

Decision No. R14-1417-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-0145E

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING MOTION TO HOLD
PROCEEDING IN ABEYANCE;
NOTING WAIVER OF STATUTORY
DEADLINE; AND, WAIVING RESPONSE TIME**

Mailed Date: November 28, 2014

I. STATEMENT

A. Background

1. The procedural schedule in this proceeding was established by Interim Decision No. R14-0423-I, issued April 23, 2014, as amended by Interim Decision No. R14-0682-I, issued June 23, 2014, which set an evidentiary hearing for November 3 through 7, 2014.

2. By Interim Decision No. R14-1237-I, issued October 10, 2014, because no further pre-hearing conferences were scheduled prior to the start of the hearings, several procedural requirements were established regarding the evidentiary hearing. La Plata Electric Association, Inc.; Empire Electric Association, Inc.; and, White River Electric Association, Inc.

(Complainants or Complaining Parties) and Tri-State Generation and Transmission Association, Inc. (Tri-State or Respondent) were required to confer to develop a witness list with an order of cross-examination and estimated cross-examination times for each witness. The witness list was to be filed no later than October 29, 2014.

3. On October 29, 2014, legal counsel for Complainants and Respondent held a conference call with the undersigned Administrative Law Judge (ALJ). The parties indicated that they were conducting settlement negotiations and it appeared that a final settlement was possible. Consequently, the parties requested that the procedural requirements pursuant to Interim Decision No. R14-1237-I be waived and the evidentiary hearing scheduled for November 3 through 7, 2014 be vacated.

4. The parties discussed several scenarios regarding the settlement process but seemed to agree that a two-step process was most viable. Under that process, the procedural schedule would be waived and the evidentiary hearing vacated. The parties would continue settlement negotiations and would attempt to reach some sort of an interim agreement whereby the parties would concur that sufficient progress had been made to move towards a final settlement agreement.

5. A status conference was proposed at a later time in order to receive an update from the parties regarding progress in settlement negotiations. If sufficient progress had been made at that time, an interim agreement was proposed to be filed with the Commission with an indication as to when a final settlement agreement would be executed and filed. However, if it appeared that consensus among the parties could not be reached, the evidentiary hearing would be re-scheduled and the Formal Complaint proceeding would go forward. The status conference was scheduled for Thursday, November 13, 2014 by telephone.

6. The proposals discussed above were adopted by Interim Decision No. R14-1318-I, issued October 30, 2014. As part of the Interim Decision, Complainants were urged to consider waiving the 210-day deadline in accordance with § 40-6-108(4), C.R.S.; or, propose another reasonable procedural method of extending the 210-day deadline in order to provide sufficient time for the parties to comfortably continue settlement negotiations, and for the Commission to issue a final decision in this matter, whether that is a final decision on the terms of settlement agreement on the merits of the Formal Complaint after hearing.

7. During the November 13, 2014 teleconference with the ALJ, and attorneys for the Complaining Parties and Tri-State, the parties stated that they had reached a preliminary agreement that establishes a temporary rate which will be in effect through 2015. The parties indicated that negotiations would begin in 2015 to establish a permanent A-39 rate which could be in effect by late 2015 or early 2016.

8. On November 21, 2014, the Complaining Parties and Tri-State filed a Joint Motion of Waiver of the Statutory Deadline for a Final Commission Decision, Motion to Hold Proceeding in Abeyance, and for Waiver of Response Time (Joint Motion). Attached to the Joint Motion is a copy of the Preliminary Agreement entered into among the Complaining Parties and Tri-State.

9. According to the Preliminary Agreement the rate identified as “TR-1” will be available to all of Tri-State’s non-New Mexico member systems on a voluntary basis, including the Complainant member systems. TR-1 is to remain available to all Tri-State non-New Mexico member systems through December 31, 2015, or as otherwise agreed to by the parties in a subsequent global settlement agreement. The TR-1 rate is to be comprised of a demand charge of \$26.49 per kilowatt hour and an energy charge of \$0.0282 per kilowatt hour.

10. Negotiations for a global settlement agreement are anticipated to begin sometime in 2015 and it is expected that a permanent A-39 rate will be adopted as part of that global settlement agreement in late 2015 or early 2016, which will be in effect going forward from sometime in 2016.

11. As a result of the terms of the Preliminary Agreement, the parties anticipate that the complexity of the issues presented, and the need for any global settlement to be approved by the various boards of directors will require long-term negotiations. Therefore, the Joint Motion requests that this Complaint proceeding be held in abeyance until December 31, 2015, unless a shorter or longer abeyance is subsequently requested by the parties and approved by the Commission.

12. The Joint Motion further states that should the parties reach a global settlement the Complaining Parties will withdraw their Formal Complaint. However, should the parties fail to reach a global settlement, the Complaining Parties reserve their right to revive the Formal Complaint and request a scheduling conference to establish a new procedural schedule, and to proceed to an evidentiary hearing on the original Formal Complaint.

13. The parties also propose to file quarterly status reports on March 31, 2015, June 30, 2014, September 30, 2015, and if necessary, December 31, 2015 in order to keep the Commission up-to-date on the progress in achieving a global settlement agreement.

14. Finally, the parties request that response time to the Joint Motion be waived.

B. Findings

15. Good cause is found to grant the requested relief contained in the Joint Motion. It appears that the parties have agreed upon a course of action which may resolve all of the issues raised by the Complaining Parties in the Formal Complaint. As a result, this proceeding will be

held in abeyance until December 31, 2015 pending the outcome of negotiations toward a global settlement agreement as discussed above.

16. The parties to this proceeding are to file joint quarterly status reports on March 31, 2015, June 30, 2015, September 30, 2015, and if necessary, December 31, 2015 in order to apprise the Commission of the progress of negotiations towards ~~p~~ermanent rate.

17. The voluntary waiver of the 210-day statutory time period in which to issue a final Commission Decision in this proceeding pursuant to § 40-6-108(4), C.R.S., by the Complaining Parties is noted.

18. Response time to the Joint Motion will be waived.

II. ORDER

A. It Is Ordered That:

1. The Joint Notice of Waiver of the Statutory Deadline for a Final Commission Decision, Motion to Hold Proceeding in Abeyance, and Motion for Waiver of Response Time (Joint Motion) filed by La Plata Electric Association, Inc.; Empire Electric Association, Inc.; and, White River Electric Association, Inc. (the Complaining Parties) and Tri-State Generation and Transmission Association, Inc. is granted consistent with the discussion above.

2. This Formal Complaint Proceeding shall be held in abeyance until December 31, 2015.

3. The parties to this proceeding shall file joint quarterly status reports on March 31, 2015, June 30, 2015, September 31, 2015, and December 31, 2015 (if necessary) to report on the progress of global settlement negotiations towards ~~p~~ermanent rate.

4. The voluntary waiver of the 210-day statutory time period in which to issue a final Commission Decision in this proceeding pursuant to § 40-6-108(4), C.R.S., by the Complaining Parties is noted.

5. Response time to the Joint Motion shall be waived.

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