

Decision No. C19-0777

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

PROCEEDING NO. 19M-0005E

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IN THE MATTER OF THE YEAR 2019 FILINGS BY COLORADO ELECTRIC UTILITIES  
IN ACCORDANCE WITH RULE 4 CCR 723-3-3206 FOR THE DESIGNATION OF  
ELECTRIC UTILITY TRANSMISSION FACILITIES WHETHER THE FACILITIES ARE IN  
THE NORMAL COURSE OF BUSINESS OR AN APPLICATION TO OBTAIN A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED.

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**DECISION DENYING TRI-STATE'S APPLICATION FOR  
REHEARING, REARGUMENT, OR RECONSIDERATION**

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Mailed Date: September 18, 2019

Adopted Date: September 18, 2019

**I. BY THE COMMISSION**

**A. Statement**

1. This Decision denies the application for Rehearing, Reargument, or Reconsideration (RRR) filed by Tri-State Generation and Transmission Association, Inc. (Tri-State or Company) in response to Commission Decision No. C19-0638.<sup>1</sup> We find that Tri-State must file an application for a Certificate of Public Convenience and Necessity (CPCN) since Commission Staff (Staff) at this point, have not been able to determine that the projects proposed by Tri-State are in the ordinary course of business or whether it is appropriate to exempt the projects from Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3206(b)(I) of the Rules Regulating Electric Utilities.

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<sup>1</sup> Decision No. C19-0638 was issued on July 30, 2019.

**B. Background**

2. Rule 4 CCR 723-3-3206(c) requires each Colorado electric utility to file with the Commission, no later than April 30 of each year, information on its proposed new construction or extensions of transmission facilities for the next three calendar years.

3. Several utilities, including Tri-State filed information on proposed projects. By Decision No. C19-0421-I, issued May 17, 2019, the Commission issued notice of the information submitted by the utilities concerning the proposed construction of transmission facilities.

4. Decision No. C19-0555-I issued June 27, 2019, waived Rule 3206(d)(II)(B) and ordered Commission Staff to make recommendations on the submitted projects by July 24, 2019. Tri-State submitted descriptions for ten projects. In that Decision it was determined that Tri-States' Spanish Peaks Solar Farm Interconnection (Spanish Peaks), Windtalker Switchyard (Crossing Trails Wind Farm) Interconnection (Windtalker), and Rattlesnake Ridge Transformer Addition each require a CPCN or a formal determination that no CPCN is required.

5. Regarding the other Tri-State projects, we found that the Davis Substation Upgrade, Greenhouse Delivery Point, North Park Substation Reconfiguration, Rancho Substation Upgrade, and Slater-Del Camino Upgrade projects are in the ordinary course of business and therefore do not require a CPCN. We also found it appropriate to waive Rule 3206(b)(I) for the Fairgrounds Substation Upgrade and Silver Saddle Substation Upgrade finding that no CPCN is required for those two projects.

6. On August 19, 2019, Tri-State filed its RRR requesting reconsideration of the Commission's decisions regarding the Spanish Peaks and Windtalker projects (together, the Projects). According to Tri-State, both of the Projects interconnect a single renewable resource

to the Tri-State transmission system and will be designed to meet the Commission's standards for audible noise and magnetic fields. Tri-State urges the Commission to find that both Projects be considered either to be in the ordinary course of business or exempt from Rule 3206(b)(I). Tri-State maintains that doing so would be in conformance with a longstanding Commission practice of not requiring CPCNs for generation interconnection facilities.<sup>2</sup>

7. Although the Commission's rules generally require a CPCN for any transmission facility designed at 230 kilovolts (kV) or above, Tri-State refers to past Commission Decisions for the proposition that the Commission has "frequently" waived the rules and does not require CPCNs for specific projects. Tri-State specifically points to decisions that have granted generation interconnection projects waivers.

8. Additionally, Tri-State argues that Rule 3206(b)(I) states that a "radial transmission line designed at 230 kV or above that serves a single retail customer and terminates at that customer's premises will not require a CPCN application." While the Projects do not fall fully within the rule exception since they are not radial transmission line projects, Tri-State takes the position that the rule's language is nonetheless instructive. In Tri-State's interpretation, the rule indicates that "where a transmission facility is going to connect only a single customer, the Commission does not generally require a CPCN to be obtained."<sup>3</sup> Tri-State RRR at p. 8.

9. Therefore, Tri-State requests that the Commission determine that no CPCN is required for the Windtalker and Spanish Peaks Interconnect projects as described in its 2019 Rule 3206 Report.

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<sup>2</sup> Tri-State also expresses concern that requiring the Windtalker facility to seek a CPCN could jeopardize the availability of the full Federal Production Tax Credit, which it characterizes as a key assumption in the power purchase agreement Tri-State has with the developer of the Crossing Trails Wind Farm.

<sup>3</sup> Tri-State's RRR, pp.7-8.

**C. Findings and Conclusions**

10. In Tri-State's 2019 Colorado PUC Rule 3206 filing, the Company describes the function of the Spanish Peaks Interconnect as, a new switching station required to connect the 100 Megawatt (MW) Spanish Peaks Solar Farm to Tri-State's existing transmission system. The interconnection facilities will consist of a new three breaker ring bus 230 kV switchyard and will interconnect with the Walsenburg-Gladstone 230 kV line approximately 20 miles southeast of Walsenburg.

11. Windtalker is a switching station required to connect the 104 MW Crossing Trails Wind Farm to Tri-State's transmission system. The interconnection facilities will interconnect with the existing Burlington-Landsman Creek-Big Sandy 230 kV transmission line approximately 26 miles west of the Landsman Creek Substation. The Windtalker Switchyard will consist of a new three breaker 230 kV Switching Station.

12. Rule 3206(b)(I) requires that "[a]ll utilities and electric cooperative associations subject to paragraph (a) [of Rule 3206] shall be required to file a CPCN application for all new transmission facilities that meet one of the following criteria:"

- (I) Transmission facilities designed at 230 kV or above, even if initially operated at a lower voltage. However, a radial transmission line designed at 230 kV or above that serves a single retail customer and terminates at that customer's premises will not require a CPCN application.
- (II) Transmission facilities designed at 115 kV or 138 kV if:
  - (A) the facilities do not meet the noise and magnetic field thresholds ... ; or
  - (B) the Commission determines that the facilities are not in the ordinary course of business.

13. In Proceeding No. 09R-904E, which promulgated rules related to the construction or extension of electric transmission facilities, Tri-State argued against proposed Rule 3206(b) which proposed that all transmission projects designed at 230 kV and above would require a CPCN, even for projects that would be initially operated at a lower voltage. Transmission projects at or below 230 kV would be exempt from requiring a CPCN if the projects meet the noise and EMF thresholds and had no unusual system impact or expense. Those projects would be deemed in the ordinary course of business under § 40-5-101, C.R.S.

14. Tri-State's position in that rulemaking proceeding was that radial 230 kV lines built solely to serve a single customer should be in the ordinary course of business and not require a CPCN. Moreover, Tri-State argued that since it does not serve retail load, proposed Rule 3206(b) would not apply to it. Tri-State wanted all radial lines, whether designed at 115 kV or above, to be considered within the normal course of business and not require a CPCN.

15. However, in Decision No. R10-0430 in Proceeding No. 09R-904E, issued May 7, 2010, Hearing Commissioner James K. Tarpey determined that:

Rule 3206(b)(I) would apply to Tri-State in a situation where a radial line is built to serve a single retail customer, even if Tri-State does not serve that retail customer directly. The Hearing Commission further finds that the Commission should have an opportunity to review whether a radial 230 kV line that serves more than a single retail customer is indeed in the ordinary course of business and to review that proposed project in detail.<sup>4</sup>

Commissioner Tarpey therefore declined to amend Rule 3206(b)(I) based on Tri-State's recommendations.

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<sup>4</sup> See, Recommended Decision No. R10-0430 at p. 6, ¶18.

16. Commission Rule 3206(b)(I) states that transmission facilities designed at 230 kV or above, even if initially operated at a lower voltage, require a CPCN, unless the facility is a radial transmission line designed at 230 kV or above serving a single retail customer and terminating at that customer's premises. In Tri-State's 2019 Rule 3206 filing, it describes the function of the Spanish Peak Interconnection as "a new 3 breaker ring bus 230 kV substation ...". Furthermore, Tri-State describes the function of the Windtalker Switchyard as, "a new three (3) breaker 230 kV POI Switching Station."

17. Staff found that the information provided by Tri-State was insufficient to make a determination of whether the proposed projects were in the ordinary course of business. Staff further determined that it was prudent to review the proposed projects in further detail to ascertain whether a CPCN was required or whether the project was in the ordinary course of business.

18. Therefore, we accept Staff's recommendation and deny Tri-State's RRR. We require the Company to file an application for a CPCN for both projects. Should sufficient information be received from Tri-State in its CPCN application filings, Staff may find that it is satisfied and able to determine at that time that either no CPCN is necessary, or that the application process should proceed forward. Should Staff be convinced that no CPCN is necessary, the application process will be terminated prior to the application proceeding to an Administrative Law Judge for disposition.

19. We understand that time is of the essence for Tri-State in order to preserve Production Tax Credits for its developer. Consequently, Tri-State is advised that as part of its CPCN application, it should request expedited treatment and an abbreviated notice and intervention period.

**II. ORDER**

**A. The Commission Orders That:**

1. The Application of Tri-State Generation and Transmission Association, Inc. (Tri-State) for Rehearing, Reargument or Reconsideration of Decision No. C19-0638 is denied consistent with the discussion above.

2. Tri-State is directed to file an application for a certificate of public convenience and necessity (CPCN) for the Windtalker 230 kV Switchyard Project and the Spanish Peaks Solar Farm Interconnect Project.

3. The Commission will consider Tri-State's CPCN application consistent with the discussion above in order to determine whether the application should proceed to an Administrative Law Judge for disposition or whether no CPCN is necessary for either or both projects.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
September 18, 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