

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

THE JOINT APPLICATION OF
COLORADO-UTE ELECTRIC
ASSOCIATION, INC. (BY AND
THROUGH ITS TRUSTEE IN
BANKRUPTCY VICTOR H.
PALMIERI) AS TRANSFEROR, AND
PUBLIC SERVICE COMPANY OF
COLORADO AND TRI-STATE
GENERATION AND TRANSMISSION
ASSOCIATION, INC., AS
TRANSFEREES, FOR COMMISSION
AUTHORIZATION OF THE TRANSFER
AND ACQUISITION OF CERTAIN
ASSETS PURSUANT TO SECTIONS
40-5-101 AND 40-5-105,
C.R.S., AND RULE 55 OF THE
COMMISSION'S RULES OF
PRACTICE AND PROCEDURE

Docket No. 91A-589E

COMMISSION DECISION GRANTING
APPLICATION

Mailed Date: January 27, 1992
Adopted Date: December 12, 1991

Appearances:

James Delman, Esq., Montrose Colorado, and
Ronald Eastman, Esq., Washington, D.C., for
Victor H. Palmieri, Trustee of Colorado-Ute
Electric Association, Inc.;

John J. Conway, Esq., Denver, Colorado, for
Tri-State Generation and Transmission
Association, Inc.;

Kenneth V. Reif Esq., Denver, Colorado, and
Mark Davidson, Esq., Denver, Colorado, for
Public Service Company of Colorado;

Jack Wolfe, Esq., Longmont, Colorado, for
Mountainview Electric Association;

John Kappa, Esq., Montrose, Colorado, for
City of Montrose;

Edward Lyons, Esq., Denver, Colorado, for
Shell Western E&P;

Perry Glantz, Esq., Denver, Colorado for
Atlantic Richfield Company and
Exxon Corporation;

Paula Connelly, Esq., Denver, Colorado for
Colorado Association of Municipal Utilities;

Bruce Driver, Esq., Denver, Colorado, and
Eric Blank, Esq., Denver, Colorado, for
Land and Water Fund of the Rockies;

Jeff Pond, Esq., Denver, Colorado, for
Delta-Montrose Electric Association;

Jerry Goad, Esq., First Assistant Attorney General,
Denver, Colorado, for the Office of Energy
Conservation;

John Palmquist, Esq., Englewood, Colorado, for
Intermountain Rural Electric Association;

Deborah Waldbaum, Esq., Assistant Attorney General,
Denver, Colorado, for the Office of Consumer
Counsel;

Mana L. Jennings-Fader, Esq., Assistant Attorney
General, Denver, Colorado, for the Staff of
the Commission;

Carol Smith Rising, Esq., Assistant Attorney
General, Denver, Colorado, for the Commission.

STATEMENT

BY THE COMMISSION:

On September 9, 1991, the instant application was filed with the Commission by Colorado-Ute Electric Association, Inc. (by and through its trustee in bankruptcy, Victor H. Palmieri) (CUEA) as transferor, and Public Service Company of Colorado (PSCo) and Tri-State Generation and Transmission Association, Inc. (Tri-State) as transferees. In their joint Application, the Applicants seek

authorization of the transfer and acquisition of certain assets pursuant to §§ 40-5-101 and 40-5-105, C.R.S. (1984 Repl. Vol.), and Rule 55 of the Commission's Rules of Practice and Procedure. The Applicants also requested in their Application that the notice and intervention period for this application be shortened to September 24, 1991.

Notice of the within Application was sent to interested persons, firms and corporations by the Executive Secretary of the Commission on September 12, 1991, by sending a Notice of Application Filed, setting forth September 24, 1991 as the deadline for receipt by the Commission of petitions to intervene or other appropriate pleadings by persons desiring to intervene or participate as a party in the within action.

On September 13, 1991, PSCo filed a Motion for Prehearing Conference and for Reservation of Hearing Date. Appropriate pleadings requesting intervention were filed by the City of Montrose, Colorado; Staff of the Commission; Delta-Montrose Electric Association; the Land and Water Fund of the Rockies (LAW Fund); White River Electric Association, Inc.; Atlantic Richfield Company and Exxon Corporation; the National Rural Utilities Cooperative Finance Corporation; the Committee to Protect the Montrose Economy; the Colorado Office of Energy Conservation (OEC); the Colorado Office of Consumer Counsel (OCC); Mountain View Electric Association, Inc.; the Colorado Association of Municipal

Utilities (CAMU); and Shell Western E&P, Inc. All of these interventions were granted or recognized by the Commission.

A prehearing conference was held on October 7, 1991, before Chief Administrative Law Judge Robert E. Temmer. On October 11, 1991, Judge Temmer issued Decision No. R91-1336-I, setting the matter for hearing on November 25 and 26, 1991, in a Commission hearing room in Denver, Colorado. He also established other procedural dates and guidelines, including the filing of supplemental testimony concerning state-wide dispatch and transmission access by the Applicants and the provision of daily transcripts by the Applicants.

On November 14, 1991, Atlantic Richfield Company and Exxon Corporation filed a Motion for Extension of Time and to Vacate and Reschedule Hearing dates. PSCo and Tri-State filed written responses to the Motion, and a telephone hearing was held before Judge Temmer on November 18, 1991. By Decision No. R91-1537-I, Judge Temmer denied the Motion.

At the assigned place and time, Chairman Cook called the matter for hearing before the Commission sitting en banc. During the course of the hearing, Exhibits 1 through and including 21 were offered and admitted into evidence. Exhibit numbers 22 through 26 were reserved for specified late-filed exhibits. Late-Filed Exhibits 22 through 26 were duly filed with the Commission. No objections were filed to the admission of Late-Filed Exhibits 22

through 26; therefore, they are also admitted into evidence and made a part of the record in this proceeding. A list of the exhibits admitted into evidence is attached hereto as Appendix A.

During the course of the hearing, the following persons testified on behalf of the listed parties:

Victor Palmieri	CUEA
Richard Kelly	PSCo
William Martin	PSCo
Frank Knutson	Tri-State
Gilbert Friesen	Tri-State
John Stutz	OEC
Ronald Binz	OCC
Kenneth Gale	City of Montrose
John Allum	CAMU
Stephen Pomerance	LAW Fund
Shepard Buchanan	LAW Fund
Frank Shafer	Staff
Ralph Teague	Staff
Saeed Barhaghi	Staff
Gary Schmitz	Staff

At the conclusion of the hearing, the parties were given the opportunity to make oral closing statements, or to submit written statements of position. All parties elected not to make oral closing statements, and the parties were ordered to file written

statements of position on or before December 6, 1991. All statements of position were timely filed. PSCo filed a Motion for Leave to File Response to Statement of Position of Staff on December 10, 1991, along with a Response to Statement of Position of Staff.

FINDINGS

1. CUEA, acting through its trustee in bankruptcy, is the Transferor in this proceeding. It is a Colorado cooperative electric association. CUEA is a public utility as defined in §40-1-103(2)(a), C.R.S. (1984 Repl. Vol.), and is subject to the jurisdiction and regulation of this Commission. A copy of its Articles of Incorporation is on file with the Commission.

2. CUEA generates and transmits electricity within the State of Colorado to its fourteen member distribution cooperative electric associations: Delta Montrose Electric Association, Inc.; Empire Electric Association, Inc.; Gunnison County Electric Association, Inc.; La Plata Electric Association, Inc.; Sangre de Cristo Electric Association, Inc.; San Isabel Electric Association, Inc.; San Luis Rural Electric Cooperative, Inc.; San Miguel Power Association, Inc.; Southeast Colorado Power Association; White River Electric Association, Inc.; Grand Valley Rural Power Lines, Inc.; Holy Cross Electric Association, Inc.; Intermountain Rural Electric Association; and Yampa Valley Electric Association, Inc.

3. PSCo is one of the Transferees in this proceeding. It is a Colorado corporation engaged in the generation, transmission and distribution of electricity within the State of Colorado. A copy of its Articles of Incorporation is on file with the Commission.

4. PSCo is a public utility as defined in § 40-1-103(2)(a), C.R.S. (1984 Repl. Vol.), and is subject to the jurisdiction and regulation of this Commission.

5. Tri-State is also one of the Transferees in this proceeding. Tri-State is a Colorado cooperative electric association, engaged in the generation and transmission of electric energy for the use of its own member cooperatives in the States of Colorado, Nebraska, and Wyoming. A copy of its Articles of Incorporation is on file with the Commission.

6. Tri-State is a public utility as defined in § 40-1-103(2)(a), C.R.S. (1984 Repl. Vol.), and is subject to the jurisdiction and regulation of this Commission with respect, inter alia, to facilities, safety and service.

7. PacifiCorp Electric Operations, Inc. (PacifiCorp) is an Oregon corporation and is a Transferee of some of the assets which are the subject matter of this Application. PacifiCorp does not propose to serve any customers in the State of Colorado by generating, transmitting or distributing electricity to them. Under such circumstances, PacifiCorp is not a public utility within the meaning of § 40-1-103(2)(a), C.R.S. (1984 Repl. Vol.)

8. On March 30, 1990, CUEA filed a voluntary petition for protection under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§

101 et seq., which was docketed as Case No. 90B-03761-C, styled In re: Colorado-Ute Electric Association, Inc. After hearing on the motion of certain parties for the appointment of a trustee for CUEA, the appointment of Victor Palmieri as trustee was confirmed by the bankruptcy court on August 17, 1990.

9. Competing plans of reorganization were filed with the Bankruptcy Court in the spring of 1991. Prior to approval by the Bankruptcy Court, the Transferees herein developed a consensual joint plan of reorganization. The competing plans of reorganization were withdrawn.

10. The first amended joint plan of reorganization was filed with the Bankruptcy Court by the Transferees and Intermountain Rural Electric Association on or about October 31, 1991.

11. Under the first amended joint plan of reorganization, all of CUEA's assets would be transferred to the Transferees herein. The assets contemplated to be transferred are listed in Exhibits C, D and E to the Application, and are more specifically described in the documents attached as RCK-4, RCK-5, RCK-6, and RCK-8 to Exhibit 2, Direct Testimony of Richard C. Kelly. Exhibit 2, RCK-4, RCK-5, RCK-6 and RCK-8 are attached to this Decision as Appendix B.

12. CUEA is the holder of certain Certificates of Public Convenience and Necessity (CPCNs) issued by this Commission. A list of the CPCNs held by CUEA is contained in Late-Filed Exhibit 22. A copy of Late-Filed Exhibit 22 is attached as Appendix C to this Decision.

13. Under the first amended joint plan of reorganization, ten of CUEA's members will become Class B members of Tri-State. Those ten members are: Delta Montrose Electric Association, Inc.; Empire Electric Association, Inc.; Gunnison County Electric Association, Inc.; La Plata Electric Association, Inc.; Sangre de Cristo Electric Association, Inc.; San Isabel Electric Association, Inc.; San Luis Valley Rural Electric Cooperative, Inc.; San Miguel Power Association, Inc.; Southeast Colorado Power Association; and White River Electric Association, Inc.

14. Under the first amended joint plan of reorganization, four of CUEA's members will enter into separate Power Purchase contracts with PSCo. Those four members are: Grand Valley Rural Power Lines, Inc.; Holy Cross Electric Association, Inc.; Intermountain Rural Electric Association; and Yampa Valley Electric Association, Inc.

15. Under the first amended joint plan of reorganization, certain substations and transmission assets of Holy Cross Electric Association, Inc. would be acquired by PSCo. While those assets are now owned by Holy Cross, they have been operated and maintained by CUEA. PSCo would acquire these assets at their depreciated book value at the time of closing.

16. Pursuant to stipulation with the OCC, PSCo has agreed to allocate 50% of the cost of the Holy Cross substations to Holy Cross, and 50% of the cost of those substations to all of its customers, and has agreed to allocate the cost of the Holy Cross transmission assets to all of its customers.

17. PSCo has bought out certain Qualifying Facilities ("QF") contracts for the approximate cost of \$5.4 million. PSCo has stipulated with OCC that the cost of these QF contracts will be borne by its shareholders.

18. If the transfer is consummated, Tri-State will refinance the debt secured by the assets it acquires, in favor of the Federal Finance Bank and the National Rural Utilities Cooperative Finance Corporation, now owed by CUEA, in the approximate amount of \$272 million.

19. If the transfer is consummated, PSCo will finance its acquisition of the assets by issuing debt and equity securities. PSCo will file securities applications seeking approval of those securities issues by this Commission. PSCo will pay approximately \$310 million for these acquisitions.

20. CUEA's net equity as of the date of the hearing was negative, that is its debt exceeded its total capital. CUEA is incurring a financial loss of approximately \$35 million per year, or \$3 million per month. Unless the CUEA bankruptcy reorganization is resolved in the near future, CUEA will continue to absorb these losses, and the probability of reorganization will be jeopardized.

21. Tri-State's financial position is adequate to accomplish its acquisition of the CUEA assets which it anticipates acquiring. This acquisition is anticipated to cause approximately a 1.5% decrease in equity in Tri-State. However, Tri-State will enjoy increased cash flow by acquisition of additional load to offset its increased debt obligations.

22. PSCo's financial integrity will not be adversely affected by this acquisition. It will acquire increased load to offset its additional debt burden.

23. PSCo will acquire additional generating capacity at a cost of approximately \$300 per kW. This cost of generating capacity compares with an approximate current replacement cost per installed kW of \$1500 for PSCo's Pawnee Plant #2.

24. Tri-State will acquire the Nucla generating plant. The Nucla plant has been operated as an experimental or research facility, testing the feasibility of an atmospheric fluidized bed combustion technology, pursuant to Decision No. C83-426 of this Commission, which granted CUEA a conditional CPCN for that purpose. Major repairs to the boiler and superheaters are required for the commercial operation of Nucla. See Late-Filed Exhibit 24, Independent Engineer's Report on the Nucla Boiler Review for Tri-State Generation and Transmission Association, Inc. by the Harris Group Inc.

25. Late-Filed Exhibit 24 indicates that such repairs are feasible. Tri-State has allowed \$15 million for such repairs in its feasibility study; the Harris Group estimates that the repairs will cost approximately \$6 million.

26. Tri-State will sell power generated by the Nucla plant to PSCo pursuant to contract, at \$18.00 per kW month if the Nucla plant is used to generate such power, up to 100 MW. To the extent that Nucla is not used to generate such power, the cost to PSCo for the power it buys under the contract would decrease to a minimum of

\$13.50 per kW month. PSCo estimates that the cost of \$18.00 per kW month is comparable to the price it would have to pay if it bought power under QF contracts.

27. As part of the secured debt it assumes, Tri-State will assume \$108 million in debt secured by the Nucla plant. If the Nucla plant never reaches commercial levels of reliability (greater than 80% reliability factor), Tri-State anticipates that it will only have to raise its rates to its members by 0.5 to 1 mill per Kwh.

28. Tri-State will assume the lease of the Craig 3 plant. Tri-State has renegotiated the lease, at an estimated savings of \$4.7 million per year over the life of the lease.

29. Tri-State will sell PSCo from 100 MW to 250 MW on a yearly basis beginning upon consummation of the plan. PSCo's obligation to take power from Tri-State may be decreased upon 5 years notice, beginning in 1999, and its obligation to take power from Tri-State will cease in the year 2018.

30. Tri-State plans to sell excess capacity to PSCo and to other off-system customers. PSCo will avoid the necessity of constructing new generating plants by purchasing power from plants which are already in existence, and by acquiring CUEA generating assets.

31. PacifiCorp will acquire 66.53% of CUEA's 29% of Craig 1 and Craig 2. In addition, PacifiCorp will acquire 24.5% of CUEA's 100% of Hayden 1, and 25.2% of CUEA's 50% share of Hayden 2. It will acquire total capacity of 243 MW.

32. PSCo and PacifiCorp will enter into a long term power purchase contract, under which PSCo will purchase 176 MW of firm capacity. PSCo will be able to decrease its obligation beginning in 2008, with its obligation ending in 2012. PacifiCorp will deliver 67 MW out of state.

33. The Transferees have agreed with the City of Montrose to maintain certain payroll levels within the City, to help ameliorate the effects of the reorganization on the local economy. Their agreement has been filed as Late-Filed Exhibit 23.

34. The Joint Plan of Reorganization provides that PSCo and Tri-State shall pursue, in good faith, the establishment of one control area for the Rocky Mountain Power Area. Tri-State and PSCo have agreed to work diligently over the course of the next 2 years toward central dispatch agreements; to provide quarterly reports of their progress to the Commission; and to the participation as an observer or non-voting member of a member of the Staff of the Commission in the Regional Operations Group. See Late-Filed Exhibit 26.

35. Tri-State has acknowledged the jurisdiction of this Commission over its facilities, and the authority of this Commission to order Tri-State to take advantage of possible efficiencies in operation if it does not otherwise take advantage of them. See Late-Filed Exhibit 26.

36. PSCo and Tri-State have entered into a transmission access agreement with CAMU. The transmission access agreement

provides non-discriminatory access to transmission facilities. See Exhibit 14, Revised JRA-4.

37. The Applicants are seeking or will seek the approvals of the bankruptcy court and of the Federal Energy Regulatory Commission of the contemplated transfers.

38. Tri-State and PSCo have acknowledged their commitment to the demand side management process. Tri-State has not considered DSM prior to this time; however, Tri-State has committed in this proceeding that it will now use DSM in its resource planning, with respect to regional impact, cost to construct new capacity or to purchase power, while recognizing that DSM is not always the equivalent of generation and that flexibility is needed.

39. The proposed transfer is in the public interest and should be authorized and approved.

DISCUSSION

The evidence in this proceeding establishes that PSCo and Tri-State are qualified, financially and otherwise, to operate the assets to be transferred, and to serve the concomitant load obligations. No party has challenged the capability of the Transferees. While no party has expressed unconditional enthusiasm for all of the aspects of the proposed transfers, most of the parties to this docket have acknowledged the fragility of the compromises that the joint plan proponents have reached. Most of

the parties have agreed that, to quote Mr. Palmieri, this Commission should "not condemn the good for want of the perfect."

Many compromises have been made in the search for the resulting asset transfer agreement which we have before us for approval. This asset transfer agreement undoubtedly does not represent the perfect solution for any of the parties to it. However, it probably represents the most practicable solution to the CUEA dilemma with which this Commission has struggled for the past few years.

The LAW Fund urges that the Commission order a modification to the plan which would allow PSCo to phase down its power purchases from Tri-State beginning in 2 years, and thus to encourage PSCo to engage in more demand side management ("DSM"). The Staff urges that the Commission reject the Nucla transaction (although that position is taken only by Mr. Barhaghi, who stated that it was his personal position and not that of the Staff as a whole), and that the Commission defer consideration of the acquisition adjustments requested by PSCo until the next rate case. Staff also urges that if the Commission does approve the transfer of the Nucla CPCN, that it do so with conditions, and that the conditions only be removed from the CPCN after consideration in a formal application procedure before the Commission. We believe that changing the advocated aspects of the proposed transfers would endanger the delicate balance of interests which has been attained by the parties., without the benefits to justify such a result.

We are sensitive to the concerns of the LAW Fund. Progress is being made in this state to begin implementing demand side management of our energy resources. This Commission has instituted other dockets to examine DSM issues, in which the LAW Fund and many of the other parties to this proceeding are participating or have participated. Our approval of this application should not be interpreted as an indication that DSM is any less important to this state now than it was before this application was filed. While our approval of this application may affect some of the time frames within which DSM is implemented for PSCo, it is apparent from the testimony and statements of Tri-State that it is committed to use DSM in its resource planning process in the future, and we intend to ensure that those commitments are kept. Further, we are unwilling to take the risk that DSM would be blamed for continuing financial losses of CUEA, which could certainly occur were we to disapprove this application or to change some of the features of this overall proposal in the interest of encouraging DSM. Our intent that DSM be taken seriously cannot be gainsaid. We can help to ensure that it will be taken seriously by carefully considering the unique situation presented in this application, and by refusing to attempt to change aspects of the application to improve the prospects of DSM for PSCo over the short term. We reassure the parties that this Commission remains committed to DSM, and will continue to work toward full implementation of DSM policies in relevant dockets which are before us.

We are especially cognizant of the immediacy of the CUEA problem, when CUEA is losing \$3 million per month. Time is of the essence. This bankruptcy has been pending for nearly 21 months. There appears to be no other viable solution -- no other saviors are waiting in the wings to rescue CUEA from further financial hemorrhage. Therefore, we are of the opinion that the public interest mandates that we approve this application; however, we do not do so without conditions.

Tri-State has requested that the conditional CPCN for the Nucla station (Decision No. C83-426) be transferred to it, with a modification to the conditions set forth in the CPCN. Tri-State has also requested that it be allowed to file affidavits with the Commission at such time as the Nucla plant achieves an availability factor of 80% for a period of 90 days, with an opportunity for all parties to this docket to file counter-affidavits. The Commission could then decide whether it would hold a hearing on the adequacy of the affidavits for the removal of the conditions in the CPCN. We are willing to approve the transfer of the Nucla CPCN with the conditions modified as requested by Tri-State in Statement of Tri-State Generation and Transmission Association, Inc. re Nucla Station Certificate at 11-14. However, we believe that filing affidavits is not sufficient to bring the issue of removal of those conditions from the Nucla CPCN before this Commission. We believe that Staff's recommendation for a procedural mechanism to seek removal of the conditions from that CPCN is appropriate. Therefore, we will order that at such time as Tri-State achieves an

80% availability factor from the Nucla plant, Tri-State may file an application with this Commission requesting the removal of the conditions from the CPCN. That application will be noticed to the public in accordance with applicable law, and will be treated as any other application would be treated by this Commission.

PSCo has requested that it be allowed to make an acquisition adjustment to reflect this transaction on its books, and that it be allowed to earn its authorized rate of return on the unamortized balance of the acquisition adjustment that it requests. We note with acceptance the agreement between PSCo and OCC that the \$5.4 million portion of the acquisition adjustment which is attributable to the buy out of certain QF contracts be borne by the shareholders of PSCo, that is, that it be booked "below the line." Therefore, we now consider the way in which the remaining acquisition adjustment, of approximately \$10 million, should be treated. As we have stated before, this application arises out of unique circumstances. While we would not ordinarily allow PSCo to book an acquisition adjustment prior to considering a general rate case, the circumstances of this case justify our allowing such an acquisition adjustment immediately. First, the situation before us impacts a significant portion, if not most, of the electric utility customers in this state. Resolution of the Colorado-Ute dilemma is imperative. Second, PSCo is acquiring generating assets at very reasonable prices. Such an opportunity is unlikely to present itself again. Third, PSCo will be able to supplement its older plants with plants of more recent and more efficient construction.

That these newer plants have more effective pollution control equipment is an additional benefit. Finally, particularly with respect to transmission access, the acquisition of existing assets will alleviate the need for acquisition of new rights of way, the need for environmental impact statements for new construction, and the like. Therefore, we will allow PSCo to book the approximate \$10 million acquisition adjustment above the line, and will allow PSCo to earn its authorized rate of return on the unamortized balance of the adjustment.

PSCo has also requested that it be allowed to use the vehicle of the ECA to recover the return it will be authorized to earn on this new plant, including the allowed acquisition adjustment. While we would not ordinarily allow PSCo to recover that return prior to a general rate case, and while it is not our general policy to allow such a recovery, the unique circumstances of this case persuade us to allow it in this instance. However, in order that it be made clear that the ECA mechanism will be used for more than recovery simply of the cost of purchased power and changes in the cost of fuel for generation, we will denominate what was formerly the ECA as the "acquisition adjusted" ECA, until such time as new base rates are set as a result of the general rate case which is to be filed later this year.

We applaud the efforts and commitment of PSCo and Tri-State to pursue the establishment of a single control area for the Rocky Mountain Power Area. We also congratulate PSCo, Tri-State and CAMU for their agreement regarding open transmission access. These

commitments, taken together, give us, and should give the LAW Fund and OEC, encouragement for the future fate of integrated resource planning in this state, and perhaps the region. Finally, we feel the parties' willingness to have a member of the Staff participate as a non-voting observer in the discussions which will be undertaken to work toward the goal of a single control area for the Rocky Mountain Power Area will facilitate their efforts in this regard.

We believe that reporting to the Commission by the parties of their progress toward this goal of a single control area on a quarterly basis is appropriate. Failure by the parties to make significant progress toward that goal should not be dropped in our laps two year from now. Quarterly reporting should obviate such an occurrence. Two years from the effective date of this Decision, if the goal of a single control area has not been achieved, the Commission will institute a docket to review the progress that has been made. Tri-State has explicitly recognized the facilities jurisdiction of this Commission, and our authority to order it to capture efficiencies in its operations, in its statements in Late-filed Exhibit 26. We are relying on Tri-State's representations in making our decision. If it is established within that docket that PSCo and Tri-State have not captured the efficiencies available to them, the Commission may order them to do so. It is understood that Tri-State will continue to be a full participant in the Commission's integrated resource planning and DSM related dockets.

We note that PSCo has agreed with OCC to allocate 50% of the substations now owned by Holy Cross (which PSCo will acquire) to Holy Cross, and to allocate the remaining 50% of the substations and the transmission assets of Holy Cross which it will acquire to all of its customers as central system. We approve of this allocation of the assets which PSCo will acquire from Holy Cross.

PSCo sought full normalization of the book/tax timing differences resulting from the special tax treatment of the tax benefit transfer leases. Our policy is generally to allow full normalization in the context of a general rate case. While we would not ordinarily allow normalized treatment without the benefit to us of hearing a general rate case, the unique circumstances of this application justify our allowing normalization immediately in this case.

We are aware of the possible effects of the proposed plan of reorganization on the economic well-being of the Montrose area where CUEA has been headquartered for many years. Therefore, we are pleased that PSCo and Tri-State were able to make a commitment to maintain a \$6 million minimum wage base in Montrose for a minimum period of 5 years.

PSCo has provided the Commission with a set of accounting entries which it proposes to make upon closing of the transfer transaction. We will approve the entries proposed in principle; however, PSCo will be required to file the precise amounts of the entries to be made when they are known.

Staff has urged that the Commission reserve the right to review the ratemaking treatment which we are approving herein at a future date to determine prudence and whether the assets acquired by PSCo are "used and useful" to PSCo. The prescription of rates is a quasi-legislative function of this Commission. Colorado-Ute Electric Association, Inc. v. PUC, 602 P.2d 861, 865 (Colo. 1979). We cannot, and do not here, bind ourselves or a future commission not to consider changed circumstances. Id. See also American Trucking Ass'n v. A. T. & S. F. R. Co., 387 U.S. 397, 416, 18 L.Ed.2d 847, 860, 87 S.Ct. 1608 (1967). The prudence of PSCo's acquisition of these CUEA assets must be determined today, when the acquisition is made. Therefore, while we, or a future commission, may review these transactions later, such consideration would be made only in response to changed circumstances, rather than as an exercise of hindsight.

In summary, this application has presented a challenging opportunity for all of the participants in this proceeding. Although the opportunity originated in adversity, all of the parties have come away with positive benefits. The public interest has been satisfied. The viability of the electric generation and transmission industry in CUEA's territory has been assured. CUEA's customers will continue to have a reliable source of power and energy. PSCo and Tri-State are well qualified to render service to the members of CUEA in the future. The CUEA bankruptcy is another step closer to being resolved. Therefore, this application will be

approved subject to the conditions set forth in the following order.

ORDER

THE COMMISSION ORDERS:

1. The joint application for approval of asset transfer filed by Colorado-Ute Electric Association, Inc., Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc. is granted, subject to the terms and conditions set forth below.

2. The Commission authorizes and approves the sale and transfer from Colorado-Ute Electric Association, Inc. to Public Service Company of Colorado, Tri-State Generation and Transmission Association, Inc. and PacifiCorp, of the assets, utility operations, and business of Colorado-Ute Electric Association, Inc. in the State of Colorado as provided by the asset purchase agreement (Exhibit 2, RCK-3), and authorizes Colorado-Ute Electric Association, Inc., Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc. to otherwise perform in accordance with the terms of said asset purchase agreement and in accordance with the terms of all other documents reasonably necessary to consummate the sale, transfer, and other transactions described in that agreement.

3. Specifically, Colorado-Ute Electric Association, Inc. is authorized to transfer, and Tri-State Generation and Transmission

Association, Inc. is authorized to acquire the Nucla power plant, as well as the right to operate and maintain said station as a research and development project using atmospheric fluidized bed combustion technology. Therefore, the Certificate of Public Convenience and Necessity granted to Colorado-Ute Electric Association, Inc. by the Commission in Decision No. C83-426, dated March 17, 1983, to construct, operate, maintain and test an atmospheric fluidized bed combustion project at said station is hereby transferred to Tri-State Generation and Transmission Association, Inc., subject to the following conditions and provisions:

a. Tri-State Generation and Transmission Association, Inc. is authorized to make the necessary modifications to complete the research and development project at said station for the purpose of concluding the research on the commercial application of an atmospheric fluidized bed combustion technology to the electric power industry.

b. Tri-State Generation and Transmission Association, Inc. shall contact the Staff of the Commission to establish which accounts within the Rural Electrification Administration Uniform System of Accounts should be used with respect to said project.

c. On or before March 31 of each year, Tri-State Generation and Transmission Association, Inc. shall advise the Commission in writing as to the progress of the modifications to the Nucla Project and as to the expenditures of funds by it with respect thereto.

d. After the Nucla station achieves an availability factor of at least 80% for a 90 day period, Tri-State Generation and Transmission Association, Inc. may file an application with the Commission seeking the removal of these conditions from the Certificate of Public Convenience and Necessity for the operation and maintenance of the Nucla station.

4. The Commission authorizes Public Service Company of Colorado, Tri-State Generation and Transmission Association, Inc. and PacifiCorp to succeed to all of Colorado-Ute Electric Association, Inc.'s electric utility rights, title, and interest in its utility plant and facilities, and to all certificates, consents, and permits relating to the ownership and operation of such plant and facilities, all as set forth in Appendices B and C to this Decision.

5. The Commission authorizes Public Service Company of Colorado to commence providing wholesale electric service to Grand Valley Rural Power Lines, Inc., Holy Cross Electric Association, Inc., Intermountain Rural Electric Association, and Yampa Valley Electric Association, Inc., and this Decision shall authorize the transfer of the Certificate of Public Convenience and Necessity therefor from Colorado-Ute Electric Association, Inc. to Public Service Company of Colorado.

6. The Commission authorizes Tri-State Generation and Transmission Association, Inc. to commence providing wholesale electric service to Delta Montrose Electric Association, Inc., Empire Electric Association, Inc., Gunnison County Electric

Association, Inc., La Plata Electric Association, Inc., Sangre de Cristo Electric Association, Inc., San Isabel Electric Association, Inc., San Luis Valley Rural Electric Cooperative, Inc., San Miguel Power Association, Inc., Southeast Colorado Power Association and White River Electric Association, Inc., and this Decision shall authorize the transfer of the Certificate of Public Convenience and Necessity therefor from Colorado-Ute Electric Association, Inc. to Tri-State Generation and Transmission Association, Inc..

7. The Commission authorizes Colorado-Ute Electric Association, Inc., effective upon the closing of the transaction, to discontinue providing electric utility service to the public in its service areas and to file a closing annual report for the portion of 1992 in which it actually provides electric service.

8. Colorado-Ute Electric Association, Inc., Public Service Company of Colorado and Tri-State Generation and Transmission Association, Inc. are authorized to perform any and all other acts and transactions, consistent with this Decision, which may be necessary or convenient to carry out the transactions approved herein.

9. Public Service Company of Colorado and Tri-State Generation and Transmission Association, Inc. shall work toward establishing a state-wide dispatch and planning area within 2 years after the effective date of this Decision. Public Service Company of Colorado and Tri-State Generation and Transmission Association, Inc. shall report quarterly to the Commission regarding their progress. Public Service Company of Colorado and Tri-State

Generation and Transmission Association, Inc. shall permit a member of the Commission Staff to attend and observe the processes. After the two year period, the Commission may institute a docket to review the progress Tri-State Generation and Transmission Association, Inc. and Public Service have made. If it is established in that docket that there remain uncaptured efficiencies which Public Service Company of Colorado and Tri-State Generation and Transmission Association, Inc. have the ability to capture, the Commission may, after hearing, issue any appropriate and lawful order related to the capture of such benefits.

10. For regulatory purposes, the assets which Public Service Company of Colorado acquires from Colorado-Ute Electric Association, Inc. shall be valued at the cost of acquisition to Public Service Company of Colorado less the \$5.4 million attributable to Public Service Company of Colorado's buyout of two QF contracts.

11. Public Service Company of Colorado shall be entitled to book an acquisition adjustment for any difference in the acquisition price and the net book value of the assets (said difference to be determined at closing but presently estimated to be approximately \$10 million). The acquisition adjustment shall be functionalized to the proper accounts in proportion to the functionalized net book value of the assets acquired. For example, if production facilities account for 40% of the total net book value of the acquisition, then 40% of the acquisition adjustment shall be functionalized as production related and allocated to

Public Service Company of Colorado's rate jurisdictions and rate classes accordingly. Public Service Company of Colorado shall be permitted to earn its authorized rate of return on the unamortized balance of the acquisition adjustments.

12. Public Service Company of Colorado shall allocate the transmission assets purchased from Colorado-Ute Electric Association, Inc. and Holy Cross which are set forth in Exhibit 2, RCK-6 and RCK-8, to all of its customers as central system. One-half of the substation assets acquired from Holy Cross, which are set forth in Exhibit 2, RCK-6, shall be allocated to all of Public Service Company of Colorado's distribution customers. The remaining one-half of those substation assets shall be allocated to Holy Cross.

13. The revenue credit which was originally proposed by Public Service Company of Colorado in this docket shall not be implemented.

14. The Public Service Company of Colorado Electric Cost Adjustment clause, hereafter to be designated as the "acquisition adjusted ECA," shall be adjusted to include an acquisition adjustment recovery, calculated as set forth in Exhibit 2, RCK-7, and denominated in that exhibit as an "imputed fuel cost." The precise amount of the acquisition adjustment recovery will be determined at closing. Public Service Company of Colorado shall report that amount to the Commission with appropriate work papers within 30 days of closing.

15. Public Service Company of Colorado shall be entitled to full tax normalization for the book/tax timing differences resulting from the special tax treatment of the tax benefit transfer leases (TBT's). Further, Public Service Company of Colorado shall be entitled to recover through its rates any indemnity payments that it may have to make to Norfolk & Western Railway Company in connection with Public Service Company of Colorado's assumption of the TBT's.

16. The stipulation among the City of Montrose, Tri-State Generation and Transmission Association, Inc. and Public Service Company of Colorado, providing generally for the maintenance of a \$6 million minimum wage base in Montrose by Tri-State Generation and Transmission Association, Inc. and Public Service Company of Colorado for a minimum period of 5 years, among other things, is hereby accepted and approved.

17. Public Service Company of Colorado and Tri-State Generation and Transmission Association, Inc. may not commence service as provided in ordering paragraphs 5 and 6, supra, unless and until the Joint Plan of Reorganization, as amended from time to time, is confirmed by the bankruptcy court, and unless and until the Federal Energy Regulatory Commission approves the acquisition of transmission facilities by Public Service Company of Colorado, and approves transmission rates for Public Service Company of Colorado. Should the bankruptcy court not confirm the Joint Plan of Reorganization, as amended from time to time, or should FERC disapprove the acquisition of transmission assets and transmission

rates for Public Service Company of Colorado, then this Decision shall be of no further force and effect, and all approvals given herein shall be revoked.

18. Public Service Company of Colorado shall submit the book entries recording the acquisition herein to the Commission Staff for review within 90 days of the transfer of the facilities herein.

19. The Commission retains jurisdiction in this matter to make such further orders as may be deemed appropriate.

20. The 20-day time period provided for by § 40-6-114(1), C.R.S. (1984 Repl. Vol.) to file an application for rehearing, reargument or reconsideration begins on the first day after mailing or serving of this Decision and Order.

21. This Order shall be effective forthwith.

Done in open meeting at Denver, Colorado, this 12th day of December, 1991.

(S E A L)



ATTEST: A TRUE COPY

Robert E. Temmer
Robert E. Temmer
Acting Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ARNOLD H. COOK

GARY L. NAKARADO

CHRISTINE E. M. ALVAREZ

Commissioners