

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

IN THE MATTER OF THE APPLICATION OF)	
TRI-STATE GENERATION AND TRANSMISSION)	DOCKET NO. 09A-324E
ASSOCIATION, INC., (A) FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY FOR THE)	
SAN LUIS VALLEY-CALUMET-COMANCHE)	
TRANSMISSION PROJECT, (B) FOR SPECIFIC)	
FINDINGS WITH RESPECT TO EMF AND NOISE,)	
AND (C) FOR APPROVAL OF OWNERSHIP)	
INTEREST TRANSFER AS NEEDED WHEN)	
PROJECT IS COMPLETED.)	

AND

IN THE MATTER OF THE APPLICATION OF)	
PUBLIC SERVICE COMPANY OF COLORADO)	DOCKET NO. 09A-325E
(A) FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR THE)	
SAN LUIS VALLEY TO CALUMET TO)	
COMANCHE TRANSMISSION PROJECT, (B))	
FOR SPECIFIC FINDINGS WITH RESPECT TO)	
EMF AND NOISE, AND (C) FOR APPROVAL OF)	
OWNERSHIP INTEREST TRANSFER AS)	
NEEDED WHEN PROJECT IS COMPLETED.)	

REBUTTAL TESTIMONY OF JAMES P. SPIERS

1 **Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A: My name is James P. Spiers. My business address is: 1100 West 116th Avenue,
3 Westminster, CO 80233.

4 **Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A: I am employed by Tri-State Generation and Transmission Association ("Tri-State")
6 as Senior Manager Energy Strategies.

7 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS DOCKET?**

1 A. I am testifying on behalf of Tri-State.

2 **Q: HAVE YOU PREPARED A STATEMENT OF YOUR EXPERIENCE AND**
3 **QUALIFICATIONS?**

4 A: Yes, a statement of my qualifications is attached to my rebuttal testimony (Exhibit
5 JPS-1).

6 **Q. WHAT IS YOUR INVOLVEMENT WITH THE SAN LUIS VALLEY –**
7 **CALUMET – COMANCHE TRANSMISSION LINE PROJECT**
8 **(“PROJECT”)?**

9 A. I am not directly involved in the planning or design of the Project. In my position
10 as Senior Manager Energy Strategies, I am responsible for, among other things,
11 strategy development that includes rates and regulation and product development
12 strategies. I am familiar with all aspects of Tri-State’s operations and the extent to
13 which capital investments and operational costs are reviewed and approved by Tri-
14 State’s Board of Directors and have an impact on Tri-State’s cost of service and
15 ultimately its rates to its member-systems.

16 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

17 A. My rebuttal testimony is offered in response to the Answer Testimony of Trinchera
18 Ranch witness Michael J. McFadden and Western Resource Advocates witness
19 Tom Darin.

20 **Q. HAVE YOU READ THE DIRECT TESTIMONY OF MICHAEL J.**
21 **MCFADDEN SUBMITTED ON BEHALF OF TRINCHERA RANCH IN**
22 **THIS CASE?**

23 A. Yes.

1 **Q. WHAT IS YOUR UNDERSTANDING OF MR. MCFADDEN’S POSITION**
2 **IN THIS CASE?**

3 A. Mr. McFadden provides a summary of his “findings, conclusions and
4 recommendations” on pp. 7-8 of his Answer Testimony. First, he asserts that there
5 is “substantial evidence” that there are lower cost alternatives to the Project that
6 would accomplish the same objectives. Second, he asserts that there is “insufficient
7 evidence” that the Project is necessary to provide service to utility customers.
8 Finally, he argues that traditional utility ratemaking principles should be applied in
9 this case such that if the Project is not fully utilized, PSCo’s ratepayers should be
10 protected in some manner.

11 **Q. DO YOU AGREE WITH ANY OF THESE THREE POINTS MADE BY MR.**
12 **MCFADDEN?**

13 A. No. Although the focus of my rebuttal testimony is to respond to the last argument
14 made by Mr. McFadden, I also disagree with his first two points with respect to the
15 need for the Project and feasible alternatives. Mr. McFadden has simply done no
16 analysis of his own to support his assertions. He relies solely on the report
17 submitted by another Trinchera Ranch witness, Mr. Dauphinais. Tri-State witness
18 Leoni and PSCo witnesses Green, Stellern and Taylor will address these issues in
19 more detail in their rebuttal testimony. As for his third argument, that the costs of
20 the Project may not be “used and useful” or “prudently incurred”, Mr. McFadden
21 improperly attempts to inject ratemaking principles into a certificate of public
22 convenience and necessity case.

1 **Q. WILL THE COMMISSION MAKE ANY FINDING WITH RESPECT TO**
2 **WHETHER THE PROJECT IS “USED AND USEFUL” IN THIS CPCN**
3 **PROCEEDING?**

4 A. No. Mr. McFadden is attempting to introduce a cost recovery concept into a case
5 that is exclusively an analysis of public convenience and necessity. To emphasize
6 this point, Tri-State is not rate regulated by the Commission. Tri-State has filed a
7 number of CPCNs for Commission approval over the years. None of those cases
8 have involved cost recovery, nor could they, for a non-rate regulated utility such as
9 Tri-State. Further, Tri-State’s recovers its costs through a Board-approved
10 “postage stamp” rate charged to its member-systems in four states. Thus, any
11 attempt to impose rate conditions in this Application would be inappropriate.

12 **Q. DOES THIS MEAN THAT THE COMMISSION COULD MAKE SUCH**
13 **FINDINGS IN THIS CPCN PROCEEDING FOR RATE REGULATED**
14 **UTILITIES?**

15 A. No. Even rate regulated utilities are subject to long standing regulatory law and
16 practice regarding the appropriate scope of a CPCN Proceeding. Regulatory law
17 and practice draws a distinction between CPCN authority and rate authority.
18 The Commission’s rules with respect to CPCN applications require utilities to
19 demonstrate why the project is needed and that it will not duplicate the facilities of
20 another utility. Under traditional ratemaking principles, public utilities are entitled
21 to rely on the grant of the CPCN and to recover prudent investments when they
22 become used and useful. For rate regulated utilities this typically occurs in
23 subsequent rate cases or through other recovery proceedings or processes before the

1 Commission while for non-rate regulated utilities, such Tri-State, this occurs
2 through its Board's actions. I do note that the law, in order to encourage public
3 utilities to pursue the construction and expansion of transmission facilities, now
4 allows a rate regulated utility to recover construction work-in-progress on
5 transmission facilities through a rate adjustment clause C.R.S. §40-5-101(4)(b).

6 **Q. YOU REFERRED TO THE "POSTAGE STAMP RATE" CONCEPT. DOES**
7 **THIS MEAN THAT ALL OF TRI-STATE'S MEMBERS WILL SHARE IN**
8 **THE COSTS OF THE PROJECT?**

9 A. Yes, the Project will have system-wide benefits for Tri-State and all of its members
10 will share in the costs. Tri-State and its member-systems operate under
11 cooperative principles, one of which is mutuality. Postage stamp rates embody the
12 concept of mutuality.

13 **Q. MR. MCFADDEN ALSO STATES THAT THE COSTS OF OPERATING**
14 **AND MAINTAINING THE PROJECT SHOULD BE PRUDENTLY**
15 **INCURRED. DO YOU AGREE WITH THIS STATEMENT?**

16 A. Yes, I agree that operation and maintenance costs should be prudently incurred;
17 however, that is not at issue in this Application. Again, Mr. McFadden attempts to
18 inject a ratemaking concept into a CPCN proceeding where it has no relevance.
19 Although the general principle that rate regulated utilities can only recover in their
20 rates costs that are prudently incurred is accurate, this is not the appropriate forum
21 for that analysis. PSCo will have future proceedings to recover the investments and
22 expenses associated with these facilities, subject to Commission review and

1 approval, much as our Board of Directors reviews and approves the prudence of
2 Tri-State's investments and costs.

3 **Q. DO YOU AGREE WITH MR. MCFADDEN'S "FIELD OF DREAMS"**
4 **CRITICISM OF THE PROJECT?**

5 A. No. Mr. McFadden's testimony does not take into account recent policy
6 developments in Colorado with respect to the development of electric transmission
7 infrastructure. Mr. McFadden is either unaware of, or he chooses to ignore, recent
8 legislative enactments in Colorado whereby an emphasis has been placed on the
9 development of new transmission capacity to enhance opportunities for the
10 development of beneficial energy resources. These new laws undercut Mr.
11 McFadden's criticism of the Project as a "Field of Dreams."

12 **Q. WHAT SPECIFICALLY IS THE BASIS FOR THIS NEW EMPHASIS ON**
13 **TRANSMISSION DEVELOPMENT?**

14 A. In 2007, the Colorado legislature adopted S.B. 07-100. This bill, known as "Senate
15 Bill 100", created a new approach to transmission planning for investor-owned
16 utilities such as PSCo. Senate Bill 100 encourages investor-owned utilities to plan
17 for transmission to accommodate "beneficial energy sources." Senate Bill 100
18 fundamentally changed the framework under which the Commission operates to
19 make decisions with respect to the CPCN application of utilities. Whereas the old
20 paradigm was that a utility would only propose a transmission project to either
21 address a reliability issue or provide a path for a firm generation resource, the new
22 paradigm under Senate Bill 100 allows utilities to build transmission to areas of
23 likely future generation development.

1 **Q. DOES SENATE BILL 100 APPLY TO TRI-STATE?**

2 A. No. Senate Bill 100 only applies to rate regulated utilities such as PSCo. Senate
3 Bill 100 creates rate recovery mechanisms that provide an incentive for investor-
4 owned utilities to invest in transmission facilities. Since Tri-State does not make
5 capital investment decisions based on a return on investment, the incentives created
6 in Senate Bill 100 do not apply to Tri-State. Nonetheless, Tri-State supported the
7 adoption of Senate Bill 100 during the 2007 legislative session. Tri-State's support
8 of the bill was based on the fact that much of the needed transmission in Colorado
9 can be best developed as joint utility projects and Tri-State has a long history of
10 participation in joint transmission planning and development. In addition, we
11 believed it would be appropriate for PSCo to receive appropriate regulatory
12 incentives to participate in projects such as this Project.

13 **Q. DOES SENATE BILL 100 APPLY TO THIS CONSOLIDATED**
14 **PROCEEDING?**

15 A. While the Commission has ruled that Senate Bill 100 does not apply to this case, it
16 has also found that it has broad authority under C.R.S. §40-5-101 to consider all
17 aspects of the Project in assessing the public convenience and necessity.

18 **Q. DO YOU AGREE WITH MR. MCFADDEN'S COMPARISON OF THIS**
19 **CASE TO EITHER THE FRONT RANGE PIPELINE CASE OR THE FORT**
20 **ST. VRAIN CASE?**

21 A. No. There have been many developments impacting the selection and siting of
22 transmission facilities in the last few years that render earlier Commission CPCN
23 decisions moot. Mr. McFadden relies on outdated Commission decisions which

1 have nothing to do with electric transmission lines and the current regulatory
2 environment for the consideration of CPCN applications. Ironically, in each of the
3 cases cited by Mr. McFadden, the Commission granted PSCo's applications to
4 build the facilities. It is surprising that a witness of Mr. McFadden's clear
5 involvement in and seeming knowledge of regulatory law and practice would
6 misapply rate principles in a certificate case, fail to acknowledge clear changes in
7 public policy regarding certificate cases and attempt to interject misguided analysis
8 regarding past Commission rulings.

9 **Q. HAVE YOU READ THE TESTIMONY OF WESTERN RESOURCE**
10 **ADVOCATES WITNESS TOM DARIN?**

11 A. Yes.

12 **Q. DO YOU BELIEVE THAT THE CONDITIONS RECOMMENDED BY MR.**
13 **DARIN ARE APPROPRIATE CONDITIONS FOR THE COMMISSION TO**
14 **IMPOSE ON THE CPCN ISSUED TO TRI-STATE FOR THE PROJECT?**

15 A. No. Unfortunately, WRA is using this CPCN docket to attempt to accomplish
16 other objectives that are outside the scope of this proceeding. If the Commission
17 desires to see transmission built for load serving and market development purposes,
18 it is essential that it draw a line and discourage intervenors from participating in
19 CPCN proceedings to promote their particular interests that are unrelated to the
20 public convenience and necessity of a particular project.

