

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF EMPIRE ELECTRIC ASSOCIATION,)
INC., FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CON-)
STRUCT, OPERATE AND MAINTAIN A)
115 kV TRANSMISSION LINE AND)
ASSOCIATED FACILITIES IN PARTS OF)
MONTEZUMA, AND DOLORES COUNTIES,)
COLORADO.)

APPLICATION NO. 33481

RECOMMENDED DECISION OF
EXAMINER ROBERT E. TEMMER

GRANTING APPLICATION

September 10, 1982

Appearances: William Hamilton McEwan, Esq., Denver,
Colorado, and
Clifford C. Fossum, Esq., Cortez,
Colorado, for Applicant Empire Electric
Association, Inc.;

Alvin J. Meiklejohn, Jr., Esq., and
Edward Lyons, Esq., Denver, Colorado,
for Intervenor Shell Oil Company;

Suzanne A. Schiro, Assistant Attorney
General, Denver, Colorado, for the
Staff of the Commission.

STATEMENT

Empire Electric Association, Inc. (hereinafter referred to as "Empire" or "Applicant"), on January 23, 1981, filed an application with the Commission for a certificate of public convenience and necessity to construct a 115 kV transmission line, associated substations, switch stations, and ancillary facilities within portions of Montezuma and Dolores Counties, Colorado (hereinafter, sometimes referred to as the "proposed electric facilities").

The Commission assigned Application No. 33481 to the matter and, pursuant to Decision No. C81-562, entered on March 24, 1981, required Empire to provide written mailed notice of the filing of the within application, together with a summary of the nature of the proposed construction, to each of Empire's customers and to each customer of San Miguel Power Association (hereinafter referred to as "San Miguel").

The notice to San Miguel's customers was required because the original application contemplated the construction of a segment of the transmission line within a small portion of San Miguel's service territory in order to interconnect with an existing 115 kV transmission line owned and operated by Colorado-Ute Electric Association, Inc. (hereinafter referred to as "Colorado-Ute"). Empire complied with the foregoing notice requirements and filed with the Commission, on or about May 1, 1981, its Affidavit of Mailing reflecting compliance.

Shell Oil Company (hereinafter referred to as "Shell") petitioned to intervene in the matter. Its petition was granted by the Commission, pursuant to Decision No. C81-504, dated March 17, 1981. The Colorado Office of Consumer Services (hereinafter referred to as "OCS")

petitioned to intervene in the within matter on May 8, 1981. Its request was administratively granted by the Executive Secretary of the Commission on May 13, 1981. Subsequently, on January 13, 1982, counsel for OCS moved to withdraw. This request was administratively granted by the Executive Secretary of the Commission on January 19, 1982.

Hearing on the within application was originally scheduled for June 30, 1981. Hearing continuances were granted by the Commission and the Hearings Examiner at the request of Empire, principally on the grounds that Empire and Shell had not completed negotiating appropriate contracts for the construction of the proposed facilities. Empire, on June 30, 1982, notified the Examiner and counsel for the Staff of the Commission that it was prepared to proceed to hearing. Accordingly, by Decision No. R82-1056-I, entered on July 14, 1982, hearing in this matter was scheduled for August 12, 1982, in Denver. Empire, on July 29, 1982, prefiled summaries of the testimony and copies of the exhibits which it intended to introduce in its direct case. Empire also prefiled, on August 10, 1982, copies of the prepared direct testimony which it intended to offer in its direct case.

The hearing was held as scheduled on August 12, 1982. Empire presented the testimony of (a) Everett C. Johnson, its General Manager, and (b) Irvin C. Sanders, Vice-President and Project Manager of Merrick and Company, in support of the application. Empire and Shell jointly presented the testimony of B. J. Alford, an employee of Shell, in support of the application. Exhibits A, B and C, containing the prepared direct testimony of witnesses Johnson, Sanders and Alford respectively, were offered and admitted into evidence. Additionally, Exhibits 1 - 25, accompanying the testimony of witnesses Johnson, Sanders and Alford, were offered and admitted into evidence. Staff did not offer any exhibits or sponsor testimony in the proceeding. Counsel for the Staff cross-examined the witnesses sponsored by Empire and Shell.

The original application filed by Empire contemplated the possibility of constructing a small portion of the proposed transmission line in the service area of San Miguel in order to effect an interconnection with Colorado-Ute's existing 115 kV transmission line in that area. Empire, as a preliminary matter during the hearing, advised the Examiner that as the details of the proposed electric facilities advanced, it was decided to eliminate a particular substation thus also avoiding the necessity of interconnection within San Miguel's service area. Accordingly, Empire requested that all reference to a proposed interconnection within San Miguel's service area be deleted from its request for a certificate of public convenience and necessity and that said request be treated as a restrictive amendment to its application. The Staff of the Commission offered no objection thereto and the Examiner hereby grants such request.

At the conclusion of the hearing, Empire requested permission to submit a proposed decision and order and said request was granted by the Examiner. The subject matter was then taken under advisement. The proposed decision and order was received on August 20, 1982.

Pursuant to the provisions of 40-6-109, CRS 1973, the Examiner hereby transmits to the Commission the record and exhibits of this proceeding, together with this recommended decision.

FINDINGS OF FACT
AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions drawn:

1. Empire is a public utility as defined in 40-1-103, CRS 1973. It is engaged in the purchase, transmission, distribution and sale at retail of electric power and energy to its consumers and members who are located in Montezuma, Dolores and San Miguel Counties, Colorado and San Juan County, Utah. Empire holds a certificate of public convenience and necessity from this Commission to provide electric utility service to its consumers and members located within its Colorado service area. Empire obtains its wholesale power and energy requirements from Colorado-Ute under an all-requirements contract.

2. Empire has requested authority to construct, operate and maintain the proposed electric facilities described in the testimony and exhibits offered and admitted in this proceeding. The Commission has jurisdiction over Empire and the subject matter of this proceeding by virtue of the provisions of 40-5-101, CRS 1973.

3. Empire proposes to construct, own, operate and maintain approximately 72 miles of 115 kV transmission line, with points of interconnection at Colorado-Ute's Cahone and Lost Canyon substations, together with associated substations, switch stations, communication and control facilities and equipment. The proposed electric facilities and points of interconnection are depicted on several maps introduced into evidence, Exhibits 3, 7, 19 and 21, and are narratively described in Exhibit 18.

4. The proposed electric facilities are necessary to serve Shell's electric power and energy requirements in the production, gathering and compression of carbon dioxide from areas located within Empire's Colorado certificated service territory and the transmission thereof via a 500 mile pipeline to the Denver Unit of the Wasson oil field in West Texas. The carbon dioxide will be used in the tertiary recovery of oil, thus enhancing the production of domestic oil reserves. This carbon dioxide project "is expected to culminate in the largest tertiary oil recovery project in the history of the domestic oil industry" and is anticipated to enhance oil production in the amount of approximately 280 million barrels (Exhibit C, p. 2).

"Shell's purpose in embarking on this project is to recover 280 million barrels of oil from the Denver Unit of the Wasson oil field in West Texas. This oil would otherwise be unrecoverable. One objective of this project is to increase our nation's supply of oil for fuel, heat, electricity, and other uses while reducing our nation's dependency on foreign oil reserves." (Exhibit C, p. 9)

5. It is anticipated that construction of the proposed electric facilities will commence in the fall of 1982 and will continue until the first phase is completed during the winter of 1983 - 1984 with commercial service anticipated in the first quarter of 1984. Empire desires to commence construction on a portion of the proposed transmission line in the fall of 1982 to mitigate damage to irrigated land and crops that would occur if construction was conducted on this segment of the transmission line during the irrigating and growing seasons. The proposed electric facilities will be located entirely within Empire's Colorado certificated service area and within portions of Montezuma and Dolores Counties, Colorado.

6. Empire and Shell estimate that the cost of the proposed electric facilities will be approximately \$23,000,000, which includes, inter alia, the estimated costs of material and equipment, acquisition of necessary rights-of-way, construction and installation, engineering, insurance, Empire's in-house costs and costs incurred by Empire to third parties such as professional service providers, legal counsel, and archaeological consultants. The agreements entered into between Empire and Shell (Phase I Facilities Agreement - Exhibit 4; Phase II Facilities

Agreement - Exhibit 5) provide that Shell will finance all the reimbursable costs which Empire incurs in the acquisition, construction and installation of the proposed electric facilities, which includes all the cost items discussed above (hereinafter collectively referred to as "construction costs"). Consequently, Empire will not be required to finance any of the construction costs associated with the proposed electric facilities from revenues derived from its other customers or from external sources such as debt financing. Empire and Shell have established a forward funding procedure in their respective agreements for the payment of construction costs which avoids the need for Empire to use its working capital funds for payment of invoices prior to reimbursement from Shell. Additionally, Shell has agreed to provide Empire with a \$4,000,000 irrevocable letter of credit to guarantee payment of construction costs.

7. At the hearing, counsel for the Staff inquired on cross-examination concerning the risk of loss or damage to the proposed electric facilities as addressed in the Phase II Agreement. During this cross-examination, Mr. Johnson testified on behalf of Empire, and Mr. Alford testified on behalf of Shell. The intent of each party was that the risk of loss or damage to the electric facilities will be borne directly by Shell before title to the electric facilities passes to Empire, and that after title to the electric facilities passes to Empire and until the electric facilities are energized and in commercial operation, any costs associated with loss or damage to the facilities in excess of any insurance proceeds will be reimbursable costs. The evidence and the Phase II Agreement also indicate that any premiums associated with the insurance to be maintained on the proposed electric facilities during construction will be reimbursable costs. Counsel for both Shell and Empire stated that the Phase II Agreement is only intended to address the risk of loss or damage issue up to the point in time when the electric facilities are energized and in commercial operation. Counsel for both Shell and Empire also stated that the issue of risk of loss or damage after the facilities are energized and in commercial operation will be addressed in the negotiations between the parties for the Phase III Electric Service Agreement. The Staff indicated that it had no objection to the Phase II Agreement based upon the testimony of Empire and Shell witnesses and statements of Empire's and Shell's counsel. However, counsel for the Staff advised both parties that the Staff expects both parties in the Phase III Electric Service Agreement to address the issue of risk of loss or damage after the proposed electric facilities are energized and in commercial operation, and that the Staff will also address that issue in reviewing the Phase III Agreement.

8. The agreements entered into by Empire and Shell (Phase I Facilities Agreement - Exhibit 4; Phase II Facilities Agreement - Exhibit 5) have been approved and executed by Empire's Board of Directors and an appropriate corporate officer of Shell.

9. Empire and Shell have given extensive consideration to environmental factors in connection with the location, design and construction of the proposed electric facilities. A Draft and Final Environmental Impact Statement addressing the environmental impacts of the proposed electric facilities and the entire carbon dioxide project was prepared by the Department of the Interior, Bureau of Land Management. It was approved in late 1979 and released early in 1980. Empire prepared a Borrower's Environmental Report/Plan of Operation concerning the proposed electric facilities and submitted it to the Rural Electrification Administration (REA). The REA, in turn, prepared an Environmental Assessment containing REA's independent evaluation of the environmental impacts of the proposed electric facilities. Thereafter, on March 19, 1982, REA issued its "Finding of No Significant Impact" (FONSI) (Exhibit 13).

10. The proposed electric facilities have been located and designed, and will be constructed and operated in such a manner as to substantially comply with all pertinent local, state and federal environmental, construction, electrical and land use standards, laws and regulations. Moreover, Empire has conducted extensive archaeological and historical studies in the routing of the proposed electric facilities in order to avoid damage to or disturbance of historic and cultural sites (Exhibit 14).

11. Empire has obtained the requisite construction permits from Montezuma and Dolores Counties and has also obtained a right-of-way grant from the Bureau of Land Management with respect to location, construction and operation of the proposed electric facilities on federal lands (Exhibits 10, 11 and 12).

12. Empire has the technical and operational ability and experience to carry out and supervise the construction, operation and maintenance of the proposed electric facilities.

13. There exists a present need for the proposed electric facilities. Empire does not have existing facilities capable of serving Shell's energy and power requirements. As noted above, Empire will not be required to finance the construction costs associated with the proposed electric facilities.

14. The public convenience and necessity requires that the application be granted and a certificate of public convenience and necessity be issued. Granting the application will be in the public interest.

15. Pursuant to 40-6-109, CRS 1973, it is recommended by the Examiner that the following Order be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. Application No. 33481 being the application of Empire Electric Association, Inc. for a certificate of public convenience and necessity to construct, operate and maintain a looped 115 kV transmission line within its certificated service area, with points of interconnection at the Colorado-Ute Lost Canyon and Cahone substations, together with associated substations, switch stations, communication and control system and equipment, such system to be known as the McElmo Dome-Doe Canyon Transmission System, as described in this Decision and the exhibits admitted into evidence in this proceeding, be, and hereby is, granted, and this Decision shall be a Certificate of Public Convenience and Necessity therefor.

2. Prior to commencing delivery of commercial electric service to Shell, Empire shall submit to the Commission an appropriate contract and/or tariff sheets for review and approval.

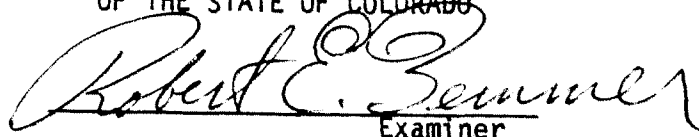
3. This Commission shall retain jurisdiction of this matter to the end that it may make such further order or orders as it may deem to be proper or desirable.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

5. As provided by 40-6-109, CRS 1973, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the

Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of 40-6-114, CRS 1973.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner