

Decision No. R20-0310-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0620E

LA PLATA ELECTRIC ASSOCIATION, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

PROCEEDING NO. 19F-0621E

UNITED POWER, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ESTABLISHING PROCEDURES**

Mailed Date: April 28, 2020

TABLE OF CONTENTS

I. BY THE COMMISSION2
A. Statement2
B. Presentation of Exhibits Electronically Submitted During Evidentiary Hearing3

C. Assignment of Hearing Exhibit Number Blocks.....5

D. Identification and Filing Requirements for Hearing Exhibits5

E. Formatting of Hearing Exhibits.....7

F. Filing of Executable Attachments to Hearing Exhibits.....8

G. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit on or Before the Deadline for Corrections8

H. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit After the Deadline for Corrections10

I. Procedures Regarding Confidentiality11

II. ORDER.....12

A. It Is Ordered That:12

I. BY THE COMMISSION

A. Statement

1. La Plata Electric Association, Inc. (La Plata) and United Power, Inc. (United Power) (collectively, Complainants) filed these formal complaints against Tri-State Generation and Transmission Association, Inc. (Tri-State) on November 5 and 6, 2019, respectively, requesting that this Commission determine a just, reasonable, and non-discriminatory exit charge for Complainants. On November 25, 2019, by Decision No. C19-0955-I, the Commission consolidated the complaints in Proceeding Nos. 19F-0620E and 19F-0621E and designated Commissioner Frances Koncilja as the Hearing Commissioner.

2. Commissioner Koncilja’s term expired in January 2020. She was asked and agreed to continue to serve until a new commissioner was appointed and confirmed in her stead. A new Commissioner was sworn in on March 13, 2020.

3. On March 13, 2020, by Decision No. R20-0175-I, the evidentiary hearing in this proceeding, scheduled for March 23 to March 27, 2020, was suspended and the proceeding returned to the Commission *en banc*.

4. On March 25, 2020, by Decision No. C20-0201-I, the Commission referred the matter to an Administrative Law Judge.

5. The procedural history of the above captioned proceeding is recited in Decisions previously issued in this Proceeding and is repeated here as necessary to put this Decision into context.

B. Presentation of Exhibits Electronically Submitted During Evidentiary Hearing

6. The presentation of evidence at the hearing shall be done through electronic exhibits to the fullest extent possible, with the exception of exhibits used for impeachment or rebuttal, or any other exhibits admitted in paper form during the hearing. If a pre-filed hearing exhibit marked for identification is admitted into evidence, it is anticipated that the electronic copy in the Commission's file will be admitted by administrative notice, in lieu of receiving the identical paper copy (*e.g.*, the fact administratively noticed is that the copy on file is the content of the otherwise-admissible hearing exhibit).

7. To facilitate the presentation of exhibits electronically during the evidentiary hearing, the Commission will provide a spreadsheet identifying each hearing exhibit as it exists in the administrative record. The spreadsheet will include hyperlinks to the filings in the administrative record. The spreadsheet will be made available to the parties prior to hearing and

marked as a hearing exhibit. Commission Staff will display pre-filed electronic filings during hearing.¹

8. Final versions of all electronic hearing exhibits must be filed **on or before** the fourth business day prior to hearing, unless otherwise ordered, so that the spreadsheet may be timely prepared and distributed during the three business days prior to hearing. Hyperlinks will not be included for confidential or highly confidential information.²

9. After this deadline, any exhibit that is intended to be offered into evidence: (1) may be filed for the limited purpose of disclosure and shall not be marked for identification; (2) shall be marked for identification during hearing and offered in paper form, and in such a circumstance, the party offering the document for admission is responsible for ensuring that a sufficient number of paper copies is available pursuant to Commission Rule 1501(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1; and (3) will neither be included in the spreadsheet of electronic exhibits nor admitted in electronic form by administrative notice pursuant to this Decision.

10. Unless otherwise ordered, any party offering admission of any prefiled exhibit during hearing shall ensure that one paper copy of each prefiled hearing exhibit is available for use by the witnesses during hearing. The paper copy made available at hearing shall be marked for identification identically to the electronic version in the administrative record. The sponsoring party shall assure that the paper copy of the exhibit is identical to the electronic version.

¹ Exhibits will be displayed on large monitors in the hearing room. Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Christie Nicks at (303) 894-2010.

² A calculation of the fourth business day prior to hearing shall exclude the first day of the hearing and include each of the four business days preceding the hearing. For example, if the first day of the hearing falls on a Monday, then the fourth business day prior to hearing is Tuesday of the preceding week.

C. Assignment of Hearing Exhibit Number Blocks

11. Hearing exhibits shall be marked numerically and sequentially for identification by the filing parties within their respective blocks of numbers. In order to efficiently organize the numbering and preparation of exhibits for hearing, all parties shall use a unified numbering system for all hearing exhibits. Parties should not duplicate hearing exhibits or attachments previously filed by another party because any prefiled hearing exhibit filed may be offered by any party.

12. The hearing numbers shall be distributed as follows:

100-299	La Plata
300-399	United Power
400-499	Tri-State

13. All exhibits first presented at hearing will be marked for identification during hearing using the next available sequential block of numbers. This includes any document used for impeachment or rebuttal that has not been prefiled as a hearing exhibit. If the exhibit is a document, the party offering it for admission shall ensure that a sufficient number of paper copies is available pursuant to Commission Rule 1501(b).

D. Identification and Filing Requirements for Hearing Exhibits

14. In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Interim Decision.³

³ In order to minimize the size and allow electronic text searches of the PDF files, versions filed in PDF format should be generated from the native executable electronic file format when possible.

15. Each type of a witness's testimony, including any attachments, (*e.g.*, direct, answer, rebuttal, cross-answer, and supplemental), shall be marked as one hearing exhibit number. Even if comprised of multiple electronic documents, the testimony and attachments will be one hearing exhibit. The title of each pre-filed hearing exhibit shall match the title entered in the Commission's E-Filings System and start with "Hearing Exhibit XXX." Hearing exhibits shall be marked numerically and sequentially for identification by the filing parties within their respective blocks. At the hearing, any party may sponsor an exhibit that was pre-filed by another party.

16. The title of all pre-filed written testimony (*i.e.*, primary document) should include the type of testimony and the name of the witness. For example, if Hearing Exhibit 100 is the direct testimony of witness John J. Doe, the following title should be used: "Hearing Exhibit 100, Direct Testimony of John J. Doe."

17. Anything accompanying pre-filed written testimony within a hearing exhibit (*e.g.*, traditionally exhibits, appendices, attachments, or attachments to filing) shall be referred to as an "attachment" to the testimony in the hearing exhibit and identified by the hearing exhibit number reference, the witness's initials, and a number sequence. Again, attachments will be part of the hearing exhibit identifying each type of testimony. As an example, if the party assigned block 300 files answer testimony of Albert B. Cooke, that includes a table as Attachment ABC-1, then the title of the table will be "Hearing Exhibit 300, Attachment ABC-1." The attachment should not be referred to as Exhibit ABC-1 or Appendix A.

18. Any party wishing to admit any document used for impeachment or rebuttal, may do so by presenting a paper copy of the document at the time of the hearing.⁴ In such a circumstance, the party offering the document into evidence is responsible for ensuring that there are an appropriate number of paper copies available at the time of the hearing. In addition to an original, copies for the other parties, and a copy for the witness, the parties should bring a copy for the advisor(s) and the presiding officer, or Commissioners if the matter is heard *en banc*.

E. Formatting of Hearing Exhibits

19. There shall be only one page number shown on each page of all testimony. The first page of **all** page-numbered hearing exhibits shall be page 1, with each additional page numbered in succession (to best match page number references with electronic file page references). For example, the cover page shall be page 1, and all following pages shall be numbered sequentially, including executive summaries, tables of contents, and lists of attachments.

20. Page numbers should be included in the header of each page-numbered hearing exhibit. The top line of the header shall include the title of the document (*e.g.*, Hearing Exhibit 400, Answer Testimony of Albert B. Cooke or Hearing Exhibit 400, Attachment ABC-1).

21. A person may modify formatting options in revisions to filed documents in order to minimize the resulting impact to page and line references (*e.g.*, widen a paragraph margin to insert a word).

22. Titles entered into the Commission's E-Filings System should be in title format (*i.e.*, not all capitals).

⁴ To be clear, the parties are not required to pre-file documents to be used solely for impeachment or rebuttal.

F. Filing of Executable Attachments to Hearing Exhibits

23. Any attachments to hearing exhibits created from a spreadsheet and relying on foundation not viewable in the pre-filed version (*i.e.*, PDF version), shall also be filed in the native executable electronic file format (*e.g.*, .xlsx, .ods, .gsheet).⁵

24. The title of the executable version filed shall mirror the title identifying the pre-filed version and include the word “Executable” after the hearing exhibit number. For example: Hrg. Ex. 300, Executable Attachment ABC-1C.

25. The executable version is not required to be marked for identification as a hearing exhibit and paginated in the same manner as the PDF version.

26. All executable versions shall have the various cell formulae or links left intact. Cell formulae shall not be converted to values.

27. The executable version shall be filed on the same day as the pre-filed PDF version.

G. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit on or Before the Deadline for Corrections

28. Should a party need to modify, amend, or correct a previously identified hearing exhibit **on or before the earlier of** the ordered deadline for such changes or the fourth business day prior to hearing, the following procedures shall be followed.

29. If the native executable electronic file format is **not** a spreadsheet, a complete revision including all changes in redline/strikeout format shall be filed.⁶ No modification, amendment, or correction shall be made to a filed hearing exhibit without indicating a new

⁵ Filing of the executable version may result in the programmatic creation of a corresponding PDF version. Any such PDF version titled as “Executable” (consistent with the naming convention set forth above) will be disregarded for all purposes, including reference and display during hearing.

⁶ Filing a “clean” version is not necessary and is discouraged.

revision number, as described below. The same title shall be used for the title as the original, except that a revision number reference should be added to give notice of the change.

30. Illustratively, if Hearing Exhibit 100, Direct Testimony of John J. Doe changed, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 1 containing redlined modifications to the original version.⁷ If an additional revision is later filed, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 2 and would contain all redlined modifications as compared to the original version (*i.e.*, not only as compared to Rev. 1). For Rev. 2 and all subsequent revisions, the filing shall also include a notice identifying changes in each revision from the most recent previous revision. Further, the title of any revision should not contain the word “corrected” even if the revision corrects the prior filing.

31. If the native executable electronic file format is a spreadsheet (*e.g.*, .xlsx, .uos, .gsheet), a complete revision including all changes shall be filed. The changes do *not* need to be in redline/strikeout format. No modification, amendment, or correction shall be made to a filed hearing exhibit without indicating a new revision number (*e.g.*, Rev. 1). The same title shall be used for the title as the original, except that a revision number reference should be added to give notice of the change. The revision pages shall also include an additional notice attachment (*i.e.*, as a secondary document if electronically filed) identifying changes in each revision from the most recent previous revision. Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed in accordance with Section F above.

32. The most recent revision of a hearing exhibit shall be the version utilized during the evidentiary hearing. References in testimony to obsolete versions of other testimonies will

⁷ “Rev.” stands for revision.

be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*i.e.*, no need to amend) so long as the reference remains in reasonable proximity to the referenced material. Thus, a reference in answer testimony to page 10, line 5 of someone else's direct testimony need not be revised when a revision is filed to such direct testimony so long as page 10, line 5 is in reasonable proximity to the referenced material.

H. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit After the Deadline for Corrections

33. Should a party need to modify, amend, or correct a previously identified hearing exhibit **after the earlier of the** ordered deadline for such changes or the fourth business day prior to hearing, or during hearing, the following procedures shall be followed.

34. If the native executable electronic file format is **not** a spreadsheet, all changes should be reflected on replacement pages only in redline/strikeout format that will be presented in paper form during hearing.⁸ The replacement pages shall collectively be marked for identification at the time of hearing as a separate hearing exhibit. The replacement pages shall also include an additional notice attachment (*i.e.*, as a secondary document if electronically filed) identifying changes in each revision from the most recent previous revision.

35. If the native executable electronic file format **is** a spreadsheet (*e.g.*, .xlsx, .uos, .gsheet), all changes should be reflected on replacement pages only that will be presented in paper form during hearing. The changes do *not* need to be in redline/strikeout format. The revision pages shall also include an additional notice attachment (*i.e.*, as a secondary document if

⁸ Filing a "clean" version is not necessary and is discouraged.

electronically filed) identifying changes in each revision from the most recent previous revision. Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed in accordance with Section F above.

36. If the changes are permitted, and assuming the original filing otherwise admissible, both hearing exhibits would be admitted into evidence during hearing with the latter replacement pages superseding and prevailing to the extent of conflict in the next previous revision.

37. References to superseded portions of a hearing exhibit will be construed to be amended to refer to the replacement pages, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*e.g.*, no need to amend) so long as the reference remains in reasonable proximity to the referenced material. Thus, a reference in answer testimony to page 10, line 5 of someone else's direct testimony need not be revised when a replacement page 10 is filed so long as page 10, line 5 is in reasonable proximity to the referenced material.

I. Procedures Regarding Confidentiality

38. Any pre-filed hearing exhibit (including attachments) filed in accordance with the Standards of Conduct in the Commission's Rules of Practice and Procedure containing confidential information, shall be pre-marked for identification by the same hearing exhibit number within the assigned block identifying the portion in the public record, and shall be designated with a "C" following the number of the hearing exhibit or attachment.

39. For example, a witness's pre-filed written testimony might be identified as Hearing Exhibit 100, Direct Testimony of John J. Doe. If portions of the testimony in Hearing Exhibit 100, Direct Testimony of John J. Doe are claimed to be confidential, those portions

would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 100C, Direct Testimony of John J. Doe. Hearing Exhibit 100, Direct Testimony of John J. Doe would remain in the public record (redacted to exclude confidential material).

40. Further, if portions of Hearing Exhibit 100, Direct Testimony of John J. Doe, Attachment JJD-1 are claimed to be confidential, those portions would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 100, Attachment JJD-1C. Hearing Exhibit 100, Attachment JJD-1 would remain in the public record (redacted to exclude confidential material). Comparably, should any highly confidential protections be afforded, the hearing exhibit number would be designated with an “HC” following the number.

41. A deadline will be established, as ordered below, for any objections to the admissibility of any pre-filed hearing exhibits marked for identification (*e.g.*, authenticity).

II. ORDER

A. It Is Ordered That:

1. In addition to other requirements of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (*e.g.*, Rule 1202 regarding pre-filed testimony), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Decision.⁹

2. Any attachments to hearing exhibits created from a spreadsheet and relying on foundation not viewable in the pre-filed version (*i.e.*, PDF version), shall also be filed in the

⁹ If the Commission’s E-Filings System does not accept the electronic format of any pre-filed hearing exhibit, an electronic copy must be filed with the Commission on a CD, DVD, or portable drive. If any such hearing exhibit is created from a spreadsheet, the native executable electronic file format must be filed simultaneously on the same CD, DVD, or portable drive.

native executable electronic file format (*e.g.*, .xlsx, .uos, .gsheet) in accordance with this Decision.

3. To comply with this Decision, all parties shall revise and re-file the testimony it filed with its Application and any other exhibits it intends to offer into evidence in accordance with ordered procedures and the discussion above within seven days of the date of this Decision. For purposes of this Decision, any such filings shall be treated as the original filing of hearing exhibits.¹⁰

4. At the hearing, all parties shall provide one paper copy of each pre-marked hearing exhibit they intend to offer for use by the witnesses during examination.

5. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

¹⁰ Compliance with this Decision may result in a change to pagination of prior versions of hearing exhibits. References in discovery requests and responses to prior versions of hearing exhibits will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*i.e.*, no need to amend) so long as the reference remains in reasonable proximity to the referenced material.