

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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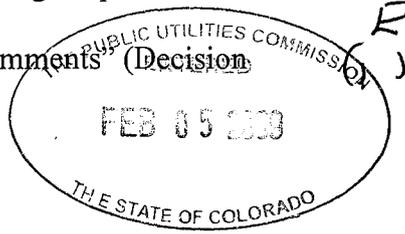
IN THE MATTER OF THE INVESTIGATION OF)
ELECTRIC TRANSMISSION ISSUES AND THE)
OPENING OF AN INVESTIGATORY DOCKET.)

DOCKET NO. 08I-227E

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TRI-STATE'S COMMENTS CONCERNING PROPOSED EMERGENCY RULES

Tri-State Generation and Transmission Association, Inc. ("Tri-State"), by and through its undersigned counsel, hereby submits the following Comments Concerning Proposed Emergency Rules in response to the Commission's "Order Requesting Comments" (Decision No. C09-0085).



1. Proposed Rules Impede Transmission Development

When this Docket was opened, the Commission encouraged interested persons to comment on essentially any or all aspects of electric transmission development in Colorado. In its comments, Tri-State advocated a more streamlined and efficient approach to the transmission line approval process currently employed by the Commission. Although the Commission's proposed emergency rules may be intended to promote that objective, Tri-State believes that the proposed rules (at least as described in the concept paper) fall short of that objective.

Tri-State supports the development of rules which define the term "ordinary course of business" as that term is used in §40-5-101, C.R.S. A clear description of the types of projects that are considered by the Commission to be in the ordinary course of business such that a certificate of public convenience and necessity (CPCN) is not required would be a benefit to Tri-State and other transmission-owning utilities. Tri-State understands that the proposed emergency rules essentially codify the staff guidelines that have been used to

evaluate this question, and the expression of those guidelines in administrative rules could, if properly drafted, eliminate some of the uncertainty associated with whether to a CPCN will be required by the Commission for a particular project. However, the proposed emergency rules are of little assistance on this point because the guidelines are so broad that they will apply to virtually any transmission project.

Tri-State is also concerned that the proposed rules contain substantive new requirements for CPCN applications that will add time and expense to the preparation of the applications. How much time and expense is difficult to quantify in such an expedited proceeding and Tri-State would prefer to have additional time to evaluate these proposed rules and provide detailed comments. Tri-State is concerned that rather than moving in the direction of expediting and streamlining the CPCN process, the proposed emergency rules instead create new requirements which will delay the process of acquiring Commission approval of transmission line projects.

2. Emergency Rulemaking is Unnecessary

Tri-State does not believe that an emergency rulemaking docket is the appropriate mechanism for thoughtful consideration of such important and substantive new rules. While Tri-State believes that a regular rulemaking on this subject is timely and appropriate, it should be conducted in accordance with the procedures set forth in the Colorado Administrative Procedures Act (“Colorado APA”) for a permanent rulemaking. This would allow all interested parties appropriate time to analyze the proposed rule changes and provide comments, consider and respond to the comments of other parties, and discuss the rules in an appropriate hearing. Tri-State believes that the issues that are involved in this proposed Docket are as important as other issues the Commission has addressed in other permanent

rulemaking dockets, and it believes that the permanent rulemaking procedure and schedule should be followed here.

The Commission is subject to the procedural requirements of the Colorado APA through the application of §40-2-108, C.R.S. The Colorado APA (§24-4-103 (6), C.R.S.) authorizes the adoption of “temporary or emergency rules” with less than the normal statutory notice “only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such finding on the record.” In contrast with other recent emergency rulemaking dockets (i.e, the emergency rules adopted to implement new electric resource planning rules, Docket No. 07R-0368E), in this instance there is no state or federal law or regulation which requires immediate action by the Commission. Further, it is difficult to conclude that the emergency rules are necessary to preserve the public health, safety or welfare. The Commission should use the existing rules for transmission CPCN applications until new proposed rules are fully examined by interested parties and a decision is made based on a complete record.

Tri-State understands that one of the reasons the Commission is proceeding on an emergency basis is so that the new rules will apply to Public Service Company’s expected S.B. 07-100 filings. As the Commission is aware, Tri-State also plans to submit a CPCN filing in the near future with respect to a project in the San Luis Valley. Tri-State submits, however, that there is no compelling reason to implement new rules prior to the filing of these applications. Although the Commission has expressed its desire for additional

information related to transmission planning, it should take a more deliberate approach rather than rushing the proposed new rules into place without proper review.

3. Comments on Proposed Emergency Rules

If the Commission decides to proceed with this emergency rulemaking, Tri-State has the following comments with respect to the proposed rules.

a. Ordinary course of business

Rule 3102 (a) states that a utility “need not apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is in the ordinary course of business.” Rule 3206 (a) requires utilities to submit a filing with the Commission of planned new transmission projects or extensions of existing projects to be completed within the next three calendar years. The Commission then makes a determination as to which projects are in the ordinary course of business, and which projects require a CPCN from the Commission. Rule 3206 (b) describes circumstances in which modifications to projects that were approved through a prior Commission decision must also be considered by the Commission to determine whether a CPCN is required.

Since the current rules do not define which transmission line projects are considered to be “in the ordinary course of business” and thus exempt from the CPCN requirements, Tri-State supports the notion of defining this term in the electric rules. The proposal set forth in the concept paper, however, does not advance this objective.

In paragraph #3 of the concept paper, the Commission proposes a set of “guidelines” to be used in determining “when a transmission project requires a CPCN determination.” It is not clear, however, how these guidelines are to be used. Is it the Commission’s intent that a transmission project which fits *any* of the eleven guidelines is subject to a “CPCN

determination”? If this is the case, it is likely every transmission line project will fall into at least one of the eleven guidelines and no projects will be determined to be “in the ordinary course of business.” For instance, a transmission line project may be located entirely within Colorado, less than 35 miles long, and less than 230 kV, but it may be determined to affect the reliability of the Colorado bulk transmission system. Does this fact alone allow the Commission to find that the project is not in the ordinary course of business and require a CPCN application? If so, the proposed rules are not likely to expedite the construction of transmission in Colorado.

If, on the other hand, the guidelines are intended to be used more generally to evaluate whether a proposed project is subject to CPCN review, the Commission should so state in the proposed rules. Further, it is unclear how some of the guidelines were established and how they apply. For instance, guideline 3 (a) refers to “the bulk power transmission system of the State of Colorado.” What is the definition of the bulk power system? Is it only lines of 230 kV voltage and higher as described in 3 (f)? What is the rationale behind the determination that a line over 35 miles long is an appropriate factor in requiring a CPCN review? What is the basis for concluding that a \$7 million project should require a CPCN determination? What is included in the term “project costs” to calculate the threshold amount? Should that amount be adjusted for inflation? What is meant in 3 (h) by the reference to “environmentally/politically sensitive areas”? In paragraph 3 (i), what does the term “first of its kind” refer to, the voltage of the line or a particular design characteristic? What “area” is encompassed in the 3 (i) requirement? Why should efforts to mitigate EMF and corona noise impact the initial need determination? These are just a few of the questions that could be more carefully explicated in a permanent rulemaking proceeding.

In order for the rules to provide more certainty, they should list specific categories of transmission projects that the Commission considers to be in the ordinary course business as a matter of policy, and leave no question as to the right of the utility to proceed with such projects without filing a CPCN application. The utilities would continue to include these projects in their Rule 3206 filing, but the presumption would be that no CPCN application is required.

b. Required new studies

The proposed emergency rules also require additional studies to be filed with CPCN applications. Although the typical transmission planning horizon is ten years (as established by FERC rules), the proposed rules require the filing of “any and all” short-term and long-term (20-40 year) transmission planning studies that the utility has performed. In addition to the fact that typically no long term transmission planning studies exist, Tri-State has two objections to this requirement. First, the utility should only be required to provide the planning studies that are relevant to the proposed project. All transmission-owning utilities are constantly studying and reevaluating their transmission systems, and to require “any and all” studies that may relate to a particular project is burdensome and unnecessary.

Tri-State also objects to the requirement that it file the studies listed in paragraph 4 of the concept paper. Steady-state power flow studies, stability studies, and fault/short circuit studies all require significant data input from all utilities in the region. For a multi-state utility like Tri-State, there are many other transmission owners that will not provide 20-40 year projections, thereby making the long-term studies virtually meaningless. Long-term (20-40 year) planning may have some merit in identifying transmission corridors, but detailed engineering studies as proposed in the emergency rules would be based on speculative data

and would add no value to this process. The Commission should limit its analysis to factors that relate to the Commission's statutory charge of determining whether the public convenience and necessity supports a proposed transmission project.

c. Documentation from regional planning groups

In paragraph 5, the proposed rules would require the utility to file "documentation" it has received from subregional and regional planning groups as well as the WECC which approve the "proposed plan and project corresponding to the system planning study." The implication of this proposed rule appears to be that discrete transmission projects are "approved" by a regional planning body, i.e., RTO or ISO, and that such approvals are conditions precedent to the construction of the project. This is not the case in Colorado where there is no regional transmission authority. Accordingly, the Commission cannot compare a proposed project with a regional plan, and there is no reason for this type of data to be filed with a Colorado CPCN application. Further, the Commission's staff participates in the regional transmission planning efforts, and it has access to and can provide to the Commission such studies as it deems relevant to a particular project.

d. EMF and noise limits

Tri-State complies with the Commission's rules pertaining to EMF and it employs the required prudent avoidance measures. As for noise standards, the intent of the rules is apparently to create a standard that will be applied in all cases notwithstanding the Commission's authority, pursuant to §25-12-103 (12) (a), C.R.S., to determine noise level reasonableness on a case by case basis. Nonetheless, Tri-State believes it can meet the proposed standard (50 dB(A) at a distance of 25 feet from the edge of the right-of-way).

e. Land use and zoning information

The last provision of the proposed rules would require utilities to file detailed zoning and “relevant land use information along the entire corridor to which this CPCN application applies.” Although the rule states that this information is to be used in the context of making decisions with respect to audible noise, it is not clear whether the information would in fact be used by the Commission to review the routing decisions made by the utility. Although the Commission has jurisdiction to consider appeals from decisions of local governments related to conditions imposed on certain electric utility projects, the scope of its inquiry in CPCN cases should remain limited. Appeals from local government permitting processes are brought pursuant to a separate statutory scheme (§29-20-108, C.R.S.) and the information sought in paragraph 6 of the proposed rules is not relevant to CPCN applications. Further, in the case of projects financed by federal agencies, the preferred route may be determined in a federal environmental review (environmental impact statement or environmental assessment) which may occur either before or after the filing of a CPCN application. Where the EIS/EA analysis occurs after the CPCN determination, a preliminary routing decision that is filed with the Commission may jeopardize the availability of federal funding.

4. Streamlined process

Tri-State is aware of the Commission’s interest in promoting transmission development in Colorado, particularly transmission which will facilitate the development of renewable generation in the energy resource zones that have been identified in Public Service Company’s S.B. 07-100 filings. From Tri-State’s perspective, complex new CPCN rules do not advance this objective. Instead, the Commission should adopt rules which clearly exclude certain projects from the CPCN requirements entirely, and then expedite those projects for

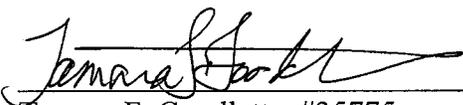
which a CPCN is required. Further, the Commission should clearly and narrowly define the scope of transmission-related CPCN dockets in order to keep the proceeding focused on the specific project being considered.

Just as the legislature has chosen to expedite S.B. 07-100 projects by requiring action on CPCN applications within one hundred eighty days, the Commission could create a “fast-track” process for selected transmission projects. Although the Commission is subject to statutory deadlines to act, there is nothing in the public utility law which would preclude the Commission from adopting a more aggressive schedule.

5. Conclusion

Tri-State believes that the important issues in this docket should not be addressed in an emergency rulemaking where the parties have four business days to respond. There is no urgent need to adopt new rules, and even though a permanent rulemaking will follow there is a chance that permanent rules will not be in place until later this year. In the meantime, the filing of CPCN applications will be governed by rules that were vetted on a cursory basis, without careful consideration by impacted parties. Tri-State appreciates the opportunity to present these Comments to the Commission.

Respectfully submitted this 4th day of February, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this fourth day of February, 2009, I served an original and seven copies of the foregoing **TRI-STATE'S COMMENTS CONCERNING PROPOSED EMERGENCY RULES** on the Colorado Public Utilities Commission by handing to and leaving the same with the Executive Director of the Commission, Mr. Doug Dean, and that copies were e-mailed to the following:

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A handwritten signature in blue ink, reading "Donna Johnson", is written over a horizontal line.