

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 GRANTING MOTION TO COMPEL

Mailed Date: June 2, 2004
Adopted Date: June 2, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Motion to Compel the Homeowner's Coalition to Provide Reasonable Access to Properties on Specie, Sunshine, and Wilson Mesas by Tri-State Generation and Transmission Association (Tri-State). The Homeowner's Coalition (Coalition), a party to this case, filed its Response opposing the Motion to Compel, and Tri-State filed its Reply to the Homeowner's Coalition Response.¹ Now being duly advised in the premises, we grant the Motion to Compel consistent with the discussion below.

2. The motion requests that members of the Coalition be required to provide Tri-State reasonable access to their properties on Specie, Sunshine, and Wilson Mesas, to enable

¹ Rule 22(b), Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, does not permit a reply to a response to a motion. On our own motion, we waive the rule and accept Tri-State's Reply.

Tri-State to perform cost estimates, including the costs for necessary rights-of-way and any diminution of the remainder, relating to construction of its proposed transmission line. As noted in the motion, the Commission's Decision No. C04-0093 directed Tri-State to perform these cost estimates for both underground and overhead construction. Decision No. C04-0093 directs Tri-State to file these cost estimates with the Commission by September 1, 2004. In its motion, Tri-State points out that it initially requested that the Coalition grant it access to the subject properties in early April 2004. The Coalition and Tri-State have had discussions regarding the form of the written access agreement, but, as of this time, the Coalition has not returned any agreements to Tri-State. The Motion to Compel requests necessary access to the property on the Mesas during the week of June 7, 2004.

3. The Coalition, in its Response, states that it is presently working to obtain signed access agreements from property owners and anticipates that many agreements will be obtained by June 7, 2004. Additionally, the Coalition represents that it will use its best efforts to obtain signed agreements from property owners who are not members of the Coalition. Under these circumstances, the Coalition suggests, granting the Motion to Compel serves no purpose.

4. We grant the motion. Since Decision No. C04-0093 requires Tri-State to perform certain cost studies and file those studies by September 1, 2004, time is of the essence. We also note that Tri-State made reasonable efforts to obtain access to the subject property from the Coalition prior to filing the motion. Therefore, an order compelling the Coalition members--these members are parties to this case by virtue of their membership in the Coalition--to provide access to Tri-State for the above-stated purposes is appropriate. The Coalition is ordered to provide signed access agreements to Tri-State within seven days of the effective date of this order. The Coalition is also directed to use its best efforts to obtain signed agreements from non-

members as soon as possible. Finally, the Coalition is directed to provide to Tri-State and the Commission the names and addresses of its members, and, to the extent known, names and addresses of property owners on the above Mesas but not members of the Coalition. That information shall be provided within seven days of the effective date of this order.

5. The Commission emphasizes that it is in the Coalition's interest to assist Tri-State in performing the necessary cost studies as directed in Decision No. C04-0093. We specifically note that Tri-State requires reasonable access to properties on Specie, Sunshine, and Wilson Mesas in order to comply with our prior directives in this case.

6. We construe Tri-State's request for reasonable access to properties as a discovery request under Rule 34, Colorado Rules of Civil Procedure (C.R.C.P.). We point out that Rule 37, C.R.C.P., provides for certain sanctions against a party who fails to obey an order granting a motion to compel.

II. ORDER

A. The Commission Orders That:

1. Rule 22(b), Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, is waived and Tri-State Generation and Transmission Association's Reply to the Homeowner's Coalition Response to the Motion to Compel is accepted.

2. The Motion to Compel the Homeowner's Coalition to Provide Reasonable Access to Properties on Specie, Sunshine, and Wilson Mesas by Tri-State Generation and Transmission Association is granted consistent with the above discussion.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 2, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners