

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20M-0218E

IN THE MATTER OF THE COMMISSION'S CONSIDERATION OF THE EXISTING RESOURCES OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. PRIOR TO ITS INITIAL ELECTRIC RESOURCE PLAN FILING PURSUANT TO 40-2-134, C.R.S.

**INTERIM DECISION ADDRESSING INTERVENTIONS,
ESTABLISHING PROCEDURES, AND
REQUIRING FILINGS**

Mailed Date: July 17, 2020

Adopted Date: July 15, 2020

I. BY THE COMMISSION

A. Statement

1. On June 1, 2020, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed an assessment of its existing generation resources (Assessment of Existing Resources). Tri-State made the filing consistent with the new provisions in the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, that govern Electric Resource Plans filed by Tri-State (ERP Rules for Tri-State). The new ERP Rules for Tri-State were promulgated in Proceeding No. 19R-0408E pursuant to § 40-2-134, C.R.S.

2. By this Decision, we address the requests for intervention in this matter¹ and establish procedures for this Proceeding.

¹ The Motion to Intervene filed by The Western Way Organization, filed on July 1, 2020, will be addressed by a separate decision.

B. Assessment of Existing Resources

3. Pursuant to the Commission's ERP Rules, an assessment of existing resources combines with electric energy and demand forecasts and other factors to determine the need for additional resources to be acquired by the utility. Assessments of existing resources in ERP proceedings during the past decade have contributed to electric utility resource needs due to the aim to achieve emissions reductions at an overall reduced cost to the utility and the emergence of competitive alternative resources available in the marketplace whose acquisition can bring economic benefits to the utility and, in this instance, to its member owners.

4. Tri-State's assessment filed on June 1, 2020 includes: (1) an inventory of owned and leased resources; (2) projected emissions, capacity factors, and availability of those resources; (3) purchased power resources; (4) demand-side management (DSM) and energy efficiency resources; (5) a benchmarking analysis; and (6) an assessment of ancillary services.

5. In its assessment of existing resource, Tri-State states that it sought the assistance of Black & Veatch (B&V). B&V explains in an attachment to Tri-State's assessment that resource modeling for an ERP requires modeling assumptions for the costs and performance of a utility's existing resources. B&V reviews the modeled values for Tri-State's existing resources and provides recommended changes to those values for the modeling in the forthcoming ERP.

6. Tri-State also engaged B&V to complete the benchmarking study attached to the assessment in accordance with a new ERP rule requirement. Tri-State explains that this study compares the cost and performance of existing resources to generic resources. Tri-State explains that the benchmarking exercise is limited to thermal and utility-scale renewable resources in operation in Colorado or in operation outside of Colorado but capable of serving Colorado load at

any time. Federal hydro contracts, small hydro contracts, and contracts with the Basin Power Electric Cooperative (Basin) appear to be excluded from the benchmarking study.

7. With respect to DSM and energy efficiency, Tri-State includes with its assessment a DSM technical potential study prepared by Mesa Point Energy and the Brightline Group.

C. Interventions

8. By Decision No. C20-0437, issued on June 11, 2020, the Commission established a notice and intervention period for this Proceeding. Requests for intervention were due July 1, 2020.

1. Interventions as of Right

9. On July 1, 2020, Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of Consumer Counsel (OCC), and the Colorado Energy Office (CEO) each filed notices of intervention by right.

10. Staff, OCC, and CEO are each intervenors as of right and are each a party to this Proceeding.

2. Permissive Interventions

11. On June 30, 2020, Colorado Independent Energy Association (CIEA) filed a motion to intervene and Interwest Energy Alliance (Interwest) filed a petition² to intervene.

12. On July 1, 2020, Southwest Energy Efficiency Project (SWEEP), Colorado Solar and Storage Association and the Solar Energy Industries Association (CoSSA/SEIA), Western Resource Advocates (WRA), La Plata Electric Association (LPEA), Natural Resources Defense

² Interwest cites to the not-yet-effective version of Rule 1401 as support for its petition. That rule, along with the currently effective rule, only contemplate a motion to intervene. Because the substance of the two rules results in no different outcome as applied to Interwest, we construe Interwest's petition as a motion and apply the currently effective rule.

Council (NRDC), the Sierra Club, and the Western Colorado Alliance (WCA) filed motions seeking to intervene in this proceeding. These ten motions seek permissive intervention under Commission Rule 1401(c).

13. On July 10, 2020, Tri-State filed a response to the motions for permissive intervention. Tri-State states that it does not object to intervention by any of the ten movants listed above.

14. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, governs motions to intervene. The rule provides that the Commission exercises its discretion when ruling on motions to intervene, and it outlines a handful of factors that the Commission considers when determining whether to grant permissive interventions.

15. Having reviewed and considered each of the ten filings requesting permissive intervention in this proceeding, we find and conclude that all ten organizations have shown that their participation in this proceeding is appropriate. Therefore, we exercise our discretion and grant the requests for permissive intervention.

16. We note, however, that this docket is a pre-ERP information gathering proceeding and that a grant of intervention here should not be construed to be a right to intervene in the ERP proceeding to come. Parties will be required to seek intervention in the upcoming ERP proceeding.

3. Parties to this Proceeding

17. Parties to this Proceeding include Tri-State, Staff, the OCC, CEO, CIEA, Interwest, Sierra Club, NRDC, WCA, WRA, SWEEP, COSSA/SEIA, and LPEA.

D. Procedures**1. Discovery**

18. Decision No. C20-0437 set July 1, 2020 as the deadline for responses to Tri-State's request that the Commission adopt discovery procedures for this Proceeding consistent with the Commission's intentions stated in Decision No. C20-0304, issued April 28, 2020, in Proceeding No. 19R-0408E.

19. WRA, SWEEP, Sierra Club, NRDC, and WCA timely filed a joint discovery proposal in addition to their intervention pleadings on July 1, 2020. They suggest that the Commission consider at least four factors in determining the appropriate discovery procedures for this case.

20. First, they note that Tri-State has never before filed an ERP at the Commission in a fully litigated proceeding. As a result, parties will need to ask discovery questions because there is no prior Tri-State ERP that explains its methods and approaches to satisfying the requirements in the Commission's ERP rules.

21. Second, they state that an assessment of existing resources, including all its components such as the benchmarking study, is a critical part of an ERP. They explain that changes to Tri-State's existing resource mix will be required to achieve the carbon reductions contemplated by House Bill 19-1261 and that the declining price of renewables is putting cost pressures on existing fossil generators.

22. Third, they suggest that Commission consider both the likelihood that Tri-State will not fully comply with appropriate discovery requests and the time needed to resolve discovery disputes. They base their recommendation on Tri-State's actions in other recent proceedings, on

Tri-State's motion for extraordinary protection in this proceeding, and on alleged deficiencies in Tri-State's filing made in this proceeding.

23. Fourth, they acknowledge the need to conclude this Proceeding prior to the December 1, 2020 deadline for Tri-State to file its ERP application pursuant to the ERP Rules for Tri-State.

24. WRA, SWEEP, Sierra Club, NRDC, and WCA provide examples of topic areas they expect to explore through discovery. They list, for instance: the sources of, and accuracy of, data used in existing resources assessment and benchmarking study; the methods used for projecting the emissions, for estimating the cost to operate resources, for comparing existing resources to generic resources in the benchmarking study; data sources for the generic resources in the benchmarking study; methods for incorporating social cost of carbon into cost estimates; current and expected costs associated with ancillary services; costs and assumptions associated with member cooperative distributed generation; and various assumptions and methods used in the DSM potential study.

25. WRA, SWEEP, Sierra Club, NRDC, and WCA propose that the Commission allow the parties to conduct discovery for 90 days and require responses be provided ten calendar days after service of each discovery request. They suggest that the Commission should extend this 90-day period for discovery if the Commission grants a pending motion regarding the Basin contracts (discussed below) or if discovery disputes arise throughout the course of this proceeding. They further recommend that the Commission establish a discovery cut-off date no earlier than 30 days after the latest testimony deadline if the Commission orders testimony to be filed in this Proceeding. Finally, they seek a decision clarifying that all materials obtained through discovery in this proceeding may be used in Tri-State's ERP proceeding that begins on December 1, 2020.

26. As part of its notice of intervention of right, the OCC also addresses Tri-State's request that the Commission establish provisions governing discovery in this case. The OCC's proposal further links this Proceeding to the ERP application proceeding initiated by Tri-State's December 1, 2020 filing. Specifically, the OCC asks that the scope of discovery in this Proceeding to be limited to the resource assessment and any related filings made in this Proceeding currently on file. The OCC requests time for at least four rounds of discovery assuming a ten business-day response time. The OCC suggests that the Commission temporarily suspend discovery from October 1, 2020 through Tri-State's December 1, 2020 ERP filing. Discovery on Tri-State's resource assessment would resume after the December 1, 2020 ERP application filing is made and until the Answer Testimony deadline established in the new ERP application proceeding. The OCC further requests that the Commission consolidate this proceeding with the new ERP application proceeding, so that this resource assessment report, any related filings and the associated discovery conducted in this proceeding, become part of the record in the full ERP proceeding.

27. In a pleading filed on July 10, 2020, Tri-State states that it continues to request that the Commission establish a discovery period that reasonably balances the parties' need for information with Tri-State's ability to focus on development of its full ERP application filing due December 1, 2020. Tri-State continues to support its discovery proposal in Proceeding No. 19R-0408E, in which Tri-State requests that the Commission authorize parties to serve discovery related to Tri-State's June 1, 2020 filing only during a six-week period following the effective date of the Commission's decision regarding interventions.³ Tri-State also states, however, that it can

³ Application for Rehearing, Reargument, or Reconsideration to Decision No. C20-0155, filed by Tri-State on March 30, 2020 in Proceeding No. 19R-0408E.

support the OCC's proposals for discovery. Tri-State explains that the OCC's proposal would provide Tri-State much of the month of October 2020 and all of the month of November 2020 to finalize the ERP filing, while still allowing a reasonable period for discovery.

28. In its July 10, 2020 filing, Tri-State also agrees with the requests made by OCC and others that the Commission allow information filed or developed in this Proceeding to be used in the upcoming ERP application proceeding so as to avoid the need for duplicative discovery and to advance the efficiency of the forthcoming ERP proceeding.

2. Joint Motion Addressing Basin Contracts

29. NRDC, Sierra Club, WCA, and WRA (Joint Movants) also filed a motion on July 1, 2020 seeking a Commission order finding that Tri-State has omitted information on its contracts with Basin from its existing resources assessment and benchmarking study in violation of Commission's ERP Rules. The Joint Movants request that the Commission order Tri-State to file revised versions of the existing resources assessment and benchmarking study that include all the information required by the ERP Rules for Tri-State for the contracts between Tri-State and Basin.

30. The Joint Movants explain that Tri-State has two long-term contracts to purchase energy, capacity, and other services from Basin and that, taken together, the two contracts represent a significant share of Tri-State's overall resources for serving customers. They argue that it is important for parties and the Commission to understand Tri-State's agreements with Basin in order to be able to assess the full cost and emissions impact of the operation of Tri-State's existing resources.

31. The Joint Movants state that while Tri-State claims that it has included all thermal and renewable utility scale resources that are located outside of Colorado but are capable of serving Colorado load at any time, and while they acknowledge that Tri-State's existing resource

assessment mentions the existence of the contracts with Basin, they allege that Tri-State specifically excludes the contracts from the benchmarking assessment and the existing resources assessment does not include the same information regarding the Basin contracts that Tri-State provides for its other, existing resources (pointing to the lack of information on the emissions attributable to the two Basin contracts as an example).

32. On July 10, 2020, Tri-State filed a brief response to the motion. Tri-State explains that the resource assessment filed on June 1, 2020 included relevant information concerning Tri-State's power purchases from Basin. Tri-State states that due to the unique nature of the Basin contracts and the energy they provide, Tri-State could not provide the same information as it provided for other resources. Tri-State states that it explained why it did not include the Basin contracts in the benchmarking study in its June 1, 2020 filing. Tri-State further states that its counsel also explained these considerations to counsel for the Sierra Club prior to filing of the joint motion.

