

(Decision No. C89-834)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF THE APPLICATION OF )  
TRI-STATE GENERATION AND TRANSMIS- )  
SION ASSOCIATION, INC., P.O. BOX )  
33695, DENVER, COLORADO 80233, )  
FOR (1) A DECLARATORY RULING THAT )  
TRI-STATE DOES NOT REQUIRE A CERTI- )  
FICATE OF PUBLIC CONVENIENCE AND )  
NECESSITY IN ORDER TO OWN A SEVEN )  
PERCENT CAPACITY ENTITLEMENT )  
INTEREST IN THE WESTERN COLORADO- )  
BONANZA 345 KV TRANSMISSION LINE )  
PROJECT, OR (2) IF SAID RULING IS )  
TO THE CONTRARY, A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY )  
AUTHORIZING THE OWNERSHIP OF SAID )  
INTEREST. )

DOCKET NO. 89A-250E

COMMISSION DECISION GRANTING  
CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY

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June 14, 1989  
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STATEMENT

BY THE COMMISSION:

On April 28, 1989, Tri-State Generation and Transmission Association, Inc. (Tri-State), filed Docket No. 89A-250E, under the provisions of C88-976 dated July 6, 1988, issued in Case No. 6396, Rules 55 and 60 of the Commission's Rules of Practice and Procedure, Rule 1B of the Commission's Rules regulating the service of electric utilities, and § 40-5-101 of the Public Utilities Law for a declaratory ruling that Tri-State does not require a certificate of public convenience and necessity to acquire a seven percent capacity entitlement (approximating 25.3 megawatts (MW) in certain facilities which will be owned by Deseret Generation and Transmission Corporation (Deseret) and the Western Area Power Administration (WAPA), or, alternatively, for a Certificate of Public Convenience and Necessity authorizing the ownership of that seven percent interest.

Notice of the application was given by the Commission on May 1, 1989. No protests or Petitions to Intervene have been filed in connection with this application, and it is unopposed. Accordingly, the Commission may determine this application without the necessity of a formal oral hearing pursuant to the provisions of § 40-6-109(5), C.R.S., and Rule 24 of the Commission's Rules of Practice and Procedure.

## FINDINGS OF FACT

1. Tri-State is a public utility under Colorado law, and subject to the facilities jurisdiction of this Commission. It is engaged in the generation, purchase, transmission, transformation, and sale of electricity to its members within the States of Colorado, Wyoming, and Nebraska. Applicant owns and operates generating facilities in the States of Colorado and Wyoming, and transmission and transformation facilities of the States of Colorado, Nebraska, and Wyoming.

2. The transmission system in western Colorado has been under various stages of study and plant construction since early 1984. The western Colorado project was determined to be the preferred alternative in the Craig-Utah Transmission report completed in 1986. In early 1988, the Craig-Bonanza environmental assessment was approved with a finding of no significant impact (FONSI) issued by the United States Department of the Interior.

3. The Western-Colorado Bonanza 34 KV Transmission Line project (project) involves the construction of approximately 105 miles of 345 KV transmission line from the Bonanza generating station in eastern Utah to the Craig generating station in western Colorado. As proposed, the existing Craig-Rifle 345 KV Transmission Line will be sectionalized at a new site (Bears Ears Substation) near the Craig generating station. The purpose of this project is to increase transfer capability, improve the reliability of the regional transmission system and to increase power marketing capabilities from the Rocky Mountain region to other regions.

4. Tri-State needs to obtain firm or non-firm transmission capability to market surplus and economy energy on a cost-effective basis. Tri-State's capacity entitlement, equal to approximately 25.3 MW is derived as the product of the percentage participation (seven percent) and the simultaneous transfer capability (361 megawatts) of the transmission addition. Tri-State's estimated cost share for this seven percent participation is \$3,081,000.

5. The Project Participation Agreement, Contract No. 88-SLC-0071, was executed by the participants on January 30, 1989, and was incorporated with Tri-State's application as Exhibit D-1.

6. Tri-State's ownership of a capacity entitlement interest in the project is not likely to require Tri-State to raise its rates to its members.

## DISCUSSION

Section 40-5-101(1), C.R.S., requires a public utility to obtain a Certificate of Public Convenience and Necessity from the Commission before it begins the "construction of a new facility, plant, or system, or of any extension of its facility, plant, or system." Tri-State does

not believe that it is required under this statute to obtain a Certificate of Public Convenience and Necessity since it would neither construct nor own any of the facilities proposed to be constructed nor will it be responsible for the construction of any of the facilities. The project will be owned by Deseret and Western, with Western being the project manager charged with the responsibility of constructing the facilities. Western also will be the operating agent, charged with the responsibility of operating the facilities for the participants when the project is in commercial operation. Accordingly, Tri-State submits that it is not required to obtain a Certificate of Public Convenience and Necessity, but that if the Commission determines otherwise, that a Certificate of Public Convenience and Necessity should be issued primarily because Tri-State's capacity entitlement interest would provide Tri-State with firm and non-firm transmission capability to market surplus and economy energy on a cost-effective basis, which will benefit Tri-State, its members, and the members and patrons of its members. In addition, Tri-State states that the joint participation project will significantly increase the transfer capability of the existing 138 KV transmission system, provide additional stability to the interconnected system, provide additional delivery capability for the Colorado River Storage Project Federal Power, and provide additional marketing capability for all the project participants.

There is no question, of course, that § 40-5-101(1), C.R.S., requires a public utility to obtain a Certificate of Public Convenience and Necessity when it proposes construction of new facilities except that this requirement does not obtain when construction is necessary in the ordinary course of its business or for an extension within or to territory already served by the utility. Tri-State does not invoke the "ordinary course of business" or "extension of facilities" exceptions in § 40-5-101(1), C.R.S. Rather, Tri-State proposes that § 40-5-101(1), C.R.S., is not applicable at all since it (Tri-State) is not the entity which is beginning construction, nor will it be the entity which operates the facility after it is completed. We believe the overly literalistic interpretation of Tri-State would defeat the obvious purpose of the statute which is to prevent duplication of facilities and to require regulatory approval before a public utility undertakes some major project with all of its attendant financial implications, not only to itself but to its ratepayers. The strict interpretation advanced by Tri-State would enable a utility to defeat the purpose of the statute by arranging for some other entity to be the one who "begins the construction." Tri-State is not doing that here, of course, but if this Commission were to enter a declaratory order that a Certificate of Public Convenience and Necessity was not required since the facility is not being literally constructed by Tri-State nor operated by Tri-State, we believe that such a declaratory ruling might possibly open the door to inter-corporate arrangements for the purpose of evading the obvious salutary intent of the statute. Premises considered, the Commission will deny Tri-State's request for a declaratory order that a Certificate of Public Convenience and Necessity is not needed in the circumstances outlined in the Findings of Fact above.

We find that the alternative relief requested by Tri-State should be granted on the basis of the public interest grounds stated in the above Findings Of Fact which clearly indicate that the project will be not only in the interest of Tri-State, but also its members, and its members' patrons. Accordingly, the grant of a Certificate of Public Convenience and Necessity for permission to be a seven percent participant in the project will be ordered.



THEREFORE THE COMMISSION ORDERS THAT:

1. Docket No. 89A-250E, filed by Tri-State Generation and Transmission Association, Inc., on April 28, 1989, is granted in accordance with this Decision and Order, and otherwise it is denied.
2. Tri-State Generation and Transmission Association, Inc., is granted a Certificate of Public Convenience and Necessity authorizing its ownership of a seven percent capacity entitlement interest in the Western Colorado-Bonanza 34 KV transmission project in accordance with the participation agreement set forth in Exhibit D-1 to this application.

This Decision and Order is effective immediately.

DONE IN OPEN MEETING June 14, 1989.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

  
  
Commissioners

COMMISSIONER RONALD L. LEHR ABSENT  
BUT CONCURRING IN THE RESULT.

JEA:emn:1169N