

Decision No. R20-0357-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
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING JOINT NOTICE AND REQUEST TO
DECLARE INITIAL DMEA EXIT CHARGE PUBLIC**

Mailed Date: May 8, 2020

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I. SUMMARY

1. La Plata Electric Association, Inc. and United Power, Inc. (United Power) (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.

2. The procedural history of this proceeding is set out in previous Decisions and is repeated here as necessary to put this Decision in context.

3. On November 25, 2019, by Decision No. C19-0955-I, the Commission consolidated the complaints in Proceeding Nos. 19F-0620E and 19F-0621E, designated Commissioner Frances Koncilja as the Hearing Commissioner, and required the parties to file a proposed procedural schedule by December 6, 2019.

4. On December 19, 2020, by Decision No. R19-1001-I, Hearing Commission Koncilja adopted a procedural schedule which included an evidentiary hearing from March 23 to 27, 2020.

5. Commissioner Koncilja's term expired in January 2020. She was asked and agreed to continue to serve until a new commissioner was appointed and confirmed in her stead. A new Commissioner was sworn in on March 13, 2020.

6. On March 13, 2020, by Decision No. R20-0175-I, the evidentiary hearing in this proceeding, scheduled for March 23 to March 27, 2020, was suspended and the proceeding was returned to the Commission *en banc*.

7. On March 23, 2020, United Power filed its Notice of After-Decided Authority and Request for Video or Telephonic Status Conference.

8. On March 26, 2020, by Decision No. C20-0201-I, the Commission referred the matter to an Administrative Law Judge.

9. On April 3, 2020, by Decision No. R20-0218-I, a status conference was scheduled for April 14, 2020.

10. At the status conference on April 14, 2020, an evidentiary hearing was scheduled from May 18 through May 22, 2020.

11. On April 27, 2020, Complainants filed their Joint Rule 1101(f) Notice and Request to Declare Initial DMEA Exit Charge Public (Notice and Request).

12. On May 8, 2020, Tri-State filed its Response in Opposition to Complainants' Notice and Request (Response).

II. RULE 1101(F) NOTICE AND REQUEST TO DECLARE INITIAL DMEA EXIT CHARGE PUBLIC, COMPLAINANTS' ARGUMENT

13. In its Notice and Request, Complainants request that the Commission declare that the initial Mark-to-Market exit charge offered by Tri-State to Delta-Montrose Electric Association (DMEA) (Initial DMEA Exit Charge) is not highly confidential and may be included in the public record in this proceeding.

14. Complainants state that Tri-State's April 13, 2020 exit charge methodology tariff filing with the Federal Energy Regulatory Commission (FERC) attempts to bind all future exit

charges to Tri-State's Mark-to-Market methodology. Complaints argue that because the Initial DMEA Exit Charge was produced utilizing the same Mark-to-Market methodology that Tri-State has now filed as a public tariff at FERC, the Initial DMEA Exit Charge cannot be considered confidential.

15. Complainants further assert that the Initial DMEA Exit Charge should no longer be considered confidential given that the final, actual DMEA exit charge number is now public as part of the settlement in Proceeding No. 18F-0866E.

16. Finally, Complainants state that in Proceeding No. 18F-0866E, the Initial DMEA Exit Charge was only treated as highly confidential out of an abundance of caution; however, that proceeding settled and Tri-State's claim of confidentiality was never challenged, let alone resolved. Complainants also argue Tri-State has no basis to assert that the Initial DMEA Exit Charge must remain confidential, citing the extraordinary protection motion filed in Proceeding No. 18F-0866E, in which DMEA noted specific "inadvertent disclosures of this exit charge figure by Tri-State."¹

A. Tri-State's Argument

17. In its Response, Tri-State states it no longer requests highly confidential or confidential treatment for the Initial DMEA Exit Charge.

B. Discussion

18. Rule 1101(f) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, "establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential." It further provides that if an

¹ Notice and Request at footnote 6.

agreement cannot be reached by the parties, the party challenging a claim of confidentiality shall file a notice identifying the challenged information. Within ten days, the party asserting the challenged information is confidential shall make a filing stating grounds to support its claim of confidentiality.

19. Here, since Tri-State no longer requests that the Initial DMEA Exit Charge be treated as highly confidential or confidential it shall no longer be given such treatment and may be included in the public record in this proceeding.

20. Complainants' Request to declare Tri-State's initial Mark-to-Market exit charge offered to DMEA public will be granted.

III. ORDER

A. It Is Ordered That:

1. The Joint Rule 1101(f) Notice and Request to Declare Initial DMEA Exit Charge Public, filed by La Plata Electric Association, Inc. and United Power, Inc. on April 27, 2020, is granted.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director