33. Tri-State states that it disagrees with the Joint Movants' arguments; however Tri-State does not develop its objections in its July 10, 2020 response to the motion. Tri-State instead states that, in the interest of streamlining this Proceeding and minimizing conflicts with its efforts to prepare its full ERP application filing, it will supplement the information pertaining to the Basin contracts and will revise the benchmarking study to include the Basin contracts. Tri-State states that, in coordination with B&V, it will file this supplemental information by August 3, 2020.

3. Findings and Conclusions

34. Based on the intervention pleadings, the other pleadings filed by the parties to this Proceeding, and our initial review of the assessment of existing resources filed by Tri-State on June 1, 2020, we conclude that this Proceeding shall culminate in a Commission decision

providing guidance and directives to Tri-State regarding the “Assessment of Existing Resources” component of its December 1, 2020 full ERP application filing. We shall design procedures for this Proceeding to accommodate a final decision to be adopted in October 2020.

35. This Proceeding will serve to educate the parties and the Commission about Tri-State’s generation fleet and its underlying economics as intended in the rulemaking orders in Proceeding No. 19R-0408E. This Proceeding will also ensure that Tri-State provides all of the information related to its existing resources required for the forthcoming ERP proceeding. This Proceeding will have a discrete purpose and a specific end date, which addresses Tri-State’s concerns about discovery burdens impairing its ability to meet the December 1, 2020 deadline for the full ERP filing. This approach further provides sufficient context for this Proceeding such that we can refer discovery disputes to an Administrative Law Judge.

36. The parties shall file initial comments on Tri-State’s assessment of existing resources no later than September 7, 2020.

37. Parties shall file comments responsive to the initial comments no later than October 2, 2020.

38. We shall rule on the Joint Motion requesting that the Commission order Tri-State to file revised documents in its assessment of existing resources after the initial and responsive comments have been submitted.

39. We direct Tri-State to confer with the parties to develop consensus discovery procedures in accordance with this overall framework. Tri-State shall file a report on proposed discovery procedures no later than July 31, 2020.

40. Finally, we find that discovery conducted in this Proceeding may be used in Tri-State's upcoming ERP application proceeding to be initiated on December 1, 2020 pursuant to the ERP Rules for Tri-State.

II. ORDER

A. It is Ordered That:

1. The Motion to Intervene filed by the Colorado Independent Energy Association (CIEA) on June 30, 2020 is granted.

2. The Petition for Leave to Intervene filed by the Interwest Energy Alliance (Interwest) on June 30, 2020 is granted.

3. The Joint Motion to Intervene filed by Sierra Club, Natural Resources Defense Council (NRDC), and the Western Colorado Alliance (WCA) on July 1, 2020 is granted.

4. The Motion for Leave to Intervene filed by Western Resource Advocates (WRA) on July 1, 2020 is granted.

5. The Motion to Intervene filed by the Southwest Energy Efficiency Project (SWEEP) on July 1, 2020 is granted.

6. The Joint Motion to Intervene filed by the Colorado Solar and Storage Association and the Solar Energy Industries Association (COSSA/SEIA) on July 1, 2020 is granted.

7. The Motion to Intervene filed by La Plata Electric Association, Inc. (LPEA) on July 1, 2020 is granted.

8. The parties in this Proceeding include Tri-State Generation and Transmission Association, Inc.; Staff of the Colorado Public Utilities Commission; the Colorado Office of Consumer Counsel; the Colorado Energy Office; CIEA; Interwest; Sierra Club; NRDC; WCA; WRA; SWEEP; COSSA/SEIA; and LPEA.

9. Tri-State shall confer with the intervening parties to develop consensus discovery procedures in accordance with procedures established by this Decision. Tri-State shall file a report on proposed discovery procedures no later than July 31, 2020.

10. Consistent with the discussion above, parties shall file initial comments on Tri-State's assessment of existing resources no later than September 7, 2020.

11. Parties shall file comments responsive to the initial comments no later than October 2, 2020.

12. Discovery disputes in this matter are referred to an Administrative Law Judge.

13. The Joint Motion Requesting the Commission Order Tri-State Generation and Transmission Association, Inc. to File Revised Documents to Comply with the Electric Resource Planning Rules filed by Sierra Club, NRDC, WCA, and WRA on July 1, 2020 shall be addressed by separate decision, consistent with the discussion above.

14. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 15, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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Commissioners