Decision No. C11-0288

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09A-324E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SAN LUIS VALLEY-CALUMET-COMANCHE TRANSMISSION PROJECT, (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE, AND (C) FOR APPROVAL OF OWNERSHIP INTEREST TRANSFER AS NEEDED WHEN PROJECT IS COMPLETED.

DOCKET NO. 09A-325E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SAN LUIS VALLEY TO CALUMET TO COMANCHE TRANSMISSION PROJECT, (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE, AND (C) FOR APPROVAL OF OWNERSHIP INTEREST TRANSFER AS NEEDED WHEN PROJECT IS COMPLETED.

ORDER ADDRESSING EXCEPTIONS TO RECOMMENDED DECISION NO. R10-1245, MOTION TO REOPEN, MOTION TO STAY, AND MOTION TO STRIKE

Mailed Date: March 23, 2011
Adopted Date: February 11, 2011

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I. BY THE COMMISSION

A. Statement

1. This matter now comes before the Commission for consideration of exceptions to Recommended Decision No. R10-1245 (Recommended Decision) filed on December 16, 2010 by Tri-State Generation and Transmission Association, Inc. (Tri-State); Public Service Company of Colorado (Public Service); Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC (collectively, Trinchera Ranch); Interwest Energy Alliance (Interwest); and Majors Ranch Property Owners Association (Majors Ranch). On January 10, 2011, Trinchera Ranch, Public Service, Tri-State, and Bar Nothing Ranches, LLC (Bar Nothing), filed responses to these exceptions.

2. This matter also comes before the Commission for consideration of a Motion to reopen evidentiary hearing and permit limited discovery (Motion to Reopen) filed by Trinchera Ranch on December 16, 2010 and responses in opposition to the Motion to Reopen filed by both Public Service and Tri-State (Applicants) on December 30, 2010. Trinchera Ranch filed a Supplement to its Motion to Reopen on January 10, 2011; Public Service and Tri-State each filed a response to the Supplement on January 24, 2011.

3. Further, this matter comes before the Commission for consideration of a Motion to Stay Proceedings (Motion to Stay) filed by Trinchera Ranch on January 7, 2011, and responses to the Motion to Stay filed by Public Service and Tri-State on January 21, 2011.

4. Finally, this matter comes before the Commission for consideration of a Motion to Strike Extra-Record References in Trinchera Ranch's Response to Exceptions (Motion to Strike), filed by Public Service on January 14, 2011 and response to the Motion to Strike filed on January 21, 2011 by Trinchera Ranch.

5. Now, being fully advised in the matter and consistent with the discussion below, we address the exceptions and the Motions.

B. Procedural History

6. The Administrative Law Judge (ALJ) assigned to this case discussed in detail the procedural history of this consolidated docket in the Recommended Decision, at ¶¶ 1-50. We incorporate that statement of procedural history in this Order. We will not reiterate this procedural history here, but will refer to it below, as needed to provide context to our rulings.

7. Following the issuance of the Recommended Decision, we extended the deadline for filing exceptions and responses to exceptions. Decision Nos. C10-1295, mailed December 3, 2010, and C10-1374, mailed December 28, 2010.

8. We granted, in part, a Motion to Strike Attachments to the Exceptions of Trinchera Ranch and arguments concerning same, filed on December 21, 2010 by Public Service. Decision No. C11-0021, mailed January 7, 2011.

9. We scheduled an oral argument on the exceptions to the Recommended Decision, regarding the issues related to the 700 MW, 10 years, 50 percent condition imposed by the ALJ, for January 26, 2011 at 2:30 p.m. Decision No. C11-0068, mailed January 19, 2011.

During the oral argument, Public Service, Tri-State, Trinchera Ranch, Interwest, Bar Nothing, and Western Resource Advocates (WRA) presented legal and policy arguments surrounding the 700 MW, 10 years, 50 percent condition or a similar condition; the specific parameters of the condition; and possible implementation and/or enforcement issues.

C. Motion to Reopen

1. Trinchera Ranch

10. In its Motion to Reopen, Trinchera Ranch argues that the evidentiary record in this docket must be reopened to take testimony regarding the effect of the amended application to amend its 2007 Electric Resource Plan (ERP), filed by Public Service on November 19, 2010 in Docket No. 10A-377E. Trinchera Ranch further requests that the Commission order written discovery and appropriate depositions on the reopened record.

11. Trinchera Ranch points out the ALJ previously reopened the evidentiary record in this docket to take testimony regarding the impact on the need for the proposed transmission line of House Bill (HB) 10-1001, and the original application to amend the 2007 ERP filed by Public Service on June 4, 2010. Trinchera Ranch argues that the latest amendments proposed by Public Service, which would further reduce additions of solar generation in Energy Resource Zone (ERZ) 4 and wind generation in ERZ 5, dramatically impact the need for the project, just like the initial application in Docket No. 10A-377E. Trinchera Ranch points to the testimony of Mr. Kurt Haeger regarding a debate within the solar industry regarding the leading technologies on a going forward basis, and argues that the considerable uncertainty created by shifting market conditions and evolving solar technologies is not conducive to a high likelihood of solar development in the San Luis Valley. Trinchera Ranch concludes that, just like the original

application to amend in Docket No. 10A-377E resulted in a reopened record, so too should the amended application to amend filed in the same docket.

12. In its Supplement to the Motion to Reopen filed on January 10, 2011, Trinchera Ranch points to the statements made during the oral argument held on January 3, 2011 in Docket No. 10A-905E, in support of the proposition that a delay with the proposed transmission line had nothing to do with Public Service's decision to reject the E.ON Climate & Renewables North America, LLC (E.ON) wind bid and to reopen the wind bids. Trinchera Ranch argues that Public Service rejected E.ON's proposal to build a radial line because that would hurt the utility's chances of obtaining the certificate of public convenience and necessity (CPCN) in this docket. This, argues Trinchera Ranch, proves that Public Service artificially bolstered the alleged export need for the proposed transmission line. Trinchera Ranch also argues that Public Service is manipulating the disclosure of information to affect the outcome in this docket. Trinchera Ranch points out that: (1) Public Service filed its amended application in Docket No. 10A-377E only 26 minutes after the ALJ issued the Recommended Decision, which prevented the ALJ from learning of the new acquisition plans in the San Luis Valley; and (2) Public Service served a discovery response in Docket No. 10A-377E to Trinchera Ranch one day late, so that Trinchera Ranch would not have the information contained in that discovery response before filing exceptions in this docket. Trinchera Ranch argues that this behavior falls short of responding to discovery in good faith and in a timely manner, which the Commission recently emphasized in Docket No. 10M-245E.

13. Closely related to the Motion to Reopen is Trinchera Ranch Additional Exception No. 1. Trinchera Ranch argues that the ALJ should have granted its oral motion to stay the proceeding pending the resolution of Docket No. 10A-377E. The ALJ ruled, *inter alia*, that the effect of a Commission decision in Docket No. 10A-377E could be considered in this docket without a stay. Trinchera Ranch argues this ruling is arbitrary and capricious.

2. Public Service and Tri-State

14. In its response filed on December 30, 2010, Public Service argues that the Motion to Reopen is nothing more than another attempt by Trinchera Ranch to delay a final decision in this case. Public Service contends that its latest proposed amendments in Docket No. 10A-377E contain no new information that warrants reopening of the record. Public Service points out that the possibility that the acquisition of solar generation in the San Luis Valley pursuant to the 2007 ERP could be reduced to 60 MW was known during the reopened evidentiary record; indeed, it was one of the three solar acquisition options presented by Public Service at that time. The ALJ generally found that these proposed amendments did not affect the need for the proposed project because these were temporary, rather than long-term, reductions. Public Service also states that the timing of the filing of the amended application in Docket No. 10A-377E and the issuance of the Recommended Decision was coincidental; it had no idea when the ALJ was planning to issue the Recommended Decision. Public Service also states that one of the reasons for the reductions in acquisitions of renewable resources proposed in the amended application is the delay with the proposed transmission project; nothing affects the need for the line *in the long term*.

15. In its response, Tri-State generally makes the same arguments as Public Service. Tri-State adds that the latest ERP amendments proposed by Public Service indicate a change in the *timing* of acquisition of new generation resources that might interconnect with the proposed transmission line, not a change in the need for the line itself. Tri-State further argues that these latest proposed amendments by Public Service do not change its own reliability-based need for the project. Tri-State concludes that not every Commission docket that tangentially touches on or mentions the subject matter of this docket warrants a reopening of the evidentiary record.

16. In their responses to the Supplement to the Motion to Reopen, Public Service and Tri-State generally argue that the only purpose of the Motion to Reopen and the Supplement is to delay the final decision in this docket. Public Service also argues that statements and arguments made by counsel during oral argument held in Docket No. 10A-905E are not evidence and, moreover, the Commission rejected the same arguments in Decision No. C11-0029, Docket No. 10A-905E, mailed January 11, 2011. Public Service reiterates that it had no idea when the ALJ planned to issue the Recommended Decision.

3. Discussion

17. In its original application to amend filed on June 4, 2010, Public Service proposed three solar acquisition options involving an amendment of the 2007 ERP. These options were as follows: (1) acquisition of one 125 MW solar thermal with storage bid along with two 30 MW solar photovoltaic bids, for a total solar acquisition of 185 MW; (2) acquisition of three 30 MW solar photovoltaic bids, for a total solar acquisition of 90 MW; and (3) acquisition of two 30 MW of solar photovoltaic bids for a total solar acquisition of 60 MW.

18. In its amended application to amend the 2007 ERP filed on November 19, 2010, Public Service proposes two changes. First, regarding solar acquisitions, Public Service requests that the Commission grant it an amendment to the approved 2007 ERP that was listed as Option 3 in the original application. This would defer all additional purchases from utility scale solar facilities until Public Service's next ERP, due to be filed in October 2011, and would limit the acquisition of solar resources to 60 MW. Second, regarding wind acquisitions, Public Service requests to amend the 2007 ERP by rejecting the remaining wind bid and proceeding with a new targeted solicitation instead.

19. We agree with Public Service that its proposal to reduce solar acquisitions under the 2007 ERP in ERZ 4 to 60 MW does not warrant a reopening of the evidentiary record. This was one of the three options presented by Public Service when it filed the original application in Docket No. 10A-377E and was fully vetted by the ALJ.

20. We also agree with the ALJ's denial of Trinchera Ranch's oral motion to stay the proceeding pending resolution of Docket No. 10A-377E (Additional Exception No. 1) and deny the exceptions filed by Trinchera Ranch on that issue. We agree with the ALJ that the impact of a Commission decision in Docket No. 10A-377E on the need for the proposed transmission line could be ascertained by looking at possible outcomes so that a final decision is not needed.

21. We note that Public Service's proposal to reject the E.ON wind bid and to reopen the wind bids in a targeted solicitation is outside the scope of the reopened record in this docket. However, we find that this proposal does not warrant a reopening of the record. This is because the E.ON bid, contemplating an approximately 200 MW wind facility, as originally bid, would have interconnected to a segment of the proposed transmission line that is not opposed.

Further, E.ON and other wind bidders located in the same vicinity may rebid and then be selected by Public Service and approved by the Commission.

22. Two of the overarching policy issues in this proceeding are how far into the future may the Commission look in determining whether there is a need for a transmission project, and the extent to which the public policies espoused by Senate Bill (SB) 07-100 of moving transmission ahead of generation apply. If the Commission adopts the position advocated by Trinchera Ranch, that the Commission can consider only those generation resources that will certainly be built in deciding a need for a transmission project, then an approximately 200 MW wind facility bid by E.ON is not sufficient to justify the need for the proposed project, even if Public Service did not request any amendments with respect to wind acquisitions. On the other hand, if the Commission looks further into the future, as advocated by Public Service and Tri-State (as well as other parties), the possibility that the E.ON facility may not come into being is also irrelevant. E.ON may rebid, either in the 2011 Wind Request for Proposals (RFP) proposed in Docket No. 10A-905E or in another future RFP. Further, development of other wind facilities in the same general area is also substantially probable, as discussed below. Either way, a reopening of the record is not necessary to determine which general approach the Commission will adopt (and we discuss these policy issues more fully below).

23. Finally, we are not persuaded by the arguments presented by Trinchera Ranch in its Supplement to the Motion to Reopen. First, the statements and arguments made during oral argument in Docket No. 10A-905E and cited by Trinchera Ranch are not evidence, but argument of E.ON's counsel. Second, we find that any implication regarding the timing of the filing of the amended application in Docket No. 10A-377E and the issuance of the Recommended Decision in this docket to be a red herring. The critical time point, with respect to new evidence

potentially resulting in reopening of the record, was July 30, 2010, when the ALJ closed the reopened record, not November 19, 2010, when she issued the Recommended Decision. Finally, any allegations of discovery misconduct by Public Service in Docket No. 10A-377E should be addressed by the ALJ hearing that docket. For the reasons stated above, we deny the Motion to Reopen.

D. Motion to Stay

1. Trinchera Ranch

24. In its Motion to Stay filed on January 7, 2011, Trinchera Ranch argues that the Commission should stay a ruling on the exceptions to the Recommended Decision until it fully complies with its obligations under the Colorado Open Records Act (CORA). Pursuant to § 24-72-201, C.R.S., Trinchera Ranch filed with the Commission on November 24, 2010, a CORA request, in which it sought inspection of public records concerning the proposed San Luis Valley-Calumet-Comanche transmission project. In its Motion to Stay, Trinchera Ranch states that, as of the date of the Motion to Stay, it has been provided only a small fraction of the public documents that fall within the scope of its CORA request. Trinchera Ranch believes that the documents that have not yet been produced as of the date of the Motion to Stay are likely to contain information material to this docket, but it cannot make that determination until it inspects these documents. Trinchera Ranch argues that, depending on the contents of the documents that have not yet been produced, it may have good cause to request that the record be reopened or to seek other appropriate relief.

2. Public Service and Tri-State

25. In their responses to the Motion to Stay, Public Service and Tri-State argue that the purpose behind the motion is to manufacture another delay in this docket. Tri-State and Public Service argue that all of the matters that are the subject of the CORA request were known to Trinchera Ranch before the evidentiary record in this case closed in July 2010 and that Trinchera Ranch could have filed its CORA request earlier if it believed that any of the documents were material to this case. Public Service also argues that the Motion to Stay is based entirely on supposition.

3. Discussion

26. We generally agree with the arguments presented by Public Service and Tri-State in their responses to the Motion to Stay. Further, if any of the documents the Commission so far produced or will produce to Trinchera Ranch pursuant to CORA are, in the opinion of Trinchera Ranch, material to this case, it can seek appropriate relief at that time, detailing the basis for such relief. We deny the Motion to Stay.

E. Motion to Strike

1. Public Service

27. In its Motion to Strike, Public Service argues that the Commission should strike certain references in Trinchera Ranch's response to exceptions. These references are as follows:

- Footnote references to a transcript created by Trinchera Ranch from the January 5, 2011 Commission Weekly Meeting, discussing Docket No. 10A-905E (footnotes 3, 4, 5 at pp. 10-11);
- Xcel Energy PowerPoint presentation from August 2010 (first full paragraph at p. 2); and
- A California blog story (The Goat Blog) about a California solar developer.

28. Public Service states the information contained in these references is not evidence in the record and is an improper attempt by Trinchera Ranch to introduce new evidence after the evidentiary record was closed. Public Service further states this is a second attempt by Trinchera Ranch to do this and states that the Commission previously struck attachments to the exceptions filed by Trinchera Ranch in Decision No. C11-0021, mailed January 7, 2011. Public Service argues that these references are not appropriate for administrative notice. Public Service further states that, regarding the quotes made by the Commissioners during deliberations in a different docket, these quotes are not evidence and are devoid of all context. Public Service finally states that Tri-State joins in the Motion to Strike.

2. Trinchera Ranch

29. In response, Trinchera Ranch contends that Public Service is preventing Trinchera Ranch from presenting its arguments in this case. Trinchera Ranch states that it is not presenting the statements made by the Commissioners as record evidence, but to contradict arguments made by Public Service in its exceptions that it has no control over its resource acquisitions. Trinchera Ranch makes a similar response with respect to the quote from the Xcel Energy presentation (the quote is that transmission is a key component to Xcel Energy's growth strategy). Regarding the Goat Blog story, Trinchera Ranch states that it is not introducing new evidence, but rather is arguing that this docket is not the first time that a public utility commission has considered a transmission line justified by speculative renewable energy development.

3. Discussion

30. We grant the Motion to Strike filed by Public Service, in part, with respect to the quote from the Xcel Energy PowerPoint presentation and the Goat Blog story.

These references are factual in nature and therefore would require an opportunity for the parties disputing the facts contained in and the implications of these references to respond, which cannot occur without a reopening of the evidentiary record. However, regarding statements made by the Commissioners during deliberations in Docket No. 10A-905E, we deny the Motion. The citations to these statements by Trinchera Ranch are more similar to citations to legislative history that a party may use to support an argument, rather than factual citations (although this is a close question). Further, the Commissioners will be able to put these comments in a proper context without additional argument. We note, however, that the transcript of these deliberations presented by Trinchera Ranch is not an official Commission transcript and we will consider this fact in determining the weight that should be assigned to that transcript.

F. Trinchera Ranch Exceptions Related to Procedural and Evidentiary Rulings by the ALJ and the Commission

1. Trinchera Ranch Additional Exception 2, Motion to Reopen the Record Based on Docket No. 10M-245E

a. Trinchera Ranch

31. In its exceptions, Trinchera Ranch argues that the ALJ should have reopened the evidentiary record to consider the generic expansion plan filed by Public Service in Docket No. 10M-245E, as it has argued in a motion filed on August 31, 2010. Trinchera Ranch argues that the ALJ abused her discretion in denying its motion to reopen the record.

32. In its Motion to Reopen, Trinchera Ranch generally argued the generic expansion plan that Public Service filed on August 13, 2010 in Docket No. 10M-245E did not indicate that a single solar resource would be acquired until 2020 and did not indicate a single solar resource over 125 MW. Trinchera Ranch claimed that there was an inconsistency, on one hand, between the 2010 Renewable Energy Standard (RES) Compliance Plan, which assumed three 250 MW

solar thermal placeholders in the San Luis Valley by 2018 and which Public Service claimed shows the need for the proposed transmission line, and, on the other hand, the generic expansion plan in Docket No. 10M-245E, which shows a very different scenario.

b. Public Service

33. In response to that motion, Public Service generally contended that there was no contradiction between the testimony filed in this docket and the filings in Docket No. 10M-245E. This is because Docket No. 10M-245E addressed only emission reductions from Public Service's coal plants in furtherance of the Clean Air-Clean Jobs Act. Public Service argued that Docket No. 10M-245E did not address future resource acquisitions beyond the capacity needed to replace the retired coal plants, or new generation additions outside of the Denver metro area, subject to some limited exceptions. Public Service therefore argued that Docket No. 10M-245E was irrelevant to this proceeding.

34. The ALJ agreed with Public Service and denied the Motion to Reopen based on the generic expansion plan filed in Docket No. 10M-245E. She ruled that Docket No. 10M-245E did not address all-source or renewable resource acquisitions that are addressed in ERP and/or RES compliance dockets. *See* Recommended Decision, at ¶ 49.

c. Discussion

35. We find that the record supports the ruling of the ALJ. We agree that the limited scope of Docket No. 10M-245E did not address all-source and renewable resource acquisitions, but only the generation that Public Service may need to replace coal plants to reduce emissions pursuant to the Clean Air-Clean Jobs Act. We deny the exceptions filed by Trinchera Ranch on this issue.

2. Trinchera Ranch Additional Exceptions 7 and 8, Motion to Dismiss Based on *Ex Parte* Communications and Request for Discovery Relating to *Ex Parte* Contacts

a. Trinchera Ranch

36. In its exceptions, Trinchera Ranch claims that its Motion to Dismiss based on *ex parte* communications[1] between the utilities and the Commissioners should have been granted. It argues that, for reasons stated in its Motion to Dismiss filed on January 25, 2010, a Supplement to the Motion, a request for reconsideration of the Commission decision denying the motion, and as recognized by Commissioner Tarpey in his recusal, Public Service and Tri-State engaged in *ex parte* communications with the Commissioners that were not appropriate, prohibited by law, and violated due process. Trinchera Ranch thus argues that the Commission should have granted the Motion to Dismiss and that failure to do so was arbitrary and capricious, an abuse of discretion, and erroneous as a matter of law.

37. Trinchera Ranch further argues that its request for additional discovery following the denial of its request for reconsideration related to *ex parte* contacts should have been granted. Trinchera Ranch points out that it filed a motion to compel depositions of Karen Hyde and Roy Palmer (employees of Public Service), based upon a disclosure letter filed by Public Service regarding a January 12, 2010 meeting between Commissioner Baker, Ms. Hyde, and Mr. Palmer, and evidence regarding the April 14, 2009 *ex parte* meetings between Commissioners Binz and Baker and Ms. Hyde. The ALJ denied that motion as moot, citing the Rule of Necessity and the

[1] In its pleadings, Trinchera Ranch describes certain meetings as *ex parte* communications. By referencing the terms used by Trinchera Ranch in this Order, we do not agree these meetings were *ex parte* communications as defined by Rule 1004(n) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, and other applicable authority.

fact that, following recusal of Commissioner Tarpey, recusal of either Commissioner Baker or Chairman Binz would have destroyed the quorum. Trinchera Ranch argues this ruling allows the Rule of Necessity to trump due process of law, is arbitrary and capricious, an abuse of discretion, and is erroneous as a matter of law.

(1) Public Service and Tri-State

38. In response, Public Service and Tri-State argue that the Commission previously decided these issues in Decision Nos. C10-0124, C10-0125, and C10-0368 and that there is no "third bite at the apple." Tri-State points out that the Motion to Dismiss was not directed to the ALJ and was not decided by the ALJ in the Recommended Decision. Instead, the Commission itself decided the Motion and Trinchera Ranch sought review of the decision denying that Motion via a request for reconsideration. Tri-State argues that the next step for Trinchera Ranch is to file an application for judicial review of these Commission decisions, which it has already done, in Case No. 2010 CV16, Costilla County District Court. However, according to Tri-State, this is not an appropriate subject of exceptions to the Recommended Decision. Tri-State also states that the ALJ relied on the Commission decisions addressing the Motion to Dismiss as establishing the law of the case, in denying the Motion to compel depositions of Ms. Hyde and Mr. Palmer. Tri-State argues that the substantive arguments related to the Motion to Compel depositions pertains not to the Recommended Decision but the Commission decisions denying the Motion to Dismiss and that this is also not a proper subject for exceptions to the Recommended Decision.

(2) Discussion

39. For the reasons argued by Public Service and Tri-State, we agree that the issues raised by Trinchera Ranch in its January 25, 2010 Motion to Dismiss and related pleadings are

not a proper subject of exceptions to the Recommended Decision. We will therefore not address the merits of these issues here. We deny the exceptions filed by Trinchera Ranch on these issues.

3. Trinchera Ranch Additional Exceptions 3, 4, 5, 6, and 9, Evidentiary Rulings

a. Overview

40. In its exceptions, Trinchera Ranch contends the ALJ erroneously excluded several items of evidence. We will review the general principles related to the admissibility of evidence in Commission proceedings before discussing each of the ALJ's rulings individually.

41. First, Rule 1501(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, states that the Commission shall, to the extent practical, conform to the Colorado Rules of Evidence (CRE) applicable in civil non-jury cases in district courts. However, the Commission is not bound by the technical rules of evidence. The Commission may receive and consider evidence not admissible under the rules of evidence, if it possesses reliable probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

42. For its part, CRE 103(a) states that an error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected. The issue of whether the evidence is relevant is a matter that is within a decision maker's sound discretion. A decision maker's refusal to admit evidence will constitute grounds for reversal only if it affects substantial rights of a party. *See, e.g., Arnold v. Colo. State Hospital*, 910 P.2d 104 (Colo. App. 1995). Finally, CRE 403 states that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues … or undue delay, waste of time, or needless presentation of cumulative evidence."

b. Trinchera Ranch Additional Exception 3, Exclusion of the Testimony of Mr. Bill Powers

(1) Trinchera Ranch

43. Trinchera Ranch argues that the ALJ erred in excluding the testimony of Mr. Bill Powers regarding the impact of HB 10-1001 on the need for the proposed transmission project. Trinchera Ranch states that it invited Mr. Powers, a nationally recognized expert on distributed generation, to testify regarding the impact of HB 10-1001 on the proposed project. Mr. Powers would have testified that it is economically as well as technically feasible and preferable for a substantial portion of Public Service's 30 percent RES requirement to be met with distributed solar generation. This would in turn reduce the need for transmission lines in general, including the proposed project, improve reliability, and achieve a higher level of solar penetration at lower cost.

44. The ALJ ruled that this proposed testimony was either outside the scope of the reopened record or duplicative of the subjects on which Mr. James Dauphinais, another expert witness sponsored by Trinchera Ranch, would testify. Decision No. R10-0746-I, mailed on July 19, 2010, at ¶¶ 29-31.

45. In its exceptions, Trinchera Ranch argues this testimony was neither outside the scope of the reopened record nor duplicative of the testimony presented by Mr. Dauphinais. It states that Mr. Powers would have provided much more detail regarding the impact of the new distributed generation set-asides established by HB 10-1001 than Mr. Dauphinais, and that this issue is within the scope of the reopened record. Trinchera Ranch contends that, in fact, the ALJ reopened the record to explore the possibility that the new distributed generation set-asides may impact the need for the proposed project.

(2) Public Service

46. In response, Public Service argues that the ALJ correctly excluded this testimony from the reopened evidentiary record. Public Service argues any decisions as to what generation resources should be acquired to meet the RES can only be made in a resource planning or a RES compliance plan docket, not in a transmission CPCN docket such as this proceeding.

(3) Discussion

47. We find that the record supports the ALJ's ruling regarding the testimony of Mr. Powers. We agree with the ALJ that the decisions regarding which types of generation resources a utility should acquire are largely outside the scope of a transmission CPCN docket such as this one. Further, regarding potential effect of the new distributed generation set-asides established by HB 10-1001 on the need for the proposed project, Trinchera Ranch sponsored the testimony of Mr. Dauphinais. The testimony of Mr. Powers therefore would have been duplicative on this issue and its exclusion did not affect the substantial rights of Trinchera Ranch. We find that the ALJ was within her discretion in excluding the testimony of Mr. Powers. We therefore deny the exceptions filed by Trinchera Ranch on this ground.

c. Trinchera Ranch Additional Exception 4, Exclusion of Exhibit Sponsored by Dr. Anjali Sheffrin

(1) Trinchera Ranch

48. Trinchera Ranch argues that the ALJ erroneously excluded an exhibit prepared by Dr. Anjali Sheffrin (Exhibit 145), related to the impact on available Renewable Energy Standard Adjustment (RESA) moneys from certain conditions (delay in a carbon proxy cost until 2014; substantial decline in natural gas prices, and the regulatory tools enacted by HB 10-1001). The ALJ excluded Exhibit 145 because she found its probative value was outweighed by the potential for undue delay and because it would waste administrative time for parties to respond

to this document. Hearing Transcript, July 30, 2010, at p. 129, lines 2-8. Trinchera Ranch contends that, in the Recommended Decision, the ALJ came to a number of incorrect conclusions because of this the exhibit was excluded.

(2) Public Service

49. In response, Public Service argues that Trinchera Ranch did not produce Exhibit 145 in discovery prior to the reopened hearing and that the exhibit contains several questionable assumptions.

(3) Discussion

50. We find that the record supports the ALJ's ruling regarding Exhibit 145. Exhibit 145, although relevant, contained several assumptions disputed by Public Service. Its probative value therefore was outweighed by the potential to unduly delay the proceeding, since it would have been necessary for other parties to spend significant time rebutting it. This is especially so because Exhibit 145 was not produced to Public Service before the reopened hearing (regardless of whether Trinchera Ranch erred in not doing so). Furthermore, even without the exhibit, Dr. Sheffrin was able to present her point that changed circumstances such as the delay in carbon proxy costs until 2014, substantial decline in natural gas prices, and the fact that regulatory tools enacted by HB 10-1001 are subject to the Commission's discretion and thus are not a guarantee, reduce the likelihood that Public Service actually will acquire as much renewable resources as it claims. The exclusion of Exhibit 145 therefore did not affect the substantial rights of Trinchera Ranch. We find that the ALJ was within her discretion in excluding Exhibit 145. We deny the exceptions filed by Trinchera Ranch on this ground.

d. Trinchera Ranch Additional Exception 5, Exclusion of the Pre-Filed Withdrawn Testimony of Morey Wolfson

(1) Trinchera Ranch

51. Trinchera Ranch argues that the ALJ erred in precluding the questioning of the Governor's Energy Office (GEO) witness Mr. Morey Wolfson regarding his pre-filed withdrawn testimony. In that testimony, Mr. Wolfson opined that the Commission should bifurcate this CPCN docket and conduct a separate proceeding to address the routing of the proposed transmission line pending the outcome of the Environmental Impact Statement (EIS) process conducted by the Rural Utilities Service (RUS). Mr. Wolfson withdrew that pre-filed testimony a day before he was scheduled to testify orally at the hearing. Trinchera Ranch argues that it should have been able to explore the credibility and bias of Mr. Wolfson and whether there has been undue influence or improper communications leading up to the withdrawal of pre-filed testimony.

(2) Public Service and Tri-State

52. In response, Public Service and Tri-State argue that the ALJ was well within her discretion to allow Mr. Wolfson to change his written testimony, which is a common practice at the Commission. The utilities also contend that Trinchera Ranch's allegations of undue influence or improper communications leading up to the withdrawal of testimony have no basis. Tri-State adds that any questioning regarding the decision by GEO to withdraw pre-filed testimony would have likely intruded upon privileged information, such as the deliberative process privilege.

(3) Discussion

53. We find that the record supports the ALJ's ruling regarding the pre-filed withdrawn testimony of Mr. Wolfson. Mr. Wolfson, on behalf of GEO, was within his prerogative to withdraw his pre-filed testimony. We agree with Public Service and Tri-State that

Trinchera Ranch did not show anything besides stating its suspicion of undue influence or improper communications. We find that the ALJ was within her discretion in precluding the questioning on this issue. We deny the exceptions filed by Trinchera Ranch on this ground.

e. Trinchera Ranch Additional Exception 9, Exclusion of the Supplemental Testimony of Inez Dominguez

(1) Trinchera Ranch

54. Trinchera Ranch contends that the ALJ erroneously excluded the supplemental testimony filed on February 10, 2010 by Staff witness Mr. Inez Dominguez. Trinchera Ranch argues that Mr. Dominguez could not have filed his supplemental testimony earlier because the testimony directly responded to Public Service's oral testimony, which in turn contradicted the utility's pre-filed testimony regarding the export need for the proposed project.

(2) Public Service and Tri-State

55. In response, Tri-State and Public Service contend that Staff filed its supplemental testimony out-of-time and there was no basis upon which to admit this late testimony. Tri-State adds that Staff, by this supplemental testimony, purported to respond to the evidence relating to Public Service's plans in the San Luis Valley. Public Service discussed these plans in its rebuttal testimony filed on December 2, 2009. Staff was due to file sur-rebuttal testimony on January 18, 2010, but did not do so until February 10, 2010.

(3) Discussion

56. We agree with Public Service and Tri-State that supplemental testimony pre-filed by Mr. Inez Dominguez on February 10, 2010 was not timely. We find that the ALJ was within her discretion in excluding this testimony. We deny the exceptions filed by Trinchera Ranch on this ground.

f. Trinchera Ranch Additional Exception 6, Exclusion of Exhibits 134 to 136

(1) Trinchera Ranch

57. Trinchera Ranch argues that the ALJ erred in excluding Exhibits 134 to 136, the application, testimony, and exhibits filed by Public Service in June of 2010 in Docket No. 10A-377E. The ALJ ruled that these exhibits were not necessary to cross-examine Public Service's witness Ms. Karen Hyde concerning her testimony that nothing in the proposed ERP amendment changed Public Service's plans with respect to the acquisition of renewable resources in the San Luis Valley. In its exceptions, Trinchera Ranch argues that the record was reopened to consider the impact of the application to amend on the need for the proposed project, that these excluded exhibits would have clarified the record, and are relevant.

(2) Public Service and Tri-State

58. In response, Public Service and Tri-State argue that the ALJ was well within her discretion to exclude Exhibits 134 to 136. The ALJ ruled that it was unnecessary to have a final Commission decision on the ERP amendments proposed by Public Service in Docket No. 10A-377E before proceeding with the reopened evidentiary hearing in this case. Instead, for purposes of this docket, the ALJ ruled that it is sufficient to consider the parameters of solar thermal and photovoltaic (PV) solar resources as set forth in the application (the floor or low end) and as set forth in the final Commission decision in Docket No. 07A-447E (dealing with Public Service's 2007 ERP) (the ceiling or high end).[2] Decision No. R10-0486-I, mailed May 17, 2010. The ALJ also ruled the purpose of the reopened evidentiary record was to consider the *effect* of granting the application filed in Docket No. 10A-377E on the need for the

[2] Decision No. C09-1257 (Phase II Decision), mailed November 6, 2009.

proposed transmission line, not the *motivation* of Public Service for filing this application. Hearing Transcript, July 26, 2010, at p. 20, lines 14-17.

(3) Discussion

59. We find that the record supports the ALJ's ruling regarding Exhibits 134 to 136. The ALJ found that Trinchera Ranch could rebut Public Service's claim that the application to amend did not change its plans for solar acquisitions in the San Luis Valley in the long term by cross-examining Ms. Hyde and that the excluded exhibits were not necessary to be able to do so. Hearing Transcript, July 26, 2010, at pp. 41-42. We agree with the ALJ that Exhibits 134 to 136 were cumulative and strayed outside the scope of the record (*i.e.,* focused on the motivation of Public Service for filing the application to amend, instead of the effect, if any, of the application on the need for the proposed transmission line). Hence, we find that the exclusion of Exhibits 134 to 136 did not affect the substantial rights of Trinchera Ranch. We find that the ALJ was within her discretion in excluding these proffered exhibits. We deny the exceptions filed by Trinchera Ranch on this ground.

G. Trinchera Ranch Exceptions, Present and Future Need for the Project

1. Legal Standard for Future Need, Trinchera Ranch Exceptions 27 and 28

a. Trinchera Ranch

60. In Exceptions 27 and 28, Trinchera Ranch argues the standard articulated by the ALJ to show future need is wrong as a matter of law and that prior Commission decisions relying on this standard are inapplicable. In the Recommended Decision, at ¶ 464, relying on a previous Commission decision, the ALJ found that "…when consideration of future events is involved, evidence demonstrating a substantial possibility that a future event will occur is sufficient to support a decision." Trinchera Ranch contends substantial possibility that a future event will

occur is not sufficient to support a decision. It also argues that the statutes enacted as part of the New Energy Economy did not change the legal standard for proving need in § 40-5-101, C.R.S. It states that lowering the legal standard to show need in this way is unreasonable, arbitrary, and contrary to the public policy since it would effectively allow Public Service to build transmission projects at its whim and reap significant returns on the investment.

b. Public Service and Tri-State

61. In response to Exceptions 27 and 28, Public Service agrees with the ALJ's ruling that absolute certainty with respect to future export need is not needed to justify a Commission decision and that substantial possibility is sufficient. Public Service agrees with the ALJ's (and the Commission's) reliance on *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663, 666 (Colo. 1980), and other Colorado Supreme Court cases in support of that proposition. Public Service further argues that the finding that a substantial possibility with respect to future events is sufficient to justify a Commission decision is especially appropriate in light of the forward-looking public policies behind SB 07-100, that is, that transmission lines should be developed to serve ERZs before beneficial resources are built. Public Service contends that the ALJ appropriately relied on the guidance expressed by the Commission in Decision No. C09-1004, mailed September 14, 2009—that the public policies behind SB 07-100 can be considered as a factor in determining need and that the lack of contracts for generation resources does not by itself establish a lack of need for a transmission line.

62. For its part, Tri-State generally agrees with the ALJ and Public Service that the "substantial possibility" standard is proper when considering evidence of future export need and that Trinchera Ranch does advocate just in time transmission.

c. Discussion

63. Regarding the type of evidence that is sufficient to support a future export need, Trinchera Ranch and other parties agree that resources authorized by an electric resource plan are sufficient evidence (Trinchera Ranch Exception 21). Therefore, the disputed issue is to what extent can evidence other than "hard evidence" (evidence showing that existing generation, or generation that is certain to be constructed, will interconnect with the proposed project) support a future export need? This ties in to the overarching policy issues in this docket, which are how far into the future can the Commission look in determining whether there is need for a transmission line and the extent to which the policies espoused by SB 07-100 of building transmission ahead of generation apply to this case. Stated another way, the issue is whether the ALJ and the utilities are correct that statutory changes and public policies can be a factor in determining whether there is an export need for the project and that substantial possibility of future export need is sufficient.

64. In Decision No. C09-0886, mailed August 12, 2009, at ¶ 25, the Commission ruled that SB 07-100, codified at § 40-2-126, C.R.S., does **not** apply to this docket. That said, in Decision No. C09-1004, at ¶¶ 11-12, the Commission clarified that the presence or absence of contracts by a utility for particular generation resources does not by itself establish the need for a transmission line or lack thereof. The Commission also stated that its finding that § 40-2-126, C.R.S., does not apply to this docket does not mean that Public Service's obligation to meet RES cannot be considered as a factor in determining whether there is a need for the proposed transmission project. The Commission clarified that the general legislative policy directives

related to development of renewable energy, such as those found in § 40-2-123, C.R.S., may be considered as a factor in determining need.[3]

65. The ALJ interpreted the policies behind SB 07-100 as an attempted solution for the transmission constraints associated with the development of renewable generation resources and the timing mismatch between construction of renewable resources and transmission facilities necessary to move them to load (the so-called "the chicken and the egg dilemma"). The ALJ also cited § 40-5-101(4), C.R.S., which establishes the transmission rate adjustment clause. The express purpose of that provision, enacted as part of SB 07-100, is "to provide *additional encouragement* to [rate-regulated] utilities *to pursue the construction* and expansion *of transmission facilities*…" (emphasis supplied). The ALJ concluded that the legislative intent of SB 07-100 was to encourage construction of transmission facilities, including those needed to deliver renewable generation resources from ERZs to load, even in the absence of "hard evidence." Recommended Decision, at ¶¶ 452-455. The ALJ found that, taken together, these statutes and policies encourage the construction of transmission to designated ERZs in advance of the construction of renewable resources to foster the development of these resources and rejected the "hard evidence" approach advocated by Trinchera Ranch. *Id.*, at ¶¶ 456-458.

66. We find the ALJ appropriately relied on the guidelines issued by the Commission in Decision No. C09-1004 and correctly applied the policies surrounding SB 07-100 to this case.

[3] Further, the Commission finds that: (1) SB 07-100 did not change the legal standard for granting a CPCN for construction of transmission facilities; and (2) the Commission had the ability to consider the policies behind SB 07-100 as a factor in determining present or future need for a transmission line even in the absence of the legislation. Rather, SB 07-100 clarified the authority that the Commission already had, with respect to the lines such as this one that do not meet the procedural requirements of the statute. Section 40-2-126(3)(b), C.R.S., states the Commission shall grant a CPCN if it finds that the present or future public convenience and necessity require such construction or expansion of transmission facilities. Section 40-5-101, C.R.S., which generally governs CPCN applications, has similar language. The difference is that, if the Commission finds that certain additional SB 07-100 requirements are met (which was not the case here), then the 180-day time clock for rendering a Commission decision applies.

She also appropriately relied on prior Commission decisions for the proposition that, when the consideration of future events is involved, substantial possibility that a future event will occur is sufficient to support a Commission decision. Recommended Decision, at ¶ 464, *citing* Decision No. C10-1149, Docket No. 08A-407CP, mailed October 26, 2010. As we stated in Decision No. C10-1149, the Commission bases its decisions on substantial possibilities in many different contexts and that some level of prediction is inherent in making a decision that will affect future conditions. Decision No. C10-1149, at ¶ 20. We agree with Public Service and Tri-State that the fact that both Decision No. C10-1149 and *Mobile Pre-Mix Transit* involved motor vehicle carriers and are factually distinguishable from this case is not relevant. In particular, we agree with Tri-State that the substantial possibility standard is a sensible compromise between hard evidence and unsupported speculation. We agree with the ALJ's legal conclusions on this point. We deny the exceptions filed by Trinchera Ranch on these grounds.

2. Trinchera Ranch Exceptions 1, 7, 8, and 26, Reliability Need

67. The ALJ discussed the undisputed, identified, and long-standing reliability issues in the San Luis Valley, the area south and southeast of Pueblo and Walsenburg, and northeastern New Mexico. The ALJ found that these reliability issues can and have resulted in load shedding and affect Public Service's customers, Tri-State, and customers served by Tri-State's members. The ALJ found that existing transmission facilities are inadequate to address these reliability issues. The ALJ found that the proposed project would address the reliability issues by creating looped transmission infrastructures and, specifically, that the San Luis Valley-Calumet segment is critical to creating the looped transmission by connecting San Luis Valley with Comanche and Walsenburg via the Calumet substation. She concluded that the utilities met their burden of proof that there is a present or future need for the proposed project, including the San Luis Valley-

Calumet segment, to address the reliability issues. Recommended Decision, at ¶¶ 460-462. We agree with the ALJ's conclusion on these issues and her reasoning in support of this conclusion.

68. In its exceptions, Trinchera Ranch disputes several factual findings made by the ALJ, which supported her findings and conclusions. We address these arguments individually below.

a. Trinchera Ranch Exception 1, Argument that Load is Not Shed Every Time the 230 kV Line Trips

69. Trinchera Ranch disputes the statement contained in ¶ 119 of the Recommended Decision, that "[w]hen the jointly-owned 230kV line trips off, Tri-State must shed load because it has no transmission rights on PSCo's 115kV line." Trinchera Ranch argues this is not always the case and that load is shed only if the load in the San Luis Valley exceeds 65 MW and the 230 kV line is out of service. Trinchera Ranch further contends that the ALJ did not recognize that: (1) there has not been a load shedding event in the San Luis Valley for more than seven years; (2) the 230 kV line has been out of service for an average of only one minute per year over the last five years; and (3) the load in the San Luis Valley is below 65 MW for nearly 80 percent of the year. Trinchera Ranch concludes that the ALJ incorrectly concluded that load is being regularly shed when the evidence establishes the opposite.

70. In response, Public Service cites ¶¶ 123, 269, and 271 of the Recommended Decision, where the ALJ specifically discussed the possibility of partial or total black-out if an outage of the 230 kV line occurs when the total San Luis Valley load exceeds 65 MW. The ALJ was also aware of how often the 230 kV line was out of service and how often the San Luis Valley load exceeded 65 MW. Public Service argues that the ALJ correctly determined that

the risk of voltage collapse has increased over time. For its part, Tri-State states that the ALJ's conclusions are supported by the record and provides numerous citations to the record discussing the 65 MW threshold.

71. We agree with Public Service and Tri-State that the ALJ was aware of the 65 MW threshold for load shedding in the event the 230 kV line trips off, even if she did not mention it in the same paragraph. The ALJ was also aware of how often both events occur and we agree with her conclusion that the risk of voltage collapse has increased over time. We deny the exceptions filed by Trinchera Ranch on this ground.

b. Trinchera Ranch Exception 7, Evidence that Load will Continue to Increase in the San Luis Valley

72. Trinchera Ranch takes exception to the statements contained in ¶¶ 272 and 273 of the Recommended Decision that the San Luis Valley load will increase in the future. Trinchera Ranch contends this conclusion is contrary to the evidence and that Public Service's demand and energy forecasts have been revised downward on multiple occasions.

73. In response, Tri-State contends that the record evidence indicates a historic load growth in the San Luis Valley. Tri-State states that the load exceeded 65 MW 15 percent of the time in 1995 and 23 percent of the time in 2007, when a combined peak load for Public Service and Tri-State was 120 MW. Tri-State argues that recent revisions to Public Service's statewide forecasts are immaterial. It expects the San Luis Valley load to grow, while transmission lines serving the San Luis Valley now are at capacity and unable to handle single contingency conditions. Tri-State response to exceptions, p. 6, and record references cited therein.

74. We agree with Tri-State that the record evidence is sufficient to support the conclusion of load growth in the San Luis Valley and the substantial probability that the load will

increase in the future. The evidence also supports a conclusion that the transmission lines now serving the San Luis Valley are at capacity. We deny the exceptions filed by Trinchera Ranch on this ground.

c. Trinchera Exception 8, Argument that there is no Evidence that the Existing Transmission System in the San Luis Valley May Violate Mandatory Reliability Standards in the Future

75. Trinchera Ranch points out that in ¶ 274 of the Recommended Decision, the ALJ notes "the existing situation in the San Luis Valley violates no mandatory reliability standards." Trinchera Ranch does not disagree with that statement, but disagrees with the ALJ's finding that this situation may change in the future. Trinchera Ranch argues that no evidence in the record alludes to a future change in mandatory reliability standards.

76. In response, Tri-State argues that Trinchera Ranch ignores the trends in regulatory standards. It further states that the record does support a finding that future revisions of the North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) standards may lead to a violation in the San Luis Valley. Tri-State further contends that the NERC and WECC reliability standards are only the minimums and that doing just enough to satisfy them is not acceptable to the Applicants. Tri-State states that the Applicants are interested in a robust, looped system to resolve reliability concerns and to export renewable resources out of the San Luis Valley, not "a race to the bottom."

77. We agree with Tri-State that the record evidence is sufficient to support the ALJ's finding of substantial possibility that the situation in San Luis Valley may violate reliability criteria in the future. We find that the record supports such forward-looking statements, based, in part, on the trends in regulatory standards referenced by Tri-State. We also agree with Tri-State

that utilities are not limited to meeting the minimum reliability standards. We deny the exceptions filed by Trinchera Ranch on this ground.

d. Trinchera Ranch Exception 26, Overbuilt Argument Relates to Both Needs

78. Trinchera Ranch takes exception to the ALJ's characterization of its argument that the project is over-built as "rest[ing] on the assumption that the sole need for the project is the export need." Recommended Decision, n. 291, ¶ 462, n. 298, ¶ 470. Trinchera Ranch states that it has argued that the line is overbuilt as to both needs and that a single circuit line out of the San Luis Valley would cure the claimed reliability need.

79. In response, Public Service claims that the argument that reliability issues would be cured by a single circuit line ignores the fact that the project creates a looped transmission system as well as the benefits associated with a joint project. For its part, Tri-State adds that Trinchera Ranch ignores other aspects of transmission planning. Tri-State argues that excess capacity for future resource development is consistent with the public policy. Tri-State further contends that the transmission planning requires a balance between reliability, line size, capacity, and cost and that the proposed project is the preferred solution for a variety of reasons. Tri-State characterizes Trinchera Ranch's argument as a "divide and conquer" approach and argues that the Commission should reject it.

80. To the extent that Trinchera Ranch wishes to clarify its position that the proposed project is an overbuild with respect to both reliability and export needs, we note it to be the case. However, we disagree with its position on this issue. We agree with Public Service and Tri-State that there are many aspects to transmission planning and that sizing a transmission line to match only the most immediate needs is not necessarily the preferred solution. We find that the record

supports the ALJ's finding that the line is justified by the reliability need. We deny the exceptions filed by Trinchera Ranch on this ground.

3. Trinchera Ranch Exceptions 4, 9, 10, 12, 13, 15, 16, 20, 34, and 36(i), Export Need

81. In its exceptions, Trinchera Ranch disputes several findings made by the ALJ, all supporting her ultimate conclusion that the project is needed to export renewable resources. We address these arguments individually below.

a. Trinchera Ranch Exceptions 4 and 36(vi), Tri-State Export Need

82. Trinchera Ranch contends that the ALJ erroneously concluded in ¶¶ 221, 223, and 467(a) of the Recommended Decision that Tri-State needs the proposed line to export renewable generation to satisfy RES requirements. Similarly, it states that the ALJ faults Trinchera Ranch for failing to establish its alternatives could help Tri-State meet its export needs. Trinchera Ranch argues that Tri-State testified that it has no present need for the line beyond reliability. Trinchera Ranch argues that any testimony on future renewable resource acquisitions by Tri-State was speculative and cannot establish export need.

83. In response, Tri-State acknowledges it has no present need in the San Luis Valley for export. However, it argues that its members in Colorado and New Mexico are subject to RES requirements and that it has an anticipated export need. Tri-State argues that the project will give it flexibility and capacity to incorporate the renewable resources located in the San Luis Valley and elsewhere into its generation portfolio to meet these future needs as they develop. Tri-State cites to the testimony of its witness Mr. Joel Bladow in support of this argument.

84. We agree with Trinchera Ranch that Tri-State's anticipated export need is not the primary need for the proposed project. However, we find that the ALJ appropriately considered

this need as one of the *factors* in her overall conclusion that the Applicants established a present or future need for the line. We deny the exceptions filed by Trinchera Ranch on this ground.

b. Trinchera Ranch Exceptions 9, 20, 34, Existing Transmission Capacity

85. Trinchera Ranch disputes the several findings made by the ALJ pertaining to the existing transmission capacity out of the San Luis Valley. First, Trinchera Ranch points to ¶ 290 of the Recommended Decision where the ALJ states that "[a]ny significant development of new electric generation in ERZ 4 and ERZ 5 requires the expansion of transmission capacity between southern Colorado and the Denver Metropolitan area load center." Trinchera Ranch argues that this finding is not in accordance with the record and does not recognize the 160 MW of new generation that can be added in ERZ 4 without transmission upgrades; the additional 25 MW of new generation that can be added with only minor upgrades; the additional 525 MW of new generation that can be added by implementing a Remedial Action Scheme (RAS) to curtail generation during peak loads; and the new generation in ERZ 5 that can be accommodated at or near the Comanche Substation.

86. Next, Trinchera Ranch objects to ¶ 329 of the Recommended Decision, where the ALJ states that "[t]he existing transmission facilities cannot export more than 65 MW, and then only during light load conditions, from the San Luis Valley." Trinchera Ranch contends that the existing transmission facilities can export 160 MW from ERZ 4 without transmission upgrades, an additional 25 MW of new generation with only minor upgrades, and an additional 525 MW of new generation with a RAS.

87. Finally, Trinchera Ranch disputes the finding made in ¶ 468 of the Recommended Decision, where the ALJ states that because there is no transmission connecting ERZ 4 and

ERZ 5 to the Denver metro load center, there is a substantial possibility that any generation developed in ERZ 4 and ERZ 5 will use the project to export energy to the Denver metro load center and to other areas in Colorado. Trinchera Ranch states that multiple lines currently connect ERZs 4 and 5 to the Denver metro load, owned either by Public Service, Tri-State, or the Western Area Power Administration. Trinchera also argues that the existing transmission facilities can export the above mentioned amounts of new renewable generation.

88. In response, Public Service states the ALJ was aware of the generation amounts discussed by Trinchera Ranch, as is reflected in ¶¶ 305 and 330 of the Recommended Decision. Public Service contends that the disagreement between Trinchera Ranch and the ALJ appears to be over the meaning of the word "significant." Public Service also points out the ALJ concluded that a RAS is not acceptable for transmission lines serving solar thermal with storage facilities because these facilities will be depended on to meet peak load, which conclusion was well within her discretion. Public Service reiterates that a RAS is not an acceptable long term solution to increasing export capacity.

89. Public Services opines that the reference to 65 MW in ¶ 329 of the Recommended Decision is a harmless typographical error. Public Service believes that the 65 MW refers to the voltage collapse risk when the load in the San Luis Valley exceeds approximately 65 MW. Public Service states that the reference in ¶ 329 should be to "185 MW with minor transmission improvements."

90. Public Service further argues that the ALJ did not conclude that no transmission lines are available but that transmission export capacity was inadequate. Public Service finally argues that the fact that certain transmission lines now connect ERZs 4 and 5 and the Denver load center does not mean there is Available Transfer Capacity (ATC) on these lines.

91. Regarding Exceptions 9 and 34, we agree with Public Service that the ALJ was aware of the now available transmission export capacity, as is stated in ¶¶ 305 and 330 of the Recommended Decision. The ALJ appropriately took that information into consideration in concluding that, at present, existing transmission infrastructure was insufficient to accommodate "significant" levels of renewable generation development in ERZs 4 and 5, or that over 185 MW. We also agree with the ALJ and Public Service that a RAS is not an appropriate long term solution for N-1 contingencies (events involving loss of one transmission system element) for transmission lines that serve solar thermal with storage facilities. We find the conclusions reached by the ALJ are well supported by the record, and we agree with these conclusions. We deny Trinchera Ranch Exceptions 9 and 34 on these grounds.

92. Regarding Exception 20, we find that ¶ 329 of the Recommended Decision should have referred to 185 MW with minor transmission improvements rather than 65 MW. We correct this typographical error and thus grant the exception. However, we also find that this error is harmless.

c. Trinchera Ranch Exception 37, Wind Export Need

93. Trinchera Ranch disputes the conclusion reached by the ALJ in ¶ 524, n. 313 of the Recommended Decision that any decrease in solar acquisition and shift in emphasis to wind will make the proposed project (including the Calumet Substation, the Calumet-Comanche segment, and the Calumet-Walsenburg segment) more important because it would allow for the delivery of more wind generation from ERZ 5 to serve load. Trinchera Ranch argues that this conclusion is contrary to the evidence because the connection between ERZs 4 and 5, one of the alleged benefits of the project, actually makes it less effective for purposes of delivery of wind generation from ERZ 5. It concludes that a northern alternative (*i.e.*, a transmission line running

north out of the San Luis Valley Substation), which does not connect the two zones, would be superior for purposes of wind delivery.

94. In response, Public Service refers to the testimony of its witness Mr. Tom Green that one of the purposes of the project is to connect ERZs 4 and 5 in order to increase reliability. This would result in two sources of power going into the San Luis Valley and would not interfere with TOT 5.[4] Further, a northern alternative would eliminate Tri-State's interest in the project as well as the cost-sharing benefits of a joint line.

95. We find that the record evidence is sufficient to support the ALJ's finding that any increase in wind acquisition will make the proposed project more important. This is because all of the segments of the project are part of the whole and, without any one segment, the project is not likely to proceed as a joint project, if at all. We also agree that a northern alternative such as that offered by Trinchera Ranch would jeopardize the possibility of a joint project and would increase the costs that will be incurred by both Public Service and Tri-State, as well as the end customers of these utilities. We deny the exceptions filed by Trinchera Ranch on this ground.

d. Trinchera Ranch Exceptions 10 and 12, Known Potential Projects

96. Trinchera Ranch disputes the levels of renewable generation resources relied on by Public Service to justify the short-term need for the line. First, Trinchera Ranch takes exception to ¶ 291 of the Recommended Decision, where the ALJ states that new transmission to ERZs 4 and 5 is consistent with Public Service's 2007 ERP. Trinchera Ranch argues that this

[4] As the ALJ noted in n. 93 of the Recommended Decision, TOT is the total of the transmission. Exhibit 130 is a map of the TOTs in Colorado and shows the transmission lines (and the size of each line) that make up each TOT. TOT 5 is "a monitored path of transmission lines and transformers that transfer power from the west slope of Colorado, where large generation resources are located, to the east slope of Colorado, where most of the state's loads exist." Exhibit No. 33 at Exhibit JRD-6 at 22. The principal power flow across TOT 5 is west to east, and the transfer capability limit of TOT 5 is 1,680 MW from west to east. Exhibit 130.

statement does not take into account the application to amend the 2007 ERP, which Public Service filed with the Commission. The application proposes to significantly reduce the levels of renewable resources that would be acquired under the 2007 ERP. The first proposed amendment, filed in June 2010, would limit new resources in ERZ 4 to 185 MW at most, which can be accommodated by the existing transmission line with minor upgrades. The second proposed amendment, filed in November 2010, would limit new generation resources to 60 MW. Second, Trinchera Ranch disputes the statement in ¶ 297 of the Recommended Decision that Blue Diamond Ventures/FreedomWorks Joint Venture, LLC (Blue Diamond), an intervenor in this proceeding, is developing a new wind energy facility that will interconnect at the San Luis Valley Substation. Trinchera Ranch argues that, in making that statement, the ALJ relied on representations in Blue Diamond's intervention, which are not evidence.

97. In response, Public Service argues that the ALJ was referring to the original levels of renewable generation approved by the Commission in the 2007 ERP. Public Service contends that its proposed amendments to the ERP do not undermine the need for transmission to ERZs 4 and 5 because the proposed amendments are due to the lack of available transmission. Further, Public Service represents that the ALJ's statement concerning Blue Diamond is duplicative of Attachment KTH-4 to Exhibit 4, which shows that Large Generator Interconnection Procedures (LGIPs) interconnection requests in ERZ 4 were 198 MW.[5] Public Service argues that the ALJ's statement concerning Blue Diamond was not a necessary prerequisite to any of her ultimate conclusions related to need for the proposed project.

[5] The Federal Energy Regulatory Commission requires all public utilities that own, control, or operate facilities used for transmitting electric power to maintain standard procedures for interconnecting generating facilities over 20 MW. These procedures are known as LGIPs. The LGIP queue is considered to be a good indication of developer interest in different areas by the utility industry.

98. We find that the finding made by the ALJ in ¶ 291 of the Recommended Decision is supported by the record. We find that the ALJ was referring to the *original* levels of renewable generation approved by the Commission in the 2007 ERP. *See* Decision No. C09-1257, Docket No. 07A-447E, mailed November 6, 2009. The ALJ generally found that the amendments proposed in Docket No. 10A-377E did not affect the need for the proposed project because these were temporary, rather than long-term, reductions. The record evidence is sufficient to support that finding. We also note that, in its filings in Docket No. 10A-377E, Public Service cites the delay with the proposed project as the main reason for these proposed ERP amendments. If this is true (a claim that may be further explored in Docket No. 10A-377E), then allowing temporary reductions in renewable resource acquisitions caused by the delay in the proposed transmission line to undermine the need for the proposed transmission line would be circular and would defeat the purpose of SB 07-100. We deny the exceptions filed by Trinchera Ranch on this ground.

99. We also agree with Public Service that any references to Blue Diamond's project were not prerequisites to any of the ALJ's ultimate conclusions related to need for the proposed project, and specifically potential for wind development in ERZ 4. This is because this finding is supported by independent record evidence. We therefore deny the exceptions filed by Trinchera Ranch on this ground.

e. Trinchera Ranch Exceptions 13, 15, and 16, Renewable Energy Standard Requirements

100. Trinchera Ranch disputes the findings made by the ALJ related to the relationship between the project and the RES requirements that Public Service must meet pursuant to § 40-2-124(1)(c), C.R.S. Trinchera Ranch points out that, in ¶ 311 of the Recommended Decision,

the ALJ found that Public Service does not need the project to meet the RES for the year 2020. Trinchera Ranch argues that Public Service does not need new renewable resources online to meet the RES until 2030, and even then, it has options available that do not involve the project. Trinchera Ranch also disputes the statement contained in ¶ 316, that "Public Service may be able to acquire multiple 30 MW (or less) central solar PV facilities in the San Luis Valley." Trinchera Ranch argues that this statement implies, without any record support, that if Public Service does not acquire significant amounts of solar thermal resources in the San Luis Valley, it can and will acquire significant amounts of solar PV resources. Trinchera Ranch argues this implication is contrary to the evidence because: (1) Public Service presented no evidence of its plans to acquire any, much less multiple, solar PV facilities in the Valley, beyond the two 30 MW facilities contained in the ERP; (2) the solar resources in Denver and Pueblo are superior; and (3) a mere speculation cannot support the grant of a CPCN. Finally, Trinchera Ranch objects to the statement contained in ¶ 317 that Public Service may be able to meet most of its 3 percent distributed generation (DG) set-aside by utility-scale resources because of the way in which DG is defined in the statute. Trinchera Ranch argues that, at most, only half of the 3 percent DG requirement may be met by wholesale DG, whereas non-utility scale DG may meet the entire 3 percent set-aside.

101. Regarding the first objection (Exception 13), Public Service responds that the ALJ is not required to make a finding on every conceivable issue that Trinchera Ranch believes might be helpful to its cause. Public Service also argues that Trinchera Ranch ignores the public policy of acquiring renewable energy to the maximum practicable intent under the 2 percent retail rate impact cap, instead of the bare minimum. Regarding the second objection (Exception 15), Public Service states that the ALJ simply found that Public Service may be able to acquire

multiple 30 MW (or less) central solar PV facilities in the Valley *or elsewhere* and that the record supports this finding. Public Service further argues that the record supports a conclusion that San Luis Valley is well-suited for the development of solar PV facilities. Finally, regarding Exception 16, Public Service contends that the ALJ was aware that, under the statute, only one half of the 3 percent DG set aside requirement may be met by wholesale DG. Public Service argues that Trinchera Ranch ignores the testimony that Public Service can count some of its existing resources towards meeting the DG set-aside. Public Service states that the evidence supports a conclusion that it needs only 32 MW in acquisitions to meet the DG requirement, and that most of that *outstanding* amount can be met with utility-scale resources.

102. We find that the above-mentioned findings made by the ALJ are supported by the record evidence, for the reasons stated by Public Service. Further, we agree with Public Service that it may continue to acquire additional renewable resources even after it meets the RES, if it stays within the 2 percent retail rate impact cap. We also recognize that Public Service needs to acquire only 32 MW of *additional* resources to meet the DG requirement, most of which can be met with utility scale resources. We therefore deny the exceptions filed by Trinchera Ranch on these grounds.

f. Trinchera Ranch Exceptions 14, 19, 30, and 31, the Likelihood of Future Solar Thermal Projects

(1) Trinchera Ranch

103. In Exception 14, Trinchera Ranch takes issue with the ALJ's statement in ¶ 315 of the Recommended Decision that it is highly likely that the solar thermal resources represented by the three 250 solar thermal placeholder units will be developed in the San Luis Valley. Trinchera Ranch argues this statement is not supported by the evidence because:

(1) it is mere speculation that there will be sufficient RESA dollars to acquire these facilities; (2) these resources are not cost-effective; and (3) solar technology is in a state of flux.

104. In Exception 19, Trinchera Ranch disputes the statement contained in ¶ 324 of the Recommended Decision, that "[t]here is a strong probability that a significant amount (*i.e.*, 1100 MW or more) of solar generation will be developed in the San Luis Valley within the next ten years (*i.e.*, by 2020)." Trinchera Ranch argues that this finding is contrary to the evidence given that the three 250 MW solar thermal resources are not likely to be developed by 2020. It argues that the evidence shows Public Service plans to develop only 60 MW of renewable resources in the Valley within the next five years.

105. In Exception 30, Trinchera Ranch argues that the finding of substantial possibility for renewable resource development in ERZ 4 is not in accordance with the evidence. It argues that there is no evidence of any specific plans to develop renewable generation resources in ERZ 4 and that there is nothing remaining other than technical potential.

106. In Exception 31, Trinchera Ranch takes issue with the ALJ's findings in ¶¶ 467 and 585 of the Recommended Decision that Public Service will acquire substantial renewable resources in ERZs 4 and 5 in the next five to ten years if transmission is available to southern Colorado. Trinchera Ranch argues this conclusion is contrary to the evidence, which shows that Public Service will acquire only 60 MW in the San Luis Valley, which in turn does not require new transmission. Trinchera Ranch argues that none of the items of evidence cited by the ALJ is specific to the San Luis Valley. Finally, Trinchera Ranch argues that just because an area is designated as an ERZ does not mean the need for a transmission CPCN has been shown. It argues that lowering the standard for need in this manner is contrary to public policy and the interest of the ratepayers.

(2) Public Service and Tri-State

107. In response, Public Service contends that Trinchera Ranch relies on its myopic view of what evidence may be used to show future need. For example, its witness Mr. James Dauphinais testified that there must be hard evidence showing that the line will be used within two to three years after it is built. Public Service argues that Trinchera Ranch's view is that a utility cannot or should not construct transmission facilities unless they are sized exactly (or nearly so) to meet identified needs. Public Service agrees with the ALJ's characterization of that view as "just in time" transmission planning. It argues that this view ignores the public policies behind SB 07-100 and the fact that transmission lines have a very long life span. Public Service contends that Trinchera Ranch views the evidence of the probability of the development of future renewable resources in the San Luis Valley, which the ALJ relied on to find the need for the project through these "just in time" lenses.

108. Public Service states that Trinchera Ranch uses these "just in time" lenses to gloss over the evidence supporting the above-mentioned conclusions made by the ALJ, including, *inter alia:* (1) Exhibit 139, which shows that Public Service plans to meet its RES requirements with a 250 MW solar thermal facility in each of the years 2016, 2017, and 2018; (2) the testimony that the cost curve for solar thermal and PV is declining; (3) the fact that the costs of the three solar thermal facilities can be accommodated under the RESA, which will turn positive in 2012 or 2015, depending on proxy carbon costs, according to Exhibit 141; (4) the testimony that developers have targeted the San Luis Valley because of its solar potential; (5) the testimony that Public Service is willing to expand its portfolio of solar thermal resources with storage because of dispatchability and because its integration costs are lower than for wind or central solar PV; (6) the significant number of LGIP requests for both ERZs 4 and 5; and

(7) the significant potential for solar generation development. *See* response to exceptions filed by Public Service, pp. 19-21.

109. Finally, Tri-State clarifies the testimony of its witness Mr. Joel Bladow that large scale solar was not sufficiently advanced for Tri-State. Tri-State argues that Mr. Bladow did not imply that such technology could not have significant benefit for Tri-State in the future or that it is presently not beneficial to Public Service.

(3) Discussion

110. We find that the above-referenced findings made by the ALJ are supported by the record. The ALJ found that there is a substantial possibility that considerable renewable resource generation will be developed in ERZ 4 and ERZ 5 within the next five to ten years *and* a substantial possibility that the Applicants will acquire these renewable resources **if** transmission is available. This is a classic case of the "chicken and egg" we referenced before. The ALJ listed several items of evidence to support these findings, which Public Service repeats in its response to exceptions at pp. 19-21. The ALJ also found that failure to construct the project creates a significant risk that renewable energy generation will **not** be developed in ERZs 4 and 5. Recommended Decision, at ¶¶ 466-468. We find that these conclusions are supported by the evidence, when viewed through the appropriate standard for determining future need and when considering the policies of SB 07-100 as factors in such a determination. In Docket No. 07A-447E, the Commission generally found that Public Service may collect and use funds from the RESA to acquire renewable resources beyond what is needed for RES compliance as long as the 2 percent cap is not exceeded. Decision No. C08-0929 (Phase I Decision), Docket No. 07A-447E, mailed September 19, 2008, at ¶ 278. We continue to support and to encourage this position. We further note that Exhibit 141 shows that three 250 MW solar thermal placeholders

can be acquired within the 2 percent cap. In short, we find that the findings made by the ALJ are supported by credible evidence and deny the exceptions filed by Trinchera Ranch on this ground.

H. Trinchera Ranch Exceptions Related to Evaluation of its Northern Alternatives and the Burdens of Proof

1. Exceptions 24, 25, and 35, Burdens of Proof

a. Trinchera Ranch

111. Trinchera Ranch raises several points based on its overall argument that the ALJ incorrectly allocated the burdens of proof among Public Service and Tri-State and the intervenors such as itself. In Exception 25, Trinchera Ranch contends that the Recommended Decision incorrectly removed from the standard for issuing a CPCN, the burden for the Applicants to show that the proposed project is appropriate for the claimed need and that the Applicants studied feasible alternatives before filing CPCN applications.

112. In Exception 35, Trinchera Ranch argues the Recommended Decision incorrectly removes any requirement for the Applicants to study feasible alternatives before filing a CPCN application, instead ruling that an applicant only needs to provide information on the alternatives studied. Trinchera Ranch contends the ALJ incorrectly concluded that an applicant must present information on alternatives studied only if the applicant actually chose to study any alternatives. Trinchera Ranch argues that this holding is contrary to prior Commission precedent, misreads Rule 3102(b)(VIII), 4 CCR 723-3, Rules Regulating Electric Utilities, and is against public interest.[6] Trinchera Ranch concludes that the Recommended Decision results in an inappropriate

[6] Rule 3102(b)(VIII) states that "[a]n 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: […] [a]s applicable, information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate alternatives."

burden shift to the intervenors to study and to prove the feasibility of alternatives.

113. In Exception 24, Trinchera Ranch clarifies it is not requesting a CPCN for one of its alternatives. Instead, Trinchera Ranch states that it introduced evidence of these alternatives into the record to establish that there are feasible alternatives to the proposed project, which evidence demonstrates that the project is not appropriate to the claimed need. Trinchera Ranch argues that the Recommended Decision improperly shifts the burden of proving the feasibility of alternatives presented by Trinchera Ranch to Trinchera Ranch.

b. Public Service and Tri-State

114. In response, Public Service argues that the ALJ correctly allocated the burdens of proof in this proceeding. Public Service further argues that Trinchera Ranch has not proven that its alternatives are feasible or superior to the proposed project. Public Service contends that, even if the alternatives presented by Trinchera Ranch are feasible, the Commission should defer to the Applicants. This is because, among other things, Trinchera Ranch is biased towards protecting its own property interest to the detriment of the property owners that would be affected by one of its alternatives. The utilities, on the other hand, do not have this conflict of interest. Public Service also argues that the Commission is able to grant a CPCN even if two equally reasonable courses of action are open to the Commission, as the reviewing court cannot substitute its judgment for that of the Commission. *See, e.g., City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981). Public Service contends that the utilities indeed studied feasible alternatives, including those presented by Trinchera Ranch, and that the ALJ appropriately recognized this fact in the Recommended Decision. Public Service also states there is no requirement to study alternatives *prior to* filing the CPCN application.

115. Tri-State concurs that the Applicants did study feasible alternatives. Tri-State also argues that, notwithstanding the burden of proof arguments, the Applicants have established by a preponderance of the evidence that the alternatives presented by Trinchera Ranch are inadequate in order to meet the needs of the proposed joint project. Tri-State further argues that Trinchera Ranch mischaracterizes the Recommended Decision when it states that the ALJ found that the Applicants need to present information on the alternatives studied only if they choose to do so. Tri-State argues that what the ALJ actually found is that the Applicants do not need to study *every conceivable alternative* to determine whether that alternative meets the need.

c. Discussion

116. We begin with an overview of the applicable burden of proof principles. In this docket, the Applicants, as the parties seeking an order by the Commission, bear the burden of proof with respect to the relief sought by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500, 4 CCR 723-1. The evidence must be "substantial evidence," which is defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *See, e.g., City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 585 (Colo. 1997)). This standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. If an intervenor advocates that the Commission should adopt its position (for example, that a condition be placed on the CPCN), then that intervenor must meet the same preponderance of the evidence burden of proof with respect to its advocated position.

117. Therefore, to the extent that Trinchera Ranch was recommending in this docket that one of its alternatives should be built instead of the proposed project, it would then bear the burden of proof by a preponderance of the evidence with respect to such alternatives. However, to the extent that it was only presenting evidence of its alternatives to establish that the project is inappropriate given the facts and circumstances of this case, then it does not bear the burden of proof with respect to these alternatives. Because Trinchera Ranch has clarified in its exceptions that it was not requesting that the Commission issue a CPCN for one of its alternatives and presented these alternatives only to establish that the Commission should not grant a CPCN for the proposed project, it does not bear the burden of proof on these alternatives. The Recommended Decision is consistent with our discussion here.

118. In the Recommended Decision, the ALJ stated that Public Service and Tri-State, the Applicants in these dockets, did study alternatives to the proposed project and provided evidence concerning their evaluations. The ALJ, therefore, did not need to determine if Rule 3102(b)(VIII) permitted the utilities to choose not to evaluate alternatives. Recommended Decision, at ¶¶ 479, n. 302, 486, 488. Therefore, even if Trinchera Ranch is correct that Public Service and Tri-State must study feasible alternatives to the project and that Rule 3102(b)(VIII) only lists the types of information that must be included in a CPCN application, we find that the ALJ did not remove the burden of studying feasible alternatives from the Applicants. We will discuss below the specific contentions that the studies conducted by the Applicants were deficient.

119. For purposes of this proceeding, to meet their burden of proof with respect to the requested CPCN to construct and operate the proposed project, Public Service and Tri-State must show by a preponderance of the evidence: (1) that there is a present or future need for the

project; and (2) that the existing facilities are not reasonably adequate and available to meet the need. Section 40-5-101(1), C.R.S. In addition, for purposes of this proceeding, Public Service and Tri-State must study *feasible* alternatives to the proposed transmission facility. We agree with Tri-State that the Applicants need not study *every conceivable* alternative.

120. We find that the ALJ properly allocated the burden of proof in this case between Trinchera Ranch and the Applicants. The ALJ discussed *both* whether the Applicants have met their burden of proof with respect to the proposed project, including an evaluation of the feasible alternatives, *and* whether Trinchera Ranch met its burden of proof *in the event* it was advocating that one of its alternatives should be built instead of the proposed project (as it was not clear to the ALJ which position Trinchera Ranch was taking). Recommended Decision, at ¶¶ 481-88 and 491-93.

121. The ALJ concluded that there is a present or future need for the proposed project, both with respect to reliability and export of renewable resources. Recommended Decision, at ¶¶ 460-470. The ALJ further concluded that the Applicants have studied feasible alternatives to the proposed joint project. *Id.*, at ¶¶ 477-488. We will discuss whether we agree with these findings below, but we disagree with Trinchera Ranch that the ALJ incorrectly allocated the burdens of proof between itself and the Applicants. We deny the exceptions filed by Trinchera Ranch on this ground.

2. Exceptions 2 and 36, Evaluation of Trinchera Ranch Alternatives

a. Exception 2, Involvement of Public Service in the Project

122. Trinchera Ranch disputes the statement contained in ¶ 161 of the Recommended Decision that the origin of Public Service's involvement in the project goes back to the 1997, the 2004, and the 2008 studies. Trinchera Ranch argues that this statement incorrectly implies

Public Service's transmission planners had some knowledge of these earlier studies. Trinchera Ranch argues that Public Service's two primary transmission planners have not read or analyzed these earlier studies. Trinchera Ranch states that Public Service, like Tri-State, started its involvement in the project with the presumption of an east-west line and did not consider a single northern alternative[7] before filing its CPCN application.

123. In response, Public Service states the ALJ correctly described the 1997, 2004, and 2008 studies and the participation of Public Service in these studies in ¶¶ 120, 126, and 135 of the Recommended Decision. Public Service argues the ALJ's statement in ¶ 161 is neither incorrect nor misleading.

124. For its part, Tri-State states that, while it took the lead on certain earlier studies, both utilities participated and that Trinchera Ranch's focus on the fact that two Public Service transmission planners did not read certain studies is misplaced. For example, the 1997 study was a joint study in which Public Service was a participant. Tri-State further argues that the Applicants did not begin their involvement in the project with the presumption of an east-west line. To the contrary, according to Tri-State, Trinchera Ranch admitted the studies done by the Applicants examined alternatives similar to the northern alternatives advanced by Trinchera Ranch.

125. We find that whether or not particular individuals within Public Service have read or analyzed the earlier studies is immaterial. We find that the record supports the ALJ's finding that Public Service as a company was aware of the earlier studies performed by Tri-State which identified the San Luis-Calumet-Comanche route as the best solution to address the reliability

[7] As used in this Decision and unless the context indicates otherwise, the reference to one or more northern alternatives is to a transmission line to be built out of the San Luis Valley Substation and to the north (*i.e.,* to the Poncha area).

issues in the San Luis and Walsenburg areas. We find that the record also supports the ultimate conclusion reached by the ALJ that the Applicants met the requirement of studying feasible alternatives to the proposed project. We deny the exceptions filed by Trinchera Ranch on this ground.

b. Exception 36(i), Argument that Trinchera Ranch Alternatives Provide More than a Marginal Increase in Reliability to the San Luis Valley

126. Trinchera Ranch disputes the statement contained in ¶ 435 of the Recommended Decision, where the ALJ notes that "neither [applicant] is interested in marginally increasing the reliability of the southern Colorado electric transmission system, which is the level of reliability improvement provided by the Trinchera Ranch alternatives." Trinchera Ranch contends that its alternatives do much more than marginally increase system reliability in the San Luis Valley and that Tri-State and Staff acknowledge this. Trinchera Ranch points out that for example, Tri-State has admitted that a northern alternative would be acceptable to provide a second source of power into the San Luis Valley.

127. In response, Tri-State argues that even though a northern alternative may have minimally met the purpose of its original 2004 study, it was not the optimal solution for that need. Tri-State further argues that the purpose of the 2004 study was to address the risk of voltage collapse in the San Luis Valley, while the proposed project has a double purpose: to increase transmission system stability and to accommodate more generation in the San Luis Valley and Walsenburg areas. Tri-State contends that a northern alternative such as TR1AE would only marginally increase reliability in the San Luis Valley because it contemplates a radial line that provides a single source of power. On the other hand, the proposed project provides a second source of power and establishes a looped transmission system into the San Luis Valley.

Tri-State concludes that, compared to the multiple, comprehensive benefits of the proposed project, the northern alternatives provide only a marginal increase in reliability in the San Luis Valley.

128. The specific statement cited by Trinchera Ranch is not a finding made by the ALJ. Rather, in ¶ 435 of the Recommended Decision, the ALJ merely summarized the position held by Public Service and Tri-State. Further, the focus of Exception 36(i) appears to be on the use of the word "marginal." We agree with the ALJ's finding in ¶ 461 of the Recommended Decision that the proposed project creates a looped transmission system, uses separate corridors to create a second source of power, and improves reliability to the Walsenburg area and the San Luis Valley. We agree with the Applicants that these findings are well-supported by the record. We agree with Trinchera Ranch that its northern alternatives would improve reliability, but we also agree with the ALJ's ultimate conclusions that: (1) the proposed project is superior to northern alternatives because it will improve reliability to a greater extent and will meet other purposes, such as export need; and (2) the Applicants have met their burden of proof with respect to the proposed project. We deny the exceptions filed by Trinchera Ranch on this ground.

c. Exception 36(ii), Reliability and Transient System Stability Analyses of Trinchera Ranch Alternatives

129. Trinchera Ranch disputes the finding contained in ¶ 492 (a) of the Recommended Decision, where the ALJ stated that "Trinchera Ranch did not conduct required system reliability and transient system stability analyses of its alternatives." Trinchera Ranch argues this statement is not in accordance with the evidence as its witness Mr. James Dauphinais did perform both system reliability and transient stability analyses for all of the northern alternatives, including a power voltage study. Neither Tri-State nor Public Service responded to this exception.

130. We agree with Trinchera Ranch that Mr. Dauphinais performed appropriate power flow and transient stability analyses for the Trinchera Ranch alternatives. We therefore grant Exception 36(ii). However, this does not change our agreement with the ALJ's findings and ultimate conclusions that the project is superior to northern alternatives and that the Applicants have met their burden of proof with respect to the proposed project.

d. Exception 36(iii), Compliance of Trinchera Ranch Alternatives with Mandatory Transmission Planning Rules

131. Trinchera Ranch takes issue with ¶ 492 (b) of the Recommended Decision, where the ALJ states that Trinchera Ranch alternatives "do not comport with Public Service's and with Tri-State's transmission planning policies and practices." Trinchera Ranch argues this finding is not in accordance with the evidence because neither Public Service nor Tri-State has any written policies or practices. Trinchera Ranch further argues there is no evidence that its alternatives fail to comply with any unwritten policies or practices.

132. In response, Public Service argues that the NERC and WECC reliability standards are the minimum reliability standards and that Public Service does not believe it is prudent to rely on a RAS to maintain reliability during peak load conditions. Tri-State concurs and points to the testimony of its witness Mr. Joel Bladow, who stated that Tri-State's board has a looped service policy.

133. Trinchera Ranch is correct in that the Applicants did not introduce any evidence of written policies or practices calling for higher reliability standards than those required by WECC or NERC. However, both Public Service and Tri-State clearly expressed a position that a looped transmission system with access to a second source of power was a preferred means to

address reliability and that it is unacceptable to rely on a RAS to address an N-1 contingency. We agree that the utilities are not limited to meeting only the minimum reliability standards.

134. Trinchera Ranch is also correct in that its alternative TR1AE meets the NERC and WECC minimum standards. However, it does not meet the needs of Public Service and Tri-State with respect to either reliability or renewable generation export.

135. We find that the record supports the ALJ's ultimate conclusions that the proposed project is superior to the northern alternatives and that the Applicants have met their burden of proof with respect to the proposed project. We deny the exceptions filed by Trinchera Ranch on this ground.

e. Exception 36(iv), Argument that Trinchera Ranch Performed Specific Assessment of Its Northern Alternative Even Though there Was no Showing that Its Alternative Would be Sited in Close Proximity to Existing Transmission

136. Trinchera Ranch disputes the finding contained in ¶ 492 (c) of the Recommended Decision, where the ALJ stated that Trinchera Ranch alternatives require the new transmission to be constructed in proximity to the existing transmission. The ALJ further stated that, if there may be a reliability impact from siting a new transmission line in proximity to an existing line, a specific assessment should be done to quantify this impact and that Trinchera Ranch has not done this assessment. In Exception 36(iv), Trinchera Ranch argues that: (1) there is no evidence of reliability impact from siting the northern alternatives because these alternatives can be sited more than 500 feet from the existing transmission; (2) the studies performed by Tri-State found no fatal flaws associated with the northern alternatives; and (3) a fire study performed by Trinchera Ranch showed only a very remote risk of fire, which can be reduced with a modest investment in fire mitigation measures.

137. In response, Tri-State acknowledges that its 2008 study found no fatal flaws with the northern alternatives but argues that Trinchera Ranch misunderstands the purpose of such an analysis. The purpose of a fatal flaw analysis, according to Tri-State, is to determine if there are any insurmountable obstacles and not to look at the actual feasibility of siting and constructing a new transmission line in a given location. Tri-State adds that, between them, the Applicants own three transmission lines that run from the San Luis Valley to the Poncha area and are familiar with this area. Tri-State argues that the evidence indicates there are several challenges associated with siting and constructing TR1AE, such as fire susceptibility; wildlife refuges, and residential areas, among others. Tri-State concludes that, even if TR1AE can be built and constructed, these challenges will contribute to its costs, which Trinchera Ranch did not consider. For its part, Public Service points out that the fire study performed by Trinchera Ranch looked at less than 10 percent of the length of the proposed TR1AE.

138. We agree with Tri-State that just because the 2008 study found no fatal flaws with the northern alternatives does not necessarily mean such alternatives are feasible. The ALJ found the testimony of Public Service and Tri-State witnesses regarding obstacles associated with siting and constructing TR1AE to be credible. We find that this credibility assessment is supported by the record. Between them, Public Service and Tri-State own three transmission lines that go from the San Luis Valley to the Poncha area and are very familiar with this area. We also note that the testimony of Trinchera Ranch witness Mr. Dauphinais that a northern alternative could be cited more than 500 feet away from the existing line is unsubstantiated. Mr. Dauphinais testified he did not perform any siting studies and, therefore, provides no basis for this statement.[8]

[8] Hearing Transcript, February 10, 2010, p. 152.

139. We find that the findings made by the ALJ are supported by the record and deny the exceptions filed by Trinchera Ranch on this ground. These findings also do not change the ALJ's ultimate conclusion that the applicants have studied feasible alternatives to the proposed project, such as the northern alternatives, and that the proposed project is superior to these alternatives because it better meets their joint goals.

f. Exception 36(v), TOT 5 and Other Studies

140. Trinchera Ranch disputes the statement made by the ALJ in ¶¶ 492(d) and 426 of the Recommended Decision that Trinchera Ranch did "not examine the impact of its alternatives on, or interaction of its alternatives with, TOT 5." Trinchera Ranch states that Public Service did not do such a study for its own project even though it has potential TOT 5 impacts. It states that a last minute "review" that Public Service conducted on this issue was not sufficient. Trinchera Ranch generally contends that the Applicants did not perform the necessary studies relating to transient stability, simultaneous generation, power flow, or the impact of the proposed Lamar-Comanche line. Trinchera Ranch finally argues the studies that the Applicants did perform were incomplete or manipulated.

141. In response, Public Service contends that TOT 5 impacts are much more likely to affect the northern alternatives than the proposed project, according to the testimony of its witness Mr. Tom Green. This is because the terminating points of TR1AE at the Poncha and Malta Substations, the main alternative presented by Trinchera Ranch, are also the terminating points for some of the transmission lines that make up the TOT 5 path. Public Service admits it has not done a comprehensive study but states that, based on its preliminary analyses, the nature of the proposed project is such that it would not have nearly the same impact as TR1AE.

142. The statement that Trinchera Ranch did "not examine the impact of its alternatives on, or interaction of its alternatives with, TOT 5" is just that. Further, the statement is true regardless of whether Public Service did its own study regarding the interaction of the proposed project and TOT 5. We also agree with Public Service that TOT 5 impacts are much more likely to affect the northern alternatives than the proposed project. Regardless, the ALJ's statement on TOT 5 studies does not change the ultimate conclusion reached by the ALJ that the proposed project is superior to the alternatives and that the Applicants have met their burden of proof with respect to the proposed project. We therefore deny Exception 36(v).

g. Exceptions 36(viii) and (ix), Contract Path

143. Trinchera Ranch disputes the findings made by the ALJ in ¶ 492 (f), n. 309 of the Recommended Decision that estimated costs of the northern alternatives to Poncha are understated because Trinchera Ranch did not study the costs associated with using a contract path for its alternatives to Poncha or Malta. Trinchera Ranch contends that it had quantified the contract path costs and found that even considering these costs, its northern alternatives are still significantly cheaper than the project. Trinchera Ranch states that its witness Mr. Mark Clements testified that there are feasible ways to obtain significant amounts of contract path generation to the Front Ranch from both Poncha and Malta.

144. In response, Public Service contends that the record supports the ALJ's findings regarding deficient studies performed by Mr. Clements. Public Service states that Mr. Clements did not actually determine the ATC for any particular path relied upon by Trinchera Ranch and made no effort to do so. Public Service argues that Mr. Clements simply took the thermal capabilities of the lines and added those together. However, he admitted that the thermal limits of a path do not equal its Total Transfer Capability (TTC) because the path must be able to

withstand the loss of a single element while maintaining acceptable voltage and flow on the remaining elements. Then, in order to determine ATC, the committed uses on a path must be subtracted from the TTC. Public Service points out that its witness Mr. Joseph Taylor stated that some of the lines relied on by Trinchera Ranch showed committed use.

145. We agree with Public Service that the contract path analysis performed by Mr. Clements was preliminary in nature and that additional analysis is necessary to determine the firm amount of transmission that could be relied upon and its costs, which would then produce reliable estimates of the costs associated with the northern alternatives. However, even though this study was preliminary, the statement in the first sentence of n. 309 that Trinchera Ranch did not study the contract path at all is incorrect. We therefore grant Exception 36 (ix) in part.

h. Exception 36(x), Argument that the Applicants Closed Planning Forums to Trinchera Ranch

146. Trinchera Ranch takes issue with the finding made in ¶ 492 of the Recommended Decision that the northern alternatives were not vetted in the open Colorado transmission planning forums. Trinchera Ranch argues that this finding is arbitrary and capricious because the Applicants precluded it from participating in any of these processes.

147. In response, Tri-State contends that Trinchera Ranch was not excluded from any transmission planning processes. Tri-State argues that the correspondence exchanged between Tri-State and Trinchera before the commencement of this proceeding, which Trinchera Ranch relies on in support of its claim, was not submitted in the context of the Colorado Coordinated Planning Group (CCPG) proceedings or any other open transmission planning processes.

148. We agree with Tri-State that there is no evidence that Trinchera Ranch was denied access to any regularly scheduled meetings of the CCPG or another similar forum. Further, Trinchera Ranch does not dispute the ALJ's statement itself. We therefore deny Exception 36(x).

i. Exceptions 36(xi) and (vii), Environmental Impacts of Northern Alternatives and the Argument that a Two to Three-Hour Field Trip Did Not Establish Any Major Hurdles for those Alternatives

149. Trinchera Ranch disputes the statement contained in ¶ 490 of the Recommended Decision that the northern alternatives may result in significant adverse environmental impacts. Trinchera Ranch argues that this conclusion has no evidentiary basis and is not in accordance with the evidence. It further disputes the finding contained in ¶ 492 (e) of the Recommended Decision, where the ALJ states that the alternative from San Luis Valley to Poncha to Malta would be "extremely difficult to site and to build and, at worst, could not be sited and built at all." Trinchera Ranch argues that this finding appears to be based, in part, on a "field trip" that a Public Service employee took along the route from Poncha to Malta and that the "field trip" is not sufficient to support this finding. Trinchera Ranch argues that even the Public Service employee who took the trip did not testify that the northern alternative was not feasible, only that there may be issues that might increase the length or cost of the alternative. Trinchera Ranch further argues that the finding ignores the 2008 study done by Tri-State, which identified no major routing obstacles.

150. In response, Public Service argues that this conclusion is supported by the record. This is because, among other things, the Applicants have shown that attempting to site a northern alternative would be difficult, costly, and time consuming because of existing land uses, multiple property owners, a view of several 14,000 foot mountains, and other obstacles.

151. We agree with Public Service that the ALJ's findings that the northern alternative would be difficult to cite are supported by the record. It was well within the ALJ's discretion to find the Applicants' testimony on this issue to be credible. This is because, among other things, between them, the Applicants own three transmission lines that run from the San Luis Valley to the Poncha area and are very familiar with this area. It is important to note the ALJ did not find that doing so would be impossible. Further, these findings are secondary to the ALJ's ultimate conclusion that the proposed project is superior to the northern alternatives and that Tri-State and Public Service have met their burden of proof with respect to the proposed project. We deny the exceptions filed by Trinchera Ranch on this ground.

I. Trinchera Ranch Exceptions 40, 41, and 42, Consideration of Environmental and Siting Issues in a Transmission CPCN Proceeding

1. Trinchera Ranch

152. Trinchera Ranch argues that the condition advocated by the intervenor Colorado Open Lands—that the CPCN proceeding be held in abeyance pending completion of the National Environmental Policy Act environmental analysis—should have been imposed. The ALJ declined to impose this condition in the Recommended Decision. She ruled that the Commission does not make siting decisions in a transmission CPCN proceeding. The ALJ further found that such a condition would delay the construction of the proposed project; would result in additional hearings on issues that are not directly relevant to the need for the project; and would impose considerable costs on the utilities and, potentially, on the ratepayers. Recommended Decision, at ¶¶ 489-490.

153. Trinchera Ranch argues that the fact that counties and the RUS may also evaluate environmental impacts of the project does not negate the role of the state and the Commission to protect the public interest and the environment. Trinchera Ranch contends that the Commission

must consider environmental issues during transmission CPCN proceedings as it would likely be its only opportunity to do so. Trinchera Ranch states that the Commission, at a minimum, should impose a condition that the proposed transmission line will not proceed to construction if proper permits from federal, state, and local agencies are denied.

154. Trinchera Ranch also argues that the Commission indeed makes siting decisions in transmission CPCN proceedings. Trinchera Ranch acknowledges that the Commission does not make final routing decisions, but argues the Commission does determine the overall routes because it grants or denies a CPCN with the termination points of a transmission line identified. In support of this conclusion, Trinchera Ranch cites Decision No. C10-0651, mailed on June 28, 2010 in 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), at ¶ 16, n.1, that "the Commission may consider environmental issues at its discretion."

2. Tri-State

155. In response, Tri-State argues that Trinchera Ranch presents no legal basis for its claim that the Commission must consider environmental issues in a transmission CPCN docket; does not identify the environmental issues it believes should be considered; and fails to explain how these undefined environmental issues relate to the present or future need for the proposed project. Tri-State further argues that Decision No. C10-0651 actually stands for the proposition opposite from the one advanced by Trinchera Ranch. Tri-State argues that, in Decision No. C10-0651, the Commission declined to accept a proposal by WRA to amend the transmission CPCN rules to include a need analysis that takes into account environmental impacts. In response to the WRA's proposal, the Commission found that environmental considerations are more appropriate for a broader transmission planning proceeding, instead of a narrower

transmission CPCN docket that focuses on a single transmission line, Decision No. C10-0651, at ¶17.

3. Discussion

156. We agree with Tri-State that the Commission does not make siting decisions or evaluate environmental issues during transmission CPCN proceedings. These issues are more appropriate for transmission planning proceedings and for various proceedings held before federal and local agencies. In Decision No. C10-0651, at ¶16, the Commission found:

> The federal, state, and local agencies that must conduct environmental analysis and issue permits will do so with respect to specific routing alternatives before a transmission line can proceed to construction. Therefore, even if the Commission determines that there is a need for a line, [the utility] will not proceed to construction if applicable environmental permits are denied. In general, the proper assessment of need and environmental impacts does not require that the Commission consider these issues simultaneously.

We find that the ALJ did not err in declining to adopt the condition advocated by Colorado Open Lands. We also find unnecessary any condition whereby the proposed transmission line will not proceed to construction if applicable permits from other agencies are denied. The denials of permits by other agencies will be enforceable without memorializing these denials in a CPCN order. Further, we reiterate that environmental considerations are more appropriate for a broader transmission planning proceeding, instead of a narrower transmission CPCN docket that focuses on a single transmission line. We deny the exceptions filed by Trinchera Ranch on this ground.

157. This does not mean we are not mindful of the siting and environmental issues that may be implicated by this transmission project. We note that WRA recommended in this docket that, when routing, siting, and designing the line, the Applicants employ the principles and tools provided by WRA witness Mr. Dean Apostol and the environmental protection impact avoidance

and mitigation measures recommended by the environmental consultant firms retained by Public Service for the project. WRA further recommended that the Commission make it clear that any investment made to comply with these measures is prudent and that Public Service will receive cost recovery for the costs it prudently incurs to comply with these measures. The ALJ rejected this proposed condition because, among other things, she found that the Applicants have already agreed to many measures recommended by Mr. Apostol and the environmental consultants hired for the project, which undercut a need for the condition. Recommended Decision, at ¶ 671. The ALJ also agreed with the arguments made by the Colorado Office of Consumer Counsel (OCC) about the vagueness of Mr. Apostol's recommendations and the lack of standards against which to assess compliance with the condition. *Id.*, at ¶ 672. The ALJ also expressed a concern that the condition may be inconsistent with a RUS or a local requirement. *Id.*, at ¶ 673.

158. We agree with the ALJ's ruling on this issue, for the reasons stated by the ALJ. However, we encourage Public Service and Tri-State to continue to use the measures advocated by Mr. Apostol and the environmental consultants retained for the project. We also encourage collaboration and compromise among interested stakeholders regarding environmental and siting issues implicated by the project. Finally, we note that the extent of the use of these measures in connection with the project would be relevant should an appeal of a local government decision pertaining to the project be brought before the Commission pursuant to § 29-20-108, C.R.S.

J. Trinchera Ranch Exceptions 6, 17, 18, and 32, RESA Funds

1. Trinchera Ranch

159. In Exceptions 6, 17, and 32, Trinchera Ranch disputes the statement contained in ¶ 259 of the Recommended Decision, that Public Service has "considerable room for acquisition

of renewable resources between the floor established by the RES and the ceiling established by the retail rate impact rule, particularly when the 2010 RES amendments, including the ability to advance (with Commission permission) the RESA funds, are taken into account." It also argues that competent evidence does not support a conclusion that Public Service will have considerable room to acquire three 250 MW solar thermal with storage "placeholders" in the San Luis Valley. This is because the economic models showing there will be sufficient RESA funds are based on economic assumptions that have changed dramatically (such as carbon tax start date and cost of natural gas). Trinchera Ranch further contends that the regulatory tools created by the 2010 RES amendments (such as the ability to advance RESA funds) do not alter this analysis because these tools are discretionary upon the Commission and because Public Service has not quantified how helpful these tools might be. Trinchera Ranch further argues that there is no evidence concerning Public Service's capacity, under RESA or otherwise, to acquire renewable resources in general.

160. In Exception 18, Trinchera Ranch disputes the ALJ's conclusion contained in ¶ 322 of the Recommended Decision that a carrying charge on the RESA balances (associated with the utility's ability to advance RESA funds with Commission permission) is warranted because the ratepayers benefit from the earlier acquisition of additional renewable resources. Trinchera Ranch argues there is no evidence for such a benefit and that only Public Service testified as to such benefit, not the ratepayers. Trinchera Ranch concludes that the ratepayers have not been asked if they wished to make that choice and suffer undue burden from the carrying charges.

2. Public Service

161. In response, Public Service claims that, in making this argument, Trinchera Ranch ignores competent evidence offered by the Applicants to the contrary. Public Service argues that,

in making these findings, the ALJ cited to Exhibits 139 and 141, as well as the testimony of Public Service witness Ms. Hyde that sufficient RESA dollars will enable Public Service to proceed with the acquisition of solar thermal and other renewable generation. The ALJ noted that Exhibit 141 contained the costs of three 250 MW solar thermal with storage placeholders and showed that the RESA balance will turn positive in 2012 or 2015 depending on carbon proxy cost assumptions.

162. Public Service also cites to the ALJ's finding that the following regulatory tools given to the Commission by HB 10-1001 will help ensure the availability of RESA dollars for renewable energy acquisition: (1) the ability to lower the 3 percent set aside for DG as of 2015; (2) the ability to lower the standard rebate offer if market changes so warrant; and (3) the ability to assure that DG customers contribute their fair share to the RESA (even if such contribution exceeds the 2 percent of their annual electric bills). Public Service argues that the ALJ had the discretion to give weight to the testimony presented by Ms. Hyde over the testimony of Trinchera Ranch witness Dr. Sheffrin, who attempted to diminish the effect of some of these tools.

163. Finally, Public Service responds to the claim that a carrying charge on advanced RESA funds is unwarranted by arguing that the ratepayers indeed benefit from the earlier acquisition of renewable resources. Public Service argues that the legislature has recognized this benefit by specifically allowing the advancement of RESA funds. Public Service states that the ratepayers have had input into the advancement of RESA funds, via participation of the OCC in Docket No. 08A-532E, where the Commission approved such an advancement.

3. Discussion

164. We agree with Public Service that the record evidence is sufficient to support the ALJ's finding that there is considerable room for acquisition of renewable resources under the

RESA. Exhibit 141 establishes a RESA budget that accommodates the proposed level of solar resources. These resources, in turn, are a factor in establishing the need for the proposed project. Exhibit 141 is based on proxy carbon costs, natural gas forecasts, and other inputs approved by the Commission in Decision No. C08-0929 (*Phase I Decision*) issued in Docket No. 07A-447E, on September 19, 2008. It is prudent for Public Service to rely on such Commission-approved inputs unless and until the Commission reevaluates these inputs. Such a reevaluation, in turn, occurs in a resource planning or a renewable energy standard plan docket rather than a transmission CPCN docket such as this one. We also agree with Public Service that the Commission is entrusted with several regulatory tools to help ensure the availability of RESA for renewable energy acquisition. It is true that the Commission, in the future, may not grant Public Service permission to use some or all of these tools. However, the Commission cannot act arbitrarily or capriciously in doing so. We deny Exceptions 6, 17, and 32 on these grounds.

165. We also agree with the ALJ and Public Service that the ratepayers benefit from earlier acquisition of renewable resources and that the ratepayers were represented by the OCC when the Commission approved Public Service's request to advance RESA funds.[9] We find that these conclusions are supported by the record. We deny Exception 18 on these grounds.

[9] Pursuant to § 40-6.5-104(1), C.R.S., the OCC "shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the commission and appeals therefrom […] in matters which involve certificates of public convenience and necessity for facilities employed in the provision of utility service, the construction of which would have a material effect on the utility's rates and charges."

K. Trinchera Ranch and Staff Exceptions, Proposed Project Design

1. Trinchera Ranch Exceptions 22, Simultaneous Injection Limit

166. In Exception 22, Trinchera Ranch takes issue with the finding made by the ALJ in ¶ 368, n. 218 of the Recommended Decision that "the limit [of the San Luis Valley portion of the project] is 925 MW with a double-circuit 230 kV line when there is simultaneous injection at the Calumet Substation." Trinchera Ranch states that the injection limit is 925 MW only if there is zero injection at Calumet. Trinchera Ranch concludes that the finding made by the ALJ is not in accordance with the evidence and grossly overestimates the capacity of the line.

167. In response, Public Service states that the finding made by the ALJ with respect to the simultaneous injection limit is correct. Public Service cites to Exhibit 128, which shows 50 MW of injection capability at Calumet when the injection at San Luis Valley is 925 MW, in light load conditions. Public Service argues this exception should be denied.

168. Regarding Exception 22, we clarify that the injection limit is 925 MW at San Luis Valley when the simultaneous injection capability at the Calumet Substation is 50 MW under light load conditions and is 100 MW under heavy load conditions.[10] We therefore grant the exceptions filed by Trinchera Ranch on this ground, in part.

2. Trinchera Ranch Exception 23, Tri-State Reliability Studies

169. In Exception 23, Trinchera Ranch contests the statement made by the ALJ in ¶¶ 372 and 421 of the Recommended Decision that Trinchera Ranch does not have a disagreement with the studies performed by the Applicants beginning in 1997. Trinchera Ranch

[10] *See* Exhibit 36, p, 19, lines 17-18 (sponsored by Trinchera Ranch) and Exhibit 128 (sponsored by Public Service).

contends that, to the contrary, it disputes the cost analysis of the studies performed by the Applicants. Trinchera Ranch argues that, in the 2004 and the 2008 studies, Tri-State had skewed the cost analysis in favor of the San Luis Valley-Walsenburg line by underestimating the length for that line by 20 miles. Trinchera Ranch concludes that the studies performed by the Applicants are deficient, have been manipulated, and are based on flawed assumptions.

170. In response, Tri-State argues that a straight line analysis, which it had performed before identifying the San Luis Valley-Walsenburg line as the preferred alternative in the 2004 and 2008 studies, is the correct analytical tool given the screening level purpose for the studies. Tri-State further argues that the cost was not the only basis for selecting that line as the preferred alternative.

171. Regarding Exception 23, we will acknowledge that Trinchera Ranch disputes the reliability studies performed by Tri-State. However, we agree with Tri-State that a straight line analysis was the correct analytical tool given the purposes of the 2004 and 2008 studies and that cost is not the only consideration for identification of a preferred alternative. We therefore grant in part the exceptions filed by Trinchera Ranch on this ground.

3. Trinchera Ranch Exception 3, the Claim that the Proposed Project has Significant Transient Stability Issues for Generation Levels Above 600 MW in the San Luis Valley

172. In Exception 3, Trinchera Ranch disputes the statement contained in ¶ 176 of the Recommended Decision that the project does not have transient stability issues. Trinchera Ranch argues that the Applicants did not perform a transient stability analysis for the generation levels above 600 MW in the San Luis Valley. Trinchera Ranch also argues that the Applicants modeled disturbances in a selective manner and therefore artificially inflated the level at which the project

encounters transient stability issues. Trinchera Ranch concludes the transient stability analysis performed by the Applicants was cursory and only performed at the behest of Staff.

173. In response, Public Service claims that the ALJ's finding is in accordance with the evidence. It points out that in ¶ 176 of the Recommended Decision, the ALJ has stated that the "2009 Stability Analysis indicated that, *for the disturbances modeled*, the Project does not have transient stability issues" (*emphasis by Public Service*). Public Service argues that the ALJ was aware that the 2009 transient stability study was preliminary in nature and therefore did not model all potential generation amounts and that Exception 3 should be denied.

174. We agree with Public Service that the ALJ was aware that the Applicants have not completed transient stability analyses for generation levels above 600 MW in the San Luis Valley and that she qualified her statement accordingly. The ALJ also noted that the Applicants planned to do such analysis prior to constructing the project. We find that the ALJ's statement was not in error. Further, we find that transient stability analyses for generation levels above 600 MW are premature at this time. This is because an accurate transient stability analysis requires modeling of interconnected system elements such as transmission lines, generation sources, and loads. The analysis involves numerous scenarios, with various conditions that may affect different system elements. It is not certain how the system will be built out by Public Service and other utilities by the time the generation levels reach 600 MW in the San Luis Valley. We deny the exceptions filed by Trinchera Ranch on this ground.

4. Trinchera Ranch Exception 39 and Staff Exception, Argument that the Commission Should Require the Applicants to Perform Additional Power Flow and Transient Stability Studies

175. Staff argues that the Applicants should perform power flow and transient stability studies to determine additional transmission facilities that will accommodate 1129 MW of new

generation in the San Luis Valley. Staff points out that Public Service has identified 1129 MW as potential export need. However, the project, as proposed, would be limited to 925 MW. Staff notes that it cannot conduct power flow and transient stability studies and that this information should be provided by the Applicants.

176. Trinchera Ranch agrees with Staff. It argues that requiring these power flow and transient stability studies before the CPCN is granted is imperative to ensure that the project will perform as the Applicants have claimed and to evaluate how the rest of the system will perform at these injection levels.

177. In response, Public Service states that a number of options exist to increase export capacity out of the San Luis Valley after the project is in place. Public Service argues it makes no sense to study possibly dozens of scenarios, most of which may never be implemented.

178. We agree with Public Service that power flow and transient stability analyses for additional transmission facilities that will accommodate 1129 MW of new generation in the San Luis Valley are premature at the present time. We deny the exceptions filed by Trinchera Ranch and Staff on this ground. In addition, we expect that Public Service and Tri-State will continue to conduct these studies, as part of their duties to maintain system reliability, and will make needed improvements as part of the ordinary course of business. The Commission will evaluate whether the costs of these system improvements are prudent in appropriate cost recovery proceedings.

5. Staff Exception, Argument that the San Luis Valley-Calumet Segment Should be Built at 345 kV

179. In its exceptions, Staff contends that the San Luis Valley-Calumet segment of the project should be built at 345 kV and energized at 230 kV, if needed, until additional capacity is

required. Staff points out that Public Service has identified a potential need to export 1129 MW from the San Luis Valley within the next eight years. However, the project, as proposed by the Applicants, would be limited to 925 MW.[11] Staff argues that the cost difference between the San Luis Valley-Calumet segment constructed at 345 kV versus its construction at 230 kV is an estimated $54 million, which is likely less than the cost of upgrading the 230 kV line to 345 kV at a later time. Staff concludes it does not make sense to construct the San Luis Valley–Calumet segment at 230 kV given that 1129 MW is likely be added within the next eight years.

180. In response, Public Service states that a number of options exist to increase export capacity out of the San Luis Valley above the 925 MW limit after the project, with the San Luis Valley-Calumet segment constructed at 230 kV, is in place. Public Service adds that constructing that segment at 345kV will increase the required rights of way and costs, in addition to affecting the EIS process and causing other delays related to permitting and construction.

181. In ¶¶ 625-626 of the Recommended Decision, the ALJ rejected Staff's argument for reasons of cost, potential unused capacity, significant transmission additions that may be needed to accommodate a 345 kV line, adverse impacts on intermittent renewable generation, and delays to the current approval process. We find that the ultimate conclusion reached by the ALJ on this issue is supported by the record. We further agree with the ALJ that these factors outweigh any potential benefits of constructing the line at 345 kV. We also agree with Public Service that there are options to increase the export capacity out of the San Luis Valley above 925 MW after the project is in place. We deny the exceptions filed by Staff on this ground.

[11] *See* n. 189 of the Recommended Decision.

L. Public Service, Interwest, and Trinchera Ranch Exceptions Related to the 700 MW, 10 years, 50 Percent Condition

182. In this proceeding, both Trinchera Ranch and Bar Nothing generally argued that the Commission should impose a condition that protects Public Service's ratepayers in the event future events establish that assumptions about development of renewable resource generation in southern Colorado are overly-optimistic and, as a result, the project is over-built. The ALJ agreed with these arguments and thus imposed the following condition on the grant of the CPCN for the proposed project:

> Within 10 years of the date on which the Project is placed in service, at least 700 MW of generation must be interconnected with Project. The generation is not required to be renewable resource generation; the generation may be located anywhere in ERZ 4 or ERZ 5; and the generation may be owned by any entity.
>
> If at least 700 MW of generation are not interconnected with Project at end of ten years from the date on which the Project is placed in service, then Public Service will file an application containing a plan to refund to ratepayers 50 percent of the monies that Public Service collected from its ratepayers […] including any authorized return. The Public Service plan will include interest paid at the interest rate that Public Service pays on customer deposits […]

Recommended Decision, at ¶ 591.

183. During the oral argument and in their pleadings, the parties presented legal and policy arguments related to the 700 MW, 10 years, 50 percent condition or a similar condition; the specific parameters of the condition; and possible implementation and/or enforcement issues. We will discuss these arguments below.

1. Public Service

184. Public Service generally argues the 700 MW condition is not consistent with the Colorado public policy, is arbitrary, is unreasonable, and is likely to cause unintended harmful effects. Public Service argues that the 700 MW condition does not account for the fact that the Commission, not the utility, ultimately controls whether generation resources that connect to the

proposed project will be acquired. Public Service overviews the Commission's electric resource planning rules and states that the Commission Rules do not allow it to set aside a 700 MW slot of generation acquisition for facilities that would use this proposed project. Public Service argues that resources are generally selected through competitive bidding and Commission oversight, not simply chosen by the utility. In addition, even if certain generation resources are selected in a resource portfolio approved by the Commission, there is always a possibility that unforeseen circumstances may occur.

185. Public Service also argues that the 700 MW condition is contrary to the legislative intent of SB 07-100, which is to encourage the building of transmission lines to serve beneficial energy resources. Public Service states that the General Assembly enacted SB 07-100 in order to solve the "chicken and egg" dilemma, namely that renewable generation will not be built in the absence of transmission and transmission will not be built in the absence of power purchase agreements (PPAs) or CPCNs to build generation. This problem occurs because the planning, permitting, and construction cycle for a new transmission line is longer than it is for renewable generation that needs the new transmission line. Public Service points out that the Commission, in Decision No. C09-1004, found that the public policies behind SB 07-100 can be considered as a factor in determining need and that the lack of contracts for generation resources does not by itself establish a lack of need for the transmission line.

186. Public Service further claims the 700 MW condition violates the general concept of prudence, which must be determined at the time an investment decision is made (*i.e.*, in this CPCN docket) and not at some future time. It also argues that the condition is arbitrary and may be problematic to enforce. Public Service also contends that the condition presents a potential risk of bid inflation in resource planning dockets because the developers of renewable generation

that would interconnect to the line would have the increased leverage to negotiate the terms of PPAs that are favorable to them. Public Service finally argues the condition is unnecessary, as the evidentiary record establishes that it is likely large amounts of solar and wind development will occur in ERZs 4 and 5. Public Service argues that the 700 MW condition will create a bad precedent and will chill future SB 07-100 transmission projects. It concludes it will not be able to proceed with the line if the condition remains.

2. Interwest

187. Interwest generally agrees with Public Service. It also emphasizes that the project will serve not only Public Service's export need, to which the 700 MW condition is directed, but Tri-State's reliability need as well. Interwest also stresses that the 700 MW condition could skew the resource acquisition process. Interwest finally argues that the condition represents bad public policy because it focuses only on the first ten years after the transmission line is in service, even though transmission lines have a much longer life span.

3. Tri-State

188. Tri-State argues that the 700 MW condition could jeopardize the project, which is needed to address Tri-State's reliability need. Tri-State thus argues that the condition ignores Tri-State's need in the project and elevates one purpose for the project above all others. Tri-State also points out that the project is a joint project and argues that the cost-sharing benefits that come with such a joint project would be lost if Public Service and Tri-State had to proceed with separate facilities to address their needs. Tri-State also contends that the 700 MW condition is contrary to the intent behind SB 07-100.

4. Trinchera Ranch

189. Trinchera Ranch argues the 700 MW condition should be modified. Specifically, it argues the 700 MW of resources that may or may not be renewable should be replaced with a minimum level of 550 MW of new renewable generation resources to connect in ERZ 4 and a minimum level of 500 MW of renewable resources to connect in ERZ 5 by 2020. Trinchera Ranch states that these amounts represent only half of what Public Service testified it would acquire in these ERZs. If these conditions are not met, Trinchera Ranch argues, all of the monies spent by Public Service on the project should be refunded to the ratepayers, rather than just 50 percent. Finally, Trinchera Ranch argues that the Applicants should bear the upfront costs of the project, not the ratepayers.

190. In response to exceptions filed by Public Service and Interwest, Trinchera Ranch argues that these exceptions should be denied and the condition should be strengthened instead. In response to the arguments that Public Service cannot invest in the project with the 700 MW condition attached, Trinchera Ranch states that, for policy reasons, if the risk of an investment is too great for Public Service's shareholders, it is also too great for its ratepayers. Trinchera Ranch also argues that the fact that Public Service does not have sufficient confidence that it will be able to meet the condition confirms the speculative nature of claimed export need and the fact that the utilities are willing to abandon the project if the condition is not removed negates any reliability need. Trinchera Ranch also argues that Public Service grossly misinterprets the public policy and the legislative intent behind SB 07-100 and misapplies it to this docket. It argues that SB 07-100 did not give utilities an unfettered ability to construct transmission lines on the backs of their ratepayers without any expectation that renewable generation will actually be developed or acquired that would use the new transmission. Trinchera Ranch points out that SB 07-100 did

not eliminate the burden of proving need or that incurred costs are prudent. It finally argues that this project does not fall within SB 07-100.

5. WRA

191. WRA did not file its own exceptions to the Recommended Decision or a response to exceptions filed by other parties. During oral argument, WRA expressed an opposition to the 700 MW condition. In the alternative, WRA argued the condition should be modified to replace the 700 MW of resources that may not be renewable with 355 MW of renewable resources.

6. Bar Nothing

192. In its response to exceptions filed by other parties and during oral argument, Bar Nothing expressed its support for the 700 MW condition.

7. Discussion

193. We disagree with the arguments that there are legal impediments to the 700 MW condition or any similar condition. Public Service is generally correct that the Commission makes findings of prudence (or lack thereof) based on what is known at the time an investment decision is made, not at some time in the future. However, as the ALJ found, the Commission has broad authority to attach conditions to CPCNs. Recommended Decision, ¶¶ 553-568; WRA Statement of Position filed on February 25, 2010. In reaching this decision, the ALJ relied on Article XXV of the Colorado Constitution, §§ 40-5-101, -103(1), and 40-3-102, C.R.S., and the Colorado Supreme Court case law. The Commission has the authority to attach a condition to a finding of prudence just as it has the authority to do so to any other finding.[12]

[12] The Fort St. Vrain case, relied on by Trinchera Ranch, is an example of a case where the Commission has done so in the past.

194. However, even though the Commission has the authority to impose the 700 MW condition or a similar condition, we choose not to do so on policy grounds. We find that such a condition, in this case, would not be good regulatory practice, would jeopardize a project we have already found is needed, and may distort future competitive market for new energy resources. We therefore grant the exceptions filed by Public Service and Interwest related to this condition and deny the exceptions filed by Trinchera Ranch.

195. Trinchera Ranch, among other parties, has characterized the 700 MW condition as a "consumer protection" condition. We disagree with that characterization. We find that the 700 MW condition is not a consumer protection, but it amounts to a "partial money back guarantee" against the Commission being wrong. Nothing in regulatory theory or in the regulatory history of this Commission justifies such a "heads we win, tails you lose" approach.

196. Our duty in this docket is to approve or deny a CPCN to construct the proposed transmission line based upon an assessment of whether the present or future public convenience and necessity requires that the line be built. The record leads us to find that there is a present and future need for the line. On the other hand, no one – not the Commission and not Public Service – can **guarantee** that the line will be used to the extent we expect. We find that the possibility that the line will not be used to the extent we expect is remote, but we cannot eliminate this risk simply by shifting it to Public Service. We should not lay off the impact of this decision on the utility we regulate. In other words, if the Commission does not believe the proposed project will be used to the extent expected, it should not grant the application for a CPCN.

197. We are also concerned about the impact that the 700 MW condition may have on the utilities' ability to raise capital for this project. It is clear that the condition would affect the

willingness of lenders to finance the project, either in the form of a lack of financing or higher interest rates. Either outcome conflicts with and defeats our finding that the line is needed.

198. Further, we agree with Interwest that the 700 MW condition may distort the future competitive market for renewable energy in the state. We have found the line is needed based on record evidence that renewable capacity will be added in areas requiring this line. But we do not wish to create the situation where the utility biases its future choice of resources in order to avoid the penalty in the 700 MW condition.

199. Finally, we note that our decision not to impose the 700 MW condition does not mean consumers are unprotected. The Commission retains the full authority to examine Public Service's prudence in the planning, construction, and operation of the project. We expect that the Company will act prudently in these respects and we retain the right to take action if it does not.

M. Trinchera Ranch Exceptions 5, 11, and 33, Costs, Federal Incentives, and CO_2 regulations

1. Trinchera Ranch

200. Trinchera Ranch argues that potential future federal action pertaining to tax and other incentives for renewable energy and legislation addressing carbon dioxide emissions are insufficient to establish that Applicants will acquire renewable resources in ERZ 4 and the need for the proposed transmission project. Trinchera Ranch argues that a mere future potential for a federal action is not the sort of competent evidence that can support a decision on a CPCN for a transmission project. Trinchera Ranch argues that the record contains no evidence that federal incentives will make renewable resources that connect to the line more likely. Further, Trinchera Ranch states that assumptions on carbon tax have led Public Service to erroneous assumptions that dramatically affected the estimates of future RESA dollars.

201. Trinchera Ranch also disputes the statements made by the ALJ in ¶¶ 294, 466(c), and 467(f) of the Recommended Decision that solar thermal and photovoltaic technologies have declining cost curves. Trinchera Ranch argues that, instead, the record shows that Public Service is not even sure what the leading solar thermal technology will be.

2. Public Service

202. Public Service responds that the intent of the ALJ was not to imply that federal incentives make renewable resources in the San Luis Valley more likely, but that they make all renewable resources more likely. Public Service further points out that § 40-2-123(1)(b), C.R.S., permits the Commission to consider the likelihood of a future federal carbon tax. Public Service states that solar and wind resources indisputably produce zero carbon emissions and will assist the utilities in complying with the Governor's Climate Action Plan and any future carbon legislation.

203. Public Service also contends that Trinchera Ranch witness Dr. Sheffrin provided support for the conclusion that solar thermal resources have declining cost curves. It contends that Dr. Sheffrin agreed with Public Service that generic solar thermal resources have declining cost curves and will reach cost parity with generic natural gas combined cycle generation on a dollars per megawatt hour basis by the 2015 to 2016 time frame.

a. Discussion

204. We agree with the manner in which Public Service characterizes the findings made by the ALJ. The ALJ found that cost reductions in renewable resources, whether through federal incentives or otherwise, make renewable resources more likely throughout Colorado. It also follows that at least some of these resources will be located in areas with the best potential for these resources, such as ERZ 5 for wind and ERZ 4 for solar.

205. We also find that the record supports the findings made by the ALJ that the costs of renewable resources will continue to become more competitive as compared to conventional generation, as a result of the federal incentives, the carbon proxy costs, and the technological innovations that lower actual costs.

206. The existence of laws on carbon emissions or an absolute certainty with respect to such future laws is not necessary for the Commission to consider their likelihood at the present time. Indeed, § 40-2-123(1)(b), C.R.S., speaks in terms of "the *likelihood* of new environmental regulation and the *risk* of higher future costs..." (emphasis added). The absence of current laws on carbon emissions also does not mean that carbon reductions are not prudent for public policy reasons. We agree with Trinchera Ranch that the likelihood of future carbon tax laws may not be sufficient by itself to show that Public Service will acquire renewable resources in ERZ 4 or the need for the proposed project, but we find that it can be a *factor* in such a showing.

207. We deny the exceptions filed by Trinchera Ranch on these grounds.

N. Majors Ranch Exceptions

1. Noise Levels

208. In its exceptions, Majors Ranch claims the noise levels found to be reasonable should be set at 50 dB(A) to be measured at the edge of the right-of-way as opposed to at a point located 25 feet beyond the edge of the right-of-way, as ordered by the ALJ. Majors Ranch claims that to do otherwise would amount to the taking of landowner's property without just compensation.

209. In response, Tri-State argues that Majors Ranch provides no legal support for this claim. Tri-State argues that Majors Ranch ignores the statutes that authorize the Commission to make reasonableness findings with regard to noise levels associated with the transmission lines.

210. We agree with Tri-State that Majors Ranch does not provide any support for this argument. We also agree with Tri-State that Majors Ranch fails to take into account the statutes that authorize the Commission to make reasonableness findings with regard to the noise levels emanating from transmission lines. Section 25-12-103(12), C.R.S., states that the Commission may determine whether projected noise levels for electric transmission facilities are reasonable, notwithstanding the presumptive limits set in subsection (1) of the statute. That statute also states that the presumptive noise levels are to be measured from 25 feet of the edge of right of way, not from the edge of right of way. We note that the noise levels found to be reasonable by the ALJ fall within these presumptive levels. Finally, the statute provides that the owners or operators of electric transmission facilities shall not be liable in a civil action based upon noise emitted by the electric transmission facilities that comply with the noise levels found to be reasonable by the Commission. We find that the noise levels that are found to be reasonable by the Commission and that fall within the statutory presumptive levels do not amount to a taking without just compensation. We deny the exceptions filed by Majors Ranch on this issue.

2. Use of Existing Power Line Corridors

211. Majors Ranch argues that the project should only be routed north of Highway 69 along the existing power line corridor. Majors Ranch argues that this is necessary to minimize the impact of the project on sensitive wildlife, including a rare population of Rocky Mountain Big Horn Sheep.

212. In response, Tri-State contends that the routing alternatives preferred by Majors Ranch are the only possible options. Tri-State adds that the Commission does not make siting or routing decisions in a transmission CPCN proceeding. Tri-State also argues that, as noted by the ALJ, imposing such a condition may impinge on the RUS and EIS process.

213. We note the response given by Tri-State that the routing alternatives preferred by Majors Ranch are the only possible options. We also agree with the ALJ and Tri-State that a determination of a specific route for the project would not be appropriate in a transmission CPCN proceeding. We deny the exceptions filed by Majors Ranch on this ground.

3. Prudence

214. Majors Ranch argues that the Commission should not make a finding of prudence in this proceeding and instead should make that finding in a subsequent proceeding when the Commission has more information about generation resources interconnecting with the project. Majors Ranch argues that a CPCN should be conditioned on Public Service committing to the amounts of renewable resources identified in the docket. Majors Ranch further argues that any presumption of prudence should be rebuttable if a non-renewable resource interconnects to the line.

215. In response, Tri-State states this proposed condition is the same as that previously proposed by WRA and rejected by the ALJ in the Recommended Decision. Tri-State argues that the Commission should reject Majors Ranch's proposal for the same reasons. Tri-State adds that this proposal ignores the reliability need justifying the project.

216. We agree with Tri-State that WRA previously proposed the same condition in this proceeding, as summarized by the ALJ at ¶ 645 of the Recommended Decision. WRA contended that the Commission should apply a rebuttable presumption in a future CPCN proceeding against a finding of need for non-renewable generation resources that would interconnect to the project. The ALJ found, in ¶ 652 of the Recommended Decision that "the Commission must promulgate such a rebuttable presumption in a rulemaking proceeding." We agree with the rationale stated

by the ALJ for rejecting this condition. We deny the exceptions filed by Majors Ranch on this ground.

4. Post Construction Verification of Noise and EMF Levels

217. Lastly, Majors Ranch argues that the Commission should not make findings of reasonableness with respect to the Electromagnetic Fields (EMF) and noise levels at this time. This is because the Applicants modeled noise and EMF projections in a different geographic area and at lower elevations than where the project may be constructed. Majors Ranch contends that the Commission should require the Applicants to verify model results using post-construction measurements before making any reasonableness findings.

218. In response, Tri-State argues the Commission has accepted the ENVIRO model, which is used to model noise and EMF levels, and has not imposed any such requirement in prior transmission CPCN proceedings. Tri-State argues that the ALJ correctly rejected this condition in the Recommended Decision. Tri-State further argues that the model outputs are based on the maximum operating conditions of the line which will rarely, if ever, occur.

219. The Commission has used the ENVIRO model for predicting EMF and noise emanating from transmission lines and has made a reasonableness finding based on the model outputs in previous CPCN proceedings. We agree with the ALJ that this approach is reasonable. We also agree with the ALJ and Tri-State that post-construction verification of the required noise and EMF maximum levels would be difficult, especially in the near term after the transmission line is completed. This is because the measurements would need to be taken at extremely wet conditions that coincide with maximum loading. These conditions are not likely, especially not until significant generation is interconnected to the line. Finally, we find, as did the ALJ in the Recommended Decision at ¶ 808, that verification of ENVIRO-projected noise levels is not

necessary because, in Decision No. C06-0786, Docket No. 05A-072E, issued July 3, 2006 (Exhibit 90) at ¶ 277, we have already ordered that verification testing.

O. Public Service Exceptions (except those related to the 700 MW, 10 years, 50 percent condition)

1. Future Modifications to the Joint Participation Agreement

220. Public Service argues that the Commission should allow modest modifications to the joint participation agreement between the utilities without requiring a new proceeding. In the Recommended Decision, the ALJ ruled that a further change in ownership interests in the project as between the two utilities would be outside of the normal course of business and there was no evidence of whether these future unknown changes would be reasonable and in the public interest. The ALJ also found that such a preapproval would be an unlawful delegation of the Commission authority to Public Service and Tri-State. Recommended Decision, at ¶¶ 832-835.

221. In its exceptions, Public Service argues that a Commission approval should not be required if the only change to the Draft Term Sheet concerns assignment of work responsibilities as opposed to cost or ownership responsibilities. Public Service states that § 40-5-105(1), C.R.S., contains no requirement for a Commission approval of a change in work responsibilities between two utilities building a joint project. Finally, Public Service argues that the Commission should find to be reasonable a future transfer of ownership interest in order to achieve the contemplated ownership arrangements in the Draft Term Sheet, so long as the total cost of the project is not changed.

222. In response, Trinchera Ranch argues that any change in the amount of costs that would be borne by the Public Service ratepayers must require an approval of the Commission. Trinchera Ranch also argues that any changes in ownership interest of the assets associated with the project requires a Commission approval, pursuant to § 40-5-105(1), C.R.S.

Trinchera Ranch does not address Public Service's argument concerning future changes in the assignment of work responsibilities. Trinchera Ranch urges the Commission to deny Public Service's exceptions on this ground.

223. For its part, Bar Nothing states that it does not oppose the Commission granting the utilities the ability to modify the assignment of work responsibilities, if such assignment does not affect cost or ownership responsibilities. Bar Nothing opposes the remainder of this request.

224. We grant the exceptions filed by Public Service on this ground, in part. We agree that Commission approval is not required for changes to the assignment of work responsibilities, provided there are no changes to cost or ownership responsibilities. We find that a pre-approval of such future changes would not violate the non-delegation doctrine. This is primarily why the ALJ denied the Applicants' request for preapproval of future ownership interest transfers as needed when the project is completed. On the other hand, we agree with both Trinchera Ranch and Bar Nothing that any future changes in either cost or ownership responsibilities will require Commission approval. We therefore deny the remainder of the exceptions filed by Public Service on this ground.

2. Filing Dates for Cost Data

225. In the Compliance Appendix to the Recommended Decision, the ALJ required the Applicants to file all final as-built cost data by January 1, 2016, but in no event later than 15 days following the in-service date of the project. In its exceptions, Public Service objects to this filing requirement for two reasons. First, it states that only a high-level cost update would be available 15 days after the in-service date and that final costs would not be available for several months or longer. Second, Public Service believes that this requirement should be eliminated in its entirety and that these costs will be addressed in future Transmission Cost Adjustment dockets.

226. We deny the exceptions filed by Public Service on this ground. We believe that final costs are important information to file in this docket, especially since this project involves joint ownership between Public Service and Tri-State.

227. We find that Public Service's proposal to file a high-level cost update 15 days after the in-service date of the project is reasonable. In addition, we require Public Service to file final as-built cost data, including, but not limited to, consulting, engineering labor, construction labor, land acquisition, and materials within one year of the completion of the project. These data should be broken down for the substation and transmission line components.

228. To monitor compliance with these requirements, we set firm deadlines as follows: high-level cost data shall be due on or before January 1, 2016 and final as-built costs shall be due on or before January 1, 2017. We recognize that these dates may change and, should this become necessary, we will allow the Applicants to file a notice to that effect. We reiterate that the cost filings are compliance filings.

P. Tri-State Exceptions

1. Filing Dates for the Joint Participation Agreement and the RUS Record of Decision

229. In its exceptions, Tri-State objects to the deadlines set by the ALJ for the filing of the Joint Participation Agreement and the RUS Record of Decision. Tri-State argues that, given the status of this CPCN docket, the timing of the EIS process and local government permitting processes, as well as the likelihood of appeals, it is unlikely these filings can be made by the times set by the ALJ. Tri-State proposes the Commission require it to file the joint participation agreement and the RUS Record of Decision no later than 30 days after they are final and issued. If a firm date is necessary, Tri-State proposes December 31, 2011 for filing of the joint

participation agreement and January 1, 2012 for filing a status report of the RUS Record of Decision.

230. We grant the exceptions filed by Tri-State on this ground. We set the deadline for filing the joint participation agreement at December 31, 2011 or 30 days from the date on which it is signed, whichever is earlier. We do not modify the requirement for filing the RUS Record of the Decision at this time, but we will allow the Applicants to file a status report if it appears in the future that the date established by the ALJ should be changed.

2. Preferred Corridors

231. In its exceptions, Tri-State expresses a concern regarding the "preferred project corridors" term used by the ALJ. Tri-State raises this with respect to the ALJ's requirement for filing of the RUS Record of Decision and her findings regarding the noise and EMF levels. Tri-State points out that the Recommended Decision does not identify any exhibit that specifically describes the preferred project corridors and states that neither Public Service nor Tri-State designated any corridor as preferred.

232. We agree with Tri-State that the Recommended Decision does not identify any corridor as preferred. We find that the term "preferred project corridors" refers to the general paths between the components of the project (*i.e.*, the San Luis Valley to Calumet to Comanche and Walsenburg to Calumet) and not to any specific route. We also find the ALJ intended for the Commission to receive notice of any possible inconsistencies between this proceeding and the RUS proceeding with respect to the termination points of the project. We also agree that this information is important and, with this clarification, deny the exceptions filed by Tri-State on this ground.

3. Applicability of the Cost Data Filing Requirement

233. In its exceptions, Tri-State notes that the ALJ ordered both utilities to file the final cost data and the RUS Record of Decision. Tri-State notes that Public Service has not applied for RUS funding and that this requirement should only apply to Tri-State. Tri-State also argues that, if the filing of the final as-built cost data was required to support the 700 MW criteria, this requirement is not applicable to Tri-State and, therefore, it should not be required to file the final as built cost data. In the event this filing requirement applies to Tri-State, it requests a modification of the filing date.

234. We agree that the requirement for filing the RUS Record of Decision only applies to Tri-State and therefore grant this portion of its exceptions. In addition, because this is a joint project, we find that both Applicants must file the final as-built cost information. We discuss the filing dates for this information above. We deny the exceptions filed by Tri-State on this ground.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the exceptions to Recommended Decision No. R10-1245 (Recommended Decision) filed on December 16, 2010 by Tri-State Generation and Transmission Association, Inc. (Tri-State) are granted, in part, and denied, in part.

2. Consistent with the discussion above, the exceptions to the Recommended Decision filed on December 16, 2010 by Public Service Company of Colorado (Public Service) are granted, in part, and denied, in part.

3. Consistent with the discussion above, the exceptions to the Recommended Decision filed on December 16, 2010 by Interwest Energy Alliance are granted, in part, and denied, in part.

4. Consistent with the discussion above, the exceptions to the Recommended Decision filed by Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC (Trinchera Ranch) on December 16, 2010 are granted, in part, and denied, in part.

5. Consistent with the discussion above, the exceptions to the Recommended Decision filed on December 16, 2010 by Majors Ranch Property Owners Association are denied.

6. Consistent with the discussion above, the Motion to Reopen the Evidentiary Hearing and Permit Limited Discovery filed by Trinchera Ranch on December 16, 2010, as supplemented on January 10, 2011, is denied.

7. Consistent with the discussion above, the Motion to Stay the Proceedings filed by Trinchera Ranch on January 7, 2011, is denied.

8. Consistent with the discussion above, the Motion to Strike Extra-Record References in Trinchera Ranch's Response to Exceptions, filed by Public Service on January 14, 2011, is granted, in part, and denied, in part.

9. Consistent with the discussion above, Public Service and Tri-State shall make the filings identified in the revised Appendix attached to this Order.

10. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

11. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING February 11, 2011.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

MATT BAKER

Commissioners

COMMISSIONER JAMES K. TARPEY
NOT PARTICIPATING.

COMPLIANCE APPENDIX

NOTE: All compliance filings are to be made in Docket No. 09A-324E and are to be served on the Parties. The specific dates may be changed by filing a notice in Docket No. 09A-324E and serving all parties. A formal motion and Commission decision will not be required. If action needs to be taken the Commission will do so on its own motion.[1]

Within 90 days of the date of the final Commission decision in this transmission proceeding: Public Service shall make a compliance filing that explains the method, and shows the accounts, that it will use to track Project-related monies collected from ratepayers.

December 31, 2011 ~~**June 30, 2011**~~: Applicants shall file, as a compliance filing, their final Joint Project Participation Agreement for the Project. Applicants shall make this filing within 30 days of the date on which the final Joint Project Participation Agreement for the Project is signed, but in no event later than December 31, 2011 ~~June 30, 2011~~.

January 1, 2012: Within 30 days of the date on which the Rural Utilities Service (RUS) issues its Record of Decision on Tri-State Generation and Transmission Association's loan application, Tri-State ~~Applicants~~ shall file, as a compliance filing, (a) a copy of the RUS Record of Decision; (b) a report that informs the Commission whether the RUS-preferred Project corridors are consistent or inconsistent with the CPCN; and (c) if there is an inconsistency, a report that informs the Commission of the action(s) that Tri-State ~~Applicants~~ propose to take in light of the inconsistency and why. Applicants shall make this filing within 30 days of the date on which the RUS Record of Decision is issued, but in no event later than January 1, 2012.

January 1, 2013: Applicants shall file, as a compliance filing, the final route of the San Luis-Valley-Calumet-Comanche transmission line and the final route of the Calumet-Walsenburg transmission line. Applicants shall make this filing on or before January 1, 2013, but in no event later than 15 days following final siting approval for the Project.

January 1, 2016: Applicants shall file, as a compliance filing, information about any significant change in the Project. Applicants shall make this filing on or before January 1, 2016, but in no event later than 15 days following the Project's in-service date.

January 1, 2016: Applicants shall file, as a compliance filing a high-level cost update of preliminary as-built cost data, including (but not limited to) consulting, engineering labor, construction labor, land acquisition, and materials, broken down for the Project's substation and transmission line components. Applicants shall make this filing on or before January 1, 2016, but in no event later than 15 days following the Project's in-service date.

January 1, 2017 ~~**2016**~~: Applicants shall file, as a compliance filing, all final as-built cost data, including (but not limited to) consulting, engineering labor, construction labor, land acquisition, and materials, broken down for the Project's substation and transmission line components. Applicants shall make this filing on or before January 1, 2017 ~~2016~~, but in no event later than 1 year ~~15 days~~ following the Project's in-service date.

[1] Commission revisions to the Compliance Appendix of the Recommended Decision are indicated by underline and strikeout.