

Decision No. C24-0069

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0548E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF COLORADO-BASED SOLAR PROJECTS TOTALING 255 MW.

**COMMISSION DECISION GRANTING APPLICATION;
GRANTING MOTION FOR EXTRAORDINARY
PROTECTION OF HIGHLY CONFIDENTIAL
INFORMATION; ADDRESSING MOTION TO APPROVE
PROCEDURAL SCHEDULE; GRANTING DISCOVERY
PROCEDURES AND TREATMENT OF CONFIDENTIAL
INFORMATION; ADDRESSING MOTIONS TO
INTERVENE; AND DENYING MOTION TO
CONSOLIDATE**

Mailed Date: January 30, 2024

Adopted Date: January 10, 2024

I. BY THE COMMISSION

A. Statement

1. On November 3, 2023, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed an Application for a Certificate of Public Convenience and Necessity (CPCN) to construct the Dolores Canyon (110 MW) and Axial Basin (145 MW) solar projects, including certain transmission elements associated with the Axial Basin facility, (collectively the Projects).

2. This Decision grants Tri-State's application as an uncontested matter.

B. Discussion**1. Application**

3. By the application, Tri-State requests that the Commission issue a CPCN for the Projects, including a single-span, 150-foot 230 kV transmission generation-tie line connecting Axial Basin to the Milk Creek Substation. Tri-State had previously planned to obtain power from these projects through 15-year power purchase agreements (PPAs) with JUWI, Inc (Juwi), the project developer. Tri-State determined that owning the Projects outright will be more cost-effective due to changes to federal tax credits and the availability of Empowering Rural America (New ERA Program) funding through the Inflation Reduction Act (IRA).

4. Tri-State represents that the IRA will allow it to take advantage of significant federal tax incentives and grants through changes to the Investment Tax Credit (ITC) and Production Tax Credit (PTC).¹ Additionally, under the details of the New ERA Program, the Project may be eligible low-cost loans and/or grants. According to Tri-State, the combination of these federal incentives makes the economics of owning these projects beneficial to its membership.

5. The Projects were originally executed with Juwi in 2018 and 2022. While Tri-State is seeking to own these projects outright, the PPAs are still in effect. Tri-State states in the application that it assessed alternatives to owning these projects.

¹ The passage of the Inflation Reduction Act in August 2022 introduced new tax benefits to the Production Tax Credit (“PTC”) and the Investment Tax Credit (“ITC”). The base-level incentive for the PTC is \$5 per megawatt hour (MWh) in 2021 dollars, and the base-level incentive for the ITC is six percent. These benefits include a five-time multiplier to base incentives when projects satisfy prevailing wage requirements and prescribed apprenticeship labor hours, which brings the standard incentive—that all projects utilizing PTC or ITC benefits should seek—to \$30 per MWh or 30 percent. The updated PTC and ITC include additional tax benefits, which can be stacked as “bonuses” on top of base-level incentives. There are two additional bonuses of ten percent (PTC) or ten percentage points (ITC) above base incentives if a project meets certain specifications for a) manufacturing with domestic resources and b) for siting projects within energy communities. Additional bonuses are available under the ITC for community solar projects that are less than 5 megawatts (MW) in size and part of an eligible low-income building or low-income economic benefit project.

6. The Projects were initially intended to be in commercial operation in 2023, but due to pervasive supply chain issues across the solar industry, operation dates were revised to the end of 2024. During this time, Tri-State and Juwi began negotiations regarding the possibility of transferring ownership of the Projects to Tri-State. Due to the introduction of federal tax credits through the IRA, Tri-State believes that if it purchases the projects, the effective price per-megawatt hour will be competitive with, and may be less than, the original PPA pricing. They believe additional benefits from the New Era program could further improve project economics.

7. Tri-State states that construction will begin on the projects in June 2024, and that the projects will achieve commercial operation in 2025. However, given the possibility of Tri-State's ownership and introduction of federal funding, there is the possibility that a National Environmental Policy Act review will be invoked. If this occurs, the commercial operation dates may be again delayed while Tri-State completes the review.

8. The Dolores Canyon project will be a 110 MW solar energy generation interconnected to the Cahone Substation. Tri-State projects that its annual energy production for its first year of operation will be 300,000 MW. It will be located in Dolores County in Empire Electric Association's—a Tri-State Member—service territory. The project will require approximately 730 acres and the available property comprises about 1,670 acres. There is an option for Tri-State to lease the property for an initial term of 30 years at annual rental rate once the project is in service, plus an option for Tri-State to extend the lease term by two consecutive 5-year periods to meet the project's 40-year life. Once under development, the developer will identify the preferred acreage, and the remainder will likely be released back to the owners.

9. The Axial Basin project will be a 110 MW solar energy generation interconnected to the Craig-Meeker transmission line via the Milk Creek Substation. Tri-State projects that its

annual energy production for its first year of operation will be 370,000 MW. It will be located in Moffat County on property owned by two wholly owned Tri-State subsidiaries. The project will require approximately 1,121 acres and the available property comprises of 3,200 acres. Tri-State will lease the property for a 35-year term commencing at commercial operation. Tri-State will need generation-side 230 kV substation facilities and a single-span, 150-foot, 230 kV generation-tie line that will connect Axial Basin to the Milk Creek Substation. Tri-State is also requesting a CPCN for these transmission facilities.

10. In its application, Tri-State requests a finding of reasonableness for the expected maximum magnetic field and noise levels of certain transmission facilities included in the application, in compliance with paragraphs 3206(e) and (f) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. Tri-State used an independent engineer to assess the magnetic field and audible noise impacts. Specifically, Tri-State requests that the Commission: (1) make specific findings that the expected maximum level of magnetic fields that could be experienced under design conditions at the edge of the property boundaries, and at a location one meter above the ground, are 150 mG or less and do not need to be mitigated to a lower level for the Axial Basin generation tie-line and substation facilities; and (2) make specific findings that the projected level of audible noise radiating beyond the property lines at a distance of 25 feet is reasonable under the circumstances and does not need to be mitigated to a lower level for the Axial Basin generation tie-line and substation facilities.

11. Tri-State further states that information regarding best employment value metrics is not yet known at the time of the filing of its application because it has not yet initiated contracts for the construction of the Projects. Tri-State explains that it will obtain the information regarding best value employment metrics specified in paragraph 4 CCR 723-3-3102(e) from potential contractors through Tri-State's process for selecting contractors for project construction.

2. Procedural Background

12. Tri-State filed two motions with the application. Through a Motion for Extraordinary Protection of Highly Confidential Information (Motion for Extraordinary Protection), Tri-State seeks protection of (1) the contents of the PPAs between Tri-State and Juwi, including the agreed upon energy rates and (2) the contents of the Engineering, Procurement, and Contracting Contracts between Tri-State and Juwi, including associated costs and the resulting effective energy rates for comparison purposes to the PPAs. Tri-State states that both categories of information are competitively sensitive data that could be used to undermine Tri-State's ability to solicit and obtain cost-effective resources—and ensure resultant best possible rates—if released publicly. By the Motion to Approve Procedural Schedule, Discovery Procedures, and Treatment of Confidential Information (Motion for Procedural Schedule), Tri-State asks that the Commission to 1) approve an expedited procedural schedule, 2) allow discovery requests and responses to be served electronically, 3) require that all responses to individual sets of discovery be shared in single, combined documents to all parties, 4) share highly confidential and confidential documents only with parties that have signed non-disclosure agreements, and 5) treat highly confidential and confidential information pursuant to 4 CCR 723-1-1100 and 723-1-1101.

13. The Commission issued a Notice of Application filed on November 8, 2023 establishing a deadline for intervention filings.

14. On December 8, 2023, the Colorado Independent Energy Association (CIEA), a Colorado non-profit organization in good standing and a trade association representing the interests of independent power producers doing business in the state of Colorado, and Juwi each filed a timely and uncontested motion to permissively intervene.

15. No other intervention pleadings were filed.

16. On December 27, 2023, CIEA filed a motion to consolidate this Proceeding with Proceeding No. 23A-0585E (Motion to Consolidate).

17. On January 2, 2024, both Tri-State and Juwi filed response motions in opposition to consolidating this Proceeding with Tri-State's ERP in Proceeding No. 23A-0585E.

C. Findings and Conclusions

18. We find good cause to grant the Motion for Intervention of CIEA. We find that CIEA has sufficiently demonstrated that this proceeding may substantially affect its pecuniary or tangible interests, as required by 4 CCR 723-1-1401(c). It has also demonstrated that its interests would not otherwise be adequately represented.

19. In CIEA's Motion to Intervene, it states that it "has a specific interest in the competitive bidding of renewable resources and market participation by IPPs," and that "the tangible and pecuniary interests of [its] members may be substantially and directly impacted by any decisions in this proceeding...." Finally, it states that it is uniquely positioned to "provide industry information to the Commission during this proceeding regarding the effect of Company-owned resources acquired outside of the competitive bidding process." CIEA does not state that it opposes Tri-States Application and does not request a hearing.

20. We deny Juwi's Motion for Intervention as moot. Juwi has not contested the application, and rather offers information. Consistent with the discussion below, the Commission grants the application as an uncontested matter and Juwi's offer of information is not required.

21. Because no other interventions were filed, we conclude that Tri-State's application is uncontested.²

² Pursuant to 40-6-109(5), C.R.S., the Commission may, by general rule or regulation, provide for the taking of evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing.

22. We find good cause to grant Tri-State's application and to issue a CPCN for the Dolores Canyon and Axial Basin projects. We further enter findings that both the magnetic field and audible noise levels are well within the bounds of the statutory requirements and do not need to be mitigated to lower levels.

23. Paragraph 4 CCR 723-3-3102(f) states that if the utility does not yet have information related to best value employment metrics, the utility is required to file a status report that contains, for each construction contract, the information obtained from the selected contractor regarding how the contractor meets best value employment metrics within 45 days after the last contract is awarded. Accordingly, we direct Tri-State to file a status report in this Proceeding that contains information on how the selected contractor(s) for this project met best value employment metrics within 45 days after the last contract is awarded.

24. In granting the application, we further grant Tri-State's Motion for Extraordinary Protection. The Motion for Extraordinary Protection is uncontested as to protection of competitively sensitive information.

25. However, because we grant the application, we deny Tri-State's Motion for Procedural Schedule as moot.

26. Finally, we also deny CIEA's Motion to Consolidate as moot.

II. ORDER

A. The Commission Orders That:

1. The application for a Certificate of Public Convenience and Necessity to construct the Dolores Canyon (110 MW) and Axial Basin (145 MW) solar projects filed on November 3, 2023, by Tri-State Generation and Transmission Association, Inc. (Tri-State) is granted, consistent with the discussion above.

2. Pursuant to 4 Code of Colorado Regulations (CCR) 723-3-3102(f), Tri-State shall file a status report in this proceeding that contains information on how the selected contractor(s) for this project met best value employment metrics within 45 days after the last contract is awarded, consistent with the discussion above.

3. Tri-State's Motion for Extraordinary Protection of Highly Confidential Information filed on November 3, 2023, is granted.

4. Tri-State's Motion to Approve Procedural Schedule, Discovery Procedures, and Treatment of Confidential Information filed on November 3, 2023, is denied as moot, consistent with the discussion above.

5. The Motion to Intervene filed by the Colorado Independent Energy Association on December 8, 2023, is granted, consistent with the discussion above.

6. The Motion to Intervene filed by Juwi, Inc.'s on December 8, 2023, is denied as moot, consistent with the discussion above.

7. CIEA's Motion to Consolidate Proceeding No. 23A-0548E with Proceeding No. 23A-0585E, filed on December 27, 2023, is denied as moot, consistent with the discussion above.

8. The 20-day period provided for in 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 10, 2024.**

(SEAL)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners