Decision No. R19-0466-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18F-0866E

DELTA-MONTROSE ELECTRIC ASSOCIATION,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE STEVEN H. DENMAN GRANTING MOTION TO COMPEL IN PART AND DENYING IT IN PART; AND COMPELLING DISCOVERY

Mailed Date: June 3, 2019

TABLE OF CONTENTS

I. STATEMENT

1. This Interim Decision resolves Tri-State Generation and Transmission Association, Inc.'s (Tri-State) Motion to Compel Production and Request for Shortened Response Time (Motion to Compel) filed in this proceeding on May 3, 2019.

A. Procedural History.

2. On December 6, 2018, Delta-Montrose Electric Association (DMEA) filed a formal complaint against Tri-State, alleging generally that DMEA wishes to withdraw from Tri-State, in order to pursue cleaner and cheaper power supply alternatives, but Tri-State's exit charge for DMEA to withdraw is unjust, unreasonable, and discriminatory. DMEA alleges *inter alia* that it has wholesale power supply options, including local renewable generation, available that are less expensive and environmentally cleaner than Tri-State's power supply.

3. The procedural history of the above-captioned proceeding is set forth in Decisions previously issued by the Commission in this Proceeding, and is repeated here only as necessary to put this Interim Decision into context.

4. On December 10, 2018, DMEA filed a Motion Requesting the Commission Establish a Procedural Schedule and Request for Commission Hearing *En Banc*. In Decision No. C18-1177-I, ¶ 2 at p. 2 (mailed on December 28, 2018), the Commission summarized the

Complaint: "Generally, the Formal Complaint alleges that Tri-State's exit charge for DMEA to withdraw from Tri-State in order to pursue cleaner power supply alternatives is unjust, unreasonable, and discriminatory." By Decision No. C18-1177-I, the Commission granted the request for an *en banc* hearing, but denied DMEA's procedural schedule and ordered the parties to file a joint proposed procedural schedule.

5. On February 11, 2019, DMEA, Tri-State, and the Colorado Energy Office filed a Joint Request to Adopt Consensus Procedural Schedule.

6. By Decision No. C19-0178-I (mailed on February 19, 2019), the Commission adopted a procedural schedule and scheduled the evidentiary hearing for June 17 through 21, 2019. DMEA filed its Direct Testimony and Attachments on March 15, 2019. Tri-State filed its Answer Testimony and Attachments on April 29, 2019. DMEA's Rebuttal Testimony and any intervenor Cross-answer Testimony were to be due on May 29, 2019.

7. On May 3, 2019, Tri-State filed the Motion to Compel addressed in this Decision. After conferral among counsel about this discovery dispute, Tri-State reports that DMEA's response was that it would not reconsider its position.

8. In the Motion to Compel, Tri-State seeks to compel DMEA to respond, or to respond more fully, to ten discovery requests propounded by Tri-State. In the Motion to Compel, Tri-State claims that DMEA objected to, and declined to provide the bulk of the information requested. According to Tri-State, DMEA withheld unspecified documents and redacted others under the claim of privilege or work product. Tri-State now seeks a Commission Decision compelling DMEA to respond to the discovery requests and to provide to Tri-State the documents it has requested.

9. By Decision No. C19-0408-I (mailed on May 8, 2019), the Commission granted Tri-State's request to shorten response time to the Motion to Compel and required DMEA to file its response by the close of business on May 10, 2019.

10. Decision No. C19-0408-I also referred this matter to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to handle this discovery dispute.[1]

11. On May 10, 2019, DMEA filed its Response to Respondent's Motion to Compel (DMEA Response), opposing the Motion to Compel. DMEA's Response urges the Commission to deny Tri-State's Motion to Compel generally for four reasons: (1) specific requests seek irrelevant information regarding potential sources of wholesale energy, load forecasts and load issue, and DMEA's buy-out calculations; (2) Tri-State's demand for electronic communications is disproportionate and overly burdensome; (3) redactions to an agreement between DMEA and Guzman Energy LLC (Guzman Agreement) were proper as privileged work product; and (4) Colorado law does not require a document-by-document privilege log.

12. On May 14, 2019, DMEA filed a Motion for a 30-day Extension of Time to File Its Rebuttal Testimony, for a Corresponding Continuance of the Evidentiary Hearing, and for Shortened Response Time (Motion for Extension). On May 17, 2019, Tri-State filed its Response to DMEA's Motion for Extension, objecting to the 30-day extension of time to file rebuttal and to rescheduling the hearing. At the Commission's May 22, 2019 Weekly Meeting, the Commission decided to grant DMEA's Motion for Extension. By Decision No. C19-0443-I (mailed on May 24, 2019), the Commission granted DMEA an extension until June 28, 2019

[1] Given the procedural events in this case after his assignment to resolve this discovery dispute, the number of discovery responses in dispute, and the complexity of the parties' legal arguments, the ALJ has rendered this Interim Decision ruling on the Motion to Compel as soon as feasible.

within which to file its rebuttal testimony and vacated the hearing previously set for June 17 through 21, 2019; and directed the parties to file a joint revised procedural schedule by May 29, 2019. The Decision also adopted Tri-State's proposal to curtail additional written discovery prospectively; DMEA and Tri-State each will have ten more document requests and ten more interrogatories.

13. On May 15, 2019, Tri-State filed a Motion for Leave to File a Reply Brief in Support of its Motion to Compel Production (Motion for Leave to Reply). On May 15, 2019, the ALJ shortened response time to the Motion for Leave to Reply to 12 Noon on Monday, May 20, 2019.[2] DMEA failed to file any Response to the Motion for Leave to Reply.

14. By Decision No. R19-0438-I (mailed on May 22, 2019), the ALJ granted the Motion for Leave to Reply and held that he would consider Tri-State's Reply Brief in resolving the merits of the Motion to Compel.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

A. Governing Discovery-Related Principles.

15. Generally, Rule 1405 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, governs discovery in Commission proceedings.[3] That rule incorporates by reference specific provisions of the discovery rules found at Rules 26 through 37 of the Colorado Rules of Civil Procedure (C.R.C.P.). "The Commission discourages discovery disputes, and will sanction parties and attorneys that do not cooperate in good faith."[4]

[2] Decision No. R19-0420-I (mailed on May 15, 2019).

[3] The Commission may modify the discovery deadlines and procedures in Rule 1405, 4 CCR 723-1.

[4] Rule 1405(g), 4 CCR 723-1.

16. A party may serve discovery upon another party to discover any matter, not privileged, that is relevant to a claim or defense of a party. Rule 26(b)(1), C.R.C.P. The scope of pretrial (or prehearing) discovery is broad in order to effectuate its purposes, some of which are: discovery of relevant evidence, simplification of issues, elimination of surprise at hearing, and promotion of settlement of issues and of cases. *Silva v. Basin Western, Inc.,* 47 P.3d 1184, 1188 (Colo. 2002). Preparation for cross-examination of witnesses at the hearing is another purpose of discovery.

17. Consistent with discovery purposes, the concept of relevance with respect to discovery requests is a broad one (*Sewell v. Public Service Company of Colorado*, 832 P.2d 994, 999 (Colo. App. 1991)), and it "is not equivalent to the standard for admissibility of evidence at trial" (*Williams v. District Court*, 866 P.2d 908, 911 (Colo. 1993)). The test of relevance for purposes of discovery is whether the information sought "appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26(b)(1), C.R.C.P. Moreover, requests for information reasonably calculated to lead to the discovery of admissible information related to a respondent's defenses is permissible. (*See Williams v. District Court*, 866 P.2d at 911-912.) "Information is discoverable if it is sufficiently related to the issues in the litigation," including facts giving rise to claims or defenses. (*Williams v. District Court*, 866 P.2d at 914 (Vollack, J., concurring).) Indeed, in determining what is discoverable, a party should not be limited by its opponent's theory of the case. (*Gopher Excavation, Inc. v. N. Am. Pipe Corp.*, 17-CV-1021-MSK-KHR, 2017 U.S. Dist. LEXIS 217798, at *8-12, 2017 WL 7355300 (D. Colo. Dec. 15, 2017).)

18. This is not to say that the right to pretrial discovery is limitless. The Colorado Supreme Court has cautioned that:

> Although the law generally favors discovery, the scope of discovery is not limitless. The need for discovery must be balanced by weighing a party's right to privacy and protection from harassment against the other party's right to discover information that is relevant.

Silva v. Basin Western, Inc., 47 P.3d at 1188 (internal citation omitted).

19. The Colorado Supreme Court has opined that, "[w]hen resolving discovery disputes, the rules should be construed liberally to effectuate the full extent of their truth-seeking purpose, so in close cases the balance must be struck in favor of allowing discovery." *National Farmers Union Property and Casualty Co. v. District Court*, 718 P.2d 1044, 1046 (Colo. 1986).

20. With these principles in mind, the ALJ will address Tri-State's Motion to Compel and DMEA's Response.

B. Tri-State's Motion to Compel and DMEA's Responses.

21. Tri-State served its First Set of Written Discovery Requests (Discovery Requests) on DMEA on April 10, 2019, consisting of 24 Requests for Productions of Documents and 4 Interrogatories, for a total of 28 Discovery Requests. On April 22, 2019, DMEA served objections and responses to Tri-State's discovery requests (DMEA's Response).[5]

22. In the Motion to Compel, Tri-State seeks to compel DMEA to respond, or to respond more fully, to ten discovery requests propounded by Tri-State. In the Motion to Compel,

[5] DMEA's Response includes both General Objections, which are incorporated into the specific objections to particular Discovery Requests. Most of the General Objections are substantively the same as certain specific objections. When this Decision rules on a specific objection, the ruling applies equally to the same substantive General Objection.

Tri-State claims that DMEA objected to, and declined to provide the bulk of the information requested. According to Tri-State, DMEA also withheld unspecified documents and redacted others under the claim of privilege or work product. Based upon its objections to the disputed Discovery Requests, DMEA urges the Commission to deny the Motion to Compel.

1. Preliminary Objections and Arguments Concerning DMA's Failure to Produce Documents.

23. Tri-State served its Discovery Requests on DMEA on April 10, 2019. DMEA argues generally that the timing of Tri-State serving its Discovery Requests was somehow improper, in support of its argument that the Motion to Compel should be denied.[6] Pursuant to Rule 1405(d), 4 CCR 723-1, Tri-State's written discovery on DMEA's Direct Testimony was due on or before the deadline for filing answer testimony, April 29, 2019.[7] Therefore, Tri-State timely served its Discovery Requests on DMEA. Moreover, DMEA agreed that the timelines in Rule 1405(b) through (d) would apply without modification.[8] DMEA's timing objection is without merit and is overruled.

24. DMEA objected to the definition of "Communications" in Tri-State's Discovery Requests, "to the extent that it purported to obligate DMEA to perform a needless and

[6] DMEA Response, pp. 5 and 15. The Conclusion argues: "For the reasons explained above, DMEA respectfully requests that the Commission deny the Motion to Compel." *Id.* at p. 15.

[7] Rule 1405(d), 4 CCR 723-1, states that:

> In proceedings where prefiled testimony is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony shall be the deadline for filing rebuttal and cross-answer testimony and the last day to propound discovery solely directed to rebuttal and cross-answer testimony shall be five business days before the first day of hearing.

[8] Joint Request to Adopt Consensus Procedural Schedule, ¶ 4 at p. 2; *see also* DMEA's Proposed Procedural Schedule, ¶ 4 at p. 2 ("DMEA further proposes that the Commission utilize the discovery timelines in Rule 1405(b)-(d) without further modification.")

unwieldy review of electronically stored information — and, in particular, emails."[9] Tri-State's Discovery Requests defined "Communications" as follows:

> "Communications" means any oral, written or electronic statements, notations or utterances of any nature whatsoever, including but not limited to, correspondence, e-mails, memoranda, conversations, discussions, meetings, interviews, consultation, agreements, and other exchanges of information in any form or format.[10]

25. This definition of "Communications" (or something similar) often appears in discovery requests served by counsel who regularly practice in litigation before the Commission. In fact, in DMEA's first and second written discovery requests served on Tri-State (on May 3, 2019 and on May 10, 2019, respectively), DMEA used an identical definition of "Communications."[11] For that reason, DMEA's objection to the definition of "Communications" is without merit and is overruled.

2. DMEA's Relevancy Objections.

26. Tri-State argues that DMEA has failed to produce and has asserted relevancy objections in response to Tri-State's Discovery Requests for three categories of documents: (1) documents regarding potential future sources of wholesale electricity; (2) documents related to load issues; and (3) documents regarding DMEA's buy-out calculations. Before turning to specific Discovery Requests and objections, DMEA's relevancy argument must be addressed.

27. DMEA argues that there is only one issue to be litigated in this proceeding: "This case is about only one thing: a just, reasonable and nondiscriminatory exit charge to allow DMEA to withdraw from Tri-State."[12] DMEA, however, ignores the scope of discovery defined

[9] DMEA Response, p. 7. The quoted qualification to DMEA's objection appears to be related to its relevancy and proportionality arguments. *See Infra.*

[10] Motion to Compel, Attachment A, p. 1.

[11] Tri-State Reply Brief, Attachment 1, Carroll Affidavit, Exhibit B, p. 1, and Exhibit C, p. 1.

[12] Motion to Compel at p. 1.

by Rule 26(b)(1), C.R.C.P.: "… [P]arties may obtain discovery regarding any matter, not privileged, *that is relevant to the claim or defense of any party* and proportional to the needs of the case…." (Emphasis added.) In determining what is discoverable, Tri-State cannot be limited by DMEA's theory of the case.[13] Therefore, requests for information, reasonably calculated to lead to the discovery of admissible information related to a complainant's claims or a respondent's defenses, are relevant and permissible.[14]

28. DMEA's Complaint is replete with claims and allegations about which Tri-State could conduct discovery relevant, or reasonably calculated to lead to the discovery of admissible information related to, those claims and allegations or to Tri-State's defenses.

29. In its Complaint, DMEA alleges that:

> 5. DMEA, and by extension its member-owners, have wholesale power supply options available to them that are significantly less expensive and environmentally cleaner than Tri-State's power supply. Through its Board of Directors, DMEA has a fiduciary responsibility to consider and pursue these alternative power supply options so as to stabilize and control its member-owners' retail rates.
>
> 7. DMEA and other rural cooperatives have watched as other Colorado utilities — including those serving urban areas — take advantage of declining wholesale costs to move to cheaper and cleaner power sources. [Footnote omitted.] Meanwhile DMEA member-owners have paid Tri-State's increases through their electric bills, with those increases in turn inhibiting economic development and growth in the rural economy.
>
> 10. Like Kit Carson, DMEA seeks to pay an exit charge that will satisfy its obligations related to Tri-State's debts and resources acquired on DMEA's behalf, while at the same time potentially allowing DMEA to migrate to a cleaner generation mix and stabilize its customers' retail rates.
>
> 17. Tri-State's "core principle" of "voluntary and open membership," reflected in the withdrawal provisions of the Tri-State Bylaws, is hollow if Tri-State can unilaterally set an exit charge that is unjust, unreasonable, and discriminatory. [Footnote omitted.] In essence, Tri-State maintains it has the right to deprive

[13] *See Gopher Excavation, Inc. v. N. Am. Pipe Corp.*, *supra*, 2017 U.S. Dist. LEXIS 217798, at *8-12, 2017 WL 7355300.

[14] *See Williams v. District Court*, *supra,* 866 P.2d at 911-912.

> rural Coloradans of less expensive and cleaner generation resources, and deny them opportunities for local growth and economic development that come with that lower-cost energy supply.
>
> 50. DMEA's request to the Commission is narrow. But the long-term economic and environmental benefits to DMEA's rural member-owners — and other rural citizens across the state — would be significant. …[15]

30. In its Motion Requesting the Commission Establish a Procedural Schedule and Request for Commission Hearing *En Banc*, filed on December 10, 2018, DMEA also stated that:

> 2. As detailed in the Complaint, this proceeding follows DMEA's efforts over two years to exercise its right to withdraw from Tri-State and allow DMEA to pursue more economic and cleaner power supply alternatives. Tri-State's prescribed exit charge for withdrawal, however, is unjust, unreasonable, and discriminatory.
>
> 11. … Because this case involves important legal and policy issues for the future of energy supply in Western Colorado, and because time is of the essence in determining the future of power supply for DMEA's retail member-owners, it is appropriate for the Commission to hear the merits of DMEA's Complaint *en banc*.[16]

31. From these pleadings, especially the Complaint, it is abundantly clear that DMEA's advocacy in this proceeding has inextricably tied its claim that Tri-State's exit charge for withdrawal is unjust, unreasonable, and discriminatory to its claims and allegations that the purpose of its proposed withdrawal from Tri-State *inter alia* is to pursue less expensive, more economical, and cleaner power supply alternatives, which would promote economic development and growth in the rural economy in DMEA's service territory. For that reason, DMEA's relevancy objections are without merit. Moreover, pursuant to Rule 1405(a), 4 CCR

[15] Formal Complaint ¶¶ 5, 7, 10, 17, and 50 at pp. 2-3, 5, and 15. In Tri-State's Response to Formal Complaint, filed on April 15, 2019, Tri-State asserted *inter alia* the following affirmative defenses: the "Formal Complaint fails to state a claim upon which relief can be granted;" and "DMEA is estopped from asserting the claims set forth in the Formal Complaint based on its contractual obligations to Tri-State." *Id.*, ¶¶ 4 and 5 at p. 9.

[16] Motion Requesting the Commission Establish a Procedural Schedule and Request for Commission Hearing *En Banc*, ¶¶ 2 and 11 at pp. 2, 5, and 6.

723-1, and Rule 26(b)(1), C.R.C.P., Tri-State may conduct "discovery regarding any matter, not privileged, that is relevant to" its defenses.

32. The ALJ finds and concludes, therefore, that Tri-State is entitled to conduct discovery regarding any matter, not privileged, that is relevant, or reasonably calculated to lead to the discovery of admissible information related to, DMEA's claims and allegations against which Tri-State may choose to mount its defenses. DMEA's relevancy objections are overruled.

3. DMEA's Overly Broad, Unduly Burdensome, and Disproportionate Objections.

33. In its Response to the Motion to Compel, DMEA argues that to require its counsel to conduct a search of a substantial quantity of electronically stored documents and emails (E-Documents) in its possession, in order to determine which are responsive to Tri-State's requests for production, would be burdensome, disproportionate to the needs of the case, and a "pointless undertaking."[17]

34. In its Reply Brief, Tri-State states that its only set of written discovery to DMEA included 24 document requests and 4 interrogatories, for a total of 28 Discovery Requests. In response, DMEA objected to searching its E-Documents. As a result, Tri-State asserts that, "DMEA produced only 447 total documents, including a mere 12 emails."[18] Tri-State reports that on May 3, 2019 DMEA served on Tri-State its first set of written discovery, consisting of 26 document requests and 11 interrogatories. On May 10, 2019, DMEA served on Tri-State its second set of written discovery, consisting of 2 document requests, 19 interrogatories, and 4 requests of admission. Tri-State claims that, as of May 13, 2019, DMEA has served a total

[17] DMEA Response to Motion to Compel at pp. 7 through 9, 10, 12, and 14.

[18] Tri-State Reply Brief, at p. 4.

of 62 discovery requests – more than twice as many as Tri-State served on DMEA. On May 13, 2019, Tri-State responded to DMEA's first set of written discovery, and produced more than 2,300 documents including more than 725 emails.[19]

35. Tri-State asserts that DMEA's "overly burdensome" and "not proportionate" arguments should be decided in light of the size and importance of this proceeding and the amount in controversy.[20] Tri-State asserts that this proceeding's size and importance are illustrated by the more readily quantifiable monetary issues. For example, DMEA's full performance under its wholesale power contract, that lasts through 2040 without a termination clause, would provide to Tri-State (and its 42 other members) an estimated net present value of revenue of approximately $557,000,000. While DMEA suggests a termination fee of between $37,000,000 and $44,000,000, Tri-State believes the amount should be as much as $131,465,367.[21]

36. In addition to being relevant to the claims or defenses of any party, Rule 26(b)(1), C.R.C.P., requires that the discovery be "proportional to the needs of the case…." DMEA argues that the Discovery Requests to which it objects are "so burdensome as to be vastly disproportionate to the needs of the case."[22] Rule 26(b)(1) requires that determinations of whether discovery is proportional to the needs of the case must consider "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant

[19] *Id.*, at pp. 4 and 5. It is unknown how many documents and E-Documents were included in Tri-State's responses to DMEA's second set of written discovery, due on May 20, 2019.

[20] DMEA's objections to specific Discovery Requests are stated as "overly broad and unduly burdensome" and "disproportionate" to the needs of the case or to the relevance of the information sought. In its Motion to Compel and Reply Brief, Tri-State describes and opposes these objections together as DMEA's "overly burdensome" objection.

[21] *Id.*, at pp. 5 and 6.

[22] DMEA Response at p. 6.

information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

37. DMEA focuses on the volume of E-Documents to be searched and objects to conducting key-word searches for approximately 373,700 documents and manually reviewing arguably "tens of thousands of documents."[23] DMEA concedes, however, that its counsel has already collected and gathered E-Documents, which includes all emails of relevant DMEA employees,[24] which provides information on DMEA's "relative access to relevant information." However, DMEA does not provide its view of the amount in controversy, the number of key-word searches required, the estimated time it would take to search the already-collected E-Documents, or the estimated expense of such key-word searches.

38. The ALJ has reviewed the case law and the Commission decision cited in DMEA's Response and in Tri-State's Reply Brief. The ALJ finds that the three federal cases from other jurisdictions, cited by DMEA to support its objections that the search of relevant emails is overly broad and unduly burdensome and disproportionate, are distinguishable and inapposite. These three federal cases do not convincingly support DMEA's arguments.

39. In *Rutledge*, 2017 U.S. Dist. LEXIS 20076, at *3-6, the discovery request was not limited to any particular subject matter, the defendant had already searched for and produced electronically stored emails, and granting the motion to compel would further extend the discovery deadline, which had already been extended several times. None of those factors are present in the instant case. In *Moore v. Lowe's Home Centers*, 2016 U.S. Dist. LEXIS 20630, at *14-16, the defendant had already searched for and produced electronically stored emails,

[23] DMEA Response at pp. 8 and 9.

[24] *Id.*, at p. 8; Exhibit C, Montville Affidavit; and Exhibit D, ESI Collection Tracking Log.

claiming that it had already reviewed 21,000 emails from 17 custodians; the court found that the request for email searches was overly broad and not proportional to the case. Here, DMEA has previously produced only 447 documents, including 12 emails. In *Connecticut General Life Ins. Co. v. Earl Scheib*, 2013 U.S. Dist. LEXIS 16234, at *2 and fn.1, the cost of searching for and producing emails in response to discovery was approximately $120,000, when the claim for damages was $119,515.49. Here, DMEA has provided no cost estimate to produce the withheld emails or compared such cost to the amount of dollars in controversy.

40. The ALJ finds that *Gopher Excavation, Inc. v. N. Am. Pipe Corp.*,[25] is the more persuasive case to follow on this issue. There, a party in a commercial dispute between two businesses was required to search for and to produce emails because it failed to support its "overly burdensome" objection with sufficient factual detail regarding the search terms it could use, the email accounts it would search, the time required for the searches, and other fact issues.[26]

41. The ALJ overrules DMEA's objection that, in order to respond fully to the disputed discovery requests, the search of relevant E-Documents is overly burdensome and disproportionate to the needs of the case. Based upon information provided by Tri-State and DMEA in the pleadings on the Motion to Compel, the ALJ finds that DMEA failed to demonstrate that "the burden or expense of the proposed discovery outweighs its likely benefit."

[25] *Gopher Excavation, Inc. v. N. Am. Pipe Corp.*, *supra*, 17-CV-1021-MSK-KHR, 2017 U.S. Dist. LEXIS 217798, at *8—12, 2017 WL 7355300, at *7 (D. Colo. Dec. 15, 2017)

[26] *See also* Decision No. R11-0078-I (mailed on January 24, 2011), at ¶¶ 30-32, in Proceeding No. 10A-554EG (granting motion to compel requiring Public Service Company (PSCo) to search its electronic records to respond to discovery because, *inter alia*, PSCo failed to meet its burden of proof because PSCo "provided only general – and unverified – information to show that it would be unduly burdensome" for PSCo to produce the responsive documents).

4. Documents Regarding Potential Future Sources of Wholesale Electricity.

42. Document Requests Nos. 1-5, 1-7, 1-16, and 1-19 seek documents concerning potential alternate sources of wholesale electricity, if DMEA withdraws from Tri-State. **Request No. 1-5** stated:

> Produce all Documents relating to DMEA's potential ability to (or plans to) purchase electricity from potential suppliers of electricity other than Tri-State after any DMEA withdrawal from Tri-State. Such Documents would include, but not be limited to, all Documents evidencing Communications between DMEA and such potential suppliers of electricity.[27]

Request No. 1-7 stated:

> Produce all Documents evidencing DMEA's Communications with Guzman Energy during the Relevant Period to the extent that such Communications concern: (1) DMEA's potential withdrawal from Tri-State, (2) DMEA potentially purchasing electricity from Guzman Energy after any DMEA withdrawal from Tri-State, or (3) this proceeding before the Colorado Public Utilities Commission.

Request No. 1-16 stated:

> Produce all Documents concerning any actual or potential purchase by DMEA of power from a small power production facility, a cogeneration facility, or any other Qualifying Facility under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Request No. 1-19 stated:

> Produce all Documents relating to the DMEA *Power Supply Request for Proposals*, dated June 20, 2018 (the "RFP"), including but not limited to: (1) all Communications relating or referring to the RFP, (2) all responses or inquiries resulting from the RFP, and (3) any other Documents discussing or referring to the RFP.[28]

43. DMEA's responses to these Discovery Requests made the following objections:

> (1) "this request is not reasonably calculated to lead to the discovery of admissible evidence relating to the question at issue in this matter — what is a fair, reasonable and non-discriminatory exit charge for DMEA's withdrawal from Tri- State?" (Request Nos. 1-5, 1-7, 1-16, and 1-19.)

[27] Capitalized words in the Document Requests, such as Documents and Communications, refer to defined terms in the Definitions section of Tri-State's Discovery Requests. Motion to Compel, Attachment A, pp. 1 and 2.

[28] Motion to Compel, Attachment A, pp. 3, 4, and 5.

(2) that "the term "ability," as used in this context, as vague and ambiguous, as it provides no reasonable guidance about the documents that Tri-State seeks." (Request No. 1-5.)

(3) that this request is "overly broad and unduly burdensome" and that the "time and expense of this effort is vastly disproportionate to the non-existent relevance of the information sought." (Request Nos. 1-5, 1-7, 1-16, and 1-19.)

(4) "as seeking documents protected by the attorney-client privilege, the work product doctrine, and the common interest privilege." (Request Nos. 1-5 and 1-7.)

(5) "the documents referred to by the request are subject to nondisclosure agreements with entities that are not party to this litigation, and which DMEA is not at liberty to unilaterally waive." (Request No. 1-19.)[29]

44. In its Motion to Compel, Tri-State asserts that DMEA's objections are meritless. Tri-State argues that the Complaint raised disputed factual issues about "whether DMEA can demonstrate that by purchasing power from a supplier other than Tri-State, it will achieve savings and purchase more renewable energy;" that DMEA has expressly made these documents "indisputably relevant" through allegations in its Complaint and direct testimony; and that the requested documents are relevant to the contract termination issue.[30]

45. This Decision has already overruled DMEA's relevancy objections.

46. DMEA objects to the word "ability" used in Request No.1-5. The

47. Merriam-Webster Dictionary defines "ability" as "the quality or state of being able," "*especially*: physical, mental, or legal power to do something." The word "ability," as used in Request No.1-5 is sufficiently clear, and the objection is overruled.

[29] Motion to Compel, Attachment B, pp. 7, 8, and 22.

[30] Motion to Compel, pp. 8 through 13.

48. This Decision has already overruled DMEA's objections that the disputed Discovery Requests are overly broad and unduly burdensome or disproportionate to the needs of the case.

49. DMEA also objected to Request No. 1-19 that "the documents referred to by the request are subject to nondisclosure agreements with entities that are not party to this litigation, and which DMEA is not at liberty to unilaterally waive."[31] That objection is sustained. To the extent that documents otherwise responsive to Request No. 1-19 are subject to nondisclosure agreements with entities that are not party to this litigation, and which DMEA is not at liberty to unilaterally waive, DMEA does not have to produce those documents.

50. DMEA made the same three privilege objections to Requests Nos. 1-5 and 1-7, on the grounds of the attorney-client privilege, the work product doctrine, and the common interest privilege. Initially DMEA failed to provide a privilege log to identify which of its three privilege objections applied to which documents. Tri-State argued that DMEA's "boilerplate" privilege objections were inadequate, as they did not identify for each objection whether any responsive documents were being withheld. Tri-State also argued that DMEA must provide a privilege log, expressly stating the privilege objection as to each withheld communication.[32] In response, DMEA argued that Colorado law does not require a document-by document privilege log.[33]

51. On May 13, 2019, DMEA provided to Tri-State a document-by-document privilege log, listing 17 withheld documents by date, author, description, and specific privilege objection. No author was stated for three of the withheld documents. The privilege log also

[31] Motion to Compel, Attachment B, p. 22.
[32] Motion to Compel, pp. 10 and 11.
[33] DMEA Response to Motion to Compel at pp. 13 and 14.

listed three redacted documents with the same information, but no author was stated for two of the three documents.[34] In its Reply Brief, Tri-State argues that DMEA's privilege log itself is inadequate and improper, because it fails to allow Tri-State and the Commission to assess the applicability of the privilege objections.[35]

52. In *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 303 P.3d 1187 (Colo. 2013), the Colorado Supreme Court described the attorney-client privilege:

> In Colorado, the attorney-client privilege … operates to protect communications between attorney and client relating to legal advice. The privilege applies to confidential matters communicated by or to the client in the course of obtaining counsel, advice, or direction with respect to the client's rights or obligations. The attorney-client privilege is not absolute. There are recognized exceptions to the attorney-client privilege, and the privilege may be waived in certain circumstances. …
>
> [T]o determine whether a communication warrants protection under the attorney-client privilege, our precedent dictates that the appropriate analysis is whether a particular communication concerns or contains confidential matters communicated by or to the client in the course of obtaining counsel, advice, or direction.
>
> This document-by-document approach is supported by our precedent. We have consistently stressed that no blanket privilege for all attorney-client communications exists. Rather, the party asserting the privilege bears the burden of establishing that a particular communication is privileged, and the party must claim the privilege "with respect to each specific communication." To withhold discovery under a claim of privilege, C.R.C.P. 26(b)(5) requires a party to "make the claim expressly" and describe the nature of the withheld information in a privilege log. The withheld information must be described "with sufficient detail so that the opposing party and, if necessary, the trial court can assess the claim of privilege as to each withheld communication."[36]

[34] Tri-State Reply Brief, Attachment 1, Carroll Affidavit, Exhibit D.

[35] Tri-State Reply Brief at pp. 7 and 8.

[36] *DCP Midstream, LP v. Anadarko Petroleum Corp.*, *supra,* 303 P.3d at 1198, 1199-1200; citations omitted; Supreme Court's own emphasis.

53. The U.S. District Court for the District of Colorado has clarified the "sufficient detail" required in a privilege log:

> Where, as here, the "case [is] based upon a state cause of action, state law controls the determination of privileges." … [E]videntiary privileges are disfavored. … Those privileges, which are "in derogation of the search for the truth," are "not lightly created nor expansively construed." …
>
> The information provided [in a privilege log] must be sufficient to enable opposing parties and the court to determine whether each element of the asserted privilege is satisfied; a blanket claim of the asserted privilege does not satisfy the burden of proof. *Generally, a privilege log is adequate if it identifies with particularity the documents withheld, including their date of creation, author, title or caption, addressee and each recipient, and general nature or purpose for creation. In addition, the particular privilege relied on must be specified.*[37]

54. DMEA cites *S.E.C. v. Nacchio*, 2007 U.S. Dist. LEXIS 5435 at, 2007 WL 219966 at 10-11(D. Colo. Jan. 25, 2007) as an example of the court finding that a categorical privilege log was acceptable. There the court held that a document-by-document privilege log was not required for certain internal Securities and Exchange Commission (SEC) documents shared only between SEC attorneys and accountants, including handwritten and typed notes, memoranda, and correspondence. The opinion in *Nacchio* makes it clear that allowing a categorical privilege log is an exception to the typical case when the "privilege log will individually list withheld documents and provide pertinent information for each document."[38] A categorical privilege log may be appropriate when "(a) a document-by-document listing would be unduly burdensome and (b) the additional log

[37] *Zander v. Craig Hospital,* 743 F. Supp. 1225, 1230, 1232 (D. Colo. 2010); citations omitted; emphasis added. *See also Heim v. Alderwoods Group, Inc.,* No. C-08-01184-SI, 2010 U.S. Dist. LEXIS 86353, at *6; 2010 WL 2951871, at *1 (N.D. Cal. July 27, 2010) (defendant's privilege log held inadequate because the "Court agrees with plaintiffs that, without the names of the author(s) and recipient(s) of each document, plaintiff cannot determine whether the attorney-client privilege applies.").

[38] *Id.,* 2007 U.S. Dist. LEXIS 5435 at *30-*31.

would be of no material benefit to the discovering party in assessing whether the privilege claim is well grounded."[39]

55. Relying on *S.E.C. v. Nacchio*, DMEA argues that any supplemental privilege log it provides should be categorical since a document-by-document privilege log would be "burdensome and unnecessary to evaluate privilege."[40] However, DMEA provides no facts that could support its argument, such as a substantially large number of documents that would need to be listed in the privilege log, or a significant amount of time and expense necessary to prepare a document-by-document privilege log. As the court stated in *S.E.C. v. Nacchio,* 2007 U.S. Dist. LEXIS 5435 at *15, "the party withholding information on the basis of privilege must make a clear showing that the asserted privilege applies and must establish all elements of the privilege," but conclusory assertions, instead of competent evidence, cannot discharge that party's burden.

56. The ALJ has evaluated Tri-State's Discovery Requests, DMEA's privilege objections, the arguments by Tri-State and DMEA regarding the privilege objections, and DMEA's May 13, 2019 privilege log. The ALJ finds that Colorado law does require a document-by-document privilege log.[41] DMEA has failed to satisfy its burden to show that a document-by-document privilege log would be burdensome and unnecessary to evaluate its privilege objections. Moreover, DMEA's privilege log is inadequate, because it omits the authors for five of the privileged documents listed and the recipients who had access to all the listed documents. Moreover, there are no identifications of the attorneys who may have given the legal advice. When the author is a non-attorney, and basis for the privilege claim is that the

[39] *Id.*

[40] DMEA's Response to Motion to Compel at p. 14.

[41] *DCP Midstream, LP v. Anadarko Petroleum Corp.*, *supra,* 303 P.3d at 1199-1200.

document contains legal advice, the ALJ is unable to determine whether the privilege objection is valid. Hence, DMEA's privilege log is not adequate to permit the ALJ to determine whether the claimed privilege objections apply to the documents listed.

57. DMEA will be compelled to provide an adequate and complete document-by-document privilege log, consistent with the details required by Colorado law and by this Decision. The privilege log must at a minimum identify with particularity, the documents withheld, including their date of creation, author, title or caption, each recipient, general nature or purpose for creation, the specific privilege relied on, and the Discovery Request to which the privilege objections relates.

58. As to Requests Nos. 1-5, 1-7, 1-16, and 1-19, the Motion to Compel is granted in part and denied in part, consistent with the findings and conclusions in this Decision. For those portions of the Motion to Compel that are granted, DMEA will be ordered to respond fully and completely to Requests Nos. 1-5, 1-7, 1-16, and 1-19 with relevant (per the holding in this Decision) and non-privileged documents.

5. Documents Specifically Concerning Load Issues.

59. Document Requests Nos. 1-10, 1-14, and 1-15 specifically requested production of documents concerning the Load Issues in this proceeding. **Request No. 1-10** stated:

> Produce all Documents concerning DMEA's future wholesale power requirements including, without limitation, any Documents evidencing future reductions in DMEA's past or present electrical loads.

Request No. 1-14 stated:

> Produce all Documents referring or relating to any actual or potential loss of DMEA's retail load due to, in whole or in part, either: (1) the rates charged by DMEA, (2) DMEA's cost of purchasing wholesale power and energy from Tri-State, or (3) the generation resource mix that Tri-State relies upon to provide wholesale power and energy to DMEA.

Request No. 1-15 stated:

> Produce all Documents relating to any known or reasonably anticipated future loss or reduction in DMEA's load including, without limitation, documents concerning future power purchases by Arch Coal, Inc. or any of its affiliates.[42]

60. In response to Request No. 1-10, DMEA produced certain documents representing non-privileged load forecasts created during and for the relevant period (*i.e.,* the period of time from December 6, 2014, to the present).[43] DMEA's responses to Request Nos. 1-14 and 1-15 incorporate by reference its response to Request No. 1-10.[44]

61. In the Motion to Compel, Tri-State asserts that DMEA's response to Request No. 1-10 produced only 37 pages of summary load forecast reports, but

> DMEA failed to provide any underlying documents concerning the specific Load Issues addressed in these three Requests. For example, [Tri-State argues,] DMEA produced no communications with any customer relating to any actual or potential DMEA loss of that customer's load for any of the reasons outlined in Request 1-14. Similarly, DMEA produced no documents providing any information about any anticipated future reduction in DMEA load, including any reduction in Arch Coal's load.[45]

Tri-State argues that, if DMEA has no documents responsive to these three Requests (other than the 37 pages already produced), then DMEA should state that fact.[46]

62. DMEA responds to the Motion to Compel stating that the official load forecasts produced in response to Request No. 1-10 extend from the present through 2016, but what additional documents Tri-State requests is not clear. DMEA argues that producing any other

[42] Motion to Compel, Attachment A, p. 4.

[43] Motion to Compel, Attachment B, p. 13.

[44] *Id.,* pp. 17-18.

[45] Motion to Compel at pp. 13 and 14.

[46] *Id.* at p. 14.

documents "would be cumulative, burdensome to identify, and of no import to the reasonableness of DMEA's exit charge."[47]

63. This Decision has already rejected DMEA's relevancy objections regarding requests for documents beyond the issue of reasonableness of the exit charge that DMEA may pay to withdraw from Tri-State.

64. The Motion to Compel is granted in part to the following extent: If DMEA possesses any other documents, such as any underlying documents concerning the specific Load Issues, DMEA must produce them. If DMEA has no other documents that are responsive to Requests Nos. 1-10, 1-14, and 1-15, then DMEA should state that fact in a supplemental discovery response.

6. Document Request No. 1-8 Concerning DMEA's Allegation that Tri-State Inhibits Economic Development and Growth.

65. **Request No. 1-8** stated:

> DMEA alleges in paragraph 7 of its Formal Complaint in this proceeding that Tri-State's rate increases have been "inhibiting economic development and growth in the rural economy" served by DMEA. Produce all Documents evidencing that Tri-State's rate increases have inhibited economic development and growth in that rural economy.[48]

In response, DMEA produced one two-page document.[49]

66. Tri-State argues that DMEA should be ordered to provide a full production of documents in response to Request 1-8.[50] DMEA did not respond specifically to the Motion to Compel in a full response to Request No. 1-8.

---

[47] DMEA Response at pp. 11-12.

[48] Motion to Compel, Attachment A at p. 4.

[49] Motion to Compel, Attachment B at p. 11; *see* Motion to Compel at p. 14.

[50] Motion to Compel at p. 14.

67. The Motion to Compel is granted in part to the following extent: If DMEA possesses any other documents relating to its allegation in paragraph 7 of its Formal Complaint that Tri-State's rate increases have been "inhibiting economic development and growth in the rural economy" served by DMEA, then DMEA must produce them. If DMEA has no other documents responsive to Request No. 1-8, then DMEA should state that fact in a supplemental discovery response.

7. Document Request No. 1-17 Concerning DMEA's Own Buy-Out Calculations.

68. **Request No. 1-17** stated:

> Produce all Documents relating to any calculation or estimation by, for, or on behalf of, DMEA of any possible or potential amount that would be appropriate for DMEA to pay to Tri-State as a withdrawal payment or buy-out payment in connection with DMEA's withdrawal from Tri-State.[51]

69. DMEA first objected to Request No 1-17 on the grounds of the attorney-client privilege and the work product doctrine. Second, DMEA objected, "because it has previously requested information related to Tri- State's calculations, but Tri-State refused to produce it."[52]

70. Tri-State argues that, while DMEA produced several responsive documents, it failed to provide statements required by Rule 34(b) as to whether, for each objection, responsive materials were withheld. Tri-State also argues that (at least at the time the Motion to Compel was filed) DMEA had not served any written discovery requesting information related to Tri- State's buy-out calculations.[53] The ALJ concludes that DMEA's request for information related to Tri-State's exit charge calculations was informal and occurred outside the purview of the formal discovery process under Rule 1405.

---

[51] Motion to Compel, Attachment A at p. 5.

[52] Motion to Compel, Attachment B at p. 20.

[53] Motion to Compel at pp. 14-15.

71. As relevant to this Decision, Rule 34(b), C.R.C.P., provides that, "The response shall … state with specificity the grounds for objecting to the request. … An objection must state whether any responsive materials are being withheld on the basis of that objection."[54]

72. DMEA responds that its pre-filed Direct Testimony of Kevin Higgins explains DMEA's calculation of the exit charge in detail, and that DMEA has produced all documents upon which Mr. Higgins relied. DMEA then repeats it objection that Tri-State had previously asked for Tri-State's exit charge calculation and urges the ALJ to deny the Motion to Compel.[55] DMEA did not respond to the argument that its response and objections to Request No. 1-17 violated Rule 34(b), C.R.C.P.

73. Because Mr. Higgins' pre-filed Direct Testimony and three of his attachments describe DMEA's calculation of the exit charge in detail, the ALJ concludes that the Motion to Compel requires further a response to Request No. 1-17 is moot, and he will deny the Motion to Compel regarding Request No. 1-17 on that basis.

74. However, to guide the parties in any future discovery disputes, the ALJ finds that failure of a party in a Commission proceeding to respond to an informal request for information, outside the purview of the formal discovery process under Rule 1405, does not constitute a valid objection to or argument opposing a motion to compel. Moreover, when responding to requests for production of documents, under Rule 1405 and the incorporated parts of Rule 34, C.R.C.P., a party in a Commission proceeding should not ignore the requirements of Rule 34(b) related to its discovery responses and objections.

[54] Rule 1405(a)(II), 4 CCR 723-1, lists discovery rules of the C.R.C.P. that are not incorporated by reference. Only the first two sentences of the second paragraph of Rule 34(b) are *not* incorporated by reference, while the text quoted above is incorporated by reference into Rule 1405.

[55] DMEA Response to Motion to Compel at pp. 12-13.

8. Document Request No. 1-23 Concerning Mr. Bronec's Statement Concerning Specific Allegedly Available Energy Resources.

75. **Request No. 1-23** stated:

> Mr. Bronec states at 10:13-14 of his Direct Testimony that DMEA can "pursue more options for locally developed, cost-effective, and cleaner energy resources outside of Tri-State." Produce all Documents relied upon or supporting this statement, including but not limited to: Documents pertaining to local energy resource options considered or to be considered by DMEA; Documents pertaining to the cost effectiveness of energy resource options considered or to be considered by DMEA; Documents pertaining to the greenhouse gas and criteria pollutant emission characteristics of energy resources considered or to be considered by DMEA.[56]

76. While relying on its general objections, without specifying which ones applied, DMEA objected to Request No. 1-23 "as overly broad and vague, because Mr. Bronec's testimony is based not on any discrete set of documents, but instead on his decades of industry experience," which was informed by "countless" documents and sources, "the universe of which could not be reasonably limited with any specificity" or collected and produced.[57]

77. In the Motion to Compel, Tri-States argues that, "DMEA provided no documents at all in response to this Request, and did not provide the statements required by C.R.C.P. 34(b) as to whether, for each objection, responsive materials were withheld."[58] DMEA reiterates its objection that the subject testimony was based on Mr. Bronec's industry experience, not discrete documents, and then responds that, "Given that Mr. Bronec did not base his testimony on any specific documents, there is nothing for DMEA to produce."[59]

78. The ALJ finds that Request No. 1-23 was not "overly broad and vague," because when Tri-State made the request, it did not know whether or not the testimony was based on any

[56] Motion to Compel, Attachment A at pp.6-7.
[57] Motion to Compel, Attachment B at p. 25.
[58] Motion to Compel at p. 15.
[59] DMEA Response at p. 13.

documents, and the request for specific types of documents was tied to Mr. Bronec's testimony. However, DMEA's objection to Request No. 1-23 did state that the subject testimony was not based on any discrete set of documents. It is clear to the ALJ, based on the objection, that there were no specific and identifiable documents to be produced, and hence, it is reasonable to conclude that none were being withheld.[60] The Motion to Compel as to Request No. 1-23 will be denied.

9. DMEA's Alleged Improper Redaction of the Guzman Agreement.

79. The Guzman Agreement is a letter agreement, and a commercial contract, between DMEA and Guzman Energy LLC, a potential buyer and a potential seller of wholesale electricity, who appear to be two parties with adverse financial interests. Portions of certain sentences and entire paragraphs in the Guzman Agreement have been redacted as "WORK PRODUCT-PRIVILEGED."[61]

80. In the Motion to Compel, Tri-State argues that DMEA could not have included confidential attorney work product in the Guzman Agreement, because it is a contract, and commercial contracts between parties with adverse financial interests do not include the text of the parties' litigation work product materials. Tri-State asks the Commission to order DMEA to produce the Guzman Agreement without redaction, or alternatively for the Commission to conduct an *in camera* review of the Guzman Agreement.[62]

81. In response, DMEA argues that the redacted parts of the Guzman Agreement are not relevant to the exit charge. This Decision has already rejected DMEA's narrow interpretation

[60] DMEA's objection would have been clearer, and the Motion to Compel on Request No. 1-23 may have been avoided, if DMEA had only followed Rule 34(b) and stated, if true, that responsive materials were not being withheld based on its objection.

[61] *See* DMEA Response, Exhibit E.

[62] Motion to Compel at pp. 15-16.

of what is relevant to this proceeding, and the ALJ finds that the Guzman Agreement is relevant to claims and defenses that may be litigated in this proceeding. DMEA also implies that the ