

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0069E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, TO ADDRESS THE CONSTRUCTION OF NEW POWERLINE TRAILS PURSUANT TO HOUSE BILL 22-1104.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
ADOPTING RULES AS MODIFIED**

Mailed Date: June 5, 2023

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I. STATEMENT

1. On February 15, 2023, by Decision No. C23-0101, the Colorado Public Utilities Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR) and referred this matter to an Administrative Law Judge (ALJ) for disposition. A public comment hearing was scheduled for March 27, 2023, at 11:00 a.m.

2. The purpose of this Proceeding is to consider amendments to certain of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, in order to implement the recent statutory changes enacted in House Bill (HB) 22-1104, effective

April 13, 2022, adding a requirement that the Commission amend its rules requiring that ten-year transmission plan filings include information regarding the potential for powerline trails. The Commission's proposed amendments to the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Proposed Rules, or in its singular form, Proposed Rule) were attached to the NOPR.

3. On February 15, 2023, the Commission filed the NOPR with the Secretary of State and the Colorado Office of Regulatory Reform.

4. On March 13, 2023, Public Service Company of Colorado (Public Service) filed its Written Comments of Public Service Company of Colorado (Public Service's Written Public Comments). Public Service suggested two suggested modifications to the Proposed Rules: the correction of an error¹ in proposed Rule 3001(aa) and the addition of the words "by the transmission provider" at the end of proposed Rule 3627(c)(XI).

5. On March 13, 2023, Black Hills Colorado Electric, LLC doing business as Black Hills Energy (Black Hills) filed its Initial Comments of Black Hills Colorado Electric, LLC doing business as Black Hills Energy (Black Hills' Initial Written Public Comments). In Black Hills' Initial Written Public Comments, Black Hills recommended: correcting the same typo to proposed Rule 3001(aa) that Public Service recommended correcting; switching the words "an electric utility" with the words "a Transmission Provider" in proposed Rule 3001(II); adding the word "line" before the word "transmission" in proposed Rule 3627(c)(X) and (XI); deleting the words "including those" from proposed Rule 3627(c)(X); adding the words "by a Transmission

¹ The error Public Service seeks to correct is a typographical error: the use of the word "service" with the word "surface."

Provider” to the end of proposed Rule 3627(c)(XI); and adding subsection “(a)” after the reference to “§ 33-45-103(2)” in Proposed Rule 3627(c)(XII).

6. On March 13, 2023, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed Tri-State Generation and Transmission Association, Inc.’s Comments on the Proposed Rules Regarding Construction of New Powerline Trails Pursuant to House Bill 22-1104 (Tri-State’s Written Public Comments). In Tri-State’s Written Public Comments, Tri-State suggests: in Proposed Rule 3001(aa), replacing the phrase “existing transmission or planned corridor” with “existing or future transmission corridor;” in proposed Rule 3001(ll), replacing the phrase “an electric utility, or covered by an easement or right-of-way held by an electric utility, where an electric transmission line is constructed, operated, or maintained or planned to be constructed, operated, or maintained” with “transmission provider as defined in § 33-45-102(11), C.R.S. or covered by an easement or right-of-way held by a transmission provider, where an electric transmission line is constructed, operated, or maintained;” replacing the term “transmission project” with “transmission line project” in Proposed Rule 3627(c)(X); and adding the sentence “This rule does not apply to projects that pertain exclusively to substations and related facilities” to the end of Proposed Rule 3627(c)(X).

7. On March 15, 2023, the Southwest Energy Efficiency Project (SWEET) and Bicycle Colorado filed Southwest Energy Efficiency Project and Bicycle Colorado Joint Comments (SWEET’s and Bicycle Colorado’s Written Public Comments). In SWEET’s and Bicycle Colorado’s Written Public Comments, SWEET’s and Bicycle Colorado suggest” adding a new subsection (XII) to Proposed Rule 3627(c) that would read: “A description of completed and planned efforts to notify local governments of transmission projects in their area that have the potential for the construction of a powerline trail.” SWEET and Bicycle Colorado also

suggest replacing the word “planned” with the word “future” in Proposed Rule 3001(aa). SWEEP and Bicycle Colorado further state that they agree with the recommended edits suggested by Public Service, Black Hills, and Tri State, with two exceptions. Specifically, SWEEP and Bicycle Colorado recommend that the phrase “or planned to be constructed, operated, or maintained” in Proposed Rule 3001(ll) should remain as set forth in the Proposed Rules and the following phrase “a new transmission line will be constructed” be added after the word “where” to Proposed Rule 3627(c)(X). Lastly, SWEEP and Bicycle Colorado, recommended adding subsection (XIII) to Proposed Rule 3627(c), which would require transmission line providers to submit to the Commission “[a] description of completed and planned efforts to notify local governments of transmission projects in their area that have the potential for the construction of a powerline trail.”

8. On March 20, 2023, Black Hills filed its Response Comments of Black Hills Colorado Electric, LLC doing business as Black Hills Energy (Black Hills’ Written Response Public Comments). In Black Hills’ Written Response Public Comments, Black Hills: takes issue with SWEEP’s and Bicycle Colorado’s recommended replacement of the word “future” with “planned” in Proposed Rule 3001(aa), agrees with the SWEEP’s and Bicycle Colorado’s compiled edits to Proposed Rules 3001(ll), 3627(c)(X), 3627(c)(XI), AND 3627(c)(XII), and disagrees with SWEEP’s and Bicycle Colorado’s recommended addition of subsection (XIII) to Proposed Rule 3627(c).

9. On March 27, 2023, at 11:00 a.m., the public comment hearing was held. Ms. Ann Hendrickson, Black Hills’s Regulatory and Finance Analyst, appeared on behalf of Black Hills and indicated that Black Hills stood by its pre-filed written public comments in this matter. Mr. Chris Irby, Counsel for Public Service, appeared on behalf of Public Service and

indicated that Public Service generally supported the other utilities' pre-filed written comments in this matter, including, specifically, Black Hills' Written Response Public Comments regarding Proposed Rules 3001(aa), 3627(a)(1), 3627(c)(XIII). Mr. Tom Dougherty, Counsel for Tri-State, appeared on behalf of Tri State and indicated that Tri-State stood by its pre-filed comments and concurred with the pre-filed written comments submitted by Public Service and Black Hills. Mr. Tom Easley appeared on behalf of Colorado Communities for Climate Action (CCCA) and stated that CCCA was generally supportive of HB 22-1104, the Proposed Rules, and SWEEP's and Bicycle Colorado's proposed edits to the Proposed Rules. Mr. Easley highlighted the importance of the proposed edits relating to making certain that transmission line providers consult with local governments of the transmission line providers' plans to construct new transmission lines or expand existing transmission lines. Ms. Christine Brinker appeared on behalf of SWEEP. Ms. Brinker stated that SWEEP generally agreed with the "minor changes," proposed by the public commenters in this matter, but reiterated the importance of making certain that transmission line providers "coordinate and communicate" with local governments, as it relates to transmission line providers' plans to construct a new transmission line or expand an existing transmission line. Lastly, Ms. Brinker stated she was concerned that without a requirement imposed on the utilities to coordinate and communicate with local governments, the Proposed Rules, and possibly House Bill 22-1104, would be "useless."

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

10. According to Public Service, its suggested edits to Proposed Rules 3001(aa) and 3627(c)(XI) are meant to correct a typographical error and clarify that the reporting requirements

would apply to transmission providers and not “on the basis of activities that may be underway by other non-affiliated entities.”²

11. According to Black Hills, its suggested edits to Proposed Rules 3001(aa), 3001(II), 3627(c)(X), 3627(c)(XI), and 3627(c)(XII) are respectively meant to: correct a clerical error; provide “consistency with the statutory definition of in HB22-1104... and Commission Rule 3627(a)(I);” remove “ambiguity as to the scope of transmission line projects covered in [3627(c)(X)],” limit the scope of the listing requirement in a Rule 3627 filing to those transmission line projects where the Transmission Provider is actively considering a powerline trail;” and clarify the Proposed Rules regarding “the three informational resources that must be posted on the Transmission Provider’s website...”³ In Black Hills’ Written Response Public Comments, Black Hills state that it objects to SWEEP and Bicycle Colorado edits to Proposed Rules 3001(aa) and the addition of subsection (XIII) to Proposed Rule 3627(c) because “the phrase ‘future transmission corridor’ is overly broad and not meaningful,” and “because [the addition of subsection (XIII)] is not required by a full reading of the relevant statutes[,],... is overly burdensome[,], and ... unnecessarily redundant with the reporting Transmission Providers must provide local governments concerning powerline trails...”⁴

12. According to Tri States, its suggested edits to Proposed Rules 3001(aa), 3001(II), and 3627(c)(X) are meant to “mirror the statutory definition,” “align the Rule with the text of the statute,” and clarifying that “only transmission *line* projects would be considered to have the

² Public Service’s Written Public Comments at 2.

³ Black Hills’ Initial Written Public Comments at 2-4.

⁴ Black Hills’ Written Response Public Comments at 2 and 3.

‘potential for the construction of a powerline trail’ and that substation-related projects would generally not be considered to have such potential (emphasis in the original).”⁵

13. According to SWEEP and Bicycle Colorado, their recommended addition of subsection (XIII) to Proposed Rule 3627(c) and their suggested edit 3627(c)(X) are meant to: “align with the requirements of the statute” by accounting for “the legislation’s intent to ‘encourage, facilitate, and accelerate’ Powerline Trails;” and clarify that Proposed Rule 3627(c)(X) “applies to new transmission line projects, not just extensions or expansions.”⁶

14. The ALJ agrees with the public commenters herein that the term “hard service” in Proposed Rule 3001(aa) should be replaced the term “hard surface” as the inclusion of the term “hard service” in Proposed Rule 3001(aa) was a typographical error.

