

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-0145E

LA PLATA ELECTRIC ASSOCIATION, INC.; EMPIRE ELECTRIC ASSOCIATION, INC.;
WHITE RIVER ELECTRIC ASSOCIATION, INC.; BP AMERICA PRODUCTION
COMPANY, ENCANA OIL & GAS (USA), INC., ENTERPRISE PRODUCTS OPERATING
LLC, AND EXXONMOBIL PRODUCTION COMPANY AS MEMBERS OF THE RURAL
ELECTRIC CONSUMER ALLIANCE; AND KINDER MORGAN CO₂ COMPANY, LP,

COMPLAINANTS,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
IDENTIFYING SCOPE OF COMPLAINT PROCEEDING;
ADOPTING PROCEDURAL SCHEDULE;
ADOPTING DISCOVERY SCHEDULE; AND
AMENDING CAPTION OF PROCEEDING**

Mailed Date: April 23, 2014

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I. STATEMENT

1. In response to a Remand Order by the Commission pursuant to Interim Decision No. C14-0006-I issued on January 3, 2014, and Interim Decision No. C14-0337-I, issued on March 31, 2014, the undersigned Administrative Law Judge set a pre-hearing conference for April 21, 2014 by Interim Decision No. R14-0392-I, issued April 11, 2014, in order to determine how the underlying complaint proceeding would go forward given the directives of the Commission's Remand Order and to establish a procedural schedule.

2. At the scheduled date and time, the pre-hearing conference was held. Appearances were entered by La Plata Electric Association, Inc.; Empire Electric Association, Inc.; White River Electric Association, Inc.; BP America Production Company, Encana Oil & Gas (USA), Inc., Enterprise Products Operating LLC, and ExxonMobil Production Company as members of the Rural Electric Consumer Alliance; Kinder Morgan CO₂ Company, LP (collectively, Complainants), and Tri-State Transmission and Generation Association, Inc. (Tri-State).

A. Scope of Proceeding

3. Regarding the scope of the complaint proceeding, the parties agreed that the representations made in an e-mail sent on April 17, 2014 by Mr. Thorvald Nelson correctly define the scope of the proceeding. The parties agree that the impact of the Commission's Interim Decision on the scope of the proceeding results in the dismissal of Claims 1 and 2 of the Formal Complaint, as well as rejecting the Relief Requested in paragraphs (i), (ii), (iv), and (v). As a result, Claims 3, 4, and 5 remain, as well as the requests for relief in paragraphs (iii) and (vi).

B. Procedural Schedule

4. Regarding a procedural schedule, a discussion was held during the pre-hearing conference in which several issues were raised affecting a procedural schedule. On April 18, 2014, Tri-State filed a Motion to Dismiss Complaint (Motion to Dismiss), based on the Commission's findings in its Interim Decisions. In addition, Tri-State argued that a discovery schedule cannot not be established until it files its Answer, which would then put the matter at issue.

5. Further complicating a procedural schedule, Complainants, at the pre-hearing conference, raised the argument that pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1308(e) of the Commission's Rules of Practice and Procedure, Tri-State was precluded from filing an Answer since more than 14 days had elapsed since a Decision was issued on its Motion to Dismiss.

6. To ensure that the Complaint will proceed in an orderly fashion, a procedural schedule will be adopted, as discussed at the pre-hearing conference.

7. Complainants' response to the Motion to Dismiss will be due by the close of business on April 24, 2014. A decision on the Motion to Dismiss will be issued no later than May 9, 2014.

8. Complainants' written motion requesting that Tri-State be precluded from filing an Answer pursuant to Rule 4 CCR 723-1-1308(e) is to be filed no later than April 24, 2014. Tri-State's response to the Complainants' motion is due by close of business on April 30, 2014.

9. If it is found that Tri-State may file its Answer to the Complaint, such filing shall be due no later than May 16, 2014. Given the above deadlines, the full procedural schedule is as follows:

Complainants' Response to Motion to Dismiss Due	April 24, 2014
Complainants' Motion Re: Rule 1308(e) Due	April 24, 2014
Tri-State's Response to Rule 1308(e) Motion Due	April 30, 2014
Decision on Motion to Dismiss	May 9, 2014
Answer Due (if Complainants' Motion Denied)	May 16, 2014
Complainants'/Intervenors' Direct Testimony Due	June 10, 2014
Tri-State's Answer Testimony Due	July 31, 2014
Complainants' Rebuttal Testimony Due	August 28, 2014
Evidentiary Hearing	September 29-30 October 1-2, 2014
Statements of Position Due	October 17, 2014

C. Discovery

10. The earliest Complainants may begin to propound discovery is May 9, 2014. Discovery will generally be conducted pursuant to Rule 4 CCR 723-1-1405. The deadline to propound discovery related to direct testimony and exhibits is the deadline for filing answer testimony or July 31, 2014. Responses or objections to discovery related to direct testimony are due within 10 days of the date discovery is propounded. The deadline to propound discovery related to answer testimony and exhibits is the deadline for filing rebuttal testimony or August 28, 2014. Responses or objections to discovery related to answer testimony are due

within 7 days of the date discovery is propounded. The deadline to propound discovery related to rebuttal testimony is 5 business days prior to the first day of the evidentiary hearing. Responses or objections to discovery related to rebuttal testimony are due within 5 days of the date discovery is propounded.

11. Discovery served after 5:00 p.m. MDT will be deemed served the next business day, and discovery served after 3:00 p.m. MDT on a Friday will be deemed served as of the following Monday. If the following Monday is a legal holiday, then discovery served after 3:00 p.m. on a Friday will be deemed served as of the following Tuesday.

12. Written discovery requests and non-confidential responses will be served on all counsel by email. Discovery requests or responses are not to be filed with the Commission unless accompanying a motion to compel or objection to discovery request.

D. Amended Caption

13. In the Commission's Interim Decision No. C14-0006-I issued on January 3, 2014, it was found that the status of the intervenors identified as the "Industrial Complainants," including BP America Production Company, Encana Oil & Gas (USA), Inc., Enterprise Products Operating LLC, and ExxonMobil Production Company, and Kinder Morgan CO₂ Company, LP, was amended given the Commission's narrowing of the Complainants' claims on remand. As a result, the Commission dismissed the Industrial Complainants as named complainants in this proceeding. However, the Commission determined that the interests asserted by the Industrial Complainants satisfy the standards for permissive intervention pursuant to Rule 4 CCR 723-1-1401(c).

14. Since the Commission dismissed the Industrial Complainants as named complainants in Interim Decision No. C14-0006-I, it is now ordered that the caption of this

proceeding be amended by removing the names of the Industrial Complainants from the caption. Removing the Industrial Complainants from the caption of this proceeding does not alter in any manner, the rights those parties enjoy as full intervenors in this complaint proceeding.

II. ORDER

A. It Is Ordered That:

1. The scope of this complaint proceeding shall be defined as set forth above in Section A to this Decision.

2. The procedural schedule set forth above in Section B shall be adopted.

3. The discovery schedule set forth above in Section C shall be adopted.

4. The caption of this complaint proceeding shall be amended consistent with the discussion above in Section D. The caption of this proceeding going forward shall read as follows:

LA PLATA ELECTRIC ASSOCIATION, INC.; EMPIRE ELECTRIC ASSOCIATION, INC.; AND, WHITE RIVER ELECTRIC ASSOCIATION, INC.,

COMPLAINANTS,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

5. An evidentiary hearing in this matter is scheduled as follows:

DATES: September 29 and 30, 2014,
October 1 and 2, 2014

TIME: 9:00 a.m. each day

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director