

Decision No. R19-1025-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0691E

UNITED POWER, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING OUT OF STATE COUNSEL'S MOTION
FOR ADMISSION PRO HAC VICE**

Mailed Date: December 19, 2019

I. STATEMENT

1. On December 5, 2019, United Power, Inc. (United) filed with the Colorado Public Utilities Commission a Formal Complaint against Tri-State Generation and Transmission Association, Inc. (Tri-State). That filing commenced the above-captioned proceeding. United and Tri-State are the Parties to this Proceeding.

2. On December 6, 2019, pursuant to Rules 1205(a) and 1302(g) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission's Director served on Tri-State an Order to Satisfy or Answer, the Complaint, and an Order Setting Hearing and Notice of Hearing. Tri-State was ordered to Satisfy or Answer the Complaint within 20 days, or by December 26, 2019.

3. The procedural history of the above-captioned proceeding is set forth in Decision No. R19-1021-I (mailed on December 18, 2019) and is repeated here as necessary to put this Decision into context.

4. On December 9, 2019, United filed an Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission (*PHV* Motion) for Peter W. Herzog III of the St. Louis, Missouri, office of the law firm of Wheeler Trigg O'Donnell LLP to appear as co-counsel on behalf of United. The *PHV* Motion was served on four different counsel for Tri-State.¹

5. On December 19, 2019, Tri-State filed its response to the *PHV* Motion. Tri-State does not oppose the admission of Mr. Herzog as *pro hac vice* counsel for United.

II. FINDINGS AND CONCLUSIONS

6. Under Colorado law, legal counsel who are not licensed to practice law in Colorado can be granted permission to appear *pro hac vice* in this Proceeding. Rule 1201(a) of the Rules of Practice and Procedure,⁴ CCR 723-1, governs admission to appear before the Commission for attorneys who are not licensed to practice in Colorado. Rule 1201(a) refers to Rule 205.4, Colorado Rules of Civil Procedure (C.R.C.P.), which incorporates by reference Rule 205.3, C.R.C.P. Rule 205.3(2), C.R.C.P., details what an out-of-state attorney must do to be permitted to appear *pro hac vice* in a Colorado proceeding and includes five requirements.

7. On December 12, 2019, the Commission received notification from the Colorado Supreme Court that Mr. Herzog had filed the *PHV* motion and paid the required \$300 filing fee.

8. The *PHV* Motion contains the statements and information required by Rules 205.3 and 205.4, C.R.C.P.

¹ The *PHV* Motion failed to include a report of conferral with opposing counsel, as required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

9. The *PHV* Motion states good cause, establishes that Mr. Herzog is an attorney in good standing of the Bars of the State of Missouri and the State of Massachusetts, has not been subjected to any order of discipline or disability, and has not had any request for *pro hac vice* admission denied or revoked. The *PHV* Motion demonstrates that Mr. Herzog has complied with the requirements of Rules 205.3 and 205.4, C.R.C.P. and of Rule 1201 Rules of Practice and Procedure, 4 CCR 723-1.

10. The *PHV* Motion will be granted. Mr. Herzog will be admitted *pro hac vice* to represent United in this Proceeding.

III. **ORDER**

A. **It Is Ordered That:**

1. Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission, filed on December 9, 2019, is granted.

2. Peter W. Herzog III of the St. Louis, Missouri, office of the law firm of Wheeler Trigg O'Donnell LLP is admitted *pro hac vice* to represent United Power, Inc., in this Proceeding.

3. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director