

Decision No. R25-0393-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0585E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR APPROVAL OF ITS 2023 ELECTRIC RESOURCE PLAN

**INTERIM DECISION GRANTING MOTION FOR
PARTIAL WAIVER OF RULES 3102 AND 3103 IN
CONNECTION WITH A GAS RESOURCE ADDITION AND
CRAIG STATION RETIREMENT**

Issued Date: May 22, 2025

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I. STATEMENT**A. Procedural Background¹**

1. On December 1, 2023, Tri-State Generation and Transmission Association, Inc. (“Tri-State”) filed its 2023 Electric Resource Plan (“ERP”) Application (“Application”).

2. On January 10, 2024, at the Commissioners’ Weekly Meeting, the Commission deemed the Application complete and referred this matter to an administrative law judge (“ALJ”), as memorialized in Decision No. C24-0027-I, issued January 11, 2024.

3. By Decisions No. R24-0080-I and R24-0085-I,² issued February 6 and February 8, 2024, respectively, the undersigned Administrative Law Judge (“ALJ”), among other things: acknowledged the interventions of the trial staff of the Colorado Public Utilities Commission (“Staff”), Office of Utility Consumer Advocate (“UCA”), the Colorado Energy Office (“CEO”), and Big Horn Rural Electric Company, Carbon Power & Light, Inc., High West Energy Inc., Wheatland Rural Electric Association, Wyrlec Company, Inc., Niobrara Electric Association, High Plains Power, Inc., Garland Light & Power Co., (collectively, the “Wyoming Cooperatives”), Poudre Valley Rural Electric Association, Inc. (“PVREA”), Highline Electric Association (“Highline”), K.C. Electric Association (“K.C.”), San Isabel Electric Association, Inc. (“SIEA”), Southeast Colorado Power Association (“SECPA”), and Y-W Electric Association, Inc. (“Y-W”); granted the interventions of the Natural Resources Defense Council and the Sierra Club (together, the “Conservation Coalition”), White River Electric Association (“WREA”), Western Resource Advocates (“WRA”), Office of Just Transition (“OJT”), the Colorado Independent Energy Association (“CIEA”), Colorado Department of Public Health and Environment (“CDPHE”),

¹ The entire procedural history of this proceeding is provided in previous decisions and is partially repeated here, to the extent necessary to provide procedural context for this Interim Decision.

² Decision No. R24-0085-I provided certain clarifications for Decision No. R24-0080-I.

Interwest Energy Alliance (“Interwest”), La Plata Electric Association, Inc. (“LPEA”) and Mountain Parks Electric, Inc. (“MPE”) (together, “LPEA/MPE”), the Colorado Solar and Storage Association (“COSSA”) and the Solar Energy Industries Association (“SEIA”) (together, “COSSA/SEIA”), and Moffat County (“Moffat”) and the City of Craig (“Craig”), Colorado (together, “Moffat/Craig”); and established a procedural schedule to govern this Proceeding.

4. By Decision No. R24-0602, issued August 22, 2024, the undersigned the ALJ approved the parties’ comprehensive settlement agreement on Phase I of the Tri-State’s 2023 ERP (“Settlement”). Pursuant to the terms of Decision No. R24-0602, Tri-State was required to proceed with preparing the Phase II ERP Implementation Report Phase II.

5. On April 15, 2025, Tri-State filed its Motion for Partial Waiver of Rules 3102 and 3103 in Connection with a Gas Resource Addition and Craig Station Retirement (“Motion”). No responses to the Motion were filed.

B. Motion

6. The Motion states that it was filed pursuant to Rules 1003 and 1400 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.³ In the Motion, Tri-State requests that the Commission waive the requirement to file separate CPCN applications for two categories of actions: (1) the potential construction of a gas-fired generation resource that may be selected in Phase II of Tri-State’s 2023 ERP; and (2) the retirement of the Craig Generating Station in Craig, Colorado (“Craig Station”). The Motion asserts that both issues are, or will, be fully addressed within this ERP Proceeding and that duplicative filings would be inefficient and unnecessary.⁴

³ Motion at p. 1.

⁴ *Id.* at p.11, 16.

7. Tri-State states in the Motion: “The Commission’s final Phase II decision in this ERP Proceeding will comprehensively address both the need for and the public-interest determination of constructing a gas resource, and the Commission’s decision in Phase I already fully considered and approved the Craig Station retirement.”⁵

8. Tri-State notes that because it is not rate-regulated, cost recovery considerations central to CPCN applications are inapplicable here.⁶ Accordingly, the primary regulatory objectives typically served by CPCN applications, prudence review, cost allocation, and rate impact analysis, are not applicable.⁷ The Motion emphasizes that the Commission’s oversight in this proceeding is grounded in ensuring that Tri-State’s resource planning complies with the public interest and applicable law, which will be satisfied through the ERP process itself.

9. The Motion expressly requests:

An order waiving Rules 3102 and 3103 to the extent they would require Tri-State to obtain additional Commission approvals for (1) construction of a gas-fired generation resource selected as part of the portfolio approved in Phase II of Tri-State’s 2023 Electric Resource Plan (‘ERP’); and (2) retirement of the Craig Generating Station.⁸

10. Tri-State also requests that the Commission waive Rule 3102 subsections (b), (e), and (f) to the extent those provisions would otherwise require the resubmission of information, such as detailed project specifications and best value employment metrics, that will already be addressed in the Phase II ERP filings.⁹ In support, Tri-State highlights the overlap between Rule 3102(f)’s requirements and those found in Rule 3605(h)(II)(C), which governs the treatment of best value employment metrics in ERP Phase II bid evaluation.¹⁰

⁵ *Id.* at p. 1.

⁶ *Id.* at p. 17.

⁷ *Id.* at pp. 1, 9, 11, 17.

⁸ *Id.* at p. 1.

⁹ *Id.* at p. 12.

¹⁰ *Id.* at p. 15.

11. The Motion is unopposed. It is fully supported by Highline; supported with respect to Tri-State's request for waiver of the Certificate of Public Convenience and Necessity ("CPCN") requirements for the construction of a new gas generating facility (but not necessarily with respect to the Craig Station retirement) by the Wyoming Cooperatives, Y-W, and PVREA; and supported as to Tri-State's requested waiver of the CPCN requirements for the construction of a new gas generating facility by Moffat/Craig.¹¹ Moffat/Craig take no position with respect to the Craig Station retirement waiver request. UCA and SIEA do not oppose the Motion. Staff, LPEA/MPE, CEO, Interwest, OJT, LPEA, COSSA/SEIA, CIEA, WRA, and WREA take no position with respect to the Motion.¹² Tri-State did not receive a conferral response from Conservation Coalition, K.C., or SECPA.¹³

12. In summary, Tri-State argues that granting the Motion will avoid unnecessary regulatory burden and promote efficient Commission review, while preserving all substantive public interest considerations through the ERP framework.

II. APPLICABLE LAW

13. Rule 1003(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-1003, permits the Commission to "grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions." In deciding whether to grant a waiver, the Commission may consider "hardship, equity, or more effective implementation of overall policy on an individual basis."¹⁴ The rule further allows the Commission to impose appropriate terms and conditions when granting such relief.¹⁵

¹¹ *Id.* at p. 2.

¹² *Id.*

¹³ *Id.* at p. 3.

¹⁴ Rule 1003(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-1003.

¹⁵ *Id.*

14. A request for waiver submitted within an active proceeding may be made by motion.¹⁶ Waivers may be full or partial and may apply for a defined period or until the occurrence of a specific event.

15. Pursuant to Rule 1003(c) of the Rules of Practice and Procedure, 4 CCR 723-1, any request for waiver or variance must include the following:

- (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
- (II) a statement of the waiver or variance requested;
- (III) a statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request;
- (IV) a statement regarding the duration of the requested waiver or variance, explaining the specific date or event that will terminate it;
- (V) a statement whether the waiver or variance, if granted, would be full or partial; and
- (VI) any other information required by rule.

16. Rule 3102(a), 4 CCR 723-3-3102, requires that a public utility obtain a Certificate of Public Convenience and Necessity (“CPCN”) prior to constructing or operating any new generation facility, unless the project is deemed to be within the ordinary course of business. This requirement implements § 40-5-101(1), C.R.S., and provides in relevant part:

A public utility shall not begin the construction of a new facility, plant, or system or the extension of its facility, plant, or system without first obtaining from the commission a certificate that the present or future public convenience and necessity require, or will require, the construction or extension.¹⁷

¹⁶ See Rule 1003(b), 4 CCR 723-1

¹⁷ The undersigned ALJ notes that though Rule 3102 was developed primarily with rate-regulated utilities in mind, the Commission has consistently applied it to non-rate-regulated utilities such as Tri-State when necessary to protect the public interest and ensure consistency with approved electric resource planning frameworks. Importantly, the Commission has previously held that where the need for a resource and its characteristics have been reviewed and approved through a formal ERP proceeding, a separate CPCN filing may be duplicative and unnecessary. *See, e.g.*, Decision No. C10-1328, mailed December 15, 2010, in Proceeding No. 07A-447E at p. 45 (waiving Rule 3102 requirements for generation projects selected through an ERP portfolio that had already been subject to modeling, public input, and Commission findings).

17. Under Rule 3103(b), an application to amend a CPCN must include:
- (I) The information required in rules 3002(b) and 3002(c).
 - (II) A statement of the facts (not conclusory statements) relied upon by the applying utility to show that the public convenience and necessity require the granting of the application or citation to any Commission decision that is relevant to the proposed facilities.
 - (III) A description of the proposed facilities to be constructed.
 - (IV) Estimated cost of the proposed facilities to be constructed. If the facility is a transmission facility, the estimated costs shall be itemized as land costs, substation costs, and transmission line costs.
 - (V) Anticipated construction start date, construction period, and in-service date.
 - (VI) A map showing the general area or actual locations where facilities will be constructed, population centers, major highways, and county and state boundaries.
 - (VII) As applicable, electric one-line diagrams.
 - (VIII) As applicable, information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate alternatives.
 - (IX) As applicable, a report of prudent avoidance measures considered and justification for the measures selected to be implemented.
 - (X) For transmission construction or extension, the utility shall also comply with rule 3206

18. Rule 3103(a), of the Rules Regulating Electric Utilities, 4 CCR 723-3-3103, provides that: “No public utility shall abandon or discontinue any service, in whole or in part, or retire any generation or transmission facilities used in providing electric service to the public, unless the Commission finds that the present or future public convenience and necessity permit such action.”¹⁸

¹⁸ The undersigned ALJ notes that this requirement is grounded in § 40-5-105, C.R.S., which prohibits utilities from discontinuing or abandoning utility facilities without prior Commission approval, unless such activity occurs in the ordinary course of business. However, the Commission has recognized that where a facility’s retirement is addressed in an ERP proceeding and found to be in the public interest, a separate Rule 3103 application is not required. In Decision No. C18-0761, mailed September 10, 2018, in Proceeding No. 16A-0396E at pp. 35-36, the Commission granted a waiver of Rule 3103 for the early retirement of Comanche Units 1 and 2, concluding that the ERP had sufficiently considered and approved the retirements. Similarly, in Decision No. R24-0602 in this Proceeding, the ALJ approved Tri-State’s Phase I settlement, which includes the retirement of Craig Unit 3 by January 1, 2028.

19. Rule 3103(b) Rules Regulating Electric Utilities lists the following information that must be included in an application to amend such CPCNs:

- (I) all information required in paragraphs 3002(b) and 3002 (c);
- (II) if the application for amendment pertains to a certificate of public convenience and necessity for facilities, all of the information required in rule 3102;
- (III) if the application for amendment pertains to a certificate of public convenience and for franchise rights, all of the information required in rule 3100;
- (IV) if the application for amendment pertains to a certificate of public convenience and necessity for service territory, all of the information required in rule 3101;
- (V) if the application for amendment pertains to a service, the application shall include:
 - (A) the requested effective date for the extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement of the service; and
 - (B) a description of the extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement sought. This shall include maps, as applicable. This shall also include a description of the applying utility's existing operations and general service area.

20. Rule 3102(e), 4 CCR 723-3, provides that “[a]n applicant for a CPCN for a new electric generating facility shall include with its application information concerning the best value employment metrics.” This reflects the Commission’s implementation of § 40-2-129, C.R.S., which directs utilities and the Commission to consider employment-related factors when evaluating new generation proposals.

21. Rule 3102(f), 4 CCR 723-3 elaborates on the required metrics, stating:

Best value employment metrics shall include consideration of the extent to which the generation project will create or retain jobs and employment opportunities for Colorado workers; provide opportunities for training, including training programs such as apprenticeship programs registered with the United States Department of Labor or appropriate state apprenticeship council; provide for wages greater than or equal to the local

prevailing wage as determined by the United States Department of Labor; and offer health care and retirement benefits to the employees.

22. These requirements are mirrored and reinforced in Rule 3605(h)(II)(C), which governs utility conduct in Phase II of electric resource planning proceedings. That rule states: “The utility shall evaluate best value employment metrics and provide information on how those metrics are considered in the bid evaluation and selection process.” This provision ensures that employment-related considerations are an integral part of ERP Phase II resource selection, not an afterthought addressed only at the CPCN stage.

III. DISCUSSION

A. Rule 1003(c)

23. The ALJ finds that Tri-State’s motion satisfies the good cause standard under Rule 1003(c) of the Rules of Practice and Procedure, 4 CCR 723-1, particularly because the Phase II ERP process will include a robust evaluation of the need, alternatives, costs, timelines, and employment metrics associated with the gas resource addition, rendering a separate CPCN proceeding duplicative and inefficient. Furthermore, no prudence or cost-recovery determinations are implicated due to Tri-State’s exempt status under § 40-9.5-103, C.R.S.

B. Waiver of Rule 3102(a)

24. The ALJ finds and concludes that Tri-State has demonstrated good cause for waiver of Rule 3102(a). Under Rule 1003 and relevant precedent, a CPCN application may be waived when the proposed facility is subject to thorough evaluation and public review in a Commission-approved ERP.

25. The Phase II ERP process will involve modeling, stakeholder input, and Commission findings regarding the need, location, and configuration of the selected gas generation resource. Accordingly, the ERP process in this proceeding satisfies the public interest objectives

that Rule 3102 is intended to advance, rendering a duplicative CPCN application unnecessary. Requiring a duplicative CPCN filing would impose administrative burden without providing meaningful additional review.

C. Waiver of Rule 3103(a) - Retirement of Craig Station

26. Good cause exists to waive the requirements of Rule 3103(a) for the retirement of Craig Station Unit 3. The Commission approved the retirement of this unit in its Phase I decision,¹⁹ concluding that it is consistent with the public interest and supported by the Settlement. No further public convenience and necessity determination is required under Rule 3103, as the record in this proceeding has already fully addressed the timing, justification, and implications of the retirement. A separate CPCN application would serve no additional regulatory purpose and would unnecessarily duplicate prior findings.

27. In similar cases, the Commission has determined that where a generation retirement is addressed and approved within an ERP proceeding, a separate Rule 3103 application is unnecessary.²⁰ Consistent with that precedent, the ALJ concludes that a separate Rule 3103 filing is not required in this case.

28. This approach is consistent with prior Commission decisions waiving Rule 3103 where facility retirements were resolved within the ERP process itself.

29. Because the Craig Station retirement was explicitly addressed in the approved Phase I Settlement and no party has challenged the public interest findings supporting the retirement, the ALJ finds that a separate CPCN application under Rule 3103 would not materially

¹⁹ Decision No. R24-0602.

²⁰ See, e.g., Decision No. Decision No. C18-0761, mailed September 10, 2018, in Proceeding No. 16A-0396E at pp. 35-36 (waiving separate Rule 3103 filing for retirement of two power plant units (Comanche 1 and 2)).

advance the Commission’s oversight function and will therefore waive that requirement for the Craig Station, as ordered below.

IV. ORDER

It is Ordered That:

1. For the reasons stated above, Tri-State Generation and Transmission Association, Inc.’s (“Tri-State”) Motion for Partial Waiver of Rules 3102 and 3103 in Connection with a Gas Resource Addition and Craig Station Retirement (“Motion”) is granted.

2. Accordingly, the application requirements under Rules 3102 and 3103, 4 *Code of Colorado Regulations* 723-3, are waived to the extent that they require Tri-State to file separate formal applications for (1) the construction of any new gas generation facility already approved in this proceeding; and (2) the retirement of Craig Generation Station in Craig, Colorado.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director