

Decision No. R14-0027-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-0145E

LA PLATA ELECTRIC ASSOCIATION, INC.; EMPIRE ELECTRIC ASSOCIATION, INC.; WHITE RIVER ELECTRIC ASSOCIATION, INC.; BP AMERICA PRODUCTION COMPANY, ENCANA OIL & GAS (USA), INC., ENTERPRISE PRODUCTS OPERATING LLC, AND EXXONMOBIL PRODUCTION COMPANY AS MEMBERS OF THE RURAL ELECTRIC CONSUMER ALLIANCE; AND KINDER MORGAN CO₂ COMPANY, LP,

COMPLAINANTS,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
SETTING PRE-HEARING CONFERENCE
REGARDING COMMISSION'S REMAND ORDER**

Mailed Date: January 9, 2014

I. STATEMENT

A. Background

1. On March 4, 2013, La Plata Electric Association, Inc. and Empire Electric Association, Inc., acting on behalf of themselves and their members; White River Electric Association, Inc., acting on behalf of itself and its members; the Rural Electric Consumer Alliance, which consists of BP America Production Company, Encana Oil & Gas (USA), Inc., Enterprise Products Operating LLC, and ExxonMobil Power and Gas Services Inc., on behalf of ExxonMobil Production Company, a division of Exxon Mobil Corporation; and Kinder Morgan CO₂ Company, L.P. (collectively, Complainants), pursuant to 4 *Code of Colorado Regulations*

723-1-1302 of the Commission's Rules of Practice and Procedure, filed a Formal Complaint against Tri-State Generation and Transmission Association, Inc. (Tri-State) which initiated this proceeding.

2. Complainants alleged that a new rate implemented by Tri-State known as the "A-37" rate included only an energy charge and did not provide for demand costs which failed to accurately reflect the cost of service. As a result, Complainants alleged that the A-37 rate was unjust, unreasonable, discriminatory, and preferential in violation of Colorado Public Utilities Law.

3. On April 4, 2013, Tri-State filed a Motion to Dismiss Formal Complaint (Motion to Dismiss) in which its primary argument was that the dormant Commerce Clause prohibited the Commission from asserting jurisdiction over the claims of the Formal Complaint.

4. After an evidentiary hearing on the issue of the Commission's jurisdiction, Interim Decision No. R13-1119-I was issued on September 11, 2013 denying Tri-State's Motion to Dismiss. The Interim Decision found that Tri-State was a utility under Colorado Public Utilities Laws, and that the Commission has the authority and jurisdiction to regulate Tri-State's rates in order to ensure they are just, reasonable, and in the public interest.

5. Tri-State filed a Motion Contesting Interim Decision No. R13-1119-I (Motion) to the full Commission. Complainants filed a response to the Motion.

6. On January 3, 2014, the Commission issued Interim Decision No. C14-0006-I in which it granted in part and denied in part Tri-State's Motion. The Commission determined that significant state interests regarding Tri-State's rates exist and there is no *per se* violation of the

Commerce Clause as asserted by Tri-State, nor does the *Pike* balancing test¹ preclude Commission jurisdiction to hear the Complaint.

7. The Commission also found that the Complaint, in requesting a finding which establishes a cost allocation and rate design methodology for Tri-State, as well as for Tri-State to refund to cooperatives the difference that any cooperative was billed between the previous A-36 rate design (which Complainants request be found to be just and reasonable for Colorado) and the A-37 rate, goes too far.

8. The Commission determined that these particular claims and requests for relief impinge on the Commission's "long-standing practice of declining to engage in general rate regulation of Tri-State."² The Commission determined that full rate regulation necessarily requires a comprehensive rate case which would interfere with Tri-State's operations. As stated in the Commission's Interim Decision, "the Commission should not be a forum to resolve particularized rate disputes among Tri-State's cooperative members."³ The Commission remanded this Complaint to the Administrative Law Judge and specifically confined any review of Tri-State's rates to "whether the failure to include a demand and energy charge is a violation of regulatory principles,"⁴ as well as, "whether Tri-State's A-37 rate under the circumstances of this case violates Colorado law and policy."⁵

9. Finally, the Commission held that because it narrowed the claims on remand, dismissed some claims, and acknowledged the cooperative model of governance, it was

¹ *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

² See, Interim Decision No. C14-0006-I at ¶ 53.

³ *Id.* at ¶ 55.

⁴ *Id.* at ¶ 57.

⁵ *Id.* at ¶58.

appropriate to dismiss the parties generally identified as the “Industrial Complainants” from this proceeding as named Complainants. However, the Commission determined it appropriate to allow the Industrial Complainants to remain as permissive intervenors.

10. Based on these findings on remand, it is appropriate to hold a pre-hearing conference. The ALJ finds it necessary to set a pre-hearing conference to discuss substantive, procedural, and administrative matters, as well as any other issues that may arise. Issues to be discussed include, but are not limited to, whether Complainants intend to proceed with the Formal Complaint as now revised by the Commission’s Interim Decision, and the scope of such a proceeding under the remand directions. It must also be determined what relief is available to Complainants in the event they wish to proceed with the Complaint as modified and it is ultimately found that they have prevailed on the merits of the modified claims. It must also be discussed to what extent the Industrial Complainants wish to participate in the proceeding.

11. In the event Complainants wish to proceed, the parties should be prepared to discuss and set procedural dates, including dates for filing testimony, a discovery schedule, dates for the filing of any stipulations or settlement agreements, dates for an evidentiary hearing, as well as a deadline for filing closing statements of position.

12. A pre-hearing conference will be scheduled for **Wednesday January 29, 2014**.

II. ORDER

A. It Is Ordered That:

1. A pre-hearing conference is scheduled as follows:

DATE: January 29, 2014
TIME: 1:30 p.m.
PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202

2. The parties shall be prepared to discuss the matters set out above, as well as any other matters ancillary to this proceeding.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director