

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0153E

IN THE MATTER OF THE PETITION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR A DECLARATORY RULING THAT NO COMMISSION AUTHORIZATION IS REQUIRED FOR AN INTERNAL CORPORATE REORGANIZATION OR, ALTERNATIVELY, REQUEST FOR A WAIVER OF ANY APPLICABLE APPROVAL REQUIREMENTS OR, ALTERNATIVELY, JOINT APPLICATION OF TRI-STATE AND THERMO COGENERATION PARTNERSHIP, LP FOR APPROVAL OF AN INTERNAL REORGANIZATION.

**INTERIM DECISION ESTABLISHING
NOTICE AND INTERVENTION PERIOD**

Mailed Date: May 18, 2021

Adopted Date: May 12, 2021

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS,
OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. On April 12, 2021, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a petition for declaratory order, or, in the alternative, a request for waiver of requirements applicable to transfers of utility assets, or, in the alternative, a joint application with Thermo Cogeneration Partnership, L.P. (Thermo) for authorization to transfer assets. Specifically, Tri-State requests that the Commission find the transfer of physical assets associated with the J.M. Shafer power plant located in Fort Lupton, Colorado (Shafer) from Thermo to Tri-State is in the normal course of business, or grant a waiver from requirements set forth in § 40-4-105, C.R.S., and Rule 3104(a) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR), 723-3. If the Commission denies Tri-State's

request for a declaratory order and alternative waiver request, Tri-State and Thermo jointly request approval of the proposed transfer of utility assets pursuant to Rules 3002 and 3104, 4 CCR 723-3.

2. Through this Decision, we notice the filing as an application that includes a request for declaratory order and alternative request for waiver. Notice and intervention shall run concurrently and shall expire at **5:00 p.m. on June 17, 2021**.

B. Discussion

3. Section 40-5-105(1), C.R.S., states that assets of a public utility may be sold, assigned, or leased as any other property, “but only upon authorization by the commission and upon such terms and considerations as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased: (a) in the normal course of business.”

4. Tri-State states that the physical assets associated with Shafer are owned by Thermo, which is owned by limited partner JMSGEN ILP, LLC (Limited Partner) and general partner JMSGEN IGP, LLC (General Partner). Tri-State states that it owns 100 percent of both the Limited Partner and the General Partner. Tri-State explains that through a proposed internal reorganization, Thermo will merge into the Limited Partner and the Limited Partner and General Partner will both merge into Tri-State, resulting in the transfer of Shafer from Thermo to Tri-State.

5. Tri-State claims that the transfer should be deemed in the ordinary course of business and, therefore, no application to authorize the transfer is required pursuant to § 40-5-105, C.R.S. Alternatively, Tri-State requests that the Commission waive any applicable requirements because the proposed internal reorganization will have no material impact on Tri-State’s customers or its provision of service.

6. If the Commission denies the request for a declaratory order and alternative waiver request, Tri-State and Thermo jointly provide information to decide the matter as an application seeking approval of the proposed transfer.

C. Findings and Conclusions

7. The request is most efficiently treated as an application, which provides the flexibility to make all necessary determinations within one proceeding. Pursuant to Rule 1304(f)(I) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, a request for declaratory order may be addressed at the Commission's discretion within an application proceeding. Therefore, we find it efficient to notice the filing as an application that contains a request for declaratory order and alternative request for waiver.

8. The filing is therefore construed and shall be processed as an application (Application).¹ After notice and intervention, the Commission will determine whether to take up the petition for declaratory order and request for waiver within the Application, including the relief requested by Tri-State to find that the transfer is in the ordinary course of business and, thereby, dismiss the Application. However, the Commission is not precluded from deciding the merits of the Application within this proceeding, regardless of whether it accepts the request for declaratory order, consistent with Commission processes and rules.

9. The Application is available for public inspection by accessing the Commission's E-Filing system at puc.colorado.gov. **This Decision is the Commission's notice that the Application regarding transfer of the J.M. Shafer power plant from Thermo Cogeneration Partnership, L.P. to Tri-State Generation and Transmission Association, Inc., which**

¹ The proceeding number is revised accordingly. As initially processed, this proceeding was assigned Proceeding No. "21D-0153E"; the proceeding number is revised to "21A-0153E."

includes a petition for declaratory order that the transfer is in the ordinary course of business and alternative waiver of the requirements in § 40-5-105, C.R.S., and Rule 3104(a), 4 CCR 723-3, has been filed.

10. The Commission notice period for the Application shall extend from the mailed date of this Decision through **June 17, 2021**. The intervention period will run concurrent with the notice period. Interventions, including those filed by Commission Staff, shall be due by **June 17, 2021**.

II. ORDER

A. It Is Ordered That:

1. The request filed on April 12, 2021, by Tri-State Generation and Transmission Association, Inc. as a petition for declaratory order and alternative request for waiver of the requirements of § 40-4-105, C.R.S., and Rule 3104(a), 4 *Code of Colorado Regulations*, 723-3, or, in the alternative, a joint application with Thermo Cogeneration Partnership, L.P. for authorization to transfer assets is accepted as an application (Application), consistent with the discussion above.

2. Service of this Decision will provide notice of the Application to all interested persons, firms, and corporations.

3. The notice and intervention period shall expire at **5:00 p.m. on June 17, 2021**.

4. Any person desiring to intervene or participate as a party in this proceeding, including Staff of the Colorado Public Utilities Commission, shall file a petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, no later than **June 17, 2021**. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments

through the Commission's comment portal at <https://puc.colorado.gov/puccomments>.

All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission's Rules of Practice and Procedure and this Decision.

5. The Commission may consider the Application without a hearing if no notice of intervention as of right or motion to permissively intervene is timely filed, or no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the Application.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners