

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0157E

IN THE MATTER OF THE VERIFIED APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR APPROVAL OF THE RETIREMENT OF THE RIFLE STATION.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
APPROVING UNANIMOUS
COMPREHENSIVE SETTLEMENT
AGREEMENT AND GRANTING APPLICATION**

Mailed Date: September 9, 2022

TABLE OF CONTENTS

I. STATEMENT.....	1
A. Procedural Background	1
II. FACTS.....	3
III. SETTLEMENT AGREEMENT.....	4
A. Stipulations	4
B. Settlement Terms.....	5
IV. FINDINGS, DISCUSSION, AND CONCLUSIONS	6
V. ORDER.....	7
A. The Commission Orders That:	7

I. STATEMENT

A. Procedural Background

1. On April 5, 2022, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a Verified Application (Application) seeking approvals related to the retirement of Tri-State's Rifle Generating Station (Rifle Station).

2. On April 5, 2022, the Commission issued a Notice of Application Filed establishing deadlines for the filing of intervention pleadings.

3. On April 12 and May 11, 2022, the Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Public Utilities Commission (Staff) filed notices of intervention by right, respectively.

4. On May 5, 2022, Western Resource Advocates (WRA) filed a Motion to Permissively Intervene in this proceeding.

5. On May 18, 2022, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry.

6. By Decision No. R22-0360-I, issued June 13, 2022, WRA's Motion to Permissively Intervene was granted and a remote prehearing conference was scheduled.

7. On June 17, 2022, Tri-State filed an Unopposed Motion for Stay of the proceeding for 60 days (Unopposed Motion to Stay), indicating that the parties were engaged in productive discussions toward a negotiated resolution. By Decision No. R22-0505-I, issued July 6, 2022, the Unopposed Motion to Stay was granted and the remote prehearing conference scheduled was vacated.

8. On July 22, 2022, Tri-State filed an Unopposed Joint Motion to Approve Unanimous Comprehensive Stipulation and Settlement Agreement (the "Settlement Motion"), indicating that Tri-State, Staff, UCA, and WRA (the "Settling Parties") had reached a Stipulation and Settlement Agreement (Settlement Agreement) in this proceeding. The Settlement Agreement was attached to the Settlement Motion and represents an agreement between the parties to this proceeding that resolves all the issues that were actually raised, or that could have been raised with respect to Tri-State's Application.

II. FACTS

9. Rifle Station is an 85 MW gas-fired generation plant constructed in 1987 by an independent power producer as a cogeneration plant under the Public Utility Regulation Policy Act of 1987.

10. Tri-State purchased the facility in 2002 and has operated Rifle Station for the purpose of providing wholesale electric power to its Utility Members which, in turn, provide retail service to member-customers within their respective certificated service territories.

11. Although Tri-State previously forecasted a retirement date of 2028 for Rifle Station, the facility is subject to a Colorado Discharge Permit System permit from the Colorado Department of Public Health and Environment Water Quality Control Division that will require certain major capital improvements at the facility in order to continue operations beyond the end of 2022. The facility also requires other capital improvements in order to continue providing service. These capital improvements are not cost-effective in light of the age of the Rifle facility, Tri-State's capacity-long position confirmed in this case and in the most recent Phase I Electric Resource Plan Proceeding,¹ and given that Rifle Station has operated very infrequently in recent years. Early retirement will also reduce the emissions on Tri-State's system and eliminate the need to discharge wastewater to the unnamed tributary of Dry Creek.² Tri-State is therefore seeking Commission approval to retire Rifle Station on or around October 6, 2022, decommission the facility, and sell the land associated with the facility.

¹ See Hearing Exhibit 102. See also Joint Motion to Approve Settlement, Attachment B.

² Hearing Exhibit 101.

III. SETTLEMENT AGREEMENT

A. Stipulations

12. In the Settlement Agreement, Tri-State stipulates to certain facts related to its Application as follows.

13. Resource Adequacy. Tri-State will be able to maintain system reliability following the retirement of Rifle Station. Tri-State provided an updated Load & Resource (L&R) table, reflecting (1) the retirement of Rifle Station, (2) Tri-State's latest forecast for federal hydropower contract capacity for the 2022-2027 period, reflecting drought conditions, (3) Tri-State's latest load forecast, including the impact of Member Partial Requirements contracts, (4) updated power purchase agreement (PPA) expected in-service dates, and (5) that Tri-State is not forecasting a capacity shortfall to occur until 2030, consistent with its most recent Annual Progress Report.

14. ERP Phase II Modeling of Rifle. Tri-State invited parties to Tri-State's 2020 Electric Resource Plan (ERP), including the Settling Parties, to participate in a stakeholder meeting to review updated modeling assumptions Rifle in Phase II of the ERP. Tri-State reviewed its intention to model Rifle as retired in its Phase II modeling. None of the parties to Tri-State's ERP expressed concern or opposition to Tri-State's proposed approach.

15. Community Notice. Tri-State served a Form of Notice to affected communities pursuant to Commission Rule 3103(d) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. The notice was served, separately, to the City of Rifle and Garfield County on May 26, 2022.

16. Community Support. Tri-State provided a local economic development contribution to the Rifle Regional Economic Development Corporation (RREDC) in connection with the Rifle Station retirement.

17. Facilities to be Decommissioned. Tri-State provided a list of aboveground and underground facilities to be removed as part of the site decommissioning in addition to the information provided by Mr. Ingold's Direct Testimony.

18. Property Sale. Tri-State has entered into a Non-Disclosure Agreement with a potential buyer of the land associated with Rifle Station, but no definitive purchase and sale agreement has not been negotiated.

19. Environmental Liability. Tri-State has agreed to take steps to prudently manage any environmental issues associated with former utility operations in connection with the potential sale, assignment, or lease of Rifle Station land. Tri-State agreed that it will undertake to limit its future environmental liability in the purchase and sale agreement by considering the use of deed restrictions, environmental covenants, enrollment of the subject property in Colorado's Voluntary Cleanup and Redevelopment Program, and contractual mechanisms, such as environmental indemnities and releases of liability.

B. Settlement Terms

20. The Settling Parties agree that Tri-State's Application should be approved pursuant to Commission Rules 3002(IV) and 3103, 4 CCR 723-3, based on the information contained in the Application and the Settlement Agreement. The Settling Parties agree that the retirement of Rifle Station and the abandonment or discontinuation of such facilities without equivalent replacement, including Tri-State's plans for decommissioning of the facility and sale of the underlying property, is in the public interest.

21. The Settling Parties agree that the Commission should approve this Stipulation and Settlement Agreement and issue a decision approving the Settlement Agreement, without further testimony or a hearing, as expeditiously as possible.

IV. FINDINGS, DISCUSSION, AND CONCLUSIONS

22. The requested relief being uncontested, the proceeding may now be processed under the modified procedure, pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, without a formal hearing.

23. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. In reviewing the terms of the Settlement Agreement, the ALJ applied the Commission's direction and policy with respect to a review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

24. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

25. The Commission encourages parties to settle their differences in contested proceedings. Rule 1408, 4 CCR 723-1. Approval of the Settlement Agreement promotes administrative efficiency, expedites resolution, and avoids the hazards of litigation while minimizing litigation costs that customers must ultimately bear.

26. The Settling Parties agree that Rifle Station should be retired and decommissioned, without equivalent replacement, and the underlying real property should be sold.

27. The Settling Parties agree the provisions of the Settlement Agreement are just, reasonable, and consistent with and not contrary to the public interest. All Parties support approval of the Settlement Agreement without modification.

28. The Settlement Agreement proposes a fair and timely resolution of the issues in this proceeding. As described in Tri-State Application, the environmental, financial, and operational considerations at Rifle Station support its early retirement as being in the public interest. Tri-State's stipulations in the Settlement Agreement further ensure that other important considerations have

been taken into account, such as resource adequacy, treatment of Rifle in Tri-State's pending ERP,³ community notice and support, and environmental liability.

29. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement and no waiver or variance has been found to approve the Settlement Agreement. Approval of the settlement will not have a precedential effect upon other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); and *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

30. The undersigned has reviewed the Joint Motion filed by the Parties and the thorough recitations of the Parties in both the Joint Motion and the Settlement Agreement. The ALJ has duly considered the positions of all parties in this matter.

31. The undersigned finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission without modification. The facts in Tri-State's Application as well as the additional stipulations in the Settlement Agreement make a sufficient showing that approval of the Application is in the public interest.

32. The undersigned has duly considered the positions of the Parties in this matter. Based on a review of the entire record, the undersigned finds that approval of the Application filed in this Proceeding is consistent with the Settlement Agreement and is in the public interest.

V. ORDER

A. The Commission Orders That:

1. The Unopposed Joint Motion to Approve Unanimous Comprehensive Stipulation and Settlement Agreement filed by Tri-State Generation and Transmission Association, Inc. (Tri-State), Trial Staff of the Colorado Public Utilities Commission, the Office of the Utility Consumer

³ Proceeding No. 20A-0528E.

Advocate, and Western Resource Advocates (collectively, the Parties) on July 22, 2022, is granted, consistent with the discussion above.

2. The Settlement Agreement filed by the Parties on July 22, 2022, and attached to this Recommended Decision as Appendix A, is approved without modification, consistent with the discussion above.

3. The Verified Application seeking approval of the retirement of the Rifle Generating Station, filed by Tri-State on April 5, 2022, is approved.

4. Tri-State shall comply with the Settlement Agreement and this Recommended Decision.

5. 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.

6. 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 motion, the recommended decision will 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.

7. If exceptions to this Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission finds good cause and permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean, Director