21 **Q. DO YOU AGREE WITH MR. DARIN'S SUGGESTION THAT THE**
22 **COMMISSION CREATE A REBUTTABLE PRESUMPTION AGAINST A**

1 **FINDING OF NEED FOR ANY NON-RENEWABLE GENERATION**
2 **RESOURCE THAT WOULD USE THE PROJECT?**

3 A. No. Tri-State is required to comply with federal open access transmission rules and
4 it cannot limit access to its facilities based on the type of generation resources that
5 seek access. Mr. Darin's suggestion is impermissible under federal law.

6 **Q. DO YOU AGREE WITH MR. DARIN'S SUGGESTION THAT THE**
7 **COMMISSION CONDITION ANY GRANT OF A CPCN TO TRI-STATE**
8 **TO INCLUDE A REQUIREMENT FOR FILING WITH THE**
9 **COMMISSION AND THE PARTIES A BASELINE REPORT ON DEMAND**
10 **SIDE MANAGEMENT AND GRID CONNECTED ONSITE RENEWABLE**
11 **GENERATION OPERATING IN THE SERVICE TERRITORIES SERVED**
12 **BY ITS MEMBER-SYSTEMS WITHIN THE SAN LUIS VALLEY?**

13 A. No. The recommendation ignores the structural separation between Tri-State and
14 its member-systems. Tri-State has no ability to direct end-use, behind the meter,
15 programs such as DSM and grid-connected onsite renewable generation. The
16 Commission has acknowledged this in earlier rulings where it held that since "Tri-
17 State provides only wholesale service, it cannot dictate DSM programs for its
18 members, who control policies for sales to end-use customers." (*See* Docket No.
19 01A-232E, Decision No. C01-951, p. 7). The same rationale would apply to onsite
20 (behind the meter) renewable generation – Tri-State operates at wholesale while its
21 member-systems operate at retail. If this recommendation is attempting to overturn
22 that decision, that is inappropriate in this forum. If it is not attempting to overturn
23 that decision, in essence this recommendation is attempting to "boot-strap"

Commission jurisdiction over distribution cooperatives who have opted out from under Commission jurisdiction and to oversee their implementation of DSM and onsite renewable programs. Either outcome is beyond the scope of a certificate proceeding and beyond the Commission's jurisdiction.

Q. DO YOU AGREE WITH MR. DARIN'S SUGGESTION THAT THE COMMISSION CONDITION ANY GRANT OF A CPCN TO TRI-STATE TO INCLUDE A REQUIREMENT FOR FILING WITH THE COMMISSION AND THE PARTIES ITS PLAN ON IMPLEMENTING COST-EFFECTIVE MEASURES AND PROGRAMS IDENTIFIED IN THE NEXANT AND THE CADMUS GROUP STUDY IN THE SAN LUIS VALLEY ?

A. No. As noted above, the Commission has no jurisdiction over Tri-State with respect to end-use programs and such a condition would require the Commission to overturn past Commission decisions and practice.

Q. DO YOU AGREE WITH MR. DARIN'S SUGGESTION THAT THE COMMISSION CONDITION ANY GRANT OF A CPCN TO TRI-STATE TO INCLUDE A REQUIREMENT FOR FILING WITH THE COMMISSION AND THE PARTIES AN UPDATED SAN LUIS VALLEY REPORT?

A. No, for the same reasons cited in my answer to the previous question.

Q. HAS TRI-STATE IMPLEMENTED DEMAND SIDE MANAGEMENT OR ENERGY EFFICIENCY PROGRAM OFFERINGS TO THE MEMBER SYSTEMS?

1 A. Yes. Tri-State has a long standing energy efficiency program through which
2 financial incentives are provided to the member-systems who in turn provide them
3 to their member-consumers to promote the wise use of energy. This program has
4 undergone several significant changes in the past three years, to include becoming
5 ENERGY STAR based, cost-effectively priced, and, the first of its kind for G&Ts,
6 deployment and pilot product offerings, including LEDs among other things.

7 **Q. DO ANY OF THESE PROGRAMS IMPACT TRI-STATE'S MEMBER-**
8 **SYSTEMS IN THE SAN LUIS VALLEY?**

9 A. Yes. Each member-system has the option of choosing which of the programs and
10 measures to offer to their member-consumers. Their locally controlled Board of
11 Directors is best positioned to determine the service offerings that are appropriate
12 for its membership.

13 **Q. HAS TRI-STATE IMPLEMENTED PROGRAMS TO SUPPORT LOCAL**
14 **RENEWABLE PROGRAMS, INCLUDING ONSITE PROGRAM**
15 **OFFERINGS, OF THE MEMBER-SYSTEMS?**

16 A. Yes. Tri-State's Board has adopted several policies which are the first of their kind
17 for G&Ts that provide financial incentives to member-systems to be involved in
18 developing local renewable projects, including onsite, behind the meter, renewable
19 projects that the member-system promotes or that their member-consumers
20 undertake on their own accord.

21 **Q. DO ANY OF THESE PROGRAMS IMPACT TRI-STATE'S MEMBERS IN**
22 **THE SAN LUIS VALLEY?**

1 A. Yes. Each member-system has net metering programs and can take advantage of
2 financial incentives through the Tri-State programs. Again, the locally controlled
3 Board of Directors is best positioned to determine the service offerings that are
4 appropriate for its membership.

5 **Q. DOES TRI-STATE PROVIDE ANY OTHER INCENTIVES OR SUPPORT**
6 **TO MEMBER-SYSTEMS FOR DEPLOYMENT OF END-USE/ONSITE**
7 **PROGRAMS?**

8 A. Yes. In addition to the current EE/DSM and local renewable project offerings, Tri-
9 State provides education materials and events in the member-systems' service
10 territories and marketing materials and financial support to promote service
11 offerings by the member-systems to their member-consumers. In addition, Tri-
12 State's rate structure and design sends a very powerful signal to the member-
13 systems to curtail their peak demand during Tri-State's peak periods. Each of these
14 actions supports member-system participation in and deployment of end-use/onsite
15 programs to their member-consumers.

16 **Q. ARE YOU FAMILIAR WITH THE RELIABILITY ISSUES THAT AFFECT**
17 **TRI-STATE'S MEMBERS IN THE SAN LUIS VALLEY?**

18 A. Yes. There is a potential for voltage collapse when the load is above 65 MW and
19 there is an outage of the San Luis Valley – Poncha 230 kV line.

20 **A. WILL THE PROGRAMS YOU DESCRIBE IN YOUR TESTIMONY**
21 **ELIMINATE THE RELIABILITY ISSUES IMPACTING TRI-STATE'S**
22 **MEMBERS IN THE SAN LUIS VALLEY?**

1 Q. No. While EE/DSM programs are an important piece of the puzzle to mitigate the
2 problem, they are only a small part of the solution. It is important to recognize that
3 programs have already been implemented by Tri-State and its member San Luis
4 Valley Rural Electric Cooperative to encourage end-use efficiency programs and
5 reduce electrical loads by its consumers. As stated in the 2008 Alternative
6 Evaluation completed for Tri-State's original project (See pp. 3-6 of Exhibit No.
7 MJM-2 attached to the Direct Testimony of Mark Murray) "based on the growing
8 residential loads combined with the amount of irrigation in the San Luis Valley, it
9 is unrealistic to expect that peak loads can be cost-effectively reduced below 65
10 MW by either aggressive load management or through more aggressive energy
11 conservation."

12 **Q. WHAT IS THE "NEXANT/CADMUS" REPORT REFERRED TO IN MR.**
13 **DARIN'S TESTIMONY?**

14 A. The Nexant/Cadmus Report is a comprehensive Energy Efficiency and Demand
15 Side Management Study of the technical potential for energy savings across Tri-
16 State's 44 member-systems' service territories. This study will be completed in the
17 first Quarter of 2010. It will not identify savings potential by member-system;
18 rather it will do so by climatic zone. Once the study is completed, Tri-State will
19 confer with the member-systems regarding deployment options, will offer
20 appropriate programs and measure and will seek to minimize barriers to
21 implementation. Future products and service offerings and pricing/rate structure
22 and design will be evaluated by Tri-State's Board of Directors and implemented
23 according to the Board's direction.

1 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

2 **A. Yes.**