Decision No. C11-0947

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09A-324E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SAN LUIS VALLEY-CALUMET-COMANCHE TRANSMISSION PROJECT, (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE, AND (C) FOR APPROVAL OF OWNERSHIP INTEREST TRANSFER AS NEEDED WHEN PROJECT IS COMPLETED.

DOCKET NO. 09A-325E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SAN LUIS VALLEY TO CALUMET TO COMANCHE TRANSMISSION PROJECT, (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE, AND (C) FOR APPROVAL OF OWNERSHIP INTEREST TRANSFER AS NEEDED WHEN PROJECT IS COMPLETED.

ORDER ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: September 13, 2011
Adopted Date: September 2, 2011

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration (RRR) to Decision No. C11-0288 filed by Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC (collectively, Trinchera Ranch), and Staff of the Colorado Public Utilities Commission (Staff). Being fully advised in the matter and consistent with the discussion below, we deny the RRR filed by Staff and deny in part, and grant in part, the RRR filed by Trinchera Ranch.

B. Procedural History

2. The Administrative Law Judge (ALJ) assigned to this docket discussed in detail the procedural history of this matter in Decision No. R10-1245 (Recommended Decision), mailed November 19, 2010, at ¶¶ 1-50. Further, the Commission discussed the procedural history that followed the Recommended Decision in Decision No. C11-0288 (Order Addressing Exceptions), mailed March 23, 2011, at ¶¶ 6-9. We incorporate these statements of procedural history in this Order. We will not reiterate the procedural history here, but will refer to it below as needed to provide context to our rulings.

3. Trinchera Ranch and Staff filed the RRRs of Decision No. C11-0288 on April 12, 2011. By Decision No. C11-0510, mailed May 11, 2011, the Commission granted both RRRs to toll the statutory deadline in § 40-6-114(1), C.R.S., due to the unique circumstances described more fully in that decision. In this Order, we will address the merits of these RRRs.

4. Following the issuance of Decision No. C11-0288, we also issued several interim decisions addressing pleadings that touched upon the RRRs. *See*, Decision No. C11-0713, mailed July 1, 2011 (Order Denying Second Motion to Disqualify and Motion to Dismiss) and Decision No. C11-0714, mailed July 1, 2011 (Order Addressing Motions to Reopen and Motion to Strike).

C. Staff

1. Argument

5. Staff contends Decision No. C11-0288 is problematic because it does not require Public Service Company of Colorado (Public Service) or Tri-State Generation and Transmission Association, Inc. (Tri-State) to perform transient stability studies for the levels of generation in the San Luis Valley above 925 MW. Staff contends Public Service and Tri-State are in violation of the transmission standards adopted by the National Electric Reliability Corporation (NERC) and the Western Electric Coordinating Council (WECC). Staff cites to NERC standard TPL-001-0.1 and Table 1 of Standard TPL-001-0.1, as well as WECC Disturbance-Performance Table W-1 in support of its argument.

6. NERC Table 1 lists acceptable system limits or impacts from four categories of disturbances that transmission planning authorities must address. Similarly, WECC Table W-1 lists the four categories of disturbances and, for a given category, lists the maximum voltage dip,

minimum transient frequency, and post transient voltage deviation that a disturbance can have on the remaining system. The purpose of a stability study is to determine system compliance with the NERC and WECC standards.

7. Staff points out Public Service and Tri-State did not conduct a stability study to determine if the proposed system would meet NERC and WECC standards with 925 MW of generation. Staff urges the Commission to approve the proposed transmission project for these levels of generation, subject to the condition that the utilities demonstrate full compliance with the NERC and WECC standards.

2. Discussion

8. Staff previously raised this issue in its exceptions to the Recommended Decision. Citing the testimony of Public Service that it expected to build 1129 MW of generation in the San Luis Valley and the fact that the transmission project, as proposed, is limited to 925 MW, Staff argued that the Commission should require a transient stability study to determine what additional facilities will accommodate these levels of new generation. In response, Public Service argued that a number of options existed to increase export capacity out of the San Luis Valley after the project is built and that it made no sense to study possibly dozens of scenarios, most of which may never be implemented.

9. The Commission determined that a transient stability study was premature at this time. Decision No. C11-0288, at ¶ 178. The Commission stated the proposed project was rated at 925 MW and, to achieve higher levels of generation such as 1129 MW, the utilities will need to construct improvements to the existing transmission system. The Commission noted there are numerous options to address these issues, each one requiring an individual study, and

found a transient stability study was premature before the utilities determined which option(s) was best. We affirm that finding here.

10. We also note that, at the time Public Service and Tri-State filed their applications in this consolidated docket, Commission Rules did not require utilities to show compliance with the NERC and WECC standards. The transmission planning rules recently promulgated in Docket No. 10R-526E require each ten-year transmission plan that Public Service and Tri-State will file biennially beginning in February of 2012 to include "utility specific reliability criteria." This includes compliance with the NERC and WECC standards at all planned generation levels. *See* Rule 3627(c)(I) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3. We expect each ten-year transmission plan to be a comprehensive look at the transmission system overall and, therefore, a more appropriate docket in which to address the issues raised by Staff in its RRR. For these reasons, we deny the RRR filed by Staff.

D. Trinchera Ranch

1. The Argument that Removal of the "700 MW Condition" is Contrary to Public Policy, Arbitrary and Capricious, and Not in Accordance with the Evidence

a. Argument

11. In Decision No. C11-0288, the Commission agreed with both Public Service and Interwest Energy Alliance (Interwest), granted their exceptions to the Recommended Decision, and removed the "700 MW, 10 years, 50 percent" condition that the ALJ placed on the certificate of public convenience and necessity (CPCN). The Commission found there were no legal impediments to the 700 MW condition or a similar condition, but removed the condition on policy grounds. The Commission found the risk that the project will not be utilized to the extent expected was remote and could not be eliminated by simply shifting it to Public Service.

The Commission further explained that, if it did not believe the project will be used to the extent expected, it simply would not have granted the CPCN. The Commission also stated that the condition: (1) would not be a good regulatory practice; (2) would jeopardize the project it already found was needed; and (3) may distort the future competitive market for new energy resources. The Commission finally stated the decision not to impose the 700 MW condition or a similar condition did not mean the ratepayers were not protected. The Commission retains the full authority to examine Public Service's prudence in the planning, construction, and operation of the project. Decision No. C11-0288, at ¶¶ 194-196.

12. In its RRR, Trinchera Ranch argues the decision to remove the 700 MW condition was erroneous. Trinchera Ranch contends the statements about distortions of future competitive markets for new energy resources and willingness of lenders to finance the proposed project are not supported by the evidence because the only discussion on these matters was contained in the exceptions filed by Interwest. Trinchera Ranch argues these exceptions are not evidence in this case, merely argument. It concludes these unsupported opinions do not constitute substantial evidence needed to uphold a Commission decision.

13. Trinchera Ranch further claims the Commission's statement that "the possibility that the line will not be used to the extent expected is remote" is unclear, because the Decision does not specify how much the Commission expects the line to be used. Trinchera Ranch also claims the statement is different (and much stronger) than the ALJ's finding of substantial possibility that the proposed project will interconnect with certain levels of generation in Energy Resource Zones (ERZs) 4 and 5 within ten years of the in-service date.

b. Discussion

14. We disagree with the contention that removal of the so-called 700 MW condition has no basis in the record. The record evidence that supports the removal of this condition from the CPCN is the very same evidence that supports the finding that there is need for the project (both export and reliability). Stated differently, the Commission found the proposed transmission line was needed and thus granted the CPCN to Public Service and Tri-State. The Commission, on policy grounds, decided against the "in between" approach represented by the so-called 700 MW or a similar condition. If it did not believe that, in the future, the transmission project will be utilized to the extent and in the manner expected, the Commission would not have granted the CPCN.

15. It is true one can never know, with absolute certainty, the extent and the manner in which the project will be utilized in the future. However, that is not necessary for the Commission to rule on a matter, because a substantial possibility of a future event occurring is sufficient to support a Commission decision. Recommended Decision, at ¶ 464; Decision No. C11-0288, at ¶ 66.

16. Finally, Trinchera Ranch is correct that the record contains no evidence regarding the potential skew resulting from the 700 MW condition on resource acquisitions and the reluctance of the lenders to finance the project if this or any similar condition is imposed. These statements, however, are largely based on common sense. More importantly, they are *dicta* and unnecessary to the conclusion reached with respect to this issue. Nevertheless, out of abundance of caution, we will strike these statements from Decision No. C11-0288.

17. We deny the RRR filed by Trinchera Ranch based on the arguments presented in part, and grant in part, by striking paragraphs 197 and 198 from Decision No. C11-0288.

2. The Argument that Decision No. C11-0288 Errs in Refusing to Reopen the Evidentiary Record in Light of Docket No. 10A-377E

a. Argument

18. In its RRR, Trinchera Ranch points out the Commission denied its prior request to reopen the evidentiary record in this docket in order to take testimony regarding the effect of the amended application to amend its 2007 Electric Resource Plan (ERP) filed by Public Service on November 19, 2010 in Docket No. 10A-377E. The Commission agreed with Public Service that its amended proposal to reduce solar acquisitions pursuant to the 2007 ERP in ERZ 4 to 60 MW did not warrant a reopening of the record in this docket, because this was one of the three options presented by Public Service when it filed the original application in Docket No. 10A-377E. The 60 MW option was fully vetted by the ALJ when the record was reopened, during the hearings held in July of 2010. Decision No. C11-0288, at ¶ 19. The Commission also agreed with the ALJ's denial of Trinchera Ranch's motion to stay this docket proceeding pending resolution of Docket No. 10A-377E. The Commission agreed with the ALJ that the impact of a final Commission decision in Docket No. 10A-377E on the need for the proposed transmission project could be ascertained by looking at possible outcomes so that a final decision was not needed. *Id.*, at ¶ 20.

19. The Commission noted one of the overarching policy issues in this docket is how far into the future may the Commission look in determining if there is a need for a transmission project. The Commission stated a reopening of the record was not necessary to determine which general approach the Commission will adopt. Decision No. C11-0288, at ¶ 22. The Commission also discussed the substance of this policy issue and its position on this issue in the Decision.

b. Discussion

20. In its argument that the Commission erred in issuing the above rulings, Trinchera Ranch focuses on and relies on evidence and testimony in Docket No. 10A-377E that was filed or presented *after* the rulings that Trinchera Ranch challenges. Trinchera Ranch does not argue that the rulings were incorrect based on what the Commission knew at the time it made the rulings.

21. In Decision No. C11-0714, mailed July l, 2011, the Commission denied Trinchera Ranch's Motion to reopen the evidentiary record based on the same new evidence and testimony that Trinchera Ranch relies on in its RRR. The Commission found the fact that it has now granted the amended application in Docket No. 10A-377E had no effect on whether a reopening of the record in this docket was warranted. Further, in Docket No. 10A-377E, the Commission did not adopt Trinchera Ranch's position that solar thermal acquisitions should be delayed indefinitely. Decision No. C11-0714, at ¶ 9. Regarding the arguments Trinchera Ranch previously presented in its exceptions to the Recommended Decision, we are not persuaded the Commission erred in Decision No. C11-0288. We deny the RRR filed by Trinchera Ranch, for the reasons previously stated in Decision Nos. C11-0714 and C11-0288.

3. The Argument that the Exclusion of Testimony and Evidence Regarding Public Service's Motivation for Docket No. 10A-377E is Arbitrary and Capricious and an Abuse of Discretion

a. Argument

22. In its RRR, Trinchera Ranch points out the ALJ excluded testimony and evidence related to Public Service's motivation for filing its application to amend the 2007 ERP in Docket No. 10A-377E and that the Commission agreed with her in that regard. Decision No. C11-0288, at ¶ 59. Trinchera Ranch argues the exclusion of evidence and testimony regarding the

motivation behind Docket No. 10A-377E was not applied equally to Public Service and Trinchera Ranch. Trinchera Ranch argues it could not test Public Service's alleged motivations, which may have encompassed changes to long-term future plans for renewable resource acquisitions. However, Public Service was permitted to argue the delay with the proposed transmission project was the driving force behind the amendment to the 2007 ERP. Trinchera Ranch argues the Commission accepted Public Service's claim that the requested reductions in renewable resource acquisitions were only temporary and caused by the delay in the transmission line as true to deny Trinchera Ranch's exceptions on this issue (that there is no need for the project).

b. Discussion

23. In its RRR, Trinchera Ranch implies it could not argue that the reductions in solar resource acquisitions sought in Docket No. 10A-377E were long-term rather than temporary, as Public Service claimed. That is not the case. The ALJ permitted Trinchera Ranch to rebut this claim and to argue these reductions reflected a long-term trend. The ALJ merely found that certain exhibits were duplicative and strayed outside the scope of the reopened proceeding. In addition, she found the cause for the reductions in solar resource acquisitions (or whether the delay of the proposed project was the immediate cause for reductions in solar acquisitions) to be outside the scope of the reopened proceeding, but allowed the parties to present evidence on the issue of whether the reductions were permanent or temporary and therefore affected future need for the project. The ALJ heard the evidence and *found* a substantial possibility that Public Service and Tri-State will acquire renewable resource generation in ERZs 4 and 5 within the next five to ten years *if* transmission is available to southern Colorado, implicitly also finding

that reductions in renewable resource acquisitions proposed in Docket No. 10A-377E were temporary in nature. Recommended Decision, at ¶ 467. She did not just accept Public Service's claim as true.

24. Further, to some extent, Trinchera Ranch bases its arguments on why the Commission erred in excluding certain arguments based on the new evidence and testimony filed in Docket No. 10A-377E *after* the Commission deliberated on exceptions, rather than on what the Commission knew at the time of deliberations. In Decision No. C11-0714, the Commission denied Trinchera Ranch's Motion to reopen the evidentiary record based on the same new evidence and testimony. To the extent the RRR is based on the same new evidence and testimony, we deny the RRR for reasons more fully stated in Decision No. C11-0714, at ¶¶ 9-11.

25. Finally, Trinchera Ranch questions this statement within Decision No. C11-0288: "[i]f this is true [the claim that the delay with the proposed project was the main reason for the proposed ERP amendments in Docket No. 10A-377E] (a claim that may be further explored in Docket No. 10A-377E), then allowing temporary reductions in renewable resource acquisitions caused by the delay in the proposed transmission line to undermine the need for the proposed transmission line would be circular and would defeat the purpose of SB 07-100." This was stated in the hypothetical, is *dicta*, and is unnecessary to the findings and conclusions reached in the Decision.

26. We deny the RRR filed by Trinchera Ranch on this issue.

4. The Argument that the Exclusion of Witness Mr. William Powers and Dr. Anjali Sheffrin's Exhibit Regarding the RESA Balance Affected Trinchera Ranch's Substantial Rights, was Arbitrary and Capricious, and was an Abuse of Discretion

a. Argument

27. Trinchera Ranch argues the exclusion of testimony from Mr. William Powers, an expert in distributed generation, as well as an exhibit prepared by Dr. Anjali Sheffrin regarding impact on the Renewable Energy Standard Adjustment (RESA) balance given changed assumptions (such as delay in carbon costs and changed natural gas prices), affected its substantial rights. Trinchera Ranch previously raised the same arguments in its exceptions to the Recommended Decision.

28. Regarding Mr. Powers, the Commission ruled that the record supported the ALJ's ruling excluding his testimony. The Commission agreed with the ALJ that decisions regarding the types of generation resources a utility should acquire—including whether substantial portion of the Renewable Energy Standard (RES) requirement should be met with distributed solar generation—were outside the scope of a transmission CPCN docket such as this one. Further, regarding the potential effect of the new distributed generation set-asides established by House Bill 10-1001 on the need for the project, Trinchera Ranch sponsored the testimony of Mr. James Dauphinais. The Commission found the testimony of Mr. Powers would have been duplicative on the latter issue. Therefore, exclusion of this testimony did not affect substantial rights of Trinchera Ranch. Decision No. C11-0288, at ¶ 47.

29. Regarding the exhibit prepared by Dr. Sheffrin (Exhibit 145) regarding the effect of changed assumptions on the RESA balance, the Commission also found the record supported the ALJ's ruling. The Commission found that the probative value of that exhibit was outweighed by the potential to unduly delay the proceeding because Exhibit 145 was not produced to

Public Service before the reopened hearing (regardless of whether Trinchera Ranch erred in not doing so). In addition, even without the exhibit, Dr. Sheffrin was able to present her point that changed circumstances could reduce the likelihood that Public Service will acquire as much renewable resources as it claimed. For these reasons, the Commission affirmed the ALJ's finding that exclusion of this exhibit did not affect Trinchera Ranch's substantial rights. Decision

No. C11-0288, at ¶ 50.

b. Discussion

30. In its RRR, Trinchera Ranch largely repeats the arguments it presented in its exceptions to the Recommended Decision. The Commission thoroughly considered these arguments in Decision No. C11-0288. Trinchera Ranch has not presented any new argument on these issues and has not addressed why Exhibit 145 was not produced to Public Service before the reopened hearing. For reasons stated in Decision No. C11-0288, we deny its RRR on this ground.

5. The Argument that Substantial Possibility Standard for Determining Future Need is Erroneous as a Matter of Law

a. Argument

31. Trinchera Ranch points to the statement contained in ¶ 64, n. 3 of Decision No. C11-0288, that "the Commission had the ability to consider the policies behind SB 07-100 as a factor in determining present or future need for a transmission line even in the absence of the legislation." Trinchera Ranch argues the statement is unsupportable because the "substantial possibility" standard has no basis in the language of Senate Bill (SB) 07-100. It also argues that

SB 07-100 and the policies associated with that legislation do not apply to the instant docket because Public Service failed to follow certain procedures with respect to the proposed project.

b. Discussion

32. In this section of its RRR, Trinchera Ranch refers to three rulings the Commission issued in Decision No. C11-0288 and elsewhere in this docket. We will review each one in turn.

33. First, in Decision No. C09-0886, mailed August 12, 2009, at ¶ 25, the Commission found that the timelines associated with SB 07-100, codified at § 40-2-126, C.R.S., do not apply to this case. This is because, *inter alia*, the proposed San Luis Valley-Calumet-Comanche project was not contained in a formal SB 100 report. The Commission was also concerned because Public Service failed to publish a notice of its application in a newspaper of general circulation, which it agreed to do in a stipulation in the Pawnee-Smoky Hill Transmission Line docket. That said, the Commission also ruled that, although § 40-2-126, C.R.S., does not apply to this docket, the Commission could consider Public Service's obligation to meet the RES as a factor in determining whether or not there is need for the project. The Commission clarified the general legislative policy directives related to the development of renewable energy may be considered as a factor in determining need. Decision No. C09-1004, mailed September 14, 2009, at ¶ 12.

34. Second, the Commission ruled that, when consideration of future events is involved (for example, future development of renewable generation), a substantial possibility that a future event will occur is sufficient to support a Commission decision. The Commission explained it bases its decisions on substantial possibilities in a variety of contexts and stated that some level of prediction is inherent in making a decision that will affect future conditions.

Decision No. C11-0288, at ¶ 66, *citing* Recommended Decision, at ¶ 464; Decision No.C10-1149, mailed October 26, 2010 in Docket No. 08A-407CP; *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663, 666 (Colo. 1980).

35. Third, the Commission stated, in *dicta*, that it has the ability to consider the public policies associated with SB 07-100 as a factor in determining the need for a transmission project even in the absence of that legislation. Decision No. C11-0288, at ¶ 64, n. 3.

36. In this part of its RRR, Trinchera Ranch presents rather conclusory arguments and appears to mix these three rulings above mentioned together. Based on the arguments presented in the RRR, we are not persuaded that we erred in making the above rulings. We note the statement made within the RRR that SB 07-100 and the associated public policies do not apply to this docket because Public Service failed to follow certain procedures is not entirely accurate, for reasons stated above. We also note that the third statement is *dicta* and is not necessary to the findings and conclusions made in the Decision. We deny the RRR filed by Trinchera Ranch on these grounds.

6. The Argument that the Record Does Not Support a Conclusion, and that the Recommended Decision Did Not Conclude, that the Proposed Project is Justified by the Reliability Need Alone

a. Argument

37. Trinchera Ranch contests the statement contained in ¶ 80 of Decision No. C11-0288 that "the record supports the ALJ's finding that the line is justified by the reliability need." Trinchera Ranch argues the Recommended Decision never made such a finding, rather the ALJ found the issue of whether the project was justified by the reliability need alone to be moot. Trinchera Ranch argues the above statement should be struck from Decision No. C11-0288.

b. Discussion

38. Decision No. C11-0288 states "the record supports the ALJ's finding that the line is justified by the reliability need." It does not state, as Trinchera Ranch implies, that "the record supports the ALJ's finding that the line is justified by the reliability need *alone*." We therefore deny the RRR filed by Trinchera Ranch on this ground.

7. The Argument that it is Wrong as a Matter of Law to Conclude that Public Service Acted Prudently in Relying on Commission-Approved Inputs when the Claimed Future Need for the Project Depends on the Quality and Accuracy of those Very Inputs

a. Argument

39. Trinchera Ranch disputes the finding made in ¶ 164 of Decision No. C11-0288, that "it [was] prudent for Public Service to rely on … Commission-approved inputs [such as the carbon-proxy costs and natural gas forecasts] unless and until the Commission reevaluates these inputs. Such a reevaluation … occurs in a resource planning or a renewable energy standard plan docket rather than a transmission CPCN docket such as this one." In its RRR, Trinchera Ranch acknowledges the Commission previously approved the inputs and, based on those inputs, concluded there is considerable room to acquire renewable resources under the RESA. Trinchera Ranch points out that the approval occurred over two and a half years ago and argues it is not prudent to rely on the outdated inputs when the claimed future need for the transmission project depends on the quality and accuracy of these inputs and assumptions. It argues it is prudent to consider the extent to which the assumptions may have changed in the interim, especially where substantial evidence has been introduced about the dramatic effect more updated assumptions might have on the occurrence of relevant future events.

40. Trinchera Ranch further points out that, in certain other dockets, the Commission took into account the changes to relevant inputs and assumptions (natural gas prices and

carbon proxy costs), even in the absence of a reevaluation as part of an ERP docket. These proceedings are Docket Nos. 10A-377E, 10M-245E, and 09A-772E.

b. Discussion

41. We note that Trinchera Ranch raised this issue in its exceptions to the Recommended Decision and the Commission thoroughly addressed it in Decision No. C11-0288, at ¶ 164. We incorporate that discussion into this Decision.

42. We also find the other dockets cited by Trinchera Ranch for the proposition that the Commission considered changes to the inputs and assumptions related to natural gas prices and carbon proxy costs outside of an ERP docket are distinguishable from this docket and thus are consistent with Decision No. C11-0288. Docket No. 10A-377E addressed the application of Public Service for approval of an amendment to its 2007 ERP and short term resource planning, focusing on the acquisition of wind and solar resources. Docket No. 10M-245E addressed emission reductions from coal plants in furtherance of the Clean Air-Clean Jobs Act and the generation resources that Public Service may need to replace these coal plants. Both of these dockets pertained directly to resource planning, even if it was short term and narrower in scope than a typical ERP docket. For its part, Docket No. 09A-772E addressed the 2010 RES Compliance Plan filed by Public Service, where a reevaluation of certain inputs pertaining to acquisitions of renewable energy is also warranted. By contrast, the instant docket is a transmission line CPCN proceeding and only indirectly touched upon future acquisitions of generation resources, whether renewable or otherwise.

43. Finally, it is important to note that, in this docket, the record contains and the Commission relied on, the most recent Commission-approved assumptions on carbon proxy costs and natural gas prices available at the time of the February 2010 evidentiary hearing.

Even though the ALJ reopened the record and held a second evidentiary hearing in July 2010, it was only with respect to two limited issues: (1) the impact of newly enacted House Bill 10-1001, and specifically the changes in the RES and the new distributed generation set-asides; and (2) the impact of the application to amend the 2007 ERP, filed by Public Service in Docket No. 10A-377E, on the need for the proposed transmission project. The second evidentiary hearing did not address any other issues or potential changed circumstances. As discussed above, the evidentiary record contains, and the ALJ considered, the testimony of Dr. Sheffrin on the possible impact of changed circumstances.

44. For the reasons stated above and in Decision No. C11-0288, at ¶ 164, we deny the RRR filed by Trinchera Ranch on this ground.

8. The Argument that the Commission's Statement Expressing Its Continuing Support for Advancement of Funds to the RESA is Inappropriate in this Docket

a. Argument

45. In Decision No. C11-0288, at ¶ 110, the Commission states that it "continue[s] to support and encourage" the position that "Public Service may collect and use funds from the RESA to acquire renewable resources beyond what is needed for RES compliance as long as the 2 percent cap is not exceeded." Trinchera Ranch argues this statement is not appropriate in this docket. It contends the statement is not necessary for the findings and conclusions made in the Decision. It also argues the issue is likely to be contested in the upcoming RES compliance and resource planning dockets. The statement also suggests the Commission has prejudged this issue, according to Trinchera Ranch. Trinchera Ranch concludes this statement should be struck from Decision No. C11-0288.

b. Discussion

46. We agree with Trinchera Ranch that the above statement is *dicta* and unnecessary to the findings and conclusions made in Decision No. C11-0288. We therefore grant the RRR on this ground and strike that statement from the decision.

9. The Argument that the Conclusion that Northern Alternative TR1AE Does Not Meet the Utilities' Reliability Need or Renewable Export Generation Need is Unsupported by the Evidence

a. Argument

47. Trinchera Ranch disputes the finding made in ¶ 134 of Decision No. C11-0288, that its alternative TR1AE meets neither the reliability need nor the export need of Public Service and Tri-State. Trinchera Ranch contends the record and the Decision do not demonstrate how TR1AE does not meet the export need, especially because it performs better than the project as far as simultaneous generation (at the Calumet substation), what Trinchera Ranch characterizes as the key measure of export capability.

48. Trinchera Ranch contends that, even assuming TR1AE does not meet the claimed export need, the proposed project also does not meet the same need. Trinchera Ranch states that, if the claimed export need is to accommodate over 1100 MW of generation in ERZ 4 and another similar amount in ERZ 5 within ten years of the in-service date of the project, the project cannot accommodate such amounts. Trinchera Ranch contends the project can only accommodate 925 MW in ERZ 4 (only 75 MW more than a northern alternative) and only if there is zero MW of wind development in ERZ 5 interconnecting with the project.

b. Discussion

49. The Commission agreed with the ALJ's finding that the project creates a looped transmission system, uses widely separated corridors to deliver a second source of power, and

improves the reliability to the Walsenburg area and to the San Luis Valley. The Commission determined the project was superior to northern alternatives (such as TR1AE) because it would improve reliability to a greater extent and will meet other purposes, such as export need. Decision No. C11-0288, at ¶ 128. In addition, TR1AE does not serve Tri-State because it would not connect into Tri-State's existing network. Trinchera Ranch does not address these matters in its RRR.

50. Regarding export needs, Trinchera Ranch focuses solely on the rough estimates of export capacity and does not address the obstacles its alternative TR1AE must overcome in order to achieve that export capacity. The ALJ discussed these obstacles in ¶¶ 439 and 492 of the Recommended Decision: (1) insufficient Available Transfer Capability to move generation from Malta to the Front Range; (2) to achieve the claimed export capacity, TR1AE needs a N-1 contingency Remedial Action Scheme; (3) Trinchera Ranch has not studied the effects of TOT5 on TR1AE's export capacity; and (4) achieving the claimed level of export capacity for TR1AE assumes the reconductoring of the WAPA Poncha-West Canon-Midway 230kV transmission line and no one has studied if this is feasible. The ALJ found that Trinchera Ranch did not meet its burden to disprove these flaws and that the more realistic level of export capacity for TR1AE is 575 MW during peak load conditions.

51. Finally, it is true the project, standing alone, cannot accommodate the anticipated export of generation from ERZ 4 and ERZ 5. However, the record evidence also demonstrated that the utilities will construct additional transmission upgrades when they approach the limit of the project's capacity.

52. Because the record evidence supports the conclusion that the proposed project is superior to TR1AE with respect to export need, we deny the RRR filed by Trinchera Ranch on this ground.

10. The Argument that the Record Does Not Support a Conclusion of a Substantial Possibility that the Load will Increase in the Future

a. Argument

53. Trinchera Ranch disputes the finding made in ¶ 74 of Decision No. C11-0288 that the evidence of record sufficiently supports the conclusion of load growth in the San Luis Valley. Trinchera Ranch cites to the 2008 load forecast of the San Luis Valley Rural Electric Cooperative in disputing that finding and argues, based on that document, that the load in the San Luis Valley has been in a state of decline and that there will be a continued, future reduction in the load.

54. In Decision No. C11-0714, at ¶ 10, the Commission denied a motion to reopen the evidentiary record filed by Trinchera Ranch, to include the 2008 forecast of the San Luis Valley Rural Electric Cooperative, among other documents. The Commission found nothing prevented Trinchera Ranch from introducing that forecast into the record evidence at the hearings (in order to rebut the claims regarding the need for the project or for any other purpose). This document, which is the basis for Trinchera Ranch's argument that the load in the San Luis Valley has been in a state of decline, is therefore not part of the record in this case. Further, the actual record in this case supports the conclusion of load growth in the San Luis Valley. *See*, record references contained in Tri-State's response to exceptions, filed January 10, 2011, pp. 6-7.

55. Finally, not only is the 2008 Load Forecast of the San Luis Valley Rural Electric Coop not in the evidentiary record, the very title of that document makes it obvious it does not include the forecasts of other utilities serving San Luis Valley that contribute to the load growth in the San Luis Valley.

56. Based on the foregoing reasons, we deny the RRR filed by Trinchera Ranch on this ground.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration (RRR) filed on April 12, 2011 by Blanca Ranch Holdings, LLC, and Trinchera Ranch Holdings, LLC is denied in part, and granted in part, consistent with the discussion above.

2. The RRR filed by Staff of the Colorado Public Utilities Commission on April 12, 2011 is denied, consistent with the discussion above.

3. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

4. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING September 2, 2011.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

MATT BAKER

Commissioners

COMMISSIONER JAMES K. TARPEY
NOT PARTICIPATING.