Decision No. C20-0920

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.

COMMISSION DECISION DENYING APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION AND GRANTING MOTION TO FILE RESPONSE

Mailed Date: December 28, 2020
Adopted Date: December 16, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision we grant the Motion for Leave to Respond filed by Tri-State Generation and Transmission Association, Inc. (Tri-State) and deny the Application for Rehearing, Reargument, or Reconsideration (RRR) jointly filed by La Plata Electric Association, Inc. (LaPlata) and United Power, Inc. (United Power) (together, the Cooperatives).

B. Background

2. On November 25, 2020, La Plata and United Power jointly filed their Application for Rehearing, Reargument, or Reconsideration of the Commission Decision No. C20-0788. That Decision, as relevant to this RRR, addressed the parties' filed exceptions to the Administrative Law Judge's recommended decision and dismissed the complaints in this proceeding without prejudice for want of jurisdiction. The Commission determined that it did not have jurisdiction to decide the sole remaining issue in these consolidated proceedings, which is whether Tri-State lawfully added non-utility members under the laws governing corporations in Colorado ("the MEICO question"). The Cooperatives' RRR reiterates their belief that the Commission may decide that question. The Cooperatives also ask that the Commission stay the proceeding, or in the alternative, issue an order that "in any future proceeding the record in this proceeding would be imported."

3. Tri-State filed its Motion for Leave to Respond and its Response to the RRR on December 14, 2020 (Motion). In its Motion, Tri-State argues that its response is warranted under Commission Rules because the Cooperatives' RRR misstates the law and facts surrounding the Commission's jurisdiction to adjudicate the MEICO question, omits any mention of

nearly-identical relief United Power is seeking in Adams County District Court, and presents the request for a stay for the first time.

4. The next day, the Cooperatives responded to Tri-State's Motion. The Cooperatives state that they "do not believe that Tri-State has met, or can meet, the standard required by Rules 1506(b) for responding to an RRR." They also take time to make this Commission aware of an "attached filing by Tri-State in the Adams County litigation" but no filing or other document was attached or included with the response.

C. Tri-State's Motion for Leave to Respond and Response

5. Commission Rule 1506 provides that no party may file a response to an application for RRR unless it can show, among other things, an incorrect statement of law or new issues that could not reasonably have been discovered prior to the time the application for RRR was filed. In this case, the Cooperatives' Application for RRR presented for the first time their request for a stay or order regarding future proceedings. Accordingly, Tri-State has demonstrated that its Response is appropriate under Rule 1506 and we exercise our discretion to accept the Response.

D. The Application for Rehearing, Reargument, or Reconsideration

6. The Cooperatives jointly filed an Application for RRR to our Decision that dismissed the complaints. The RRR restates the Cooperatives' view—which we rejected in our previous Decision—that the Commission can adjudicate a corporate law claim. As we discussed in that Decision, the Commission cannot adjudicate corporate law disputes. *See* Decision No. C20-0788, ¶¶ 13-19, issued November 5, 2020.

7. We perceive no new legal argument in the Application for RRR. Once again, the Cooperatives assert that the Commission can decide the corporate law issue as part of its ability

to determine its own jurisdiction. This is the same argument the Cooperatives put forth and the Commission rejected in our previous Decision. *See id.* As we determined before, the Cooperatives' argument ignores the true inquiry that they ask the Commission to undertake: whether Tri-State's actions were proper under Colorado's corporate laws. And, because the Commission is without jurisdiction to adjudicate a standalone question of corporate law, it cannot adjudicate whether Tri-State properly added MEICO, Inc. as a non-utility member. Ultimately, the Complainants have not put forth any new legal argument in their Application for RRR and so we are unpersuaded that we should depart from the reasoning and conclusions in Decision No. C20-0788. That Decision is sound and we will not disturb it. The Commission cannot adjudicate the corporate law question that is now the sole question presented by these consolidated proceedings.

8. We also deny the Cooperatives' request to stay this proceeding or to issue an order that would "import" this proceeding's record into any future proceeding. For one, we cannot stay the proceeding because we have no jurisdiction over any of the claims in the proceeding. Additionally, while the Cooperatives offered, conditionally, to waive the statutory deadline for these proceedings, they did not do so. Therefore, we must resolve this proceeding within the proscribed statutory timeframe, making a stay impracticable. With respect to the "importation" order, we reject that request as well. It is unclear what practical purpose such an order would serve. Any future proceeding will take place under different circumstances, and the parties will need to update and file anew their testimony, supporting documents, and arguments in that proceeding. The Commission cannot adjudicate claims based upon a record from another, older proceeding.

II. ORDER

A. It Is Ordered That:

1. Tri-State's Tri-State Motion for Leave to Respond filed December 14, 2020, is granted.

2. This Application for Rehearing, Reargument, or Reconsideration jointly filed on November 25, 2020, by La Plata Electric Association, Inc. and United Power, Inc., is denied.

3. This Decision is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 16, 2020.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director