Decision No. R23-0087

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22D-0446E

IN THE MATTER OF THE PETITION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR A DECLARATORY ORDER THAT CERTAIN INCREMENTAL TRANSMISSION IMPROVEMENTS ARE IN THE ORDINARY COURSE OF BUSINESS.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE CONOR F. FARLEY ISSUING DECLARATORY ORDER, AND CLOSING PROCEEDING

Mailed Date: February 8, 2023

TABLE OF CONTENTS

I. STATEMENT

A. Procedural Background

1. On October 17, 2022, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a Petition seeking a declaratory order pursuant to Rule 1304(f) of the Commission's Rules of Practice and Procedure[1] and Rule 3206 of the Commission's Rules Regulating Electric Utilities (Petition).[2] In the Petition, Tri-State seeks a determination from the Commission that two transmission line projects are in the ordinary course of business and therefore do not require a Certificate of Public Convenience and Necessity. Tri-State states that it filed the Petition pursuant to the Settlement Agreement approved in Decision No. R22-0533 requiring Tri-State to request a determination of whether the projects outlined in its Petition are in the ordinary course of business.[3]

2. On October 21, 2022, the Commission issued Decision No. C22-0634-I that accepted, issued notice of, and referred to an Administrative Law Judge (ALJ), the Petition. The Petition was subsequently assigned to the undersigned ALJ. In Decision No. C22-0634-I, the Commission established a notice period for the Petition through, and ordered responsive briefs addressing the issues raised by the Petition to be filed by, November 18, 2022.

[1] 4 *Code of Colorado Regulations* (CCR) 723-1.

[2] 4 CCR 723-3.

[3] Decision No. R22-0533 issued in Proceeding No. 22A-0085E on September 9, 2022, Appendix A at 7 (§ 3.4.2).

3. No person or entity sought to intervene, or filed responsive briefs, in this proceeding.

B. REPTF Study Report

4. In 2021, the Colorado Coordinated Planning Group (CCPG) created the Responsible Energy Plan Task Force (REPTF) to address needs associated with Tri-State's Responsible Energy Plan. Participants in the REPTF included representatives from CCPG members, independent power producers, clean energy advocacy organizations, environmental advocacy organizations, grid consultants, Staff of the Colorado Public Utilities Commission, and the Colorado Office of the Utility Consumers Advocate. The REPTF met seven times between April and September 2021. The REPTF analyzed the costs and benefits of fourteen transmission alternatives in eastern Colorado to meet the following objectives: (a) accommodating generation resources (at least 400 MW) in eastern Colorado necessary to meet the preferred 2030 carbon reduction scenario in Tri-State's 2020 Electric Resource Plan; (b) increasing the ability to deliver power across Tri-State's four-state service area and to ensure access to geographically diverse resources; and (c) improving the reliability of the rural Colorado transmission system.[4] The REPTF issued a Study Report on December 16, 2021 that addressed, among other things, the need for a Big Sandy – Badger Creek 230 kV Transmission Line, a Badger Creek Switching Station, a Boone – Huckleberry 230 kV Transmission Line, and a Huckleberry Switching Station (collectively the Transmission Projects).[5]

[4] Petition at 1-2.

[5] *Id*. at 2-3.

C. Tri-State's Application for a CPCN for the Transmission Projects

5. On February 18, 2022, Tri-State filed an application for Certificates of Public Convenience and Necessity (CPCN) for the Transmission Projects in Proceeding No. 22A-0085E. On July 1, 2022, the parties (Tri-State, Trial Staff of the Commission, Western Resource Advocates, the Office of the Utility Consumer Advocate, the Colorado Independent Energy Association, and Interwest Energy Alliance (collectively, the Settling Parties)) filed a Settlement Agreement in that proceeding. In Section 3.4 of the Settlement Agreement, Tri-State committed to perform an Incremental Improvements Study to identify specific additional incremental transmission system improvements to the existing 115 kV transmission system in eastern Colorado that were identified in the REPTF Study Report.[6] On September 9, 2022, Decision No. R22-0533 approved the Settlement Agreement and approved the application for CPCNs as modified by the Settlement Agreement.[7] No parties filed exceptions and Decision No. R22-0533 subsequently became a Commission decision.

D. Incremental Improvements Report

6. Tri-State completed the Incremental Improvements Study on August 5, 2022 and distributed its Incremental Improvements Report to the Settling Parties on the same date.[8] The Incremental Improvements Report identified, among other things, two limiting elements on Tri-State's transmission system that could be upgraded: (a) the Anton – Arickaree 115 kV line; and (b) the Hell Creek Tap – Liberty 115 kV line improvement projects (the Transmission Improvement Projects). The Incremental Improvements Report stated that implementing the Transmission

[6] Decision No. R22-0533 issued in Proceeding No. 22A-0085E on September 9, 2022, Appendix A at 7 (§ 3.4.2).

[7] Decision No. R22-0533 issued in Proceeding No. 22A-0085E on September 9, 2022 at 15 (Ordering ¶ 2).

[8] Petition at 3.

Improvement Projects would improve the injection capability of the transmission system in eastern Colorado.[9]

7. Pursuant to § 3.4.1 of the Settlement Agreement, Tri-State and the Settling Parties met on August 16, 2022 to discuss the Incremental Improvements Report. The Settling Parties agreed that Tri-State should move forward with the two Transmission Improvement Projects. Pursuant to Section 3.4.2 of the Settlement Agreement, Tri-State committed to file with the Commission by September 10, 2022 a petition seeking a declaratory judgment that the Transmission Improvement Projects are in the ordinary course of business under the Commission's rules. As noted above, Tri-State filed the Petition that initiated this proceeding on October 17, 2022

E. Incremental Improvements Projects

8. The Anton – Arickaree 115 kV transmission line is approximately 14.5-miles-long. The line is strung with 4/0 ACSR "Penguin" conductors with a design temperature of 50°C, which is below the modern design temperature of 100°C. There are two spans of the Anton – Arickaree 115 kV line that currently prevent 100°C operation. Modifications/replacements of components of the two limiting spans would increase the overall line rating from 284 A (56 MVA) to 465 A (92 MVA). Tri-State's planning level cost estimate to perform the modifications/replacements is $270,000.[10]

9. The Hell Creek Tap – Liberty 115 kV transmission line is approximately five-miles-long. It includes a metering current transformer (CT) that is no longer critical to the operation of

[9] *Id*. at 3-4.
[10] *Id*. at 4-5.

the transmission system and could be removed. The bypass or removal of the metering CT would increase the overall line rating from 300 A (59 MVA) to 491 A (97 MVA). Tri-State's planning level cost estimate to perform the bypass or removal is $50,000.[11]

10. The Incremental Improvements Study determined that the Transmission Improvement Projects to Tri- State's transmission system could improve injection capability in eastern Colorado.[12] According to Tri-State, these Transmission Improvement Projects "are economical, incremental upgrades which would benefit resource accommodation in eastern Colorado."[13] Tri-State also concludes that it:

> would generally consider the Transmission Improvement Projects to be maintenance-level improvements to existing transmission facilities. As such, Tri-State would not consider the Transmission Improvement Projects to involve the "construction or extension of transmission facilities or projects" within the meaning of Commission Rule 3206. Similarly, Tri-State would not ordinarily include these types of maintenance-level projects in its annual filing under Rule 3206(d).[14]

II. QUESTION PRESENTED

11. If undertaken, would the Transmission Improvement Projects be in the ordinary course of Tri-State's business pursuant to § 40-5-101, C.R.S. and Rule 3206 of the Commission's Rules Regulating Electric Utilities?[15]

[11] *Id*. at 5.
[12] *Id*.
[13] *Id*.
[14] *Id*. at 5-6.
[15] 4 CCR 723-3.

III. ANALYSIS

A. Legal Authority

1. Statutes and Commission Rules

12. Section 40-5-101(1)(a)(III), C.R.S. states in relevant part that:

> (1)(a) A public utility shall not begin the construction of a new facility, plant, or system or the extension of its facility, plant, or system without first obtaining from the commission a certificate that the present or future public convenience and necessity require, or will require, the construction or extension. . . . Sections 40-5-101 to 40-5-104 do not require a corporation to secure a certificate for the following:
>
> . . . .
>
> (III) An extension within or to territory already served by the corporation, as is necessary in the ordinary course of its business.

13. Section 40-5-105 states in relevant part:

> (1) The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased:
>
> (a) In the normal course of business.

14. Rule 3206 of the Commission's Rules Regulating Electric Utilities states in relevant part:

> (a) No utility . . . may commence new construction, or extension of transmission facilities or projects until either the Commission notifies the utility that such facilities or projects do not require a certificate of public convenience and necessity or the Commission issues a certificate of public convenience and necessity. . . .
>
> (b) CPCN requirements for new transmission facilities. New transmission facilities that require a CPCN pursuant to this paragraph are not in the ordinary course of business. . . . All utilities . . . subject to paragraph (a) of

this rule shall be required to file a CPCN application for all new transmission facilities that meet one of the following criteria:

(1) Transmission facilities designed at 230 kV or above, even if initially operated at a lower voltage. However, a radial transmission line designed at 230 kV or above that serves a single retail customer and terminates at that customer's premises will not require a CPCN application.

(II) Transmission facilities designed at 115 kV or 138 kV, if:

(A) the facilities do not meet the noise and magnetic field thresholds in paragraphs (e) and (f) of this rule; or

(B) the Commission determines that the facilities are not in the ordinary course of business.

(c) CPCN requirements for extension of transmission facilities. Any utility . . . may request a CPCN for an extension of transmission facilities that would not otherwise require an application for a CPCN under this rule. For all utilities . . . the following modifications are not in the ordinary course of business and shall require a CPCN.

(I) Modification to any existing transmission facility that results in an increase in the noise or magnetic field levels and such levels are above the thresholds in paragraphs (e) and (f).

(II) Modification to any existing transmission facility so that it will be operated at a higher voltage, with or without conductor replacement:

(A) unless a CPCN has already been approved for the operation of the transmission facility at the higher voltage; or

(B) unless the upgrade is to a voltage less than 230 kV, and the noise and magnetic field thresholds in paragraphs (e) and (f) are met.[16]

2. Statutory Construction

15. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.[17] Words and phrases

[16] 4 CCR 723-3.

[17] *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

must be given their plain and ordinary meaning.[18] Where statutory language is unambiguous, resort to other rules of statutory interpretation is unnecessary and the language is applied as written.[19]

16. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.[20] These tools include the consequences of a given construction, the end to be achieved by the statute, and the circumstances surrounding the statute's adoption.[21] One of the best guides is the context in which the statutory provisions appear.[22] A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.[23] "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."[24]

3. Decisions Interpreting Statutes

a. Colorado Supreme Court

17. In *Mountain States Tel. & Tel. Co. v. PUC*, 763 P.2d 1020 (Colo. 1988), the Colorado Supreme Court interpreted § 40-5-105, C.R.S. There, the Commission invalidated the transfer of Mountain Bell's directory publishing (i.e. Yellow Pages) assets to U.S. West Direct, holding that the transaction was "contrary to the public interest and an abuse of management discretion."[25] On judicial review, Mountain Bell argued that Commission exceeded its jurisdiction

[18] *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).
[19] *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).
[20] *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).
[21] *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); *Williams v. Kunau*, 147 P.3d 33, 36 (Colo. 2006).
[22] *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).
[23] *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).
[24] *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).
[25] 763 P.2d at 1024.

under § 40-5-105 jurisdiction because, among other things, "the transfer [of Mountain Bell's Yellow Pages assets] was done 'in the ordinary course of business.'"[26]

18. In its decision upholding the Commission's decision, the Colorado Supreme Court held that Mountain Bell's argument:

> fails because the statutory exception for transfers done in the ***ordinary*** course of business is intended to exempt only routine transfers such as the purchase and sale of company vehicles. The size of the assets transferred (approximately $50 million) and Mountain Bell's initial treatment of the transfer as necessitating PUC authorization negate Mountain Bell's transparent attempt to avoid the reach of the statute by belatedly labelling the assets transfer as having been done "in the ordinary course of business."[27]

The Colorado Supreme Court concluded that the Commission had jurisdiction over the transfer under § 40-5-105, C.R.S. In so holding, the Colorado Supreme Court appeared to equate the standard in § 40-5-105, C.R.S. ("***normal*** course of business") with that in § 40-5-101, C.R.S. ("***ordinary*** course of business").

b. Commission

19. In Decision No. C82-843, the Commission addressed an application filed by Public Service for a CPCN to construct a new 230 kV transmission line and a new switching station to serve an oil shale load of union Oil Company of Colorado for an estimated $5.8 million. Even though it filed the application, Public Service argued that no such application was necessary because the construction was in the ordinary course of Public Service's business of serving the electric requirements of customers within its certificated territory. The Commission rejected this argument, holding that:

> the construction of a 230 kilovolt transmission line . . . and the construction of the [] switching station, at a total cost of $5.8 million to serve an oil shale load do not

[26] *Id*. at 1026 n.2.

[27] *Id*. (emphasis added).

> fall within the ordinary course of business, especially in view of the fact that the load to be served is sui generic as far as Colorado is concerned.[28]

The Commission concluded that the proposed project was not in the ordinary court of business and thus required a CPCN.

20. A short time later, the Commission addressed another application filed by the Colorado-Ute Electric Association (Colorado-Ute) for a CPCN to construct a 43-mile 230 kV transmission line that would initially be energized at 115 kV for a cost in excess of $9 million.[29] The proposed transmission line was necessary to serve "a single industrial customer and not to serve the increasing needs of . . . other customers."[30] Like Public Service before it, Colorado-Ute filed a motion to dismiss its own application in which it argued that the application was unnecessary because the proposed project was in the ordinary course of Colorado-Ute's business.[31]

21. In its ruling, the Commission first noted that, under the regulated monopoly doctrine, "Colorado ratepayers should not be required to pay for unnecessary facilities."[32] The Commission then stated:

> The size of the load to be served by the line is indeterminate, meaning that should the proposed mining operations to be served by the line cease functioning the need for the transmission line could also cease.
>
> . . . .
>
> The financing of the line is of great importance. Since the primary purpose of the line is to serve a new, large indeterminate load, the transmission line is very risky at best. In order to protect the public interest, the financing issue must be examined and assured in an open proceeding.[33]

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[28] Decision No. C82-843 issued in Application No. 34299 on June 1, 1982, 1982 COLO. PUC LEXIS 3, 9.

[29] Decision No. C82-1418 issued in Application No. 34318 on September 7, 1982, 1982 COLO. PUC LEXIS 4, 4.

[30] *Id*. at 8.

[31] *Id*. at 1.

[32] *Id*.

[33] *Id*. at 8-9.

The Commission concluded that "Colorado-Ute must have a CPCN before it can construct the facilities proposed in this application."[34]

22. In 2005, the Commission addressed the question of whether the sale of a substation by Public Service to a nonutility was in the "normal course of business" under § 40-5-105(1)(a), C.R.S. in Proceeding No. 05S-207E. In that proceeding, the Commission noted that "[i]n developing the Public Utilities Law, an important goal of the Legislature has been to protect ratepayers."[35] The Commission further stated that: (a) "[t]o a certain extent, what constitutes a sale in the ordinary course of business depends upon the circumstances surrounding a sale, as well as the potential of the transaction to affect ratepayers;"[36] and (b) "the Colorado Legislature wanted the Commission to look at non-routine transactions."[37] The Commission concluded that the sale of the substation was not in the "normal course" of Public Service's business and, consequently, Public Service needed a CPCN. Like the Colorado Supreme Court in *Mountain* States, the Commission equated the "normal course of business" in § 40-5-105(1)(a), C.R.S. with the "ordinary course of business" standard in § 40-5-101, C.R.S.[38] The Commission also stressed that an adjudicatory proceeding was not the proper proceeding in which to create a definition applicable to all Colorado utilities.[39]

23. Finally, in 2009, the Commission addressed a project by Atmos to connect its existing gas distribution system serving the communities of Greeley and Eaton to the interstate

[34] *Id*. at 12.

[35] Decision No. C05-1454 issued in Proceeding No. 05S-207E on December 12, 2005 at 7 (¶ 15).

[36] *Id*. at 6 (¶ 12).

[37] *Id*. at 7 (¶ 16).

[38] *Compare id.* at 2 (¶ 4) (quoting § 40-5-105(1)(a)) *with id.* at 13 (¶ 13), 14 (¶ 14) (referencing "ordinary course of business").

[39] *Id*. at 6 (¶ 11), 7-8 (¶ 17).

pipeline facilities of Kinder Morgan Interstate Gas Transmission, LLC. To do so, Atmos proposed to construct five natural gas pipeline laterals consisting of approximately 10.78 miles of mostly 12, 8, and 6-inch pipeline (New Supply Laterals).[40] At the time, Public Service provided firm gas transportation service over its own gas pipeline facilities to Atmos to serve the Greeley and Eaton communities. As a result, the New Supply Laterals would have replaced Public Service's existing facilities.[41]

24. Public Service filed a Complaint/Petition for Declaratory Judgment requesting, among other things, that Atmos be ordered to file a CPCN application. The Commission first noted that "[u]tilities commonly make new supply connections and system expansions to serve incremental growth and to provide service to customers in expanding territories."[42] Nevertheless, the Commission concluded that Atmos' project was not in the ordinary course of business pursuant to § 40-5-101, C.R.S because: (a) it was "significant and costly;"[43] (b) it was "an unusual event in the utility operations that is not likely to occur again in the foreseeable future;"[44] (c) the cost of $6.2 million, which "equate[d] to nearly a 19 percent increase in the net book cost of Atmos' entire Northeast Colorado Distribution Area and 74 percent of Atmos' annual cost of service for that area, exclusive of gas costs," was extraordinary;[45] and (d) Atmos' cost recovery approach and financing were "novel."[46]

25. In so doing, the Commission stated:

[40] Decision No. C09-365 issued in Proceeding No. 08F-033G on April 8, 2009 at 3 (¶ 2).
[41] *Id*. at 3-4 (¶ 4).
[42] *Id*. at 11 (¶ 26).
[43] *Id*. at 11 (¶ 27).
[44] *Id*. at 12 (¶ 27).
[45] *Id*. at 12 (¶ 28).
[46] *Id*. at 12 (¶ 30).

> The record in this docket identifies relevant factors that are applicable to an ordinary course of business determination although no single factor is determinative in this case. These factors include whether the facilities serve contiguous areas to expand service to new customers, expansion of service into other non-contiguous areas within a utility's certified service territory, new supply source connections, the accounting treatment of the facilities, and the existence of any other utilities that may be impacted by the new facilities. However, we reiterate that the assessment must be made on a case-by-case basis.[47]

The Commission also denied Atmos' exception requesting the Commission to create a standard/definition for "ordinary course of business," noting that doing so would "require[] initiation of a rulemaking as it would affect the rights of future parties."[48] The Commission concluded that "the appropriate procedure is to explain in this Decision why the facts and circumstances in this case lead to a determination that the Supply Laterals are not in the ordinary course of business" and not to "establish a standard for such determination."[49]

26. Unlike the Colorado Supreme Court in *Mountain States* and the Commission in Decision No. C09-365, the Commission in Decision No. C09-365 expressed reluctance to equate "ordinary course of business" in § 40-5-101, C.R.S., with "normal course of business" in § 40-5-105, C.R.S.[50] Specifically, the Commission stated that such a result "might result in a misconstruction of the legislature's intent as those two statutes apply to different transactions and use different language."[51]

4. Conclusions

27. From the foregoing decisions and statutes, four conclusions can be drawn.

[47] *Id*. at 11 (¶ 25).
[48] *Id*. at 13 (¶ 33).
[49] *Id*. at 14 (¶ 33).
[50] *Id*. at 7-8 (¶ 18).
[51] *Id*. at 8 (¶ 18).

28. First, while the requirement for a CPCN under § 40-1-105, C.R.S. applies to "the construction of a new facility, plant, or system or the extension of its facility, plant, or system," the same requirement under Commission Rule 3206 applies not only to "the new construction, or extension of transmission facilities or projects," but also to the "[m]odification to any existing transmission facility" under certain circumstances.

29. Second, the analysis of what constitutes a transmission project undertaken in the ordinary course of business is rooted in the doctrine of regulated monopoly, which focuses on the protection of ratepayers against payment for duplicated or otherwise unnecessary facilities. A transmission project that has relatively low impact on ratepayers is more likely to be in the ordinary course of business and vice versa.

30. Third, the unusualness of a transmission project in terms of frequency, size, cost, and financing plays an important role in determining whether the project is in the ordinary course of business.

31. Finally, decisions on whether a transmission project is in the ordinary course of business are made on a case-by-case basis. Holdings of general applicability should be made only in a rulemaking, not in an adjudicatory proceeding.

B. Application of Law to Facts

32. The ALJ concludes that the Transmission Improvement Projects are not "a new facility, plant, or system or the extension of its facility, plant, or system." Nor do they involve "new construction, or [the] extension of transmission facilities." As a result, the plain language of § 40-5-101(1)(a)(III), C.R.S. and Commission Rule 3206(a) & (b) do not apply to the Transmission Improvement Projects.

33. The Transmission Improvement Projects ***will*** modify existing transmission facilities, as required by Rule 3206(c)(I) and (II). However, there is no evidence in the record that either Project will result in either transmission line operating at a voltage of 230 kV or reaching the magnetic and sound thresholds in Rule 3206(e) and (f). In fact, Tri-State states that, after the Projects are completed, the Anton – Arickaree 115 kV and Hell Creek Tap – Liberty 115 kV transmission lines will: (a) operate at 115 kV;[52] (b) not exceed the audible noise threshold for mitigation established in Rule 3206(f);[53] and (c) operate with magnetic fields of 40.88 milliGauss (mG) (Anton – Arickaree) and 25.11 mG (Hell Creek Tap – Liberty), well below the 150 mG threshold for mitigation established in Rule 3206(e).[54] As a result, the plain language of Rule 3206(c) does not apply.

34. Finally, the only evidence in the record is that the Transmission Improvement Projects are "maintenance-level improvements to existing transmission facilities."[55] This characterization is corroborated by the anticipated cost of each project. As noted, above, the estimated cost of the improvements to the Anton – Arickaree and Hell Creek Tap – Liberty 115 kV transmission lines is $270,000 and $50,000, respectively. While these costs are not inconsequential, they are far lower than the costs of both the projects in the proceedings summarized above that the Commission held were not in the ordinary course of business, and Tri-State's overall cost of doing business.[56] Moreover, as "maintenance-level improvements," the

[52] Petition at 7.

[53] *Id*. at 10.

[54] *Id*. at 11.

[55] *Id*. at 5.

[56] *See* Decision No. C82-843 issued in Application No. 34299 on June 1, 1982, 1982 COLO. PUC LEXIS 3, 9 (construction of a 230 kilovolt transmission line and switching station for $5.8 million in 1982 dollars); Decision No. C82-1418 issued in Application No. 34318 on September 7, 1982, 1982 COLO. PUC LEXIS 4, 4 (construction of 43-mile 230 kV transmission line for $9 million in 1982 dollars); Decision No. C09-365 issued in Proceeding No.

Transmission Improvement Projects are not unusual in terms of frequency, size, and cost. In sum, the Transmission Improvement Projects do not bear any of the indicia that trigger the need for the Commission to step in to protect ratepayers. Based on the foregoing, the ALJ concludes that the Transmission Improvement Projects are in Tri-State's ordinary course of business and do not require a CPCN.

IV. ORDER

A. The Commission Orders That:

1. For the reasons stated above, the projects involving the Anton – Arickaree 115 kV and the Hell Creek Tap – Liberty 115 kV transmission lines described in the Petition for Declaratory Order are in the ordinary course of business pursuant to § 40-5-101(1), C.R.S. and Rule 3206 of the Commission's Rules Regulating Electric Utilities[57] and therefore do not require a Certificate of Public Convenience and Necessity.

2. Proceeding No. 22D-0446E is closed.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own

08F-033G on April 8, 2009 at 3-4 (¶¶ 2, 4), 12 (¶ 28) (construction of five natural gas pipeline laterals consisting of approximately 10.78 miles of pipeline for $6.2 million in 2009 dollars).

[57] 4 *Code of Colorado Regulations* (CCR) 723-3.

motion within 20 days after service, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director