

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

2009 JUL 27 11:01:13

F-11
C-Tarpey
C-2
CC
ad
/ E
/

IN THE MATTER OF THE INVESTIGATION OF)
ELECTRIC TRANSMISSION ISSUES AND THE)
OPENING OF AN INVESTIGATORY DOCKET.)

Docket No. 08I-227E

TRI-STATE'S FINAL COMMENTS AND PROPOSALS FOR AMENDED RULES

Pursuant to Decision No. R09-0707-I, Tri-State Generation and Transmission Association, Inc. ("Tri-State"), by and through its undersigned counsel, hereby submits the following Final Comments and Proposals for Amended Rules.

1. Tri-State appreciates the opportunity to participate in this investigatory docket and to present its views to the Commission with respect to transmission issues. Tri-State believes that this investigation has provided a valuable forum for the exchange of information and ideas among the many stakeholders who have an interest in transmission development in Colorado. Tri-State also appreciates the efforts of Commissioner Tarpey and the staff to organize the workshops and provide direction to the participants.

2. In our initial comments filed in this case, Tri-State focused on the question of whether there are steps the Commission can take to expedite transmission development in Colorado. Tri-State believes this should be the primary focus of any rulemaking effort that is initiated by the Commission, and it urges the Commission to consider mechanisms to create a more streamlined and focused process for the approval of transmission line applications.

3. In our comments filed in connection with the March 30, 2009, workshop, Tri-State argued for a change to Rule 3206 which would expand the category of projects that are defined to be "in the ordinary course of business" such that no CPCN is required. The current

THE PUBLIC UTILITIES COMMISSION
JUL 27 2009
THE STATE OF COLORADO

Rule 3206 does not set forth a clear standard by which the Commission will determine whether a particular project is considered to be in the ordinary course of business. Although Rule 3206 (b) (I)-(III) describes three types of *modifications* to transmission facilities that require a CPCN from the Commission, there is no provision of Rule 3206 which describes the criteria the Commission will apply in making its determination that a CPCN is required for a new project. Tri-State believes that a new subsection should be added to Rule 3206 which describes certain types of new projects that *do not* require a CPCN. For all other new transmission line projects, Tri-State agrees with the expanded list of factors that has been suggested by Public Service Company (PSCo).

4. In Tri-State's view, there are certain categories of transmission line projects that should not be subject to the Commission's CPCN scrutiny, because they are in the ordinary course of business as that term is used in C.R.S. §40-5-101 (1). That is, there are certain projects that by definition will not interfere with the operations of another utility or result in a duplication of service, the two primary concerns expressed by the legislature in the CPCN statute. Tri-State believes that these types of projects should receive "automatic" approval by the Commission in the Rule 3206 review process. These projects fall within the following five general categories:

(a) **Transmission lines with an operating voltage of less than 230 kV.** In effect this would mean that all transmission lines of 115 kV and below (although there may be a few with voltages between 115 kV and 230 kV) would be exempt from the CPCN requirement. In Tri-State's experience, lines of 115 kV and below are constructed to connect various elements within the Tri-State transmission system, and do not constitute major new bulk transmission additions that will impact the operations of other utilities or result in a

duplication of service. Tri-State builds these lines in the ordinary course of business to support increasing loads and/or enhance the reliability of its system.

(b) **Radial transmission lines (regardless of voltage) that are built to serve a specific load or to connect generation to the bulk power system.** Tri-State is often requested to construct a radial line to serve a load of one of its members in a location where looped service is unavailable. In most cases, the Commission has found that these types of lines do not require a CPCN, but a specific rule recognizing this limitation would be helpful.

(c) **Transmission lines (regardless of voltage) that are rebuilt on existing rights-of-way and which meet reasonable noise and EMF criteria.** In certain circumstances, Tri-State will rebuild an existing transmission segment using an existing right-of-way. If such a project is not 230 kV or larger, and if the project complies with the established noise and EMF standards (which Tri-State urges the Commission to adopt herein), Tri-State suggests that no CPCN should be required for such a project. In these cases, the public convenience and necessity has already been established, and if the utility can demonstrate that the project will comply with noise and EMF standards, no CPCN should be required.

(d) **Transmission lines required for compliance with Federal Energy Regulatory Commission (FERC) reliability standards.** As we indicated in our Initial Comments in this docket, Tri-State is subject to extensive new transmission reliability standards as the result of the passage of the Energy Policy Act of 2005. Having just completed an audit by the multiple federal agencies charged with enforcing these standards, Tri-State is acutely aware of the consequences of violating any of the reliability standards. For that reason, Tri-State recommends that the Commission recognize that these standards

exist and that there may be situations in the future where a utility is required to address a reliability issue in an expedited manner or face significant penalties. In these situations, the Commission should not require the utility to comply with the CPCN application and approval process.

(e) **Transmission lines that were approved through a regional planning effort such as the Colorado Coordinated Planning Group.** If any one issue became clear in this investigatory docket, it is that the regional transmission planning process is comprehensive, and that no transmission project is proposed until it has been considered by all of the regional utilities. Tri-State recommends that if a project has been approved through the efforts of a regional planning group, that the project should also be approved by the Commission without a CPCN review.

Tri-State is aware that the Commission routinely determines in the Rule 3206 process that many proposed transmission line projects do not require a CPCN, and that some of the factors listed above are considered by the Commission in making those determinations. However, Tri-State believes that the Commission could add substantial certainty to this process if it were to adopt a rule that specified that certain projects will not require CPCN approval. Tri-State recommends that Rule 3206 be amended to include a new paragraph (b) which sets forth the above criteria for projects that do not require a CPCN approval from the Commission.

5. As an alternative to the proposal outlined in paragraph (4), the Commission could establish a presumption that the projects listed would not be required to obtain a CPCN absent a showing of extraordinary circumstances. If extraordinary circumstances were alleged to exist by the Commission, the presumption established in the rule would be

rebutted, and the burden would then be on the utility to demonstrate why no such circumstances exist. In this manner, the Commission would not be required to exclude all of the projects listed in paragraph (4) from CPCN review.

6. Tri-State's proposal differs from the PSCo draft rule proposal that was attached to its March 30, 2009 workshop comments. The PSCo draft rules establish a list of factors that the Commission must consider in making a CPCN determination, but they do not substantially change the status quo when it comes to an evaluation of whether a CPCN will be required. This is because the Commission has always considered certain factors in making a determination as to whether a CPCN is required, but it has never determined that certain projects by definition do not require a CPCN. Tri-State is concerned that unless the Commission has an explicit rule excluding certain types of projects from CPCN review, it is unlikely that the status quo will change and the Commission's goal of expedited development of transmission will not be achieved.

7. Tri-State supports PSCo's proposed new rule to the extent that it includes additional factors that should be considered in making the CPCN determination in cases where the projects do not fit within one of the "automatic" exclusions described above. Tri-State believes that in order for the Commission to affirmatively promote transmission development, it must create some hard and fast rules that certain categories of transmission projects will not be required to receive CPCN approval. Tri-State is concerned that the additional factors suggested by PSCo, while worthwhile, will not result in a significant decrease in the number of projects that require CPCN approval.

8. Tri-State also supports the amendments to Rule 3102 that were proposed by PSCo in its proposed rules that were attached to its comments filed prior to the March 30,

2009 workshop. With respect to the proposed changes to Rule 3102 (a), Tri-State agrees that there may be situations where the Commission finds that no CPCN is required, but where the utility may seek a CPCN for other reasons (i.e., in order to obtain a finding that the EMF and noise levels for a project are reasonable). Tri-State further agrees with PSCo's proposed change to Rule 3102 (a) whereby a utility may seek a declaratory order that the construction of a project is in the ordinary course of business in a proceeding that is separate and apart from the Rule 3206 approval process.

9. Tri-State also supports PSCo's proposed new paragraphs (e) and (f) to Rule 3102. Tri-State agrees that the Commission should be provided with the specific data outlined by PSCo in the proposed new paragraph (e) with respect to noise and EMF, so that the Commission can evaluate the appropriate balance between those issues (although Tri-State would prefer for the Commission to adopt specific noise and EMF standards). As for the proposed new paragraph (f), Tri-State concurs with the idea that a utility should include information with respect to the planning associated with a particular project and whether the project is the result of a regional planning effort. Tri-State continues to believe, however, that the Commission's rules should provide for an "automatic" exclusion from CPCN review in cases where a project has resulted from a regional planning process as described above.

10. With respect to EMF and noise reasonableness findings, Tri-State recommends that these findings be made in the same order in which the Commission makes its CPCN determination in cases where the Commission conducts a CPCN review. It is clear that the design and capacity of a transmission line directly relates to the noise and EMF emitted by the line, and there is little value to a Commission order that does not address all of these issues simultaneously.

11. Tri-State also reiterates its position expressed in earlier comments that the Commission should establish noise and EMF levels that will be considered reasonable, thereby creating certainty for utilities filing CPCN applications. The establishment of noise and EMF standards will expedite the consideration of CPCN proceedings that have been delayed in the past based on the resolution of noise and EMF issues. The current requirements lead to a burdensome optimization exercise rather than simple verification that the facility will meet established levels that reasonably mitigate EMF and noise. Tri-State would support a maximum EMF limit of 150 mG and a noise limit of 55 dBA at the edge of the right of way. The limits should be established so as to not preclude a utility from seeking a determination that higher levels are still reasonable due to the specific characteristics of a particular project.

12. PSCo suggests in its proposed Rule 3206 (i) (IV) that the Commission consider “whether a proposed project is jointly owned with others” as an additional factor in the CPCN determination process. Tri-State agrees that this factor is important in that context, but Tri-State would also recommend that the Commission go further and consider the adoption of a new rule that would inform parties of the Commission’s expectations regarding CPCN applications for joint projects. In Tri-State’s recent experience with the pending San Luis Valley-Calumet-Comanche application (the joint Tri-State/PSCo project, Docket Nos. 09A-324E/325E), there was some initial uncertainty among the utilities as to the appropriate process for seeking approval of a joint project. In this case, the utilities filed separate applications and subsequently requested that the applications be consolidated. Tri-State believes it would be helpful if the Commission were to adopt a rule explicitly authorizing the filing of joint applications and establishing guidelines for processing such joint applications.

13. Tri-State suggests that the best way to approach this issue would be to include a new paragraph in Rule 3102 that applies to joint CPCN applications. For example, the Commission could include a new paragraph (c) to Rule 3102 that would read as follows:

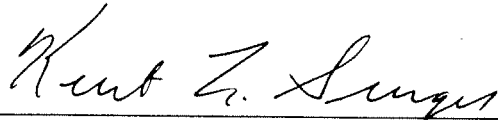
- (c) (I) A joint application for a certificate of public convenience and necessity made by two or more utilities to operate facilities or an extension of a facility pursuant to §40-5-101, C.R.S., will be accepted by the Commission and considered in the same manner as an application made by a single utility. To the extent that the participation by any utility in such joint project is accorded expedited treatment by the Commission pursuant to §40-2-126, C.R.S., or any other applicable statute, the Commission shall render a decision on all applicants' participation in the joint project on such expedited basis.
- (II) A joint application shall include, in addition to the information required in paragraph (b) above, the following information:
 - (A) A description of the joint ownership arrangement, including the allocation of ownership rights and future maintenance obligations;
 - (B) The purpose of the joint ownership arrangement, including the benefits of a joint application;
 - (C) A description of the terms of any ancillary agreements between the two or more utilities necessary to operate and maintain the project after construction, if any; and
 - (D) Evaluations by regional planning groups as to the impact of a joint project on other regional utilities, if any.

Tri-State believes that this type of guidance with respect to the process by which joint applications will be considered by the Commission would encourage the development of such projects. Further, such a rule would be consistent with one of the "Preliminary Goals" of regional cooperation that was set forth by the Commission at the outset of this proceeding.

14. Tri-State appreciates the opportunity to provide these comments and suggested rule changes to the Commission, and it urges the Commission to consider these comments in its formulation of proposed rules.

Respectfully submitted this 24th day of July, 2009.

By:



Kent L. Singer, #15234
1801 Broadway, Suite 1100
Denver, CO 80202
(303) 292-0110

Thomas J. Dougherty, #30954
Rothgerber Johnson & Lyons LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202
(303) 623-9000

Kenneth V. Reif, #10666
Tri-State Generation & Transmission Association, Inc.
P.O. Box 33695
Denver, CO 80233
(303) 452-6111

**Attorneys for Applicant Tri-State Generation and
Transmission Association, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2009, I served an original and seven copies of the foregoing **TRI-STATE'S FINAL COMMENTS AND PROPOSALS FOR AMENDED RULES** on the Colorado Public Utilities Commission by handing to and leaving the same with the Executive Director of the Commission, Mr. Doug Dean, and by filing a CD containing the same, and a copy was e-mailed to the following.

stephen.southwick@state.co.us
chris.irby@state.co.us
pb.schechter@dora.state.co.us
jerry.goad@state.co.us
ngmuller@aol.com
rpomeroy@hollandhart.com
tnelson@hollandhart.com
rakashiwa@hollandhart.com
cox@interwest.org
Judith.matlock@dgslaw.com
Sam.niebrugge@dgslaw.com
jgplaw@qwest.net
kreif@tristategt.org
tdougherty@rothgerber.com
jvaninetti@trans-elect.com
Stevew@wyia.org
bill.dudley@xcelenergy.com
gsopkin@ssd.com
mwilliamson@prwcomm.com
Frank.Shafer@state.co.us
vmandell@westernresources.org
mdavidson@hollandhart.com
jsw@state.co.us
vance.crocker@blackhillscorp.com
rlehr@mns.com
steve.denman@dgslaw.com

