

Decision No. C20-0286-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0620E

LA PLATA ELECTRIC ASSOCIATION, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION
ASSOCIATION, INC.,

RESPONDENT.

PROCEEDING NO. 19F-0621E

UNITED POWER, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION GRANTING
REQUEST TO SHORTEN RESPONSE
TIME TO FIRDAY APRIL 24, 2020**

Mailed Date: April 22, 2020

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I. STATEMENT

1. By this Decision, we grant the request by La Plata Electric Association, Inc. (La Plata) and United Power, Inc. (United Power) (collectively, Complainants) to shorten

response time to the Complainants' Highly Confidential Joint Motion to the Commission *En Banc* Requesting Initial Commission Decision and Request for Shortened Response Time (Motion).

2. On April 20, 2020 and pursuant to § 40-6-109(6), C.R.S. and Rule 1404(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, Complainants request that the Commission enter an order directing an initial Commission decision in this proceeding, and directing the omission of the Administrative Law Judge's (ALJ) recommended decision, in order to render a final Commission decision pursuant to Rule 1505(a) as soon as practicable. Further, given that time is of the essence, Complainants request a shortened response time to this Motion of seven days to Monday April 27, 2020, pursuant to Rule 1308(c).

3. Complainants argue that Tri-State Generation and Transmission Association, Inc.'s (Tri-State) strategy is to delay these proceedings while simultaneously seeking expedited relief at the Federal Energy Regulatory Commission (FERC) in order to preempt this Commission from rendering a decision in this proceeding. Complainants point out that Tri-State has argued in several FERC proceedings that Tri-State's purported addition of new non-utility members has eliminated Tri-State's exemption from FERC rate jurisdiction under the Federal Power Act. Complainants also indicate Tri-State has taken the position that as a consequence, this Commission's jurisdiction to determine a just, reasonable, and non-discriminatory exit charge for both La Plata and United Power is preempted.

4. Complainants reference Tri-State's various filings at FERC including a petition seeking a declaratory order to this effect in Tri-State's FERC Declaratory Order Proceeding, where FERC held that this Commission's jurisdiction is not currently preempted, and cannot be

preempted unless and until such time as FERC has approved a Tri-State exit charge tariff at FERC.

5. Complainants state that on the eve of the status conference to restart this proceeding, and without disclosure to the ALJ in a filing Tri-State made in this proceeding that same day, Tri-State filed an exit charge methodology tariff at FERC. According to Complainants, Tri-State requested waiver of the usual 60-day notice period prior to FERC tariffs becoming effective, requesting that FERC deem the tariff filing effective April 14, 2020.

6. Complainants posit that in the event FERC declines to waive the 60-day notice period, Tri-State will nonetheless put forth another argument to displace the Commission's jurisdiction and will try and take the position that the tariff filing is effective by operation of law 60 days from its filing (June 12, 2020).

7. In addition to requesting an Initial Commission Decision, and because time is of the essence as set forth by Complainants, they request a shortened response time to this Motion of seven days to Monday April 17, 2020.

II. FINDINGS

8. The ALJ in this Consolidated Proceeding set an evidentiary hearing for May 18 through 22, 2020 (*see*, Interim Decision No. R20-0266-I, issued April 16, 2020). We agree with Complainants that time is of the essence. However, we find that response to the Motion can be accomplished more swiftly than Complainants propose. Therefore, we find good cause to grant the request for shortened response and set the deadline for filing a response to the Motion to Friday April 24, 2020. We will take up the substance of the Motion at the April 29, 2020 Commissioners' Weekly Meeting.

III. ORDER**A. It Is Ordered That:**

1. The request by La Plata Electric Association, Inc. and United Power, Inc. for shortened response time to the Highly Confidential Joint Motion to the Commission *En Banc* Requesting Initial Commission Decision and Request for Shortened Response Time (Motion) filed April 20, 2020, is granted consistent with the discussion above.

2. Response time to the Motion is shortened to Friday April 24, 2020.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 22, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners