fixed Utility Fund?
- Identify whether Tri-State's bylaws are part of its tariffs and if so identify where the bylaws are located in its tariff filings.

5. Tri-State's response should be thorough, made in good faith, and filed by September 11, 2019.

6. We recognize that other proceedings involving Tri-State have garnered significant interest and participation from various stakeholders. For now, the Commission is looking for responses from Tri-State. We may open the proceeding for stakeholder input on these questions in the near future, but until that point we take a dim view of early-filed comments or requests to participate.

II. ORDER

A. The Commission Orders That:

1. This miscellaneous proceeding is opened to ascertain answers to questions arising from and related to Tri-State Generation and Transmission Association, Inc.'s (Tri-State) filings with the Federal Energy Regulatory Commission.

2. Consistent with the discussion above, Tri-State is ordered to respond by September 11, 2019.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 21, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners