

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-904E

IN THE MATTER OF THE PROPOSED RULES RELATED TO CONSTRUCTION OR
EXTENSION OF ELECTRIC TRANSMISSION FACILITIES, 4 CODE OF COLORADO
REGULATIONS 723-3.

**INTERIM ORDER OF
HEARING COMMISSIONER
JAMES K. TARPEY
REQUESTING COMMENTS
ON REVISED PROPOSED RULES**

Mailed Date: March 12, 2010

I. STATEMENT

A. Background

1. The Commission issued a Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3. Decision No. C09-1405, mailed December 17, 2009. That NOPR commenced this rulemaking proceeding.

2. The basis and purpose of this rulemaking proceeding is to revise the current rules related to Construction or extension of electric facilities. The proposed rules accompanying the NOPR were published in the January 10, 2009 edition of *The Colorado Register*.

3. The Commission invited interested persons to file written comments no later than February 1, 2010 and reply comments no later than February 16, 2010. The Colorado Office of Consumer Counsel (OCC); Public Service Company of Colorado (Public Service); Interwest Energy Alliance (Interwest); Black Hills/Colorado Electric Utility Company, L.P. (Black Hills); Tri-State Generation and Transmission Association, Inc. (Tri-State); and Colorado Independent Energy Association (CIEA) filed written comments.

4. Hearing Commissioner James K. Tarpey conducted a hearing on the proposed rule amendments on February 23, 2010. During the hearing, the OCC, CIEA, Black Hills, Tri-State, and Public Service provided oral comments.

5. The Hearing Commissioner has reviewed the written and oral comments provided by all interested persons. Being fully advised in the matter, the Hearing Commissioner attaches revised proposed rules to this Order, incorporating certain proposals made in these written and oral comments. The Hearing Commissioner invites interested persons to file written comments on the revised proposed rules, focusing on these latest revisions, on or before March 26, 2010. The Hearing Commissioner notes that paragraph (h) of the attached rules regarding near term and conceptual long range planning acts as a placeholder for the work currently being accomplished in Docket No. 09M-616E. Comments are requested on whether the proposed language for paragraph (h) meets this placeholder role until rules concerning transmission planning are effective.

II. ORDER

A. It Is Ordered That:

1. The Hearing Commissioner requests that interested parties file written comments on the revised proposed rules on or before March 26, 2010.

2. This Order is effective upon its Mailed Date.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in black ink that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JAMES K. TARPEY

Hearing Commissioner

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

* * *

[indicates omission of unaffected rules]

3102. Certificate of Public Convenience and Necessity for Facilities.

- (a) A utility seeking authority to construct and to operate a facility or an extension of a facility pursuant to § 40-5-101, C.R.S., shall file an application pursuant to this rule.
 - (I) If the facility is not a transmission facility, the utility need not apply to the Commission for approval of construction and operation of the facility or an extension of the facility which is in the ordinary course of business. The utility shall apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is not in the ordinary course of business.
 - (II) If the facility is a transmission facility, in addition to the requirements in paragraph (b) of this rule, the utility shall comply with rule 3206.
- (b) An application for certificate of public convenience and necessity to construct and to operate facilities or an extension of a facility pursuant to § 40-5-101, C.R.S., shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
 - (I) The information required in paragraphs 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 construction or extension of transmission facilities, the technical analyses performed for the selection of the proposed project, and alternatives.~~

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[indicates omission of unaffected rules]

3206. Construction or Extension of Transmission Facilities.

- (a) Applicability. No utility and no cooperative electric association that has voted to exempt itself pursuant to § 40-9.5-103, C.R.S., may commence new construction, or extension of transmission facilities or projects until either the Commission notifies the utility or cooperative electric association that such facilities or projects do not require a certificate of public convenience and necessity (CPCN) or the Commission issues a certificate of public convenience and necessity. Cooperative electric associations that have elected to exempt themselves from the Public Utilities Law pursuant to § 40-9.5-103, C.R.S., do not need a ~~CPCN certificate of public convenience and necessity~~ for new construction or extension of transmission facilities or projects when such construction or expansion is contained entirely within the cooperative's certificated area.
- (b) CPCN requirements for new transmission facilities. New transmission facilities that require a CPCN pursuant to this paragraph (b) are not in the ordinary course of business. Further, the utility or cooperative electric association may request a CPCN for any new transmission facility that does not require a CPCN under this paragraph (b). For all utilities and electric cooperative associations~~parties~~ subject to paragraph (a) of this rule, a ~~CPCN certificate of public convenience and necessity~~ will be required for all new transmission facilities that meet one of the following criteria:
 - (I) Transmission facilities~~projects~~ designed at 230 kV and above, even if ~~these projects will be~~ initially operated at a lower voltage. However, a radial transmission line designed at 230 kV and above that serves a single customer and terminates at that customer's premises will not require a CPCN.
 - (II) In addition, a certificate of public convenience and necessity will be required for Transmission facilities designed at new 115 kV or 138 kV, projects if:
 - (A) They do not meet the noise and EMF (electromagnetic field) magnetic field thresholds in paragraphs (f) and (g) of this rule;
 - (B) They are not consistent with -or- the near term and conceptual long range plans described in paragraph (h); or
 - (C) The Commission determines that they are not in the ordinary course of business because of their have-unusual system impact or expense.

~~The projects requiring a certificate of public convenience and necessity under the terms of this paragraph (b) are not in the ordinary course of business. In any event, the utility or cooperative electric association may request a certificate of public convenience and necessity for any project.~~

- (c) CPCN requirements for extension of transmission facilities. The utility or cooperative electric association may request a CPCN for any extension of transmission facilities not otherwise requiring a CPCN under this paragraph (c). For all utilities and electric cooperative associations ~~parties~~ subject to paragraph (a) of this rule, the following modifications are not in the ordinary course of business and shall require a certificate of public convenience and necessity:
- (I) Modification to any existing ~~transmission facility~~ transmission line ~~if either the noise or magnetic field thresholds in paragraphs (f) and (g) of this rule are exceeded or increased beyond previously approved levels, with a voltage of 230 kV and above that increases the continuous MVA rating;~~
 - ~~(II) Modification to an existing transmission line with a voltage of 115 kV or less, including increasing the continuous MVA rating, wherein either the noise or magnetic field thresholds in paragraphs (f) and (g) of this rule are exceeded;~~
 - ~~(II) Modification of the transmission facility so that it will be operated at a higher voltage, with or without conductor replacement:~~
 - ~~(A) If a CPCN has already been obtained for the operation of the transmission facility at the higher voltage, an additional CPCN shall not be required.~~
 - ~~(B) If the upgrade is to a voltage less than 230 kV and the noise and magnetic field thresholds in paragraphs (f) and (g) are met, a CPCN shall not be required.~~
 - ~~(IV) Extensions of existing 230 kV substations that require acquisition of additional land for expansion of the substation yard.~~
- (d) Annual report for planned transmission facilities. No later than April 30 of each year, each electric utility and each cooperative electric association that has voted to exempt itself pursuant to § 40-9.5-103, C.R.S., shall file with the Commission its proposed new construction or extension of transmission facilities for the next three calendar years, commencing with the year following the filing. This filing shall also include projects with an in-service date within five years of the filing. The filing shall contain a reference to all such proposed new construction or extensions, regardless of whether the utility or cooperative electric association has referenced such new construction or extensions in prior annual filings. Further, amended filings or filings of an emergency nature outside the April 30 timeframe are permitted. By submitting the proper information, ~~the~~ report can request a determination that 115 kV or 138 kV projects that meet the requirements outlined in paragraphs (b) and (c) of this rule do not need a CPCN ~~certificate of public convenience and necessity~~. For each project, the filing shall contain the following:
- (I) The name, proposed location, and function or purpose of the project, including:
 - (A) If the project is a substation or related facility, ~~the voltage level and the continuous MVA rating of~~ transformers and shunt capacitors ~~major equipment.~~
 - (B) If the project is a transmission line, the voltage, the length in miles, the continuous MVA rating, and the substation termination points.
 - (II) The estimated cost of the project.

(III) The projected date for the start of construction, the estimated date of completion, and the estimated in-service date.

(e) Annual report for ongoing transmission projects. In addition to the information provided in paragraph (d) of this rule, the filing shall provide an update of the status of, and any changes to (including cancellations) all projects referenced in prior filings. Once a project is reported as completed or cancelled, its status can be removed in subsequent filings.~~the following information:~~

~~(I) For all projects that have been referenced in prior filings, an update of the status of, and any changes to (including cancellations), such projects. Once a project is reported as completed, its status can be removed in subsequent filings.~~

~~(II) A listing of all projects completed during the past calendar year which have not been referenced in prior filings. Examples of such projects include, but are not limited to, the following:~~

~~(A) New transformers, breakers, or capacitor banks 115 kV or higher, or replacement of such equipment with larger equipment.~~

~~(B) The raising and/or strategic placement of transmission structures in order to raise the conductor.~~

~~(C) Modification to 115 kV and below transmission lines, including modification of the continuous MVA rating. If the modification increases the projected noise and EMF levels, the new values shall be reported.~~

~~(D) Expansion of existing 115 kV and below substations that required the acquisition of additional land.~~

(f) Electromagnetic fields. This paragraph (f) applies to any application for a CPCN~~certificate of public convenience and necessity~~ or any filing made pursuant to paragraph (d) of this rule for which the Commission is requested to determine that a 115 kV or 138 kV project does not need a CPCN~~certificate of public convenience and necessity~~. The filing shall include the expected maximum level of electromagnetic fields-EMF that could be experienced under normal conditions at the edge of the transmission line right-of-way or substation boundary, at a location one meter above the ground.

~~(I) In the event there is no defined transmission line right of way or the transmission line is located at the edge of a highway or railroad right of way, then the measurement will be taken at a point 50 feet from the vertical projection onto the ground of the outermost conductor.~~

~~(II)~~ For a right-of-way containing a single circuit, the EMF level will be presented at the continuous MVA rating of that circuit.

~~(III)~~ For a right-of-way containing multiple circuits, the EMF level will be presented with all one circuit out of service and the remaining circuits at their continuous MVA rating.

~~(IIIIV)~~ A Proposed EMF levels of EMF-150 mG (milliGauss) and below~~is not subject to further review are deemed reasonable by rule,~~ and need not be mitigated to a lower level. Proposed EMF levels above 150 mG will be subject to further review.

- (IV) If the ~~projected~~ EMF level for the proposed project is above 150 mG, then the filing must present an ~~an range of~~ alternatives (e.g., different spatial arrangement of conductors, higher structures, wider rights-of-way, undergrounding lines), and associated costs, that reduces the EMF level to 150 mG. The applicant may also present other alternatives yielding intermediate EMF levels for the Commission's consideration.
- (V) In the instance where the EMF level cannot be reduced to 150 mG, then the filing must present an ~~an range of~~ alternatives, and associated costs, that ~~would~~ reduces the EMF level to the lowest possible level. The applicant may also present other alternatives yielding intermediate EMF levels for the Commission's consideration.
- (VI) If either subparagraph (f)(IV) or (f)(V) is applicable, then the filing must also describe the efforts and associated costs to route the line away from concentrated population and group facilities such as schools and hospitals.
- (VII) If either subparagraph (f)(IV) or (f)(V) is applicable, the Commission shall weigh the societal, engineering, and economic considerations of the project as originally proposed, and the alternatives, in determining whether the ~~CPCN certificate of public need and necessity~~ should be granted.
- (g) Noise. This paragraph (g) applies to any application for a ~~CPCN certificate of public convenience and necessity~~ or any filing made pursuant to paragraph (d) of this rule for which the Commission is requested to determine that a 115 kV or 138 kV project does not need a ~~CPCN certificate of public convenience and necessity~~. The filing shall include the projected level of noise radiating beyond the property line or right-of-way (as applicable) at a distance of 25 feet.
- (I) The filing shall provide computer studies which show the potential level of noise expressed in db(A). These computer studies shall be the output of utility standard programs, such as EPRI's EMF Workstation 2.51 ENVIRO Program- -- Bonneville Power Administration model and use the assumption that the proposed facility is operating at its highest continuous design voltage.
- (II) A-Proposed levels of noise at or below the values listed ~~is not subject to further review are deemed reasonable by rule~~ and need not be mitigated to a lower level.
- | | | |
|-----|---|----------|
| (A) | Residential _____ and agricultural | 50 db(A) |
| (B) | Commercial | 55 db(A) |
| (C) | Light industrial | 65 db(A) |
| (D) | Industrial | 75 db(A) |
- (III) If the zoning designation assigned by the local zoning regulatory agency is not listed in subparagraph (g)(II), the applicant shall reference the noise threshold corresponding to the zoning designation listed in subparagraph (g)(II) that most closely represents the predominant use of the land used for the transmission project. To support its selection of the applicable noise threshold, the applicant shall present information related to, among other things, the projected use of the land and surrounding areas in the near term future. However, the noise level will not be subject to further review if the applicant proposes a noise threshold of 50 db(A) or below regardless of the use of the land.

- (IV~~II~~) If the projected level of noise does not meet the threshold limits in subparagraph (g)(II), then the filing must present an ~~n-range-of~~ alternatives (larger conductors, bundled conductors, different spatial arrangement of conductors, higher structures, wider rights-of-way), and associated costs, that reduces the level of noise to the proper threshold value. The applicant may also present other alternatives yielding intermediate noise levels for the Commission's consideration.
 - (IV) In the instance where the level of noise cannot be reduced to the threshold ~~limits~~ levels in subparagraph (g)(II), then the filing must present an ~~n-range-of~~ alternatives, and associated costs, that would ~~reduces~~ the level of noise to the lowest possible level. The applicant may also present other alternatives yielding intermediate noise levels for the Commission's consideration.
 - ~~(V) If either subparagraph (g)(III) or (g)(IV) is applicable, the filing must also describe the efforts and associated costs to route the line away from concentrated population and group facilities such as schools and hospitals.~~
 - (V~~II~~) If either subparagraph (g)(IV~~II~~) or (g)(IV) is applicable, the Commission shall weigh the societal, engineering, and economic considerations of the project as originally proposed, and the alternatives in determining whether the CPCN~~certificate of public convenience and necessity~~ should be granted.
- (h) Near term and conceptual ~~Long range~~ planning. This paragraph (h) applies to any application for a ~~CPCN certificate of public convenience and necessity~~ or any filing made pursuant to paragraph (d) of this rule for which the Commission is requested to determine that a 115 kV or 138 kV project does not need a ~~CPCN certificate of public convenience and necessity~~. The filing shall explain how the proposed project is compatible with the electric utility's or cooperative electric association's near term and conceptual ~~long range~~ 20 and 30 year needs of the transmission system.
- (I) If the proposed project is a transmission line, then the discussion should address the initial and ultimate design operating voltage, the initial and ultimate right-of-way needs, and the initial and ultimate noise and EMF projections.
 - (II) If the proposed project is a substation, then the discussion should describe the initial and ultimate electrical configuration, the initial and ultimate property requirements, and initial and ultimate noise and EMF projections.
 - (III) If the conceptual ~~20 and 30 year~~ long range plan has been submitted to the Commission and evaluated in a separate docket, and addresses the long term rights-of-way needs, the ultimate number and voltage of transmission lines required, the ultimate substation electrical configuration requirements, and the initial and ultimate noise and EMF projections, then the current filing merely needs to reference that docket. In this instance, the substance of that conceptual long range plan will not be at issue in the current filing.
- (i) Review of annual report. Filings made in accord with paragraph (d) of this rule will be evaluated in the following manner:
- (I) The Commission shall give notice within 15 days of the filing to the parties it believes to be interested in the subject matter of the filing.
 - (II) Any interested party may file comments within 30 days of the notice referenced in subparagraph (i)(I).

- (III) Commission Staff shall review the filing and any comments received and shall make its recommendations within the 15 days following the end of the notice period.
- (j) Service connections. All utilities and electric cooperative associations~~parties~~ subject to paragraph (a) of this rule shall install and maintain service connections from transmission extensions consistent with conditions contained in the utility's tariff.

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[indicates omission of unaffected rules]