15. The ALJ agrees that Tri-State’s recommended edits to Proposed Rules 3001(ll) and 3001(II) do, indeed, make Proposed Rules 3001(aa) and 3001(II) better align with the text of the statute. The ALJ notes that the term “future transmission corridor” is explicitly contained in the statutory definition of “powerline trail.”⁷ It is therefore appropriate to include the same term under Proposed Rule 3001(aa). Because the term “transmission corridor” is a defined term under the Proposed Rules, the ALJ does not share Black Hills’ position that the term “future transmission corridor” is “overly broad and not meaningful.” The ALJ also notes that elimination of the proviso “or planned to be constructed, operated, or maintained” from Proposed Rule 3001(II) would not detract from the purpose, enforceability, or clarity of the Proposed Rules. The term “transmission corridor” is referenced twice in the Proposed Rules: in Proposed Rules

⁵ Tri-State’s Written Public Comments at 2-5.

⁶ See SWEEP’s and Bicycle Colorado’s Written Public Comments at 1-3.

⁷ See §33-45-102(5), C.R.S.

3001(aa) and 3001(ll). Proposed Rule 3001(aa), as recommended herein,⁸ applies to an “existing or *future* transmission corridor,” (emphasis added) and Proposed Rules 3627(c)(X) and (XI) apply to “*planned* transmission projects” (emphasis added). Therefore, the proviso “or *planned* to be constructed, operated, or maintained” (emphasis added) in Proposed Rule 3001(ll) is superfluous. As such, Tri-State’s recommended edits with respect to Proposed Rules 3001(aa) and 3001(ll) will be adopted by the ALJ, as ordered below.

16. The ALJ agrees with Public Service, Black Hills, and Tri State that adding the word “line” after the word “transmission” in Proposed Rule 3627(c)(X) and (XI) would appropriately limit the applicability of the listing requirement in a Proposed Rule 3627 to transmission *line* projects, consistent with HB 22-1104.

17. The ALJ appreciates Black Hills’ concern regarding the ambiguity that words “including those” in Proposed Rule 3627(c)(X) create. The ALJ also appreciates SWEEP’s and Bicycle Colorado’s desire to make certain that it is clear that Proposed Rule 3627(c)(X) applies to the siting of new transmission lines, and not only to the expansion of extension of expansion of existing transmission lines. Given this, the ALJ will recommend modifying the language of Proposed Rule 3627(c)(X) to track more closely the language of HB 22-1104, as ordered below.

18. The modifications to Proposed Rule 3627(c)(X), as recommended herein,⁹ appropriately limit the applicability of Proposed Rule 3627(c)(X) to transmission line projects that site a new transmission line, or extend an existing transmission line by more than one mile; or increase the capacity of an existing transmission line by more than ten percent, consistent with HB 22-1104. Therefore, the ALJ does not believe that the inclusion of the sentence “This rule

⁸ See Attachments A and B to this Recommended Decision.

⁹ See *id.*

does not apply to projects that pertain exclusively to substations and related facilities” in Proposed Rule 3627(c)(X), as suggested by Tri State, is necessary.

19. The ALJ agrees with Public Service that appending the words “by the transmission provider” to the end of Proposed Rule 3627(XI) would provide clarity and appropriately limit the scope of the requirements in a Proposed Rule 3627(XI) to transmission providers considering transmission line projects with the potential for the construction of a powerline trail.

20. The ALJ agrees with Black Hills that the that the addition of subpart (a) to the statutory citation in Proposed Rule 3627(c)(XII)¹⁰ would add clarity. Section 33-45-103(2)(a), C.R.S. identifies the three minimum informational resources¹¹ that Transmission Providers must develop, maintain, and distribute. Proposed Rule 3627(c)(XII) sets forth the requirement for electric utilities to include with their ten-year transmission plan an active hyperlink or citation to where the informational resources concerning powerline trails may be found.

21. Lastly, the ALJ agrees with SWEEP and Bicycle Colorado that the reporting requirements to local governments is a critical aspect of House Bill 22-1104 and should be incorporated into the Rules Regulating Eclectic Utilities, 4 CCR 723-3. Nonetheless, the ALJ appreciates Black Hills’ concern that the addition of subsection (XIII) to Rule 3627(c), as proposed by SWEEP and Bicycle Colorado, may fall outside the scope of § 29-20-108(6), C.R.S. Therefore, the ALJ will recommend adopting a narrower subsection (XIII) to Rule 3627(c) that tracks more closely the requirements under § 29-20-108(6), C.R.S., as ordered below.

¹⁰ After the inclusion of subpart (a), the statutory citation in Proposed Rule 3627(a)(XI) would read “§ 33-45-103(2)(a), C.R.S.”

¹¹ I.e., design best practices, safety requirements, and examples of at least four powerline trails in the state.

22. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. **ORDER**

A. **The Commission Orders That:**

1. The Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6, contained in redline and strikeout format attached to this Recommended Decision as Attachment A and in final format as Attachment B are adopted and are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0069E.

2. 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.

3. 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.

4. 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 shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

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. Responses to exceptions are due within fourteen days of service of exceptions.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director