

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 23A-0585E

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IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND  
TRANSMISSION ASSOCIATION, INC. FOR APPROVAL OF ITS 2023 ELECTRIC  
RESOURCE PLAN

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**RECOMMENDED DECISION  
GRANTING UNOPPOSED JOINT MOTION TO APPROVE  
COMPREHENSIVE SETTLEMENT AGREEMENT,  
APPROVING COMPREHENSIVE SETTLEMENT  
AGREEMENT, AND GRANTING ELECTRIC RESOURCE  
PLAN APPLICATION AS AMENDED BY  
COMPREHENSIVE SETTLEMENT AGREEMENT**

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Issued Date: August 22, 2024

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## **I. STATEMENT**

### **A. Procedural Background<sup>1</sup>**

1. On December 1, 2023, Tri-State Generation and Transmission Association, Inc. (“Tri-State”) filed its 2023 Electric Resource Plan (“ERP”) Application (“Application”), including the Direct Testimony of eight witnesses and attachments to the same. The filing of the ERP Application commenced this Proceeding.

2. By Decisions No. R24-0080-I and R24-0085-I<sup>2</sup>, issued February 6 and February 8, 2024, respectively, the undersigned Administrative Law Judge (“ALJ”), among other things: acknowledged the interventions of the trial staff of the Colorado Public Utilities Commission (“Staff”), Office of Utility Consumer Advocate (“UCA”), the Colorado Energy Office (“CEO”), and Big Horn Rural Electric Company, Carbon Power & Light, Inc., High West Energy Inc., Wheatland Rural Electric Association, Wyrlec Company, Inc., Niobrara Electric Association, High Plains Power, Inc., Garland Light & Power Co., (collectively, the “Wyoming Cooperatives”), Poudre Valley Rural Electric Association, Inc. (“PVREA”), Highline Electric Association (“Highline”), K.C. Electric Association (“K.C.”), San Isabel Electric Association, Inc. (“SIEA”), Southeast Colorado Power Association (“SECPA”), and Y-W Electric Association, Inc. (“Y-W”); granted the interventions of the Natural Resources Defense Council and the Sierra Club (together, the “Conservation Coalition”), White River Electric Association (“WREA”), Western Resource

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<sup>1</sup> The entire procedural history of this proceeding is provided in previous decisions and is partially repeated here, to the extent necessary to provide procedural context for the above-titled decision.

<sup>2</sup> Decision No. R24-0085-I provided certain clarifications for Decision No. R24-0080-I.

Advocates (“WRA”), Office of Just Transition (“OJT”), the Colorado Independent Energy Association (“CIEA”), Colorado Department of Public Health and Environment (“CDPHE”), Interwest Energy Alliance (“Interwest”), La Plata Electric Association, Inc. (“LPEA”) and Mountain Parks Electric, Inc. (“MPE”) (together, “LPEA/MPE”), the Colorado Solar and Storage Association (“COSSA”) and the Solar Energy Industries Association (“SEIA”) (together, “COSSA/SEIA”), and Moffat County (“Moffat”) and the City of Craig (“Craig”), Colorado (together, “Moffat/Craig”); and a procedural scheduled to govern this Proceeding.

3. By Decision No. R24-0138-I, issued March 5, 2024, the undersigned ALJ adopted a revised procedural schedule to govern this Proceeding. Among other deadlines, the decision set a June 26, 2024 deadline for Stipulations/Settlement Agreements; a July 1, 2024 deadline for Witness Lists, Cross-Examination Estimates, and Final Exhibits List; a July 11, 2024 deadline for Settlement Testimony; a July 16-19, 2024 Evidentiary Hearing; and an August 1, 2024 deadline for Statements of Position.

4. On April 22, 2024, Tri-State filed Supplemental Direct Testimony, providing additional information in support of the Application.

5. On May 15, 2024, the Colorado Air Pollution Control Division (“APCD”) filed its Verification Report (“Emissions Report”), verifying Tri-State’s calculation of a forecasted emissions reduction of 89 percent by 2030 from Colorado sales for the submitted preferred portfolio.

6. By Decision No. R24-04060-I, the ALJ again modified the procedural schedule, extending the filing deadline for any settlement agreements through June 28, 2024.

7. On June 27, 2024, Tri-State, Highline, PVREA, Y-W, Interwest, Staff, UCA, CEO, Moffat/Craig, OJT, CIEA, COSSA/SEIA, Conservation Coalition, and WRA (the “Settling

Parties”) filed their Unopposed Comprehensive Settlement Agreement (“Settlement Agreement”). With the Unopposed Comprehensive Settlement Agreement, the Settling Parties also filed their Joint Unopposed Motion to Approve the Unopposed Comprehensive Settlement Agreement, Amend the Procedural Schedule, and Waive Response Time (“Motion”). In the Motion, the Settling Parties indicate that the Wyoming Cooperatives, LPEA/MPE, WREA, K.C., SIEA, and SECPA do not oppose the Motion or the Settlement Agreement.<sup>3</sup>

8. By Decision No. R24-0496-I, issued July 10, 2024, the undersigned ALJ waived response time for the Motion, vacated the evidentiary hearing and the deadline for the filing of Statements of Position, and indicated that any additional relief sought in the Motion will be ruled upon by separate decision.

9. On July 7 and 9, 2024, the undersigned ALJ held Public Comment Hearings in this matter.

10. On July 10, 2024, Hearing Exhibit 203, the Settlement Testimony of Rebecca V. Lim (Staff’s Settlement Testimony) was filed by Staff.

11. On July 11, 2024, Hearing Exhibit 122, the Settlement Testimony and Attachments of Susan K. Hunter on Behalf of Tri-State Generation and Transmission Association, Inc. (“Hearing Exhibit 122” or “Ms. Hunter’s Settlement Testimony”) Hearing Exhibit 123, the Settlement Testimony and Attachments of Lisa K. Tiffin on Behalf of Tri-State Generation and Transmission Association, Inc. (“Hearing Exhibit 123” or “Ms. Tiffin’s Settlement Testimony”), Hearing Exhibit 124, the Settlement Testimony and Attachments of Brian L. Thompson on Behalf of Tri-State Generation and Transmission Association, Inc. (“Hearing Exhibit 124” or “Mr. Thompson’s Settlement Testimony”), and Hearing Exhibit 125, the Settlement Testimony and

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<sup>3</sup> Motion at 2.

Attachments of Chad Orvis on Behalf of Tri-State Generation and Transmission Association, Inc. (collectively, “Tri-State’s Settlement Testimony”) were filed by Tri-State.

12. On July 12, 2024, Hearing Exhibit 903 Testimony of Clare Valentine in Support of Settlement on Behalf of Western Resource Advocates (“Hearing Exhibit 903” or “WRA’s Settlement Testimony”) was filed by WRA.

13. On July 11, 2024, Hearing Exhibit No. 1603 Settlement Testimony of Commissioner Melody Villard on Behalf of the Coal Transition Communities, Moffat County and the City of Craig, Colorado (“Hearing Exhibit 1603” or “Moffat/Craig’s Settlement Testimony”) was filed by Moffat/Craig.

14. On July 11, 2024, Hearing Exhibit 1501 Settlement Testimony of Mike Kruger on Behalf of Colorado Solar and Storage Association and Solar Energy Industries Association (“Hearing Exhibit 1501” or “COSSA/SEIA’s Settlement Testimony”) was filed by COSSA/SEIA.

15. On July 12, 2024, the Answer Testimony of Wade Buchanan on Behalf of the Colorado Office of Just Transition Hearing Exhibit 1000<sup>4</sup> was filed by OJT.

## **B. Background for This Proceeding**

16. Tri-State is a generation and transmission cooperative that provides electric transmission service and is a wholesale seller of electric energy to 42 Utility Members in its service territory of four states using facilities located in five states.<sup>5</sup> Tri-State owns, operates, or has a major equipment ownership interest in more than 5,665 miles of high-voltage transmission lines and approximately 409 substations and switchyards.<sup>6</sup> Tri-State’s interstate transmission facilities

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<sup>4</sup> Although the title of this filing included the words “Answer Testimony,” its timing and content make it clear it was intended as to be filed as OJT’s Settlement Testimony and is therefore considered herein as such.

<sup>5</sup> Hearing Exhibit 107 at 6:9-11 (Direct Testimony and Attachments of Ryan J. Hubbard on Behalf of Tri-State Generation and Transmission Association, Inc.).

<sup>6</sup> *Id.* at 6:11-14.

are interconnected to other utilities, including Western Area Power Administration, Nebraska Public Power District, Black Hills Colorado Electric, Inc., PacifiCorp, Public Service Company of Colorado, Platte River Power Authority, Colorado Springs Utilities, Basin Electric Power Cooperative, Tucson Electric Power, Public Service Company of New Mexico, and Deseret Generation & Transmission Cooperative.<sup>7</sup>

17. This Proceeding concerns Tri-State's second ERP application submitted pursuant to Rule 3605.<sup>8</sup> The Application, with its supporting testimony and attachments, are intended to describe how Tri-State will ensure reliability and resource adequacy, maintain affordability for its members, and meet compliance obligations, including environmental responsibility obligations.<sup>9</sup>

18. A significant component underlying the Application is that on September 13, 2023, Tri-State submitted a Letter of Interest to the United States Department of Agriculture ("USDA"), seeking significant funding through the Empowering Rural America ("New ERA") program of the Rural Utilities Service. The New ERA program, which was established through the Inflation Reduction Act ("IRA"), includes \$9.7 billion in federal funding for financial assistance to support the purchase of renewable energy, zero-emission, and carbon capture systems.<sup>10</sup> In its Application, Tri-State put forward as its preferred portfolio an IRA Scenario that included several actions based on its application to the New ERA program. These actions included the acquisition of 255 MW owned renewable energy projects, 1,380 Megawatt ("MW") renewable and hybrid power purchase agreement projects, and 210 MW battery storage projects; and the retirements of Craig Unit 3 as of January 1, 2028, and Springerville Unit 3 no later than September 15, 2031.

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<sup>7</sup> *Id.* at 6:15-21.

<sup>8</sup> Application at 1. *See also*, Proceeding No. 20A-0528E, which concerned Tri-State's first ERP Application with the Commission.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Attachment 1 to the Application (Stipulation between Tri-State, CEO, COSSA, UCA, County Electric Cooperative, Inc., Mountain View Electric Association, Inc., Sierra Club, and WRA), at 2-3.

19. With its Application, Tri-State submitted a stipulation with certain external stakeholders who agreed to support its acquisition in Phase II of resources pursuant to Tri-State's application to USDA, if its request for federal funding is approved in full.<sup>11</sup> Subsequently, in Supplemental Direct Testimony, Tri-State announced that it had received a notice to proceed from the USDA, and would thus be submitting a full application for New ERA funding.<sup>12</sup> At the time of this Decision, no announcements have been made by USDA regarding New ERA program awards.

**C. Settlement Agreement<sup>13</sup>**

**1. General Terms, Contents of the Phase II Implementation Report, and Injection Study**

20. The Settlement Agreement, which is attached to this Recommended Decision as Appendix A, sets forth the Settling Parties' agreement resolving all disputed issues in this Proceeding.<sup>14</sup>

21. The Settling Parties have agreed that the Commission should grant Tri-State's Application for approval of its 2023 ERP, subject to the terms of the Settlement Agreement. The Settling Parties agree that the compromise reached between the Settling Parties constitutes a just and reasonable resolution of all issues as part of Phase I of the ERP.<sup>15</sup>

22. In addition to certain specific terms which are discussed below, the Settling Parties also have agreed to numerous General Terms and Conditions, found in Section 6 of the Settlement Agreement.<sup>16</sup>

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<sup>11</sup> *Id.* at 8.

