

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0164E

IN THE MATTER OF THE APPLICATION OF DELTA-MONTROSE ELECTRIC ASSOCIATION AND TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR AN ORDER APPROVING THE TRANSFER OF CERTAIN TRANSMISSION ASSETS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FROM TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. TO DELTA-MONTROSE ELECTRIC ASSOCIATION.

**INTERIM DECISION REQUIRING
ADDITIONAL INFORMATION**

Mailed Date: May 29, 2020
Adopted Date: May 27, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision, we require Tri-State Generation and Transmission Association, Inc. (Tri-State) and Delta-Montrose Electric Association (DMEA) (together, Joint Applicants) to file supplemental information to their joint application in order for us to more effectively review the request.

B. Background

2. On April 13, 2020, Joint Applicants filed their Joint Application pursuant to § 40-5-105, C.R.S., Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1303 of the Commission's Rules of Practice and Procedure, and Rules 4 CCR 723-3-3002 and 3014 of the Commission's Rules Regulating Electric Utilities, jointly request an order approving the transfer of certain transmission assets and certificates of public convenience and necessity (CPCNs) from Tri-State to DMEA as described in the Joint Application. According to the Joint Application,

Joint Applicants seek this asset transfer to effectuate certain provisions of the settlement agreement between DMEA and Tri-State, dated July 19, 2019 (Settlement Agreement), whereby, among other things, the parties agreed that Tri-State would transfer certain of its transmission and related utility assets to DMEA.¹ In addition, Joint Applicants seek expedited approval of the Joint Application no later than June 22, 2020. The Joint Applicants assert that approval of the Joint Application is in the public interest and should therefore be approved by the Commission.

3. The purpose of the asset transfer is to effectuate certain provisions of the Settlement Agreement between DMEA and Tri-State, dated July 19, 2019, in which, *inter alia*, the parties agreed that Tri-State would transfer certain of its transmission and related utility assets to DMEA. In addition, Joint Applicants entered into a Purchase and Sale Agreement, dated April 10, 2020 regarding the transfer of the transmission assets set forth in this application.²

4. Additionally, Joint Applicants provide accounting information that summarizes Tri-State's accounting treatment for the assets subject to the Joint Application to be transferred to DMEA. According to Joint Applicants, the proceeds for the assets subject to the Joint Application are \$18,337,796.00.³ Joint Applicants represent that the amounts set forth in Attachment G represent the estimated proceeds, offset by the net book value and consideration of assets to be transferred at a future date which results in the estimated gain.

5. The Commission was not privy to the terms of the Settlement Agreement entered into between Joint Applicants on July 19, 2019 in settlement of the complaint proceeding filed by

¹ The Settlement Agreement is attached to the Joint Application as Attachment E.

² The Purchase and Sale Agreement is attached to the Joint Application as Attachment F.

³ The accounting treatment is attached to the Joint Application as Attachment G.

DMEA against Tri-State in Proceeding No. 18F-0866E (as well as Case No. 2019CV31054 in Adams County District Court). However, Joint Applicants provide that the terms of the Settlement Agreement include that DMEA is withdrawing as a member of Tri-State; DMEA is receiving the transmission and related assets from Tri-State that are the subject of the Joint Application; and, DMEA is to pay Tri-State an agreed upon withdrawal payment.⁴

6. The terms of the Settlement Agreement also provide that Tri-State is transferring to DMEA, transmission and interconnection related assets necessary for DMEA to be served entirely by the bulk-electric system and/or a Network Integration Service Agreement with Tri-State and other transmission providers. A complete list of the assets to be transferred from Tri-State to DMEA subject to Commission jurisdiction is attached as Attachment I to the Joint Application.

7. Attachment I also sets out the CPCN status of each asset. Joint Applicants state that no CPCN was required for certain assets, so there is no CPCN to be transferred from Tri-State to DMEA in conjunction with the transfer of those assets. The remaining assets listed in Attachment I, according to Joint Applicants, were originally transferred by the Commission from Colorado-Ute Electric Association, Inc. (Colorado-Ute) to Tri-State in conjunction with the Colorado-Ute bankruptcy. Tri-State maintains it is unable to determine whether Colorado-Ute originally obtained CPCNs for any of the assets subsequently transferred to Tri-State. To the extent any CPCNs existed, in Decision No. C91-1729 in Proceeding No. 91A-589E,⁵ the Commission authorized Tri-State “to succeed to all of Colorado-Ute Electric Association, Inc.’s electric utility rights, title, and interest in its utility plant and facilities, and to all certificates,

⁴ See, Attachment E at ¶ 1.

⁵ Decision No. C91-1729 was issued in Proceeding No 91A-589E on January 27, 1992.

consents, and permits relating to ownership and operation of such plant[s] and facilities.”⁶ Regarding those assets originally owned by Colorado-Ute and transferred to Tri-State by Decision No. C91-1729, Joint Applicants request the Commission approve the transfer from Tri-State to DMEA of any CPCNs associated with subject facilities. Joint Applicants represent that the transfer of the transmission assets and CPCNs will result in minimal, if any, difference in the kind of costs of service rendered to customers before and after the asset transfer.

8. While Joint Applicants failed to provide information on this particular filing, also on April 13, 2020, Tri-State filed with the Federal Energy Regulatory Commission (FERC), a Membership Withdrawal Agreement dated as of April 10, 2020 between Tri-State and DMEA, pursuant to which DMEA will withdraw from membership in Tri-State. Tri-State requests that FERC accept Rate Schedule FERC No. 262 without suspension or condition, and grant an effective date as of June 10, 2020, which is 61 days from the date of Tri-State’s filing. The Membership Withdrawal Agreement was docketed by FERC with other filings related to the withdrawal of DMEA in Docket Nos. ER20-1541, 1542, 1543, 1545, 1547, 1548, and 1559. Several parties have intervened in these FERC proceedings, both supporting and opposing the filings.

II. FINDINGS AND CONCLUSIONS

9. Pursuant to Rule 1500, in a proceeding before the Commission, as the party that seeks Commission approval or authorization, an applicant bears the burden of proof with respect to the relief sought and of moving the application forward. Here, Joint Applicants request not only approval of the transfer of transmission assets and CPCNs, but also that the decision be expedited with a decision no later than June 22, 2020.

⁶ *Id.* at Ordering ¶ 4.

10. Several issues are of concern to us that were not addressed in the Joint Application. First, Joint Applicants request this matter be expedited but offer no support for that proposition other than a single statement that Joint Applicants anticipate a closing date of June 30, 2020. We require additional support from Joint Applicants to determine whether expedited consideration is necessary.

11. Joint Applicants failed to provide information regarding Tri-State's filings at FERC seeking approval of the terms of the Settlement Agreement. Joint Applicants provided no information on the FERC proceedings, such as when a decision is expected from FERC on the terms of the Settlement Agreement, or how the progression of this proceeding and the FERC proceeding affect one another, if at all. We noted in a previous proceeding that we prefer to address applications for transfer of assets when the transferor and transferee have resolved all other issues and are in the final phase of the transfer process.⁷ We require additional information from Joint Applicants that the progression of the applicable proceedings for approval of the Settlement Agreement and the Transfer of Assets in different venues is appropriate so the Joint Application is ripe for adjudication under our standards.

12. Finally, Tri-State admits that it is unsure whether certain transmission assets previously owned by Colorado-Ute and subsequently transferred to Tri-State by Commission decision are associated with CPCNs. Nonetheless, Joint Applicants request we approve the transfer from Tri-State to DMEA of any CPCNs associated with subject facilities, with no knowledge of whether those CPCNs exist.

⁷ See, *In the Matter of the Application of the City of Boulder, Colorado for Approval of the Proposed Transfer of Assets from Public Service Company of Colorado to the City and Associated Authorizations and Relief*. Decision No. C19-0874, Proceeding No. 15A-0589E, issued October 28, 2019.

13. We are troubled by this request. Should this Commission approve such transfers, there is the risk that should there be conflict involving those assets that require proof of the existence of an associated CPCN, the burden would then rest with the Commission to show that it had sufficient evidence to grant the transfer of assets with associated CPCNs that may or may not exist. We are loathe to place such a burden on the Commission. Rather, we find that Joint Applicants bear the burden to prove the existence of any CPCNs associated with transmission assets at issue in this Joint Application proceeding or show that it is not necessary to produce such CPCNs.

14. While we understand that a previous Commission approved the transfer of certain assets from Colorado-Ute to Tri-State as part of the former's bankruptcy proceeding, we nonetheless require more definitive information regarding any CPCNs associated with the transfer of those same assets from Tri-State to DMEA.

III. ORDER

A. It Is Ordered That:

1. Tri-State Generation and Transmission Association, Inc. and Delta Montrose Electric Association (Joint Applicants) shall supplement the Joint Application consistent with the discussion above.

2. The supplemental information shall be filed no later than ten days from the effective date of this Decision.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 27, 2020.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners