

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19V-0311E

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IN THE MATTER OF THE VERIFIED PETITION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR APPROVAL OF A VARIANCE FROM RULE 3605 TO EXTEND THE FILING OF ITS NEXT ELECTRIC RESOURCE PLAN AND PETITION FOR RULEMAKING.

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**DECISION GRANTING PETITION, IN PART,  
AND DENYING PETITION, IN PART;  
GRANTING INTERVENTIONS; AND REQUIRING  
FILINGS FROM TRI-STATE GENERATION  
AND TRANSMISSION ASSOCIATION, INC.**

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**I. BY THE COMMISSION****A. Statement**

1. On May 31, 2019, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a Petition for Approval of a Variance to Extend the Filing of its Next Electric Resource Plan and Request for Pre-Rulemaking Proceeding (Petition).

2. This Decision grants, in part, and denies, in part, the set of requests set forth by Tri-State in its Petition. We waive the requirement that Tri-State file its next Electric Resource Plan (ERP) on or before October 31, 2019 pursuant to existing rules governing Tri-State's ERP filings with the Commission. However, we deny the request to set December 31, 2020 as the deadline for Tri-State's next ERP filing and instead will determine a filing deadline for Tri-State's next ERP by promulgating rules governing ERP application filings from Tri-State pursuant to the newly enacted § 40-2-134, C.R.S. (Section 134). In accordance with that new statute, the Commission also will open a Notice of Proposed Rulemaking (NOPR) by separate decision. We conclude that sufficient pre-rulemaking activities have already occurred as required by Colorado law to support the issuance of a NOPR pursuant to Section 134.

3. We also grant the requests for permissive intervention in this matter filed by Sierra Club, Western Resource Advocates (WRA), the Colorado Independent Energy Association (CIEA), and Interwest Energy Alliance (Interwest). Each of these parties, in addition to the Colorado Energy Office (CEO), objected to various elements of Tri-State's Petition.

4. Finally, we direct Tri-State to file in this Proceeding: (1) any filing submitted to the Federal Energy Regulatory Commission (FERC) related to Tri-State's Board of Directors' actions to place Tri-State under wholesale rate regulation by the FERC; (2) a notice regarding the

addition of any new member to Tri-State that causes the elimination of Tri-State's previous exception from FERC rate regulations under the Federal Power Act; and (3) any additional information germane to Tri-State's compliance with resource planning, renewable energy, and environmental provisions under Colorado law.

**B. Discussion**

5. Rule 3605 of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules), requires Tri-State to report to the Commission its forecasts, existing resource assessment, planning reserves, and needs assessment, consistent with certain requirements that also apply to the investor-owned electric utilities in Colorado pursuant to Rules 3606, 3607, 3609(a), and 3610 of the Electric Resource Planning (ERP) Rules, 4 CCR 723-3-3600, *et seq.* Rule 3605 references Rule 3603, which requires Tri-State to file its next ERP no later than October 31, 2019.

6. On February 27, 2019, the Commission issued a Notice of Proposed Rulemaking through Decision No. C19-0197 in Proceeding No. 19R-0096E to amend the Electric Rules in six areas: (1) the ERP Rules; (2) the Renewable Energy Standard Rules at 4 CCR 723-3-3650, *et seq.*; (3) the Net Metering Rules presently in 4 CCR 723-3-3664; (4) the rules governing Community Solar Gardens presently in 4 CCR 723-3-3665; (5) the provisions for utility purchases from Qualifying Facilities presently at 4 CCR 723-3-3900, *et seq.*; and (6) the Interconnections Standards and Procedures presently in 4 CCR 723-3-3667. Hearings were conducted on April 29, 2019 through May 3, 2019, and post-hearing comments were submitted on May 31, 2019. A decision adopting revised Electric Rules is pending.

7. In a letter addressed to Commission Director Doug Dean dated March 1, 2019, Tri-State announced the start of its stakeholder outreach in preparation of the filing of its 2019

ERP. Tri-State stated that it would hold several public meetings as part of a process resulting in detailed reports regarding “future resources plans by Tri-State.” The first meeting for the 2019 ERP was set for March 27, 2019 at Tri-State’s headquarters.

8. On May 30, 2019, Governor Jared Polis signed into law Senate Bill 19-236 containing Section 134, that directs the Commission to promulgate new rules that require Tri-State to submit an application for approval of an integrated or electric resource plan. The Commission is required to evaluate Tri-State’s plan using rules applicable to Tri-State. In developing such rules for Tri-State, the Commission must consider, among other factors determined by the Commission, whether Tri-State: serves a multistate operational jurisdiction; has a not-for-profit ownership structure; and has a resource plan that meets the energy policy goals of the state.

9. On June 7, 2019, by Decision No. C19-0476-I, the Commission established a shortened notice and intervention period in response to Tri-State’s general request to expedite consideration of the Petition. The shortened notice and intervention period for the Petition required intervention filings to be submitted no later than June 20, 2019.

10. Requests for intervention and substantive responses to the Petition were timely filed by Sierra Club, WRA, CEO, CIEA, and Interwest. As explained in detail below, each response objected to Tri-State’s requests as set forth in its Petition, with the exception of the waiver from filing its next ERP on or before October 31, 2019 in accordance with existing ERP Rules applicable to Tri-State.

11. At its weekly meeting on June 26, 2019, the Commission discussed Tri-State’s announced cancelation of its second stakeholder meeting for its 2019 ERP that was scheduled for

July 2, 2019. The Commission elected to take more time to consider the substantive objections to the Petition filed by the parties seeking intervention in this matter, since the stakeholder meeting on July 2, 2019 drove the need for an expedited ruling on the Petition.

12. On July 3, 2019, a letter from members of the Colorado General Assembly addressed to Duane Highly, Chief Executive Officer of Tri-State, and Rick Gordon, Chairman of the Board of Tri-State, was submitted to the Commission for its files. The letter states that the General Assembly worked closely with Tri-State and other stakeholders on Senate Bill 19-236 and describes the legislation as “a collaborative process meant to ensure the Colorado Public Utilities Commission (PUC) oversight of key aspects of Tri-State’s resource planning.”<sup>1</sup> The letter further states: “Tri-State did not inform us that during these discussions it was simultaneously planning to implement changes that would transition regulatory authority to [the Federal Energy Regulatory Commission (FERC)], thereby potentially undermining critical parts of the very resource planning oversight it was negotiating.”<sup>2</sup> A copy of the letter was added to the administrative record for this Proceeding.

13. During the Commission’s weekly meeting on July 17, 2019, Tri-State issued a press release announcing that it is pursuing an “aggressive Responsible Energy Plan to transition to a cleaner energy portfolio, while ensuring reliability, increasing member flexibility and with a goal to lower wholesale rates.”<sup>3</sup> The press release explains how the plan will set goals and pathways to comply with aggressive carbon reduction, renewable energy, and resource planning requirements. The press release further states: “A key part of Tri-State’s approach is an

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<sup>1</sup> Letter at p. 1

<sup>2</sup> *Id.*

<sup>3</sup> Press Release at p. 1.

engagement with former Colorado Governor Bill Ritter and the Center for the New Energy Economy (CNEE) at Colorado State University to facilitate a collaborative stakeholder process for Tri-State that will contribute to and help define the Responsible Energy Plan.”<sup>4</sup> A copy of the press release was added to the administrative record for this Proceeding.

**C. Tri-State’s Petition**

14. Tri-State seeks a variance from the timing requirements of Rules 3603 and 3605 and an extension of the deadline for filing its next resource plan from October 31, 2019 to December 31, 2020.

15. Tri-State argues that an extension from October 31, 2019 to December 31, 2020 will allow sufficient time for: (1) both it and the Commission to engage with stakeholders; (2) the Commission to conduct a rulemaking proceeding focused on resource planning rules applicable only to Tri-State; (3) Tri-State to obtain and consider stakeholder input in connection with development of its next resource plan; and (4) Tri-State to develop and file its resource plan pursuant to the new rules.

16. Tri-State further argues that it would be inequitable and would constitute a hardship to require Tri-State to develop and file by October 31, 2019, a new resource plan “consistent with any new rules promulgated pursuant to Section 134.”<sup>5</sup> Tri-State adds that it also would be inequitable and would constitute a hardship to require Tri-State to complete the preparation of its 2019 resource plan under the existing rules and then require it to prepare and file shortly thereafter a different resource plan under new rules.

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<sup>4</sup> *Id.* at p. 2.

<sup>5</sup> Petition at p. 6.

17. In addition to the waiver from Rule 3605, Tri-State requests that the Commission open a miscellaneous proceeding for the purpose of soliciting input and information concerning resource planning rules for Tri-State consistent with Section 134. Tri-State states that it is amenable to a reasonably expedited schedule for such a pre-rulemaking proceeding so as to enable timely promulgation of new rules and the development and filing of a new resource by December 31, 2020. Tri-State explains that certain stakeholders might prefer to implement new resource planning rules for Tri-State as soon as possible rather than waiting for a full planning cycle for Tri-State's subsequent filing in 2023. Tri-State warns against simply applying to Tri-State the existing ERP Rules or the new proposed ERP Rules currently under review in Proceeding No. 19R-0096E, and then requiring Tri-State to seek a waiver or variance of the rules it argues should not apply to Tri-State. Tri-State suggests that a more prudent approach would be for the Commission to identify those ERP Rules that make sense "in the context of a multi-state, not-for-profit, wholesale electric utility that does not have a certificated service territory."<sup>6</sup> Tri-State also states that its proposed approach is consistent with the statutory considerations required in § 40-2-134, C.R.S.

#### **D. Responses to the Petition**

##### **1. Sierra Club**

18. Sierra Club seeks to intervene in this matter and provides a response to the Petition.

19. Sierra Club states that it is a national non-profit environmental organization dedicated to the protection of public health and the environment. Sierra Club explains that it seeks to intervene in this Proceeding on behalf of itself and the more than 22,000 Sierra Club

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<sup>6</sup> *Id.* at p. 7.

members who live in Colorado, many of whom are residential electric customers of cooperatives receiving wholesale electricity and other services from Tri-State. Sierra Club seeks leave to intervene in order to protect its members' economic, health, and environmental interests that may be affected by both the timing of Tri-State's next ERP filing and the procedures for the Commission's issuance of rules governing Tri-State's ERPs.

20. In response to the Petition, Sierra Club states that it strongly supports delaying Tri-State's next ERP filing so that more robust rules can be finalized and Tri-State can then develop an ERP pursuant to those new rules. While Sierra Club agrees that some extension beyond October 31, 2019 is warranted, Sierra Club takes no position on the specific deadline of December 31, 2020 that Tri-State proposes in the Petition.

21. Sierra Club argues that a pre-rulemaking proceeding, as requested by Tri-State, is unnecessary. Sierra Club alleges that Tri-State has long made the misleading claim that it is so different from other utilities that it should be regulated differently, if at all. Sierra Club notes that many other utilities operate an electric generation and transmission system spanning multiple states yet, without exception, these multi-state utilities comply with the same resource planning rules as other utilities. Sierra Club suggests that implementing the mandate in Section 134 to issue rules for Tri-State's resource planning should be straightforward and that the burden should be on Tri-State to provide a compelling justification for not applying any of the existing or proposed ERP Rules to Tri-State.

## **2. Western Resource Advocates**

22. WRA seeks to intervene in this matter and provides a response to the Petition.

23. WRA explains that it is a non-profit conservation organization dedicated to protecting the land, air, and water of the West. For example, WRA's Clean Energy Program



develops and implements policies to reduce the environmental impacts of the electric power industry by advocating for a western electric system that provides affordable and reliable energy, reduces economic risks, and protects the environment through the expanded use of energy efficiency, renewable energy resources, and other clean energy technologies. WRA states that it has a long-standing demonstrated interest in advocating for the acquisition of renewable energy resources as a party to utility resource plan filings. WRA concludes that this Proceeding will directly impact WRA's substantial, tangible interest in reducing the environmental impact of electricity generation and that the Commission's decision on the Petition will directly impact the tangible interests WRA works to protect, including human health, air quality, water quality, and the health and beauty of Colorado's lands and ecosystems.

24. WRA does not oppose Tri-State's request to waive the October 31, 2019 deadline for Tri-State to file its next ERP. WRA agrees that ERP Rules applicable to Tri-State will likely change and agrees with Tri-State that it would be more efficient to delay filing its next ERP until after these rule changes are adopted. However, WRA opposes a December 31, 2020 deadline for the filing of its next ERP and suggests that, because Tri-State has a robust stakeholder framework in place as was being used for its 2019 ERP, and because Tri-State is already familiar with the Commission's current ERP process and rules, a more reasonable deadline for filing Tri-State's ERP under the new rules promulgated pursuant to Section 134 is April 30, 2020. WRA also states that, as an alternative, the Commission could grant Tri-State's variance from the October 31, 2019 filing deadline without granting Tri-State's request for a December 31, 2020 deadline.

25. WRA further recommends the Commission deny Tri-State's request for a pre-rulemaking proceeding. WRA instead suggests that the Commission promulgate the new

ERP Rules for Tri-State in the ongoing comprehensive rulemaking in Proceeding No. 19R-0096E rather than open a new pre-rulemaking proceeding.

### **3. Colorado Energy Office**

26. CEO filed a notice of intervention of right in this matter pursuant to § 40-6-108(2)(b), C.R.S., and responds to Tri-State's Petition.

27. CEO agrees with Tri-State that it would be appropriate for Tri-State to file its next ERP after the Commission adopts ERP Rules applicable to Tri-State pursuant to Section 134. However, like Sierra Club and WRA, CEO opposes Tri-State's request that the Commission open a miscellaneous stakeholder proceeding to develop those rules.

28. CEO further argues that the existing rulemaking in Proceeding No. 19R-0096E provides the proper venue to develop and promulgate ERP Rules for Tri-State. CEO states that opening a new proceeding may result in duplicative filings and discussions and that a new proceeding solely to address ERP Rules for Tri-State "would create timing issues for the Commission's final decision on ERP rules,"<sup>7</sup> implying that the issues raised with respect to the investor-owned utilities would need to be decided concurrently as they relate to Tri-State.

### **4. CIEA**

29. CIEA seeks to intervene in this matter and provides a response to the Petition.

30. CIEA states that it is a non-profit corporation and trade association of independent power producers (IPPs) and other entities whose mission is to foster transparent and competitive acquisition of cost-effective generation resources for the benefit of its members and for the benefit of Colorado ratepayers. CIEA states that its members rely upon the ERP processes to bring their projects to market in Colorado and routinely participate in requests for proposals

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<sup>7</sup> CEO Intervention at ¶ 4.

associated with Colorado utility ERPs. CIEA states that under Section 134, “Tri-State is now required to bring forward ERP applications to the Commission in order to acquire new generation resources.”<sup>8</sup> CIEA therefore concludes that its members will be directly and substantially affected by forthcoming ERP applications from Tri-State.

31. In its response to the Petition, CIEA states that it does not oppose the request for a waiver from Tri-State’s current filing deadline of October 31, 2019 for its next ERP. However, CIEA wants Tri-State to file an ERP early next year, arguing that the promulgation of new ERP Rules for Tri-State pursuant to Section 134 can be done quickly without much complication.

32. CIEA asserts that Tri-State is now required to bring forward ERP applications “in order to acquire new generation resources.”<sup>9</sup> Notwithstanding this change, CIEA surmises that “existing ERP rules are easily adaptable to Tri-State” and that except for a relatively minor issue regarding Tri-State’s use of its members’ load data to determine resource need, the existing ERP Rules are “well positioned” to apply to Tri-State.<sup>10</sup>

33. CIEA suggests that a February 1, 2020 filing date leaves “ample time to finalize the rules for Tri-State.”<sup>11</sup> CIEA states that Public Service Company of Colorado’s (Public Service) recent request for a delay in the filing date for its next ERP is distinguishable from Tri-State’s request because Public Service’s request was “based on the complexities around the Clean Energy Plan”<sup>12</sup> legislation. CIEA also wants Tri-State to benefit from federal Investment Tax Credits (ITCs) for solar and Production Tax Credits (PTCs) for wind. CIEA argues that an

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<sup>8</sup> CIEA Intervention at p. 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at p. 5.

<sup>11</sup> *Id.* at p. 7.

<sup>12</sup> *Id.* at p. 8.

extended delay in Tri-State's next ERP filing "means that ratepayers may not get to enjoy the lower costs that stem from projects that can take advantage of those benefits."<sup>13</sup>

## 5. Interwest

34. Interwest seeks to intervene in this matter and provides a response to the Petition.

35. Interwest states that it is a Colorado nonprofit corporation and trade association of grid-scale renewable energy and storage project developers and equipment manufacturers promoting renewable energy in Colorado, Wyoming, Utah, Nevada, Arizona, and New Mexico. Interwest argues that this Proceeding will substantially affect the pecuniary and tangible interests of its members who are developers and manufacturers of renewable energy in Colorado. For example, the Commission's decision on the Petition will directly affect their business planning and on-the-ground development activities as they prepare to bid into solicitation which will be part of the adjudication and implementation of Tri-State's resource plan.

36. Interwest's members also include environmental non-governmental organizations. Interwest argues that the Commission's decision will affect their interest in reducing greenhouse gas emissions created by electricity generation, such that a delay in an ERP filing from Tri-State will result in a corresponding delay in emissions reductions to be brought by early analysis of the economics and environmental performance of Tri-State's existing fleet, as well as new acquisitions which may help reduce greenhouse gas emissions and reach Colorado's public policy goals, including of Section 134.

37. Interwest does not oppose the request for a waiver from Tri-State's current filing deadline of October 31, 2019 for its next ERP. Like CIEA, however, Interwest advocates for an

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<sup>13</sup> *Id.*

ERP filing from Tri-State early next year and shares the view that adoption of ERP Rules for Tri-State pursuant to Section 134 can be done expeditiously.

38. For instance, Interwest concludes that most of the existing ERP Rules “will continue to apply to Tri-State”<sup>14</sup> and that only a limited rulemaking is needed to “identify which of the existing resource planning rules do not apply to Tri-State in full”<sup>15</sup> and “determine the filing deadline for the ERP.”<sup>16</sup> Interwest argues that a delay in Tri-State’s next ERP filing will “result in a corresponding delay in emissions reductions to be brought by early analysis and actions based on the economics and environmental performance of Tri-State’s existing fleet, as well as new acquisitions which may help reduce greenhouse gas emissions and reach Colorado’s public policy goals, including the 100 % clean goal by 2050 and 80 % reduction in carbon emissions by 2030 from 2005 levels.”<sup>17</sup> Interwest expects that required rulemaking could be completed within approximately six months and that Tri-State’s next ERP could be filed on February 1, 2020 but no later than April 1, 2020. According to Interwest, these filing deadlines would result in additional savings for Tri-State and its members, including the favorable impacts of the ITC and PTCs.

#### **E. Stakeholder Views**

39. As stated above, the Commission opened a proceeding and issued a NOPR in Proceeding No. 19R-0096E on February 27, 2019 to examine potential revisions to the ERP Rules at 4 CCR 723-3-3600, *et seq.* Although Decision No. C19-0197 included no proposed revisions to the language in Rule 3605 addressing “Cooperative Electric Generation

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<sup>14</sup> Interwest Response at p. 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

and Transmission Association Reporting Requirements,” changes to other rules cross-referenced in Rule 3605 were proposed in legislative format, including Rules 3603, 3606, 3607, and 3610. Notably, with respect to Rule 3603, Decision No. C19-0197 addressed the potential need for the Commission to take into account statutory changes enacted by the 2019 General Assembly and signed into law.

40. In addition to the ERP Rules, the attachments to Decision No. C19-0197 included other provisions in the Commission’s Rules Regulating Electric Utilities (Electric Rules) that apply to Tri-State, because the rulemaking in Proceeding No. 19R-0096E is not limited to changes in the Commission’s ERP Rules. For example, the attachments include: Rule 3000(c) listing the provisions in the Electric Rules that are applicable to Tri-State as well as the provisions in Renewable Energy Standard Rules that apply to a “Qualifying wholesale utility” such as Tri-State and to Tri-State’s member cooperatives that are “Qualifying retail utilities.” Decision No. C19-0197 also described the “Stakeholder Outreach Proceeding” that preceded the issuance of the NOPR and lists Tri-State as one of the Colorado electric utilities that participated in that proceeding.

41. Several comments filed in Proceeding No. 19R-0096E directly address the applicability of a Commission-driven ERP process for Tri-State. Certain commenters advocated for bringing Commission regulatory oversight to resource planning aspects of Tri-State to provide rural parts of Colorado an opportunity to more fully participate in clean energy economic benefits. Some commenters observed that Tri-State is not currently subject to the same regulations as other electric utilities in Colorado, while others requested that the Commission move Tri-State toward increasing its use of renewably-generated electricity and decreasing the cost of power in Colorado. The San Juan County Commissioners, for example, recommended

that the Commission require Tri-State to follow the same ERP Rules as required by other electric utilities.

42. The hearings to take oral comment in Proceeding No. 19R-0096E coincided with the final days of the 2019 General Assembly when Senate Bill 19-236 was debated and passed. At the beginning of the first day of hearings on April 29, 2019, Chairman Jeffrey Ackermann noted that legislative changes could affect comments or proposed rule changes and accordingly solicited additional written comments through the end of May 31, 2019.<sup>18</sup> In addition, oral comments at the hearing directly addressed ERP Rules applicable to Tri-State. For instance, a member of the City Council of Northglenn, Colorado spoke on behalf of the Colorado Communities for Climate Action, expressing support for expanding Commission oversight over Tri-State to achieve a less expensive and less carbon-intensive generation portfolio.<sup>19</sup> A representative of WRA later cited the public comment filed in the rulemaking proceeding from individuals requesting the Commission to require Tri-State to undergo a more thorough and robust resource planning process. She suggested that the Commission use the rulemaking, consistent with those public comments, to evaluate the ERP process that governs Tri-State.<sup>20</sup>

43. A representative for Tri-State was given an opportunity at the April 29, 2019 hearing in Proceeding No. 19R-0096E to respond to the written and oral comments addressing ERP processes for Tri-State. He admitted that comments had been filed by members of the public calling for the Commission to apply the same rules to Tri-State that presently apply to Colorado's investor-owned utilities. He stated "if the Commission was inclined to head in that direction, at a minimum, that would require a rulemaking, and extending the [Commission's]

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<sup>18</sup> Transcript April 29, 2019, pp. 5-7.

<sup>19</sup> Transcript April 29, 2019, pp. 13-14.

<sup>20</sup> Transcript April 29, 2019, p. 268 and pp. 270-271.

resource planning jurisdiction to a generation and transmission cooperative” also would require a new rulemaking “because the present rules just don’t fit.”<sup>21</sup> He welcomed the opportunity to provide written comment on the need for resource planning rules for Tri-State, but warned that such written comments would indicate that Tri-State supports no change to the current procedures it is using for resource planning.<sup>22</sup> He summarizes those procedures as follows:

Under the present framework, the Commission...requires Tri-State, after filing, to make itself available to the Commission to come in and answer questions and provide information, whatever it is that the Commission chooses. The only thing that doesn’t happen is a final Commission decision approving the resource plan, as the Commission does for Public Service and Black Hills. There's certainly nothing that precludes the Commission in asking Tri-State to come in, make the presentation, walk through it, answer questions, and, then, say, we disagree. We highly recommend you to go back and try again.<sup>23</sup>

44. Post-hearing written comments were filed in Proceeding No. 19R-0096E by CEO, WRA, CIEA, and Interwest, all of whom filed responses to Tri-State’s Petition at issue in this Proceeding. The written comments submitted in the ongoing rulemaking followed the passage of Senate Bill 19-236.

45. CEO suggested that Proceeding No. 19R-0096E provides the proper and appropriate venue to develop and promulgate ERP Rules for Tri-State. As a general response to the new statutes enacted by the 2019 General Assembly, CEO posited that the Commission could waive current ERP filing requirements for Tri-State and allow it to file its next ERP plan after the Commission adopts new ERP rules.

46. WRA asserted that Senate Bill 19-236 removed any ambiguity about the Commission’s jurisdiction to regulate Tri-State’s resource planning process. WRA argued that

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<sup>21</sup> Transcript April 29, 2019, pp. 275-276.

<sup>22</sup> Transcript April 29, 2019, pp. 284.

<sup>23</sup> Transcript April 29, 2019, p. 291.



the ongoing rulemaking proceeding was ideal for addressing the new rules governing the ERP process for Tri-State, because the Commission will “undoubtedly touch on ‘the energy policy goals of the state.’”

47. CIEA argued that the proposed rules in the current rulemaking proceeding adequately accommodate Tri-State “on a substantive basis” with some relatively modest clarifications and additions. CIEA suggested that the Commission should direct Tri-State to discontinue its current effort for the 2019 ERP and order Tri-State to bring a new ERP before the Commission immediately but no later than February 1, 2020.

48. Interwest argued that Tri-State should be required to act quickly to prepare a new compliant ERP pursuant to Commission rules and House Bill 19-1261 setting statewide emissions reduction goals. Echoing CIEA, Interwest argued that the new rules for Tri-State should require a plan filing no later than February 1, 2020 to help reduce costs for Tri-State’s members from the PTCs for wind projects and the ITCs for solar projects.

49. Tri-State’s post hearing comments explained that it continues to support the current regulatory framework applicable to its electric resource planning works. Recognizing the enactment of Section 134, however, Tri-State argued that the proper and most efficient means to develop and promulgate new ERP Rules applicable to Tri-State is in a new rulemaking proceeding. For its written comments, Tri-State incorporated the reasoning set forth in its Petition filed in this Proceeding.

## **F. Conclusion and Findings**

50. We find good cause to grant Tri-State’s request to waive the requirement that it file its next ERP on or before October 31, 2019. Section 134 requires the Commission to promulgate new rules for application filings from Tri-State for approval of its ERPs, which is a

significant change from Tri-State's reporting requirements in the existing ERP Rules set forth at 4 CCR 723-3-3600, *et seq.*

51. We deny Tri-State's request to establish a new deadline of December 31, 2020 for its next ERP filing at this time. A filing deadline for Tri-State's first application filing for approval of its ERP will be established in the course of the promulgation of rules applicable to Tri-State's ERPs pursuant to Section 134.

52. We also deny Tri-State's request that the Commission open a miscellaneous proceeding for the purpose of soliciting input and information concerning resource planning rules for Tri-State consistent with Section 134. We agree with Sierra Club, WRA, and CEO that it is unnecessary to engage in any further stakeholder outreach prior to initiating a rulemaking proceeding to promulgate the new ERP Rules applicable to Tri-State pursuant to Section 134. Tri-State's Petition filed in this Proceeding, the responses submitted to the Petition, and the numerous comments filed in the ongoing rulemaking in Proceeding No. 19R-0096E suffice for pre-rulemaking outreach prior to the Commission's issuance of a NOPR pursuant to Section 134.

53. Accordingly, the Commission is positioned to move directly to the issuance of a NOPR for the purpose of promulgating new ERP Rules applicable to Tri-State pursuant to Section 134. The NOPR will be a separate decision opening a rulemaking proceeding separate from the ongoing efforts to revise the Electric Rules in Proceeding No. 19R-0096E.

54. In its Petition, Tri-State recognizes its existing obligation to submit an ERP with the Commission and its future obligation to submit its future ERPs as application filings in accordance with rules promulgated pursuant to Section 134. The procedural history of this Proceeding also indicates that Tri-State is moving quickly in its efforts both to develop its next ERP filing pursuant to the yet-to-be adopted ERP Rules for Tri-State and to secure full rate

regulation from the FERC. In order to receive notice from Tri-State regarding both of these efforts during the pendency of the NOPR to promulgate the ERP Rules for Tri-State pursuant to Section 134, we direct Tri-State to file the following in this Proceeding:

- A copy of any filing submitted to the FERC related to Tri-State's Board of Directors' actions to place Tri-State under wholesale rate regulation by the FERC under the Federal Power Act, including any wholesale rate tariff filing. Tri-State shall include with such filing with the Commission a notice identifying the associated FERC docket numbers and filing identifiers. Such information shall be filed with the Commission within 5 business days of the submittal with the FERC.
- A notice regarding the addition of new members to Tri-State that causes the elimination of Tri-State's previous exception from FERC rate regulations under the Federal Power Act. Such information shall be filed with the Commission within 5 business days of the addition of each new member.
- Any additional information germane to Tri-State's compliance with resource planning, renewable energy, and environmental provisions under Colorado law.

55. Because we require Tri-State to submit additional information in this Proceeding, we apply our discretion allowed under Rule 1401 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and grant the motions for permissive intervention of Sierra Club, WRA, CIEA, and Interwest. In light of CEO's intervention of right, the parties in this matter include Tri-State, CEO, Sierra Club, WRA, CIEA, and Interwest.

## II. **ORDER**

### A. **The Commission Orders That:**

1. The Petition for Approval of a Variance to Extend the Filing of its Next Electric Resource Plan and Request for Pre-Rulemaking Proceeding filed on May 31, 2019 by Tri-State Generation and Transmission Association, Inc. (Tri-State) is granted, in part, and denied, in part, consistent with the discussion above.

2. The requirement that Tri-State file its next Electric Resource Plan (ERP) on or before October 31, 2019 pursuant to the Commission's ERP Rules set forth at 4 *Code of Colorado Regulations* 723-3-3600, et seq., is waived.

3. Tri-State shall file its next ERP in accordance with rules promulgated by the Commission in accordance with § 40-2-134, C.R.S., consistent with the discussion above.

4. Tri-State's request that the Commission initiate a pre-rulemaking proceeding is denied.

5. In accordance with the discussion above, Tri-State shall file in this proceeding: any filing submitted to the Federal Energy Regulatory Commission (FERC) related to Tri-State's Board of Directors' actions to place Tri-State under wholesale rate regulation by the FERC; a notice regarding the addition of new members to Tri-State that causes the elimination of Tri-State's previous exception from FERC rate regulations under the Federal Power Act; and any additional information germane to Tri-State's compliance with resource planning, renewable energy, and environmental provisions under Colorado law.

6. The Motion for Leave to Intervene filed by Sierra Club Environmental Law Program (Sierra Club) on June 12, 2019 is granted. Sierra Club is a party in this Proceeding.

7. The Petition to Intervene filed by Interwest Energy Alliance (Interwest) on June 20, 2019 is granted. Interwest is a party in this Proceeding.

8. The Motion to Intervene filed by the Colorado Independent Energy Association (CIEA) on June 20, 2019 is granted. CIEA is a party in this Proceeding.

9. The Petition for Leave to Intervene filed by Western Resource Advocates (WRA) on June 20, 2019 is granted. WRA is a party in this Proceeding.

10. The Colorado Energy Office is a party in this Proceeding.

11. 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 Decision.

12. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
July 17, 2019.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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JOHN GAVAN

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Commissioners