<sup>12</sup> Hr. Ex. 101, Tiffin Supplemental Direct, p. 6.

<sup>13</sup> The following is intended as a summary of some of the main terms of the Settlement Agreement, rather than a full recitation of the same.

<sup>14</sup> Settlement Agreement, ¶1.3.

<sup>15</sup> *Id.*

<sup>16</sup> *See id.*, at 31-34.

23. The Settling Parties have agreed upon certain contents of the Phase II Implementation Report, which is to be submitted 165 days after Phase II RFPs have been released.<sup>17</sup> The Implementation Report will include the items listed in Hearing Exhibit 101, Attachment LKT-3; annual emissions in short tons; a map of all Phase II bids, with an overlay identifying Disproportionately Impacted (“DI”) Communities; highly confidential technical specifications for any gas resource bids advanced to Phase II modeling; identification of any bids located in Moffat County or the West End of Montrose County; and, for any bids located in the same areas, an estimate of the annual property tax expected to be paid to the county for bids selected and an explanation of why a given bid is not advanced to Phase II modeling, if applicable.<sup>18</sup>

24. Following Phase II, Tri-State agrees to conduct an injection study reflecting the anticipated Colorado transmission system in 2031, as further set forth in ¶4.11 of the Settlement Agreement.<sup>19</sup>

## **2. Requests for Proposals**

25. The Settling Parties have agreed that the Commission should approve a Dispatchable Request for Proposals (“RFP”), a Standalone Storage RFP, and a Renewable RFP for issuance in Phase II.<sup>20</sup> While resources that are included within Tri-State’s New ERA application will retain certain requirements related to geographic location, size, and technology type, Tri-State will remove those restrictions for RFPs seeking resources that are not included within the New ERA application.<sup>21</sup>

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<sup>17</sup> Hr. Ex. 101, Attachment LKT-2, Rev. 1.

<sup>18</sup> Settlement Agreement, ¶4.10.

<sup>19</sup> *Id.*, ¶4.11.

<sup>20</sup> *Id.*, ¶4.2.

<sup>21</sup> *Id.* at ¶¶4.2.1., 4.2.3., 4.2.4., 4.2.5.



26. Furthermore, within one week of receiving a notice of award from USDA regarding New ERA funding, Tri-State commits to request a meeting with USDA to discuss flexibility related to funded projects. Tri-State will then file an informational notice with the Commission.<sup>22</sup> If New ERA guidance is provided at least 10 days before the issuance of the RFPs, Tri-State will modify its RFPs to match that guidance and informationally refile them with the Commission.<sup>23</sup>

27. The Settling Parties have agreed that Tri-State will modify Phase II Bid Security and refundability requirements, as further set forth in ¶4.2 of the Settlement Agreement. Among such modifications is the requirement for selected bidders to submit \$10,000 per nameplate capacity megawatt (“MW”) on a given project, due within 21 days of Tri-State filing its Phase II ERP Implementation Report.<sup>24</sup>

28. The Dispatchable RFP process will be modified so that the geographic location for gas plant bids (except tolling agreements) will be limited to Moffat County, no limits will be imposed on technology type or MW size, and Dispatchable RFPs must meet the carbon dioxide emission rate and performance requirements identified in the greenhouse gas emissions rules promulgated by the Environmental Protection Agency, as further set forth in ¶ 4.2.6 of the Settlement Agreement.

29. For each Phase II portfolio modeled by Tri-State pursuant to ¶4.3 of the Settlement Agreement, Tri-State is required to model an Extreme Weather Event (“EWE”) sensitivity (“EWE Sensitivity”), including the requirement on Tri-State to model the EWE Sensitivity in the dispatch only, without informing the expansion plan of the EWE modeling parameters, and otherwise comply with the remaining terms set forth in ¶4.4 of the Settlement Agreement.

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<sup>22</sup> *Id.* at ¶ 4.2.7.

<sup>23</sup> *Id.* at ¶¶4.2.8., 4.2.8., 4.2.10.

<sup>24</sup> *Id.*, ¶4.2.2.1.

30. Bids with commercial operational dates in 2026 and 2027 also will be required to have an established generator interconnection queue position.<sup>25</sup> Bids beyond those dates without an interconnection queue position will be entered into the Tri-State interconnection queue.<sup>26</sup>

31. The Settling Parties agree that Tri-State will update certain non-price factor bid evaluation criteria for its RFPs. Tri-State will make the relevant non-price factor information available to bidders as well as assumptions for use of surplus interconnection service at Tri-State-owned facilities. Among other changes, Tri-State will amend the “Development and Siting Status” narrative topics requested from bidders to address Community Stewardship, Tribal Consultation, and Land Use considerations—and specifically to seek information on community engagement and wildlife surveys—as further set forth in ¶4.7 of the Settlement Agreement.

### **3. Phase II Portfolios and Modeling and 2027 ERP**

32. The Settling Parties have further agreed upon eight portfolios to be modeled in Phase II, with the potential for two additional portfolios to be modeled. These include Tri-State’s preferred plan; a version of the preferred plan that allows other gas plant technology types (in addition to natural gas carbon capture and storage); a version of the preferred plan in which the model will not be required to select a gas resource, and constraints would be removed for non-New-ERA resources; a version of the preferred plan that limits gas resources to tolling agreements; an unconstrained portfolio that allows the model to choose resources; a “no new gas” portfolio, contingent on whether all other portfolios select new gas resources; an optional portfolio of Tri-State’s choosing; and back-up bid portfolios, as further set forth in ¶4.3 of the Settlement Agreement.

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<sup>25</sup> *Id.*, ¶4.5.

<sup>26</sup> *Id.*

33. Tri-State agreed to update modeling assumptions for non-tolling agreement gas plant bids to have a useful life of no later than 2050.<sup>27</sup>

34. For each Phase II portfolio modeled by Tri-State pursuant to ¶4.3 of the Settlement Agreement, Tri-State is required to model an EWE Sensitivity and comply with the remaining terms set forth in ¶4.4 of the Settlement Agreement. Tri-State will also remodel any portfolios that fail to meet the Level II reliability criteria related to EWE Sensitivity.<sup>28</sup>

35. Tri-State also agreed to aim to control at least 5.5% of Tri-State's Colorado peak load through demand response programs by 2030.<sup>29</sup> Tri-State also agreed to model in-house demand response offerings to that effect.<sup>30</sup>

36. Tri-State will further subject each portfolio to at least 24 hours of run time in its modeling software, EnCompass.<sup>31</sup>

37. Tri-State will use the Phase II bids that pass bid evaluation as inputs to inform its 2027 ERP generic resource assumptions used in Phase I modeling of that ERP, as further set forth in ¶4.12 of the Settlement Agreement. Applicable federal environmental compliance obligations will be reflected in this modeling.<sup>32</sup>

#### **4. Facility Retirements**

38. The Settling Parties agree that the Commission should approve retirement date of January 1, 2028 for Unit 3 of Tri-state's Craig Station ("Craig 3"). The Settling Parties agree that the Commission should approve a retirement date of September 15, 2031 for Unit 3 of the Springerville Generating Station ("Springerville 3"), subject to New ERA funding award as

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<sup>27</sup> *Id.*, ¶4.4.6.

<sup>28</sup> *Id.*, ¶4.8.1.

<sup>29</sup> *Id.*, ¶4.9.1.

<sup>30</sup> *Id.*, ¶4.9.2.

<sup>31</sup> *Id.*, ¶4.4.7.

<sup>32</sup> *Id.*, ¶4.12.

requested from USDA and successful Tri-State negotiation of contractual agreements impacted by the unit's retirement.<sup>33</sup> Depending on whether New ERA funding is awarded to Tri-State, the Settling Parties agree to convene a meeting to discuss the modeling of Springerville 3, or for Tri-State to update common facilities costs for Springerville 3 and model the cost of any applicable federal environmental compliance obligations for Springerville 3 for Phase II modeling, as set forth in ¶4.6.1 of the Settlement Agreement.

## 5. Community Assistance

39. The Settlement Agreement also includes Section 5, which represents specific agreements between Tri-State and Craig/Moffat regarding community assistance.<sup>34</sup> While not joined by other Settling Parties, other parties convey their support or non-opposition for these provisions.

40. Tri-State agrees to provide a direct benefit payment for community assistance to Moffat/Craig in the amount of \$5.5 million per year, to be paid between 2026 through 2029. The payment will go to an economic development fund established and administered by Moffat/Craig.<sup>35</sup>

41. Tri-State and Moffat/Craig agree that Phase I modeling identified the need for a gas plant in western Colorado with the potential to be cited in Moffat, consistent with Tri-State's siting study. Accordingly, in Phase II of its ERP, Tri-State will solicit bids for a gas plant to be sited in Moffat.<sup>36</sup> Tri-State and Moffat/Craig agree that no additional Commission approvals should be required for the gas plant if selected and approved in Phase II, however, Moffat/Craig agree to

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<sup>33</sup> *Id.*, ¶4.6.

<sup>34</sup> *Id.*, ¶5.1.

<sup>35</sup> *Id.*, ¶5.2.

<sup>36</sup> *Id.*, ¶5.3.

support any further filings if required by the Commission, and Tri-State commits to provide drafting and/or administrative support for Moffat/Craig.<sup>37</sup>

42. Tri-State agrees to make certain “minimum backstop payments,” to an economic development fund designated by Moffat/Craig. The backstop payments will total \$48 million and will be paid out in decreasing increments, beginning in 2028 and ending in 2038. The minimum backstop payments are subject to offset for various items, including property tax revenues paid by Tri-State, federal or state grant funds, and other items agreed-upon items, as further set forth in ¶¶5.3.5, 5.3.6 and 5.3.7 of the Settlement Agreement.

43. In the evaluation and modeling of bids located in Moffat, Tri-State agrees to implement a \$1/MWh price improvement over the life of a proposed project or contract.<sup>38</sup> The 2023 ERP Phase II “preferred portfolio” will be modeled with and without this price improvement.<sup>39</sup>

44. Within six months of the retirement of all three units at Craig Station, Tri-State will transfer to Moffat (upon consent of the Colorado River Water Conservation District), at no cost, storage water rights from Elkhead Reservoir, Second Enlargement (originally decreed in 02CW106), in an amount sufficient for the augmentation plan that is approved in Case No. 23CW3025 as determined by the Colorado Division of Water Resources and/or the Division 6 Water Court, and as further set forth in ¶5.5 of the Settlement Agreement.

45. Tri-State agrees to directly communicate with Moffat/Craig and OJT regarding significant workforce decisions related to Craig 3, as further set forth in ¶5.6 of the Settlement Agreement.

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<sup>37</sup> *Id.*, ¶5.3.3.

<sup>38</sup> *Id.*, ¶5.4.1.

<sup>39</sup> *Id.*

46. Moffat/Craig and Tri-State agree to meet twice annually from 2025 to 2028 leading up to the Craig Station closure to identify opportunities where Tri-State's assets can be utilized to facilitate development in Moffat while also benefiting Tri-State's member systems, as further set forth in ¶5.7 of the Settlement Agreement.

47. Moffat/Craig agree not to seek further community assistance or workforce transition benefits from Tri-State in the future, or take positions on workforce transition reporting before a regulatory body, court, legislative body, or through discussions or communications with others that are inconsistent with the terms of the Settlement Agreement, as further set forth in ¶55 of the Settlement Agreement.

## II. ANALYSIS

### A. Burden of Proof

48. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."<sup>40</sup> The Settling Parties filed the Joint Motion and, as a result, bear the burden of proof.<sup>41</sup> The Settling Parties must establish by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. The Commission has an independent duty to determine matters that are within the public interest.<sup>42</sup>

### B. Modified Procedure

49. The Application, as modified by the Settlement Agreement, is uncontested. The Settlement Agreement was executed by each of the Settling Parties and is otherwise unopposed as

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<sup>40</sup> Section 24-4-105(7), C.R.S.

<sup>41</sup> Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

<sup>42</sup> See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

is the Motion.<sup>43</sup> In addition, the parties agree that a hearing is unnecessary.<sup>44</sup> Finally, the Application and Settlement Agreement are supported by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S. and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1,<sup>45</sup> the Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

### C. Analysis

50. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the Settlement Agreement is just and reasonable and not contrary to the public interest. The ALJ shall approve the Settlement Agreement without material modifications and shall grant the Application, as modified and clarified by the Settlement Agreement and the testimony referenced therein.<sup>46</sup> In so doing, the ALJ approves Tri-State’s assessment of need during the resource acquisition period, its plans for acquiring additional resources, and its proposed model contracts and evaluation criteria.

51. Paragraphs 4.2. and 5.3 of the Settlement Agreement (and the subparagraphs contained therein) thoroughly set forth the process and requirements for Phase II RFPs as well as the location (Moffat) of a gas plant for which Tri-State would solicit RFPs during Phase II. Multiple public comments addressed the public’s concern as to the construction of a gas plant in Moffat.<sup>47</sup> Nonetheless, the ALJ is satisfied by the flexibility in the modeling requirements set forth

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<sup>43</sup> Motion at 4-5.

<sup>44</sup> *Id.*

<sup>45</sup> 4 CCR 723-1.

<sup>46</sup> See Settlement Agreement, ¶4.3.7.

<sup>47</sup> See, e.g., Public Comment Hr. Tr. for July 11, 2024 Public Comment Hr. at 13:1-8, 15:21-16:2, 20:1-13, and 35:12-21.

by the Settlement Agreement, which includes a requirement to model at least one portfolio with no new gas resources, should all other portfolios incorporate new gas resources.

52. Paragraph 4.2.2 of the Settlement Agreement set forth requirements regarding bid fees and bid security for Phase II RFPs. The ALJ finds that these provisions appropriately address concerns previously raised by COSSA/SEIA and Staff and are otherwise reasonable and not contradictory to the public interest.<sup>48</sup>

53. Paragraphs 4.2.7 – 4.2.10 of the Settlement Agreement addresses the New ERA Application. The New ERA Application was a primary area of concern for Staff prior to the execution of the Settlement Agreement.<sup>49</sup> The ALJs agree with the Settling Parties that the changes to Tri-State's Phase II RFPs provide reasonable flexibility while still ensuring that Tri-State can leverage federal funding. Moreover, Tri-State commits specifically to address grant flexibility with USDA and to provide informational updates to the Commission. The ALJ finds that the terms relating to the New ERA Application are reasonable and not contradictory to the public interest.

54. Paragraph 4.3 of the Settlement Agreement addresses the portfolios to be modeled by Tri-State in Phase II. The ALJ agrees with the Settling Parties that the portfolios to be modeled by Tri-State in Phase II promote flexibility and ensure the availability of sufficient options and combinations which would allow evaluation of backup options and help to inform the decision as to the need for additional gas resource.<sup>50</sup>

55. Paragraphs 4.4.1, 4.8.1, 4.8.2, and 4.8.3 of the Settlement Agreement address EWE Sensitivity. Notably, Tri-State will model the EWE Sensitivity in the dispatch only, without informing the expansion plan of the EWE modeling parameters. This approach is different than

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<sup>48</sup> See Hr. Ex. 1501, p. 2:15-19; Hr. Ex. 203, p. 9:5-12; See also Hr. Ex. 122, pp. 5:22-6:16.

<sup>49</sup> See Hr. Ex. 200, pp. 38:15-39:11.

<sup>50</sup> See Hr. Ex. 903, p. 8:5-12; Ex. 402, pp. 8:19-9:2; Hr. Ex. 203, pp. 13:7-14:16; and Hr. Ex. p. 4:12-15.



the Phase I approach to EWE modeling. The ALJ finds that the EWE Sensitivity provisions are reasonable and not contradictory to the public interest.

56. As mentioned above, ¶4.1 of the Settlement Agreement states that the Settling Parties agree that Tri-State's 2023 ERP should be approved pursuant to Commission Rule 3605(g)(III), subject to the terms of the Settlement Agreement, without modification. The Wyoming Cooperatives, LPEA/MPE, WREA, K.C., SIEA, and SECPA do not oppose the Motion or the Settlement Agreement.<sup>51</sup> In its Answer Testimony,<sup>52</sup> LPEA/MPE stated that the Commission should "[d]irect Tri-State to model at least one 'lower load' scenario under which one or more additional members exit the Tri-State system, and consider the results of that scenario in the Phase I decision..."<sup>53</sup> As the lack of any objection by LPEA/MPE to the Motion or the Settlement Agreement and Tri-State's Rebuttal Testimony<sup>54</sup> suggests, this issue was satisfactorily resolved by Tri-State's commitment to update its load forecast during Phase II modeling to incorporate LPEA's departure beginning in April 2026 and the removal of Partial Requirements starting January 2026.<sup>55</sup> However, this commitment by Tri-State is not specifically set forth in the Settlement Agreement. Therefore, the Supplemental Direct Testimony of Lisa K. Tiffin, Hr. Ex. 110, which specifically addresses this commitment by Tri-State, will be incorporated by reference to the Settlement Agreement, as ordered below.

57. Paragraphs 4.4.4, 4.4.5, and 4.4.6 discuss modeling assumptions and obligations by Tri-State regarding CO2 emission rate, carbon capture and sequestration, federal production tax credits, and the useful life of gas plants. The ALJ agrees that these modeling assumptions and

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<sup>51</sup> Motion at 2; Settlement Agreement, ¶1.2.

<sup>52</sup> Hr. Ex. 1400.

<sup>53</sup> *Id.*, p. 6:6-8.

<sup>54</sup> Hr. Ex. 113.

<sup>55</sup> *Id.* 8, 9-11.

obligations “align with the recommendations that WRA put forward in answer and cross-answer testimony, while reflecting a degree of compromise in the interest of settlement[;]”<sup>56</sup> are intended to be consistent with the New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, published in the Federal Register on May 9, 2024[.]<sup>57</sup> Therefore, the ALJ finds that the provisions in the Settlement Agreement that address modeling assumptions and obligations by Tri-State regarding CO2 emission rate, carbon capture and sequestration, federal production tax credits, and the useful life of gas plants, are reasonable and not contradictory to the public interest.

58. Paragraphs 4.4.7 and 4.4.8 of the Settlement Agreement sets forth guidelines for Tri-State’s use of the EnCompass software to run its modeling. Staff notes, and the ALJ agrees, that the guidelines for Tri-State’s use of the EnCompass software to run its modeling, as set forth in the Settlement Agreement, addresses Staff’s prior concerns about Tri-State’s EnCompass software configuration.<sup>58</sup> The ALJ finds that the provisions in the Settlement Agreement that address Tri-State’s use of the EnCompass software to run its modeling are reasonable and not contradictory to the public interest.

59. Paragraph 4.5 of the Settlement Agreement sets forth Phase II bid generator interconnection criteria, including the requirement for bids for the years 2026-2027 to include generator interconnection queue position. The ALJ finds that that these criteria are reasonable and not contradictory to the public interest.

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<sup>56</sup> Hr. Ex. 903, p. 7:18-20.

<sup>57</sup> Hr. Ex. 402, pp. 11:18-12:2 and Hr. Ex. 124, pp. 5:22-64.

<sup>58</sup> Hr. Ex. 203, pp.12:14-13:3.

60. Paragraph 4.6 of the Settlement Agreement states that the Settling Parties agree that the Commission should approve a retirement date of January 1, 2028 for Craig 3. The Settling Parties note, and the ALJ agrees, that the setting of a definite Craig 3 retirement date provides certainty for Moffat/Craig,<sup>59</sup> and while not easy to bear, is agreeable by Moffat/Craig.<sup>60</sup> The ALJ finds that a retirement date of January 1, 2028 for Craig 3 is reasonable and not contradictory to the public interest.

61. Paragraph 4.6 of the Settlement Agreement also states that the Settling Parties agree that the Commission should approve the retirement date of September 15, 2031 for Springerville 3, subject to certain conditions. Staff's concerns regarding modeling assumptions related to the cost of the retirement of Springerville 3 were appropriately addressed by the Settlement Agreement.<sup>61</sup> Further, Tri-State notes that the retirement date of Springerville 3 aligns with the New ERA application, which would facilitate the reduction of the cost of retiring Springerville 3 for Tri-State Members and enable exiting of contractual agreements to not result in undue financial impact on Tri-State Members.<sup>62</sup> The ALJ finds that a retirement date of September 15, 2031 for Springerville 3 is reasonable and not contradictory to the public interest.

62. Paragraph 5.6 of the Settlement Agreement discusses the requirements imposed on Tri-State to directly communicate with Moffat/Craig and OJT regarding significant workforce decisions related to Craig 3. Moffat/Craig believe, and the ALJ agrees, that these requirements would enhance communication between Tri-State and Moffat/Craig and assist Moffat/Craig with local economic development planning efforts.<sup>63</sup> The ALJ notes that a single commenter in this

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<sup>59</sup> Hr. Ex. 402, p. 11:10-14.

<sup>60</sup> Hr. Ex. 1603, p. 5:3-12.

<sup>61</sup> Hr. Ex. 203, p. 15:1-13.

<sup>62</sup> Hr. Ex. 123, p. 8:15-23.

<sup>63</sup> Hr. Ex. 1603, pp. 16:13-17:9.

Proceeding stated that the labor force of Craig 3 was excluded from the negotiation table as it relates to the Settlement Agreement. The commenter noted that while the Craig 3 labor force has a letter of agreement in place with Tri-State, the letter does not fully address workforce transition or timing; and the labor force has not had sufficient time to consider and respond to the terms of the Settlement Agreement.<sup>64</sup> The ALJ considered this public comment and finds that the Settlement Agreement appropriately addresses workforce transition issues in light of Tri-State's legal obligations and its continued willingness to engage in discussions regarding the local economy. Section 5 of the Settlement Agreement incorporates certain community assistance opportunities that were identified in the Informational Community Assistance Plan ("ICAP") developed by Moffat/Craig, Tri-State, OJT, CEO, and UCA.<sup>65</sup> However the ICAP includes other opportunities that are not limited to the actions of this Commission. Therefore, the ALJ finds that the commitments made by Tri-State to directly communicate with Moffat/Craig and OJT regarding significant workforce decisions related to Craig 3 are reasonable and not contradictory to the public interest.

63. Paragraphs 5.2, 5.3.1, 5.3.2, 5.3.3, 5.3.4, 5.3.5, 5.3.6, 5.3.7, 5.7, and 5.9, of the Settlement Agreement set forth the parameters for the monetary community assistance to be provided by Tri-State to Moffat/Craig. A significant number of public comments emphasized the support of individual customers and local officials for community assistance.<sup>66</sup> COSSA/SEIA note that they strongly support the "Direct Benefit" to Moffat/Craig that the community assistance provisions of the Settlement Agreement provide.<sup>67</sup> COSSA/SEIA further state that while they do

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<sup>64</sup> Public Comment Hr. Tr. for July 9, 2024 Public Comment Hr. at 48:4-19, 49:1-7, and 49:19-50:4.

<sup>65</sup> Hrg. Ex. 1601, Att. CN-1, at p. 4-7.

<sup>66</sup> See, e.g., Public Comment Hr. Tr. for July 9, 2024 Public Comment Hr. at 15:25-165, 19:14-19, 22:19-23:4, 25:19-26:13, 26:23-27:3, 28:10-21, 29:12-14, 30:9-14, 31:4-6, 32:19-33:11, and 53:10-54:2.

<sup>67</sup> Hr. Ex. 1501, p. 4:14-16.

not support the construction of a gas plant in Moffat/Craig, the Settlement Agreement provides for a competitive solicitation process that a natural gas plant will ultimately be constructed in Moffat/Craig.<sup>68</sup> Similarly, WRA states it supports the community assistance provisions of the Settlement Agreement, the community assistance provisions of the Settlement Agreement do not prematurely lock in the acquisition of new natural gas resources in Phase I of this Proceeding, and the construction of a gas facility in Moffat would provide an economic benefit to Moffat.<sup>69</sup> CEO, too, supports the community assistance provisions of the Settlement Agreement, as those are consistent with CEO's recommendations regarding Tri-State's Phase II gas resources modeling.<sup>70</sup>

64. Moffat/Craig state that community assistance provisions of the Settlement Agreement align with the ICAP process that originated from the Tri-State 2020 ERP Settlement Agreement and brings many of the ICAP Report's community assistance opportunities to fruition.<sup>71</sup> Moffat/Craig further state that Moffat/Craig have the most to lose in terms of annual tax base as a result of Colorado's transition away from coal, and the direct benefit payments and minimum backstop payments by Tri-State would help ease these impacts.<sup>72</sup> Moffat/Craig also state that the goal of Tri-State's community assistance fund is to attract new industries and support existing local businesses in the area to help with replacement tax base sources and job creation resulting from the loss of Craig 3 and two coal mines.<sup>73</sup> Lastly, Moffat/Craig state that tax base sources and job creation could be assisted by the establishment of a natural gas facility in Moffat, which also aligns with the need for a dispatchable energy resource in Western Colorado to ensure

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<sup>68</sup> *Id.*, p. 7:6-9.

<sup>69</sup> Hr. Ex. 903, p. 12:4-12.

<sup>70</sup> Hr. Ex. 402, p. 12:4-10.

<sup>71</sup> Hr. Ex. 1603, p. 8:10-13.

<sup>72</sup> *Id.*, p. 10:1-9.

<sup>73</sup> *Id.*, pp. 11:10-15, 13:13-14.

grid reliability.<sup>74</sup> Similarly, Staff “applauds” all parties involved in negotiating the community assistance provisions of the Settlement Agreement.<sup>75</sup> Tri-State states that the minimum backstop payments provisions of the Settlement Agreement, which allow for Tri-State’s payments to be reduced based on Tri-State’s investments in Moffat/Craig, can deliver value for Tri-State members and are otherwise aligned with Tri-State’s functions as a non-for-profit organization.<sup>76</sup> The ALJ agrees with the justifications set forth above and finds that the community assistance to be provided by Tri-State to Moffat/Craig is reasonable and not contradictory to the public interest.

65. Paragraph 5.5 of the Settlement Agreement sets forth the parameters for the free transfer of Tri-State’s water rights in Elkhead Reservoir to Moffat. Moffat/Craig state that securing Tri-State’s water rights was the third-ranked CAO in the Final ICAP Report because the Yampa River upstream of the confluence with the Little Snake River, including all of its tributaries, was designated as “Over-Appropriated” and Moffat relies on water replacement augmentation through a lease agreement with the Colorado River Water Conservancy District.<sup>77</sup> Moffat/Craig further state that being able to secure the transfer of water rights from Tri-State would ultimately allow Moffat to expand housing opportunities for workers of any industry and attract new residents to Moffat.<sup>78</sup> The ALJ agrees that the free transfer of water rights from Tri-State to Moffat provides a substantial benefit to Moffat/Craig, is reasonable under the circumstances, and not contradictory to the public interest.

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<sup>74</sup> *Id.*, pp. 13:13-14:13.

<sup>75</sup> Hr. Ex. 203, p. 16:10-14.

<sup>76</sup> Hr. Ex. 123, p. 23:5-9.

<sup>77</sup> Hr. Ex. 1603, p. 15:8-18, *citing* Colorado Division of Water Resources, Over Appropriation of the Yampa River above the Confluence with the Little Snake River Letter (January 19, 2022), [https://dnrweblink.state.co.us/dwr/0/edoc/3863278/DWR\\_3863278.pdf?searchid=20139195-951f-4bbd-a0fb-35562c8ddfee](https://dnrweblink.state.co.us/dwr/0/edoc/3863278/DWR_3863278.pdf?searchid=20139195-951f-4bbd-a0fb-35562c8ddfee).

<sup>78</sup> *Id.*, p. 16:2-9.

66. Paragraphs 5.3, 5.4.1, 5.4.2, and 5.4.3 of the Settlement Agreement set forth parameters relating to gas plant bid solicitation, energy cost, letters of support to be produced by Moffat in connection with Tri-State’s 2023 ERP Phase II, 2027 ERP Phase I and II processes, and Moffat/Craig’s advocacy in connection with any bids in Moffat County selected as part of Tri-State’s preferred portfolio in Phase II of Tri-State’s 2027 ERP. According to Moffat/Craig, Tri-State’s application of a \$1/MWh price improvement over the life of the proposed project and siting replacement for gas plant bids could assist local communities without having to take more extreme measures that threaten Colorado’s marketplace.<sup>79</sup> According to CEO, the “price adder” set forth in the Settlement Agreement will help with bids located in Moffat not to be eliminated from the bid evaluation screening process before the non-price factor screen can be completed.<sup>80</sup> According to Moffat/Craig, gas plant bids siting replacement is in alignment with the third-party Generation Siting Study report authored by 1898 & Co., which selected a 239-acre Moffat County site in close proximity to Craig Station as the top location for a gas plant.<sup>81</sup> The ALJ agrees that the siting and price preferences given by Tri-State to Moffat in the context of the Settlement Agreement are a reasonable methodology that balances providing a locational preference with offering competitive flexibility, and thus are reasonable and not contradictory to the public interest.

67. Paragraphs 4.7.1, 4.7.3.1, and 4.7.3.2 of the Settlement Agreement set forth parameters relating to non-price bid factors for Tri-State’s Phase II of the 2023 ERP. According to WRA, Tri-State’s agreement to make information available to bidders regarding each of the listed non-price factors in the bid policy, including, where possible, the factors’ relative weight,

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<sup>79</sup> Hr. Ex. 1501, pp. 4:19-5:15.

<sup>80</sup> Hr. Ex. 402, p. 15:2-11, *citing* Hr. Ex. 400, Answer Testimony of Kathleen Gegner, p. 39:10-13.

<sup>81</sup> Hr. Ex. 1603, pp. 7:15-8:2, *citing* 1898 & Co. Generation Siting Study Report (Hr. Ex. 112, Tri-State Supplemental Direct Testimony of Chris E. Pink, Rev. 1, Attachment CEP-2 (Public Version of Generation Siting Study Report), at 37 (filed April 22, 2024)).

will improve transparency about the proposed framework at the outset of Phase I and satisfy WRA's concerns in this regard.<sup>82</sup> CEO states that it supports the non-price bid evaluation criteria set forth in the Settlement Agreement and explains that, as it understands it, tribal consultations, wildlife surveys, and/or plans to conduct such assessments, consultations, or surveys, will be offered on an informational basis and be otherwise consistent with Tri-State's existing and proposed processes, and that it is not creating additional requirements on bidders. The ALJ agrees that the non-price bid process outlined in the Settlement Agreement does not impose unreasonable requirements on developers, the process is otherwise reasonable under the circumstances, and is not contradictory to the public interest. The ALJ further notes that ¶4.7.1 of the Settlement Agreement, is consistent with §40-2-129(1)(b) and Rule 3605(h)(I)(A)(iii) of the Rules Regulating Electric Utilities, 4 CCR 723-3, which require Tri-State to provide the Commission with the best value employment metrics information provided by bidders as a part of its Phase II ERP Implementation Report.

68. Paragraph 4.9 of the Settlement Agreement sets forth three demand response requirements Tri-State must follow. According to WRA, the requirements on Tri-State to aim to control at least 5.5 percent of its Colorado peak load through demand response programs by 2030, although a compromise from WRA's initial proposal, represents a meaningful increase in Tri-State's future demand response capacity objectives.<sup>83</sup> According to Tri-state, the requirements set forth in ¶4.9 of the Settlement Agreement are "reasonable stretch goals." The ALJ agrees that the requirements set forth in 4.9 of the Settlement Agreement are reasonable and not contradictory to the public interest.

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<sup>82</sup> Hr. Ex. 903, p. 9:11-17.

<sup>83</sup> Hr. Ex. 903, p. 8:15-22.



69. Paragraph 4.10 of the Settlement Agreement sets forth the minimum requirements for Tri-State's Phase II Implementation Report. CEO previously suggested, and supports, the requirements on Tri-State to provide the annual carbon dioxide and methane emissions in short or metric tons in its ERP Implementation Report, for each proposed Phase II portfolio and map all Phase II bids against an overlay of the EnviroScreen data layer that identifies DI communities.<sup>84</sup> The ALJ finds that the requirements set forth in ¶4.10 of the Settlement Agreement are reasonable and not contradictory to the public interest.

70. Paragraph 4.11 of the Settlement Agreement sets forth criteria for Tri-State's Post-Phase II Transmission Injection Study. The ALJ finds that the requirements set forth in ¶4.11 of the Settlement Agreement are reasonable and not contradictory to the public interest.

71. Paragraphs 4.7.2, 4.9.3, 4.12 of the Settlement Agreement set forth certain requirements relating to Tri-State's 2027 ERP. According to WRA, the requirement on Tri-State to provide information in future annual progress reports on Regional Transmission Organization ("RTO") impacts to resource adequacy determination is "an appropriate starting place for understanding the impacts of RTO participation on electric resource planning," and complements other approaches for evaluating RTO participation and impacts on utility operations.<sup>85</sup> Tri-State explains that after the start of its participation in the Southwest Power Pool ("SPP"), which is scheduled for April 1, 2026, Tri-State will begin including certain SPP information in its ERP Annual Progress Reports, as specified in ¶4.12.3 of the Settlement Agreement.<sup>86</sup> The ALJ finds that the provisions of the Settlement Agreement relating to Tri-State's 2027 ERP are reasonable and not contradictory to the public interest.

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<sup>84</sup> Hr. Ex. 402, p. 9:17-10:4.

<sup>85</sup> Hr. Ex. 903, pp. 10:16-11:2.

<sup>86</sup> Hr. Ex. 123, pp. 18:19-19:6.

72. Accordingly, in accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

### **III. ORDER**

#### **A. It is Ordered That:**

1. For the reasons stated above, the Joint Unopposed Motion to Approve the Unopposed Comprehensive Settlement Agreement, Amend the Procedural Schedule, and Waive Response Time, filed on June 27, 2024 by Tri-State Generation and Transmission Association, Inc., Highline Electric Association Highline, Poudre Valley Rural Electric Association, Inc., Y- W, Interwest Energy Alliance, Trial Staff of the Colorado Public Utilities Commission, the Office of the Utility Consumer Advocate, the Colorado Energy Office, Moffat County and the City of Craig, Office of Just Transition, the Colorado Independent Energy Association, Colorado Solar and Storage Association and the Solar Energy Industries Association, Conservation Coalition, and Western Resource Advocates (the “Settling Parties”) is granted.

2. The Unopposed Comprehensive Settlement Agreement (“Settlement Agreement”), filed by the Settling Parties on June 27, 2024 is approved, consistent with the discussion above. The Settlement Agreement is attached to this Decision as Appendix A.

3. The Supplemental Direct Testimony of Lisa K. Tiffin, Hearing Exhibit 110 is incorporated by this reference into the Settlement Agreement and is included as Appendix B to this Decision.

4. The 2023 Electric Resource Plan Application, filed by Tri-State on December 1, 2023, as modified by the Settlement Agreement, is granted.

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 shall 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 Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,  
Director

