

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-526E

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

ORDER ON EXCEPTIONS

Mailed Date: March 23, 2011
Adopted Date: March 17, 2011

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions filed on February 10, 2011 by Colorado Independent Energy Association (CIEA); Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy, Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc. (Tri-State) (collectively, Utilities); Tri-State;¹ Western Resource Advocates (WRA); and Interwest Energy Alliance (Interwest)² to Recommended Decision No. R11-0077 (Recommended Decision). On February 24, 2011, CIEA and the Utilities each filed a response to the exceptions of other parties. Being fully advised in the matter and consistent with the discussion below, we address these exceptions in turn.

2. Hearing Commissioner James K. Tarpey (Hearing Commissioner) discussed the procedural history of this rulemaking docket in the Recommended Decision, issued on January 21, 2011, at ¶¶ 1-7. We incorporate that statement of procedural history in this Order and will not reiterate it here, except as needed to provide context to our rulings. We proceed directly to a discussion of the arguments presented by each interested parties on exceptions.

¹ Tri-State filed exceptions both jointly with Public Service and Black Hills, addressing issues of concern to all three utilities, as well as supplemental exceptions on its own behalf.

² Interwest wholly joins the exceptions filed by WRA and does not present any additional arguments.

B. Western Resource Advocates**1. Best cost**

3. WRA states that Rule 3627(b)(I), as adopted, does not define the term “best cost.”

It further argues that this term is not defined elsewhere in the Colorado statutes or Commission Rules and is not easily understood by all industry participants. WRA therefore recommends that the Commission amend Rule 3627(b)(I) as follows:

Best cost is defined as balancing cost, risk, and uncertainty and includes costs associated with avoiding, minimizing, and mitigating impacts to natural and cultural resources (defined herein as recreational, wildlands, fish, wildlife, plant life, scenic, historic, cultural, religious, archeological, and water).

WRA argues that wildlife, wild lands, and cultural issues can constrain transmission planning. It further states that the Environmental Data Taskforce, working within Scenario Planning Steering Group of the Western Electricity Coordinating Council (WECC) is currently researching on how to incorporate these constraints. WRA argues that the results of this research could be presented in the ten year transmission plan and can serve as a model for planning and budgeting for natural and cultural constraints at the statewide planning scale.

4. In response, CIEA argues that these specific environmental considerations should not be made a part of the rules. However, CIEA agrees that the Commission should clarify what is meant by the term “best cost.”

5. For their part, the Utilities argue that the main flaw with WRA’s proposal is that transmission planning occurs when specific transmission corridors are not yet determined. The Utilities argue they cannot detail recreational, wildlands, fish, wildlife, plant life, scenic, historic, cultural, religious, archeological, and water impacts for each transmission project listed in a ten year transmission plan. The Utilities explain that they consider these issues only at a very high level, to provide a general characterization of environmental resource and land use

conditions in an area to identify obvious obstacles to a particular proposal. The Utilities contend that a detailed consideration of these issues is unrealistic and would amount to a required environmental impact statement for every planned transmission project, even one that may never come to fruition and does not involve any federal lands or federal loan guarantees. The Utilities conclude that WRA's proposal, if adopted, would result in needless litigation and delay at the transmission planning stage.

6. We agree with WRA that transmission planning should incorporate an evaluation of impacts to natural and cultural resources. The basic issue, however, is what level of analysis is appropriate at the preliminary transmission planning stage, when possible rights-of-way have not been identified. WRA points out that WECC is currently addressing this basic issue, but has not yet identified a solution. If and when WECC develops a methodology to evaluate impacts on natural and cultural resources before identification of specific rights of way, we may incorporate such a methodology into our transmission planning rules. However, we decline to amend the rules to require that transmission planners perform an analysis that does not yet exist yet and for which the environmental community has not yet developed the tools.

7. On the other hand, we clarify that "best cost" is not equivalent to the "least initial construction cost." Further, the lowest long-term cost may be different from the lowest short-term cost. Further, to properly account for societal and environmental concerns, "best cost" may be higher than the theoretically possible "least cost." The Commission uses the term "best cost" to mean a balance of societal and environmental considerations; operational and maintenance concerns; short and long term planning opportunities; and initial construction costs. The proper balance of these concerns will be unique to each project. We incorporate this clarification into Rule 3627(b)(I), to read as follows:

The efficient utilization of the transmission system on a best-cost basis, considering both the short-term and long-term needs of the system. Best cost is defined as balancing cost, risk, and uncertainty, and includes proper consideration of societal and environmental concerns, operational and maintenance requirements, consistency with short-term and long-term planning opportunities, and initial construction cost.

8. We therefore grant, in part, and deny, in part, the exceptions filed by WRA on this ground.

2. Load forecasts

9. WRA argues that the Commission should modify Rule 3627(c)(II) to require the utilities to include data on load forecast reductions arising from distributed generation (DG) and utility energy efficiency programs. WRA argues that this data is important to understand the reasonableness of the load forecasts and to identify how state and federal policies have been incorporated into the transmission planning process. WRA proposes the following language to accomplish this goal:

The load forecasts, load forecast reductions arising from distributed generation and utility sponsored energy efficiency programs, and controllable demand side management data including the interruptible demands and direct load control management used to develop the transmission plan.

10. In response, the Utilities state they have no objection to this proposal if the words “net metered” are added, as follows:

The load forecasts, load forecast reductions arising from **net metered** distributed generation and utility sponsored energy efficiency programs, and controllable demand side management data including the interruptible demands and direct load control management used to develop the transmission plan.

The Utilities state they already estimate load forecast reductions arising from their demand side management programs and DG, to the extent of net metered DG. The Utilities also argue that the

Commission should not create new load forecasting requirements through the transmission planning rules. Tri-State further argues that, even with the addition of the words “net metered,” it would not be appropriate to include in the rule load reductions associated with DG. Tri-State states that it is obligated to serve the loads of its members, regardless of whether DG owned and operated by third parties is available and online. Tri-State argues that, at most, the ten year transmission plan should consider the effect of net metered DG on load forecasts based on appropriate assumptions concerning the availability of such generation.

11. We agree to modify Rule 3627(c)(II), as proposed by WRA and modified by the Utilities. We therefore grant, in part, the exceptions filed by WRA on this ground. The intent of the rule is to require the utility to report the load that transmission system must be designed to support. We also clarify it is not appropriate, in the transmission planning docket, to explore the issues related to the reasonableness of the load forecast and energy efficiency programs, and compliance with state and federal policies related to energy efficiency.

3. Economic studies

12. Finally, WRA proposes certain wording changes to Rule 3627(d), to clarify the purpose of conducting economic studies and to better align the final rule with FERC Order 890 expectations. In response, the Utilities state they have no objection to WRA’s proposal, with the understanding that the only economic studies that will be required will be those performed under FERC Order 890 since the last biennial filing. The Utilities believe that the rule as modified by WRA does not require anything further.

13. We agree that the wording changes to Rule 3627(d) proposed by WRA provide a needed clarification and therefore grant the exceptions filed by WRA on this ground.

C. CIEA**1. Independent transmission companies**

14. In its exceptions, CIEA contends that the rules, as adopted in the Recommended Decision, do not specifically require the participation and inclusion of independent transmission companies (ITCs) in the development of transmission plans. CIEA further argues that the rules, while acknowledging the importance of participation by all stakeholders, do not require a fair and equal consideration of ITC projects and input as compared to transmission projects identified by the utilities. CIEA argues that the rules need more specific language to accomplish these goals. It adds that the ITCs should be given the opportunity to sponsor both reliability and economic transmission projects.

15. In response, the Utilities argue that the Commission should deny these exceptions. The Utilities argue that the rule changes proposed by CIEA are unnecessary, since Rule 3627(g) already requires utilities to conduct outreach to all stakeholders and identify alternative solutions. The Utilities state that they will give fair consideration to merchant transmission proposals when developing their transmission plans. The Utilities further wish to clarify that Rule 3627(g) would not require them to independently conduct studies that would support alternative projects, only that they fairly consider those proposed alternatives. The Utilities add that they cannot be responsible for entities that may not be subject to Commission jurisdiction. The Utilities point out that ITCs do not have the same obligations to ratepayers or to the Commission.

16. We note that the rules, as adopted in the Recommended Decision, provide that all stakeholders, including the ITCs, can participate also in the transmission planning process and present appropriate arguments to the Commission during our review if they believe their input was not fairly considered in the development of transmission plans. We do not believe that any rule language specific to the ITCs is necessary. Further, alternative transmission proposals,

including merchant projects, will be within the scope of transmission planning dockets, to the extent they bear on the adequacy of the proposed transmission plan.

17. Finally, we note that the Commission has no direct jurisdiction over ITCs, which may affect the degree to which the Commission can address the matters related to these stakeholders in its transmission planning proceedings. We note that FERC is currently addressing these issues in a rulemaking pending before it.³ If and when FERC makes policy decisions on these issues, it may be appropriate to amend the transmission planning rules at that time. Regardless, the issue of ITC constructed projects, cost recovery for those projects, and how those projects are balanced against utility projects will be an issue for Commission investigation and discussion in the future.

18. We deny the exceptions filed by CIEA on this ground.

2. Transmission planning proceedings

19. CIEA argues that the Commission should hold evidentiary hearings in connection with transmission planning proceedings. CIEA argues that, at evidentiary hearings, parties could subject the transmission plans to a more pointed analysis than might otherwise occur through the workshop process. It contends that the parties should have full rights of cross-examination and argument in addressing the sufficiency of proposed transmission plans.

20. CIEA also takes exceptions to Rule 3627(i), which, as adopted, provides that the utilities may substantively rely on the information contained within a transmission plan and the Commission decision on the review of that plan in subsequent CPCN applications for individual projects contained in the transmission plan. CIEA argues that this language is too vague and that a presumption of prudence language should be used instead.

³ June 17, 2010 FERC Notice of Proposed Rulemaking concerning Transmission Planning and Cost Allocation, RM10-23-000.

21. In response, the Utilities generally argue that the Hearing Commissioner struck a reasonable compromise between, on one hand, evidentiary hearings for the ten year transmission plans, which would result in a presumption of need for individual projects contained in the plans in a later CPCN proceeding and, on the other hand, an informational process only that would not result in any benefits to the utilities in later CPCN proceedings. The Utilities also argue that an open and inclusive stakeholder process lends itself toward workshops rather than litigation.

22. We agree with the Utilities that the Hearing Commissioner appropriately balanced competing considerations in the Recommended Decision. These considerations, *inter alia*, are as follows: (1) Commission review of state wide transmission plans in a comprehensive manner; (2) opportunity for stakeholders to participate in an open and transparent manner; (3) a resolution of transmission CPCN applications in a more streamlined manner, by enabling the stakeholders and the Commission to be able to better assess the need for a transmission project and how it fits into a larger state wide transmission plan; (4) an opportunity for the Commission to offer guidelines to the utilities to be used in preparing future transmission plans and CPCN applications; and (5) providing some benefits to the utilities in later CPCN proceedings while taking into account the possibility of changed circumstances between the filing of ten year transmission plans and CPCN applications, especially with respect to transmission projects slated for later years of the ten year plan. Further, we agree that litigating the issues related to need twice, in a transmission planning docket and a CPCN docket, would be duplicative and would slow down, rather than streamline the process.

23. Rule 3627(h), as adopted in the Recommended Decision, allows the Commission to hold workshop(s) and/or hearing(s) on filed transmission plans and this flexibility is necessary because these plans may contain a wide variety of transmission proposals. By way of example,

the utilities may have very detailed information on projects that they will be filing an application for a CPCN in the near future or only preliminary information on projects that are slated for later years of a ten year plan. The projects in the second category may not be sufficiently “ripe” for a hearing and are more appropriately explored in a workshop instead. Similarly, the “substantial reliance” language accommodates this gradation among proposed transmission projects, while the “presumption of need” standard lends itself to an all or nothing outcome. We therefore deny the exceptions filed by CIEA on this ground.

D. Tri-State⁴

1. Jurisdictional exceptions

24. Tri-State takes exception to the phrase “jurisdictional electric utilities” and states it does not concede that the Commission has jurisdiction over its electric transmission facilities. Tri-State argues that in a recent docket that considered revisions to the resource planning rules for generation and transmission cooperatives, the Commission acknowledged the jurisdictional arguments made by Tri-State. Decision No. C10-1001, mailed February 10, 2010, in Docket No. 09I-041E. Tri-State states that, without waiving its jurisdictional argument, it will voluntarily conduct its transmission planning function and provide ten-year transmission plans and twenty-year conceptual long-range scenarios consistent with the adopted rules. Tri-State requests that the Commission, in its order on exceptions, acknowledge that Tri-State has agreed to voluntarily conduct its transmission planning function consistent with the adopted rules, and does not waive its arguments with respect to the Commission’s transmission planning jurisdiction.

25. We take note of Tri-State’s position regarding the Commission’s jurisdiction over its electric transmission facilities. We also reiterate our position in Docket No. 09I-041E and, as

⁴ We note that certain issues discussed by Tri-State in its supplemental exceptions are also discussed by the Utilities in the joint exceptions. We will address these issues in the next section.

in that docket, we are willing to set jurisdictional issues aside here to proceed with the new rules adopted in the Recommended Decision. We find good cause to replace the phrase “jurisdictional electric utilities” with the language that more closely mirrors Title 40. We will therefore amend Rule 3625 to state that the new transmission planning rules shall apply to “all electric utilities in the state of Colorado except municipally owned utilities and cooperative electric associations that have voted to exempt themselves from regulation pursuant to § 40-9.5-103, C.R.S.” We will replace the term “jurisdictional electric utilities” with the term “electric utilities” elsewhere in the transmission planning rules.

26. Tri-State also states that, not including itself, other non-jurisdictional transmission providers in Colorado wholly or jointly own more than 2,000 miles of high voltage transmission lines. It explains that it will be difficult to develop a truly comprehensive statewide transmission plan without significant input from non-jurisdictional transmission providers. Tri-State states it is committed to working with all utilities and stakeholders in the development of transmission plans contemplated in the Recommended Decision. Tri-State also states that it will continue to engage all transmission providers in Colorado and adjacent states, to ensure its transmission plans are coordinated with its regional partners.

27. We appreciate the efforts of Tri-State to develop a truly comprehensive statewide transmission plan.

2. Additional exceptions

a. Rule 3627(b)(III)

28. In its exceptions, Tri-State encourages the Commission to clarify the phrase “all legal and regulatory requirements, including renewable energy portfolio standards and resource adequacy requirements” contained in Rule 3627(b)(III). Tri-State encourages the Commission to

do so either in its ruling on exceptions or as part of the informal workshops contemplated prior to the first transmission plan filing in 2012. Tri-State notes that certain requirements do not apply to Tri-State in the same way they apply to Public Service and Black Hills.

29. We agree that the phrase “all legal and regulatory requirements” warrants further clarification. The Commission will do so during the workshops contemplated later this year.

b. Rule 3627(b)(IV)

30. Tri-State states it is not subject to the requirements contained in FERC Order 890 in the same way as Public Service and Black Hills. Tri-State notes that transmission planning is only one aspect of FERC Order 890 and argues that the Commission should adopt the following clarifying language to Rule 3627(b)(IV):

Consistency with applicable transmission planning requirements in the Federal Energy Regulatory Commission (FERC) Order 890. ~~All federal Energy Regulatory Commission (FERC) regulations contained in Order 890.~~

31. We clarify it did not intend to get involved in non-transmission planning issues contained in FERC Order 890. We therefore modify Rule 3627(b)(IV) in the manner suggested by Tri-State.

3. Rule 3627(e)(II)

32. Tri-State contends it is inappropriate for the Commission to require it to submit a twenty year conceptual long range plan that includes possible retirement of existing generation. Tri-State argues that the Commission does not have the same level of oversight over its electric resource planning process. Further, the Commission’s electric resource planning rules that apply to Public Service and Black Hills do not apply to Tri-State. Tri-State states that, instead,

its twenty year conceptual long range plan will include scenarios that are developed as part of the planning conducted at CCPG or authorized by its Board of Directors.

33. We do not believe that conceptual long range transmission planning is the same as generation planning. Evaluation of the possible impact on the transmission system resulting from *possible* retirement of existing generation is not generation planning. This would be just one of several “what-if” type scenarios reviewed by the Commission. By no means will these scenarios bind the utilities for future transmission planning. We deny the exceptions filed by Tri-State on this ground.

E. Utilities

1. Rule 3627(c)(VI)

34. The Utilities contend that the intent of the rules is for the utilities to provide certain studies, reports, and analyses that they customarily generate in connection with proposed transmission facilities so that all stakeholders can participate in an open transmission planning process, not to require any studies or analyses that the utilities do not presently prepare. The Utilities state that project-specific information and analyses contemplated by the adopted rules may exist for major projects that are close to the CPCN filing stage, but not for smaller projects that are within the ordinary course of business. Further, the Utilities explain that they undertake studies and analyses of certain transmission facilities as part of an interconnected system, but do not generate studies and reports specific to an individual project, unless that project is part of an imminent CPCN application. The Utilities conclude that the Commission should clarify that the requirements within the adopted rules detailing contents, compliance, analyses and alternatives may vary according to type and development stage of the transmission facilities.

35. The Utilities also contend the intent of the adopted rules is not to require project-specific documentation and analyses for transmission facilities that are in the ordinary course of business and do not require a CPCN. Instead, the Utilities contend the intent of the adopted rules is to create an open, transparent, and inclusive transmission planning process for larger projects that are outside the ordinary course of business and are more likely to draw stakeholder interest. The Utilities state that they do not ordinarily identify or evaluate alternate solutions for ordinary course of business projects.

36. We agree that the basic intent of the rules is not to require any studies or analyses beyond those necessary to demonstrate compliance with the reliability criteria, FERC Order 890, WestConnect and WECC requirements. The Utilities assert (elsewhere in this docket) that they comply with all of these requirements and annually prepare a ten year transmission plan as part of their WestConnect duties. That plan (a) covers all facilities 100 kV and above; (b) meets all applicable reliability criteria; (c) takes into account all identified or projected system needs; (d) has a study report available for every facility identified in the plan; (e) evaluates a broad range of alternatives, with feasibility and cost analysis to select preferred alternatives; and (f) incorporates relevant material from the WECC long range planning and scenario planning efforts. The rules, as adopted by the Recommended Decision, do not contemplate any studies or analyses beyond the ones that the utilities assert they perform already in preparing their annual ten year plan with WestConnect.

37. We also clarify that appropriate depth of analyses and evaluations of alternatives may vary according to the type of transmission project. For example, a small, localized project will not receive as much attention as a larger, regional project, nor will a project on which action is not needed in the near future receive as much attention as a project that is more imminent.

It is impossible to define what depth of analysis is required for each type of project. The Commission will consider these issues on a case by case basis. To clarify this, we amend Rule 3627(c)(VI) as follows:

The related studies and reports for each new transmission facility identified in the transmission plan including alternatives considered and the rationale for choosing the preferred alternative. The depth of the studies, reports, and consideration of alternatives shall be commensurate with the nature and timing of the new transmission facility.

38. Finally, we note that a comprehensive transmission plan includes both CPCN and non-CPCN projects and decline to make a per se distinction based on the CPCN requirement in the rules. In conclusion, we grant, in part, and deny, in part, the exceptions filed by the Utilities on this ground.

39. The Utilities further argue that Rule 3627(c), as adopted, could be read in a way as to require the information that utilities customarily develop for transmission facilities of 100 kV or greater only for these larger projects, not for smaller projects that do not require a CPCN. The Utilities argue that the requirement to include “transmission base case data for all applicable power flows, short circuit and transient stability analyses” and “related studies and reports for each new transmission facility identified in the transmission plan” in the ten-year transmission plan could reasonably be interpreted to mean that this information should be filed to the extent it has been developed and is available for each project. The Utilities request that Rule 3627(c) be modified accordingly.

40. We agree with this interpretation. We note that, once an individual transmission project is included into the comprehensive transmission plan, the utilities will evaluate the plan in its entirety and the final base cases and reliability analyses will include all components of the

plan. Further, we clarify that analyses of alternatives for a particular project, as applicable, may or may not require a full spectrum of steady-state power flow, transient stability, and short circuit analyses. It is impossible to define what depth of analysis is appropriate for each type of project to properly analyze alternatives. We find that the modification to Rule 3627(c)(VI), as discussed above, sufficiently accomplishes this clarification.

2. Rule 3627(b)(II)

41. In their exceptions, the Utilities request a clarification or a minor change to Rule 3627(b)(II). The rule, as adopted in the Recommended Decision, provides that, “[f]or *each year* covered in the ten year plan,” the plan shall demonstrate compliance with applicable reliability criteria for selected demand levels over a range of forecast system demands (emphasis added). The Utilities argue that one interpretation of this subsection would require thirty assessments for each ten-year plan, i.e., a reliability assessment for (1) summer peak load, (2) winter peak load, and (3) reduced load when renewable generation is maximized for each of the ten years of the plan. The Utilities do not believe that the Commission intended such an interpretation and seek a clarification on this issue. The Utilities argue that this interpretation would go well beyond the reliability assessments performed by the Utilities pursuant to NERC and WECC requirements. The Utilities state that the CCPG annually performs a reliability compliance study that evaluates near term (1-5 year) and long term (6-10 year) scenarios for reliability purposes. The Utilities state that these two assessments are a “spot check” on the regional transmission system for each five year period.

42. We agree with the Utilities that the rule was not intended to require 30 distinct reliability assessments for each ten year plan. However, we do want to ensure that the information provided covers all potential major changes in demand levels that may affect

reliability, as well as covers short term and long term scenarios. We agree that the “[f]or each year covered in the ten year plan” phrase in Rule 3627(b)(II) is unnecessary and open to misinterpretation. We will therefore delete this phrase and amend the rule as follows:

~~For each year covered in the ten year plan, a~~All applicable reliability criteria for selected demand levels over a range of forecast system demands, including summer peak load, winter peak load and reduced load when renewable generation is maximized.

We will clarify the remaining issues raised by the Utilities during the workshop(s) scheduled in 2011.

3. Filing date

43. In their exceptions, both the Utilities and Tri-State encourage the Commission to modify the filing date of transmission plans from February 1 to April 30, to coincide with Rule 3206 filings. The Utilities argue that it would be difficult to develop the information necessary to make the transmission plan filings on February 1, especially in the first transmission planning cycle in 2012. The Utilities contend that they will need to implement the in-house processes to comply with the adopted rules and that it will take significant amount of time to comply with the requirements regarding stakeholder outreach and evaluation of alternative solutions. The Utilities state that a few months are necessary to develop project information after the SB 07-100 filings. The Utilities further argue that, even with a February 1 filing date, it is unlikely that transmission planning proceeding will be completed in time to inform a Phase II ERP docket filed in the same year. For its part, Tri-State adds that its electric resource planning process, as agreed in Docket 09I-041E does not include a Phase II, so the Commission rationale for having transmission plans due on February 1 has limited applicability to it.

44. In response, CIEA argues the Commission should maintain the February 1 filing date as it will allow the coordination of transmission and generation planning. CIEA argues that the delay to April 30 as proposed by the Utilities will defeat this coordination.

45. We reiterate that coordination of transmission and generation planning is one of the primary goals of this rulemaking. We agree with CIEA that the change of the filing date to April 30 may defeat this goal. We recognize there may be efficiencies in better coordinating the filing requirements of Rule 3206, SB 07-100, and transmission planning rules. Further, we acknowledge that the information required in the various filings may be repetitious. We will address this topic in the future. Further, we understand that, in 2012, the utilities will be complying with the adopted rules for the first time and will take that into consideration in the workshop(s) to be held in 2011. In addition, we note that the utilities currently file their ten year plans with WestConnect and WECC in December, so we believe that the February 1 filing date with is realistic.

46. We also acknowledge that Tri-State's electric resource planning process does not include a Phase II. However, the electric resource planning process applicable to Black Hills and Public Service does include a Phase II. We will maintain the February 1 filing date, as that will allow the transmission planning proceeding to inform the Phase II ERP, which applies to two of the three utilities that will file transmission plans. Regarding its claim of limited resources, we note that Tri-State may file a petition for a waiver from the filing deadline and provide a detailed explanation at that time, rather than argue about this now in the abstract.

4. Transmission base case and supporting data

47. The Utilities request that the Commission delete the references to transmission base case data in Rule 3627(c)(I) and supporting data in Rule 3627(c)(IV).

The Utilities argue that the Commission would still be able to request this information, as additional supporting information pursuant to Rule 3627(h), but the Utilities would not be required to file this data with every transmission plan. The Utilities contend that, for national security reasons, certain data may only be released pursuant to FERC critical energy infrastructure information procedures and with a proper authorization. The Utilities also argue that this data is extremely voluminous and it would be an undue burden on the utilities to provide such data in biennial filings if neither the Commission nor stakeholders wish to review it.

48. We find it is essential for the Commission and stakeholders to have access to the transmission base case data and supporting data listed in Rules 3627(c)(I) and (c)(IV), in order to make the transmission planning process open, coordinated, and transparent. Further, Rule 1100 governs the treatment of confidential and highly confidential information and can be invoked if needed. The Commission is familiar with FERC's CEII requirements, and while that process may be required, there is no valid reason to restrict stakeholders' access to the information at this point. Regarding the contention that the data is voluminous, the data is available in electronic format and we will permit the utilities to provide an active link to the data in lieu of submitting the actual data. Finally, we wish to expedite the transmission planning proceeding as much as possible, which is why Rules 3627(c)(I) and (c)(IV) require the transmission base case data and supporting data to be filed upfront. We deny the exceptions filed by the Utilities on this ground.

5. Applicability of the rules to forthcoming CPCN applications

49. The Utilities argue that, for any CPCN applications that will be filed before the first transmission plans are due on February 1, 2012, the new transmission planning requirements should not be applied retroactively.

50. We agree that the transmission planning requirements adopted in this rulemaking should not be applied to CPCN applications that will be filed before the first transmission plan is due on February 1, 2012. That said, the requirements of FERC Order 890, CCPG, WestConnect, and WECC will remain in place. We also encourage the utilities to reach out to stakeholders, to the extent feasible and to keep in mind the spirit of the new rules, with respect to any such CPCN applications.

F. Adopted Rules Not Discussed

51. All other rules not discussed in this decision are adopted without change from Decision No. R11-0077, and as attached.

II. ORDER

A. The Commission Orders That:

1. Exceptions to Recommended Decision No. R11-0077 (Recommended Decision) filed on February 10, 2011 by Western Resource Advocates are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to the Recommended Decision filed on February 10, 2011 by the Colorado Independent Energy Association are denied, consistent with the discussion above.

3. The exceptions to the Recommended Decision filed on February 10, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy, Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc., are granted, in part, and denied, in part, consistent with the discussion above.

4. The exceptions to the Recommended Decision filed on February 10, 2011 by Tri-State Generation and Transmission Association, Inc., are granted, in part, and denied, in part, consistent with the discussion above.

5. The Commission adopts the rules attached to this Order as Attachment A, consistent with the above discussion.

6. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

7. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

8. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

9. 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.

10. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 17, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners