

Decision No. R19-1021-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0691E

UNITED POWER, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
SCHEDULING A PREHEARING CONFERENCE
AND PROVIDING ADVISEMENTS**

Mailed Date: December 18, 2019

I. STATEMENT

A. Procedural History

1. On December 5, 2019, United Power, Inc. (United or Complainant) filed with the Colorado Public Utilities Commission a Formal Complaint against Tri-State Generation and Transmission Association, Inc. (Tri-State or Respondent). That filing commenced the above-captioned proceeding. United and Tri-State are the Parties to this Proceeding.

2. On December 6, 2019, the Commission scheduled an evidentiary hearing on the Complaint for February 25, 2020.

3. On December 6, 2019, pursuant to Rules 1205(a) and 1302(g) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1,

the Commission's Director served on Tri-State an Order to Satisfy or Answer, the Complaint, and an Order Setting Hearing and Notice of Hearing. Respondent was ordered to Satisfy or Answer the Complaint within 20 days, or by December 26, 2019.

4. On December 9, 2019, United filed an Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission (*PHV* Motion) for Peter W. Herzog III of the St. Louis, Missouri, office of the law firm of Wheeler Trigg O'Donnell LLP to appear as co-counsel on behalf of United. The *PHV* Motion was served on four different counsel for Tri-State.¹

5. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, Tri-State's response to the *PHV* Motion is due 14 days after service, or no later than December 23, 2019. An Interim Decision on the *PHV* motion will be issued after the later of the filing of a response or December 23, 2019.

6. On December 11, 2019, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was subsequently assigned to preside over this Proceeding.

B. Prehearing Conference

7. In anticipation of the hearing, the undersigned ALJ is setting a prehearing conference in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1. The prehearing conference will be scheduled for **January 7, 2020 at 9:30 a.m.**

8. *At the prehearing conference*, the Parties must be prepared to discuss the following items: (a) whether the February 25, 2020 hearing date set by the Commission should be vacated and rescheduled; (b) the date by which United will file direct testimony and

¹ The *PHV* Motion failed to include a report of conferral with opposing counsel, as required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

attachments;² (c) the date by which Tri-State will file answer testimony and attachments; (d) the date by which United will file rebuttal testimony and attachments; (e) the date by which each Party will file corrected testimony and attachments;³ (f) the date by which any Party may file prehearing motions, other than motions relating to discovery, but including any dispositive motions, motions *in limine*, or motions to strike;⁴ (g) the date by which the Parties will file any stipulations or a settlement agreement;⁵ (h) the date(s) for the evidentiary hearing, including a statement of how many days the Parties will need to try this case; and (i) the date by which each Party will file its post-hearing statement of position (statements of position will be simultaneous with no responses permitted).⁶

9. The statements of position to be filed by the Parties may not exceed 30 pages in length, exclusive of table of contents and appendices. If additional parties are permitted to intervene in this Proceeding, the page limits on statements of position may be adjusted.

10. Pursuant to § 40-6-108(4), C.R.S., the Commission's final decision in complaint cases must be issued within 210 days after the filing of testimony and exhibits by the Complainant, unless the time limits are waived by the Complainant. In negotiating dates for the evidentiary hearing, the Parties should be mindful of this statutory deadline. They should allow time for the ALJ to issue his Recommended Decision (generally 30 days after the statements of

² Given the apparent complexity of the issues to be litigated in this Complaint, the ALJ will require the Parties to file written testimony in question and answer format.

³ Filing of corrections shall be limited to correcting errors (*e.g.*, mathematical, typographical, or grammatical errors) in the testimonies or attachments as filed. Without a finding of good cause and leave of the ALJ, corrections may *not* be used for any other purpose (*e.g.*, to make material or substantive revisions to pre-filed testimony or attachments).

⁴ This date shall be at least 20 calendar days before the first day of the hearing.

⁵ This date shall be at least 10 calendar days before the first day of hearing.

⁶ Post-hearing statements of position shall be filed no later than 14 calendar days from the conclusion of the evidentiary hearing.

position are filed), for the filing of exceptions and responses, and for the Commission to deliberate and to issue its decision on exceptions.

11. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to discovery, if the procedures and timeframes contained in Rule 1405, 4 CCR 723-1, are not adequate.

12. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential, if the procedures and timeframes contained in Rules 1100 and 1101, 4 CCR 723-1, are not adequate. This discussion should include the treatment of highly confidential information for which extraordinary protection may be sought, assuming that highly confidential information may arise in this case.

13. *At the prehearing conference*, the Parties must be prepared to discuss whether the presentation of evidence at the hearing should be done through the presentation of electronic exhibits to the fullest extent possible, with the exception of exhibits to be used for impeachment.

14. *At the prehearing conference*, a Party may raise any additional issues relevant to this Proceeding.

15. The Parties must consult prior to the prehearing conference with respect to the foregoing matters to be discussed at the prehearing conference. The Parties are encouraged to present, if possible, a consensus procedural schedule and hearing date(s) that are acceptable to all Parties. The ALJ will order counsel for United to coordinate these discussions.

16. If the Parties are able to reach agreements on a consensus procedural schedule, hearing date(s), and the other procedural matters addressed in this Decision, the ALJ encourages United to make a filing **no later than January 3, 2020**, stating those agreements. Alternatively, United may present any consensus procedural schedule, hearing date(s), and other negotiated

procedural matters at the prehearing conference. If no consensus can be reached on these procedural matters, the ALJ will establish the procedural schedule and hearing dates.

17. **The parties are advised, and are on notice, that** the ALJ will deem a Party's failure to attend or to participate in the prehearing conference to be a waiver of that Party's objections to the rulings made during the prehearing conference, the procedural schedule established, and the hearing dates scheduled.

C. Other Advisements.

18. **The Parties are advised that** an order may issue in the future requiring that the presentation of evidence at the hearing will be done through electronic exhibits to the fullest extent possible, with the exception of exhibits to be used for impeachment.

19. **The Parties are advised, and are on notice, that** they must be familiar with, and must abide by, the Commission's Rules of Practice and Procedure, 4 CCR 723. These Rules are available on-line at www.dora.colorado.gov/puc and in hard copy format from the Commission.

20. At this point in the Proceeding, all Parties appear to be represented by counsel. The ALJ calls counsels' attention to the requirement of Rule 1202(d), 4 CCR 723-1, that, "[e]very pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, and attorney registration number." (Emphasis supplied.) **The Parties are advised, and are on notice, that** filings must comply with this requirement and with the other requirements found in the Rules of Practice and Procedure pertaining to filings made with the Commission.⁷

⁷ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of his rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks of pleadings for the appropriate e-mail addresses of counsel. If any counsel's email address changes during the pendency of this Proceeding, please promptly update it with the Commission.

21. **The Parties are advised, and are on notice, that** timely filing with the Commission means that the Commission *receives* the filing by the due date. Thus, if a document is placed in the mail on the date on which the document is due to be filed, then the document is *not* timely filed with the Commission. Pleadings and other documents are filed with the Commission either by using the E-filings System, with which counsel and the Parties should be familiar, or by filing the original of a paper document along with three copies. Emailing pleadings and other documents to the ALJ, the Commissioners, the Director of the Commission, or other employees of the Commission **does not** constitute proper filing under Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1.

22. **Each Party is specifically advised** that all filings with the Commission must also be served upon counsel for all other Parties, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

23. **Each Party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, responding Parties (*i.e.*, the Parties that did not file a motion) have the procedural right to file a written response to motions within 14 days after service of the motion, unless that time is shortened by the ALJ or the Commission.

24. Other advisements may be provided in subsequent Interim Decisions.

II. ORDER

A. It Is Ordered That:

1. A prehearing conference in this proceeding is scheduled as follows:

DATE: January 7, 2020

TIME: 9:30 a.m.

PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. The Parties and their counsel shall take note of and comply with the requirements

and Advisements set forth in this Interim Decision.

3. This Order is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director