

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-192E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., P.O. BOX 33695, DENVER, COLORADO FOR A DETERMINATION UNDER 29-20-108(5), C.R.S., THAT THE CONDITIONS IMPOSED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO, ON TRI-STATE'S PROPOSED NUCLA-TELLURIDE 115 KV TRANSMISSION LINE PROJECT WILL UNREASONABLY IMPAIR TRI-STATE'S ABILITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL SERVICE TO THE PUBLIC.

ORDER DENYING MOTION TO CONDUCT SITE VISIT

Mailed Date: September 5, 2003

Adopted Date: August 20, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the motion requesting that the Commission conduct a site visit of specific locations of the alignment for Tri-State Generation and Transmission Association, Inc.'s (Tri-State) proposed Nucla-Telluride 115 kV transmission line project. The motion was filed jointly by the Board of County Commissioners of San Miguel County (County Commissioners) and the Coalition of Concerned San Miguel County Homeowners (Homeowners) on July 29, 2003. Tri-State filed a response on August 5, 2003, and Staff of the Commission (Staff) filed a response on August 11, 2003.

2. On August 20, 2003, the County Commissioners and the Homeowners filed a request for permission to reply and a reply to Staff's response. Also, on August 20, 2003, Staff filed a response advising the Commission of possible impacts on the remaining procedural schedule.

B. County Commissioner and Homeowner Motion

3. The motion by the County Commissioners and the Homeowners requests that the Commission conduct a site visit of two specific locations on the proposed transmission line route for the Nucla-Telluride 115 kV project while the Commission is in Telluride for the September 18, 2003, open public hearing on this matter. They assert that the two locations are representative of the types of areas where San Miguel County required the transmission line to be buried underground. The County Commissioners and the Homeowners contend that such a site visit would allow the Commission to have a more thorough understanding of the record that was before San Miguel County and its County Planning Commission. The Motion also states that the County Commissioners and the Homeowners would not object to Tri-State designating up to two other sites where the County required the line to be buried underground if Tri-State believes that the locations suggested are not representative of the entire area at issue.

4. The County Commissioners and the Homeowners recommend that if the Motion is granted, the Commission not receive or consider any testimony or documentary exhibits from the applicant or the public while conducting the site visit. They recommend that the Commission notice the date, time, and location of the event as a public meeting. This would permit San Miguel County staff, other interested parties, and members of the public to attend. They recommend the Commission state for the record the date, time, and location at which the site visit occurred; the identities of the persons who were present; and a brief description of what was observed, as part of the formal evidentiary hearing in this case. Finally, the County Commissioners and the Homeowners recommend that the Commission conduct a site visit on John and Victoria Irwin's property in Specie Mesa Ranch and on Bob Herschler and Amy Conger's property on Wilson Mesa.

C. Tri-State Response

5. In its response, Tri-State recommends that the Commission deny the Motion, unless a site visit is conducted of the entire route within San Miguel County and that one representative of each party who is able to assist the Commission by describing the project be allowed to attend.

6. Tri-State disagrees that the two sites recommended by the County Commissioners and the Homeowners are representative of the sites where the county seeks to require Tri-State to bury the line underground. Tri-State contends that the testimony and exhibits of its witness Christine Keller identify a wide range of topography, population density, and land use along the proposed route. Tri-State argues that the only way for the Commission to gain a complete and accurate view of the Nucla-Telluride 115 kV project is for the Commission to observe the entire 29-mile proposed route within San Miguel County. Tri-State asserts that a viewing by the Commission of four pre-designated sites constituting a small percentage of the route in San Miguel County would result in an incomplete and misleading understanding of the Nucla-Telluride 115 kV project.

7. Tri-State also raises several concerns about the practicality and fairness of such a site visit. Tri-State contends that a site visit would not be worthwhile if no person is allowed to assist the Commission in locating the existing transmission line and to describe the proposed project. Tri-State asserts that a site visit noticed as a public meeting as suggested by the County Commissioners and the Homeowners may result in administrative burdens on the Commission.

D. Staff's Response

8. Staff recommends that the Commission deny the Motion. In its response, Staff also recommends that the Commission deny the alternative site visit proposal offered by Tri-State.

9. Staff contends that the existing record does not warrant a site visit either of specific locations on the alignment for the Nucla-Telluride 115 kV transmission line project or of the entire 29-mile route located within San Miguel County. Staff argues that the multitude of photographic exhibits contained in Tri-State's prefiled testimony and exhibits is evidence that the route traverses all manner of terrain, population density, and intensity of electric usage. Staff agrees with Tri-State that a site visit should not be limited to two or four pre-determined locations. Staff contends that the potential benefits of viewing a portion of the route does not outweigh the risks that this could produce an incomplete and misleading understanding of the project.

10. Staff also expresses its concern with the lack of detail in Tri-State's suggestion that, if a site visit is granted, the entire 29-mile route within San Miguel County should be viewed. Staff asserts that there is insufficient time prior to the open public hearing for the Commission to overcome the practical and procedural obstacles necessary to fully develop a site visit which would allow viewing of the entire route within San Miguel County.

11. Staff argues that producing a full and complete record will be made more difficult should the Commission rely in some manner on the visual observation obtained during a site visit. Staff contends that the site visit proposals do not completely address the requirement imposed on the Commission to create a full and complete record of all proceedings by § 40-6-109, C.R.S.

12. Finally, Staff asserts that the better evidence would be for the parties to contest or accept the descriptive and photographic testimony and exhibits offered by Tri-State.

E. Discussion

13. We deny the request by the County Commissioners and the Homeowners to reply to Staff's response. The late receipt of this request¹ deprived us of sufficient time to evaluate it prior to the 9:00 a.m. start of the Commission's normal Weekly Meeting. We note that Staff's response to the Motion was filed with the Commission on August 11, 2003, and that the Motion and responses thereto appeared on the Commission's Weekly Meeting agenda for August 20, 2003.² Therefore, we did not consider the reply to Staff's response in ruling on the motion for a site visit.

14. We also reject Staff's response advising the Commission of possible impacts of the motion on the remaining procedural schedule. This response also was not received in time to allow us to fully evaluate it.³ Therefore, we did not consider it in the decisions made herein.

15. We agree with Tri-State that if we conduct a site visit, the entire 29 miles of proposed transmission line route within San Miguel County should be viewed. We conclude that limiting a site visit to the two locations suggested by County Commissioners and the Homeowners would not be representative of the areas in which San Miguel County required the transmission line to be buried underground.

16. We deny the Motion by the County Commissioners and the Homeowners. We are persuaded by Tri-State's and Staff's arguments regarding the practicality and fairness of the

¹ The request was received at 8:42 a.m. on August 20, 2003.

² This agenda was available to the public on August 15, 2003.

³ The response was received at 8:50 a.m. on August 20, 2003.

proposed site visit. We agree with Staff that parties should contest or accept the descriptive and photographic evidence offered by Tri-State, and we encourage parties to offer additional descriptive testimony and photographic exhibits for the record. We note that neither the operative statute, § 29-20-108, C.R.S., nor the Commission's rules regarding the statute require or discuss the possibility of a site visit. We conclude that ample due process will be afforded to all parties through the ability to proffer descriptive and photographic evidence.

II. ORDER

A. The Commission Orders That:

1. The motion requesting that the Commission conduct a site visit of specific locations on the alignment of the proposed Nucla-Telluride 115 kV transmission line project by the Board of County Commissioners of San Miguel County and the Coalition of Concerned San Miguel County Homeowners is denied.

2. The request for permission to reply to Staff of the Commission's response by the Board of County Commissioners of San Miguel County and the Coalition of Concerned San Miguel County Homeowners is denied. Staff of the Commission's response to such reply is therefore rejected.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 20, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners