

Decision No. R14-0392-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: April 11, 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 the definitions contained within the 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 on October 7, 2013. Complainants filed a response to the Motion on October 21, 2013.

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.

7. Complainants filed an application for rehearing, reargument, or reconsideration (RRR) of the Commission's Interim Decision. On March 31, 2014, the Commission issued Interim Decision No. C14-0337-I denying the request for RRR.

8. A conference call was conducted with counsel for Complainants and Respondent on April 10, 2014. It was agreed that a pre-hearing conference should be scheduled as expeditiously as possible in order to move the Complaint forward.

9. Therefore, a pre-hearing conference will be scheduled for **Monday April 21, 2014.**¹

10. At the pre-hearing conference, the parties should be prepared to discuss the scope of the proceedings, including the issues raised by the Administrative Law Judge in Interim Decision No. R14-0027-I issued January 9, 2014, as well as the type of hearing envisioned by the parties given the Commission's findings in Decision No. C14-0006-I and the type of relief to be granted should Complainants prevail or should Respondent prevail. In addition, the parties should be prepared to discuss a procedural schedule going forward, including discovery, as well as any other issues that may arise during the pre-hearing conference.

¹ While 9:00 a.m. was initially discussed as the start time for the hearing, a scheduling conflict requires that the hearing begin at 1:00 p.m.

II. ORDER

A. It Is Ordered That:

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

DATE: April 21, 2014

TIME: 1:00 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