Decision No. R20-0173-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0620E

LA PLATA ELECTRIC ASSOCIATION, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

PROCEEDING NO. 19F-0621E

UNITED POWER, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

INTERIM DECISION OF HEARING COMMISSIONER FRANCES A. KONCILJA DENYING MOTIONS FILED BY WYOMING RURAL ELECTRIC COOPERATIVES AND BY MOUNTAIN VIEW ELECTRIC ASSOCIATION INC.

Mailed Date: March 13, 2020

I. SUMMARY

1. La Plata Electric Association, Inc. and United Power, Inc. (collectively, Complainants) filed these formal complaints against Tri-State Generation and Transmission Association, Inc. (Tri-State) on November 5 and 6, 2019, respectively requesting that this Commission determine a just, reasonable, and non-discriminatory exit charge for Complainants. On November 25, 2019 by Decision No. C19-0955-I, the Commission consolidated the complaints in Proceeding Nos. 19F-0620E and 19F-0621E and designated Commissioner Frances Koncilja as the Hearing Commissioner.

2. Relevant to this Decision, the Hearing Commissioner's March 6, 2020 decision invited interested entities to participate in this proceeding as *amicus curiae*, noting that thoughtful legal analysis of jurisdictional questions would be helpful, and limiting *amicus curiae* to addressing those questions.[1]

3. Jointly, certain Wyoming electric cooperatives, and separately, Mountain View Electric Association Inc. (Mountain View), filed notices accepting the Hearing Commissioner's invitation to address jurisdictional questions as *amici curiae*. Both also filed motions seeking to argue a handful of additional issues. This Decision denies the motions.

II. DISCUSSION

4. On March 10, 2019, the Wyoming electric cooperatives jointly filed a notice announcing their participation as *amicus curiae* in this proceeding. Once filed, the Wyoming cooperatives (now, the Wyoming Amici) jointly became *amicus curiae* to this proceeding. On that same day, the Wyoming Amici also filed a motion seeking to enlarge their participation in

[1] Decision No. R20-0149-I, ¶¶ 34-36, March 6, 2020, Proceeding Nos. 19F-0620E and 19F-0621E (consolidated).

this proceeding. Similarly, on March 11, 2019, Mountain View filed a Notice of Participation as *Amicus Curiae* on the Issue of Jurisdiction as well as a motion seeking to argue additional issues beyond jurisdiction.

5. In Commission proceedings, *amicus curiae* are permitted to address legal questions only, and may only address those legal questions the Hearing Commissioner permits. *See* 4 *Code of Colorado Regulations* 723-1 Rule 1200(c) of the Commission's Rules of Practice and Procedure. The decision inviting interested entities to participate as *amicus curiae* acknowledged both points by limiting *amicus* participation to providing legal argument on jurisdictional issues raised in the course of the proceeding.

6. Now, the Wyoming Amici move to enlarge their participation in order to address:

- the importance of the "contractual relationship" between Tri-State, the Wyoming Amici, and complainants;
- the need to preserve the integrity of those relationships; and
- the "potentially devastating" impact on the Wyoming Amici and their communities that could result from this proceeding.

7. The Hearing Commissioner declines the Wyoming Amici's invitation to enlarge their participation as requested. To do so would invite factual discussion rather than legal analysis and so would run afoul of the Commission's rule governing *amicus curiae* participation. As well, the discussion offered by the Wyoming Amici will not assist the Hearing Commissioner with the core of this consolidated proceeding which is addressing the exit charge issues as they relate to each cooperative's complaint.

8. For its part, Mountain View seeks to file additional legal argument on four issues:

- Findings and determinations regarding Tri-State's bylaws;
- The formulation of a just and reasonable exit fee from Tri-State;

- The effect on rates, terms, and conditions upon which Mountain View purchases wholesale power from Tri-State; and
- Whether the requested relief results in Mountain View bearing a disproportionate or unfair amount of Tri-State's existing debt.

9. Mountain View also requests to address "all other incident issues."

10. In the Hearing Commissioner's view, the first two issues Mountain View seeks to address are at the heart of this proceeding and will be thoroughly addressed by the parties. Therefore, allowing additional briefing on those issues by a non-party is unlikely to provide a material benefit to this proceeding, though it would require additional resources and increase overall cost to the parties. The third and fourth issues Mountain View raises attempt to make this proceeding about Mountain View and its rates, rather than about an exit charge for each complainant. Given the size and complexity of this proceeding, allowing additional briefing on a non-party's wholesale rates and allowing a non-party to brief whether a possible debt allocation is "unfair" will add little but administrative burden to this already sizable endeavor. Providing Mountain View carte blanche to address "all other incident issues" would exacerbate these concerns. So, in the exercise of her considerable discretion, the Hearing Commissioner denies Mountain View's motion.

11. Nonetheless, both the Wyoming Amici and Mountain View may analyze and brief jurisdictional questions arising in this proceeding.

III. ORDER

A. It Is Ordered That:

1. The March 10, 2020, Wyoming Rural Electric Cooperatives' Motion to Participate as *Amicus Curiae* is denied.

2. The March 11, 2020, Motion to Participate as *Amicus Curiae* filed by Mountain View Electric Association Inc. is denied.

3. This Decision is effective on its Mailed Date.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

Hearing Commissioner

ATTEST: A TRUE COPY

Doug Dean,
Director