

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 ESTABLISHING
DISCOVERY PROCEDURES**

Mailed Date: July 29, 2020
Adopted Date: July 29, 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 Decision No. C20-0527-I, issued on July 17, 2020, the Commission established procedures for this Proceeding and directed Tri-State to confer with the parties to develop provisions governing discovery consistent with those procedures.

3. On July 21, 2020, Tri-State filed a conferral report setting forth the proposed discovery procedures for this Proceeding as agreed upon by the parties.

4. By this Decision, we establish the discovery procedures for this Proceeding by adopting the proposed provisions in the conferral report filed on July 21, 2020.

B. Proposed Discovery Procedures

5. Decision No. C20-0437, issued on June 11, 2020, set July 1, 2020 as the deadline for responses to Tri-State's request that the Commission adopt discovery procedures for this Proceeding.

6. Western Resource Advocates (WRA), Southwest Energy Efficiency Project (SWEEP), Sierra Club, Natural Resources Defense Council (NRDC), and Western Colorado Alliance (WCA) timely filed a joint discovery proposal in addition to their intervention pleadings.¹ They suggested that the Commission consider at least four factors in determining the appropriate discovery procedures for this case.

7. First, they noted 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.

8. Second, they stated that an assessment of existing resources, including all its components such as the benchmarking study, is a critical part of an ERP. They explained 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.

¹ WRA, SWEEP, Sierra Club, and WCA are parties to this Proceeding. Decision No. C20-0527-I, issued on July 17, 2020, Proceeding No. 20M-0218E.

9. Third, they suggested 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 based 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.

10. Fourth, they acknowledged 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.

11. WRA, SWEEP, Sierra Club, NRDC, and WCA proposed 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 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 sought 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.

12. As part of its notice of intervention of right, the OCC also addressed Tri-State's request that the Commission establish provisions governing discovery in this case. The OCC's proposal further linked this Proceeding to the ERP application proceeding that Tri-State will initiate on December 1, 2020 pursuant to the new ERP Rules for Tri-State. Specifically, the OCC asked 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 requested time for at least four rounds of discovery assuming a ten business-day response time. The OCC suggested 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 then 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 requested 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.

13. In a pleading filed on July 10, 2020, Tri-State stated 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 continued to support its discovery proposal in Proceeding No. 19R-0408E, in which Tri-State requested 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.² Tri-State also stated, however, that it can support the OCC's proposals for discovery. Tri-State explained 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.

14. In its July 10, 2020 filing, Tri-State also agreed 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 Application for Rehearing, Reargument, or Reconsideration to Decision No. C20-0155, filed by Tri-State on March 30, 2020 in Proceeding No. 19R-0408E.

C. Decision Establishing Procedures and Requiring Conferral on Discovery Procedures

15. In Decision No. C20-0527-I, the Commission concluded 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. The Commission stated that 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. The Commission further explained that this Proceeding will ensure that Tri-State provides all of the information related to its existing resources required for the forthcoming ERP proceeding. The Commission also noted that 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.

16. The Commission therefore established procedures for this Proceeding to accommodate a final decision to be adopted in October 2020. The parties were directed to file initial comments on Tri-State’s assessment of existing resources no later than September 7, 2020. Parties were also directed to file comments responsive to the initial comments no later than October 2, 2020.

17. In the conferral report filed on July 21, 2020, Tri-State sets forth discovery procedures agreed to by the parties in accordance with Decision No. C20-0527-I. The conferral report states that:

- Tri-State agrees that the discovery period in this proceeding has commenced;
- Tri-State will respond to discovery requests consistent with the Commission’s applicable discovery rules as modified in this proposal or as otherwise directed by the Commission;

- Tri-State will respond to discovery requests within ten (10) calendar days of the requests;
- The last day to propound discovery requests in this Proceeding is September 22, 2020;
- Discovery served after 3:00 p.m. on a Friday or before a holiday will be considered as served the next business day for purposes of calculating the due date for responses;
- Tri-State will serve copies of discovery responses to all other parties at the same time responses are provided to the party propounding the discovery requests without the need for other parties to issue a request for copies of such responses; and,
- Except as proposed to be modified in the conferral report, the Commission's in-effect discovery rules shall apply to this Proceeding.

18. Tri-State also explains that it filed the conferral report early so that the Commission may establish the applicable discovery procedures as soon as it can.

D. Findings and Conclusions

19. We find good cause to adopt the proposed discovery procedures set forth in the conferral report filed by Tri-State on July 21, 2020. The proposed discovery provisions are consistent with the procedures for this Proceeding established by Decision No. C20-0527-I.

20. We also reiterate the finding in Decision No. C20-0527-I 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 proposed procedures for discovery in this Proceeding as set forth in the conferral report filed by Tri-State Generation and Transmission Association, Inc. (Tri-State) on July 21, 2020 are adopted, consistent with the discussion above.

2. Except as modified by the discovery procedures adopted by this Decision, the rules governing discovery in the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 shall apply.

3. The last day to propound discovery requests in this Proceeding is September 22, 2020.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 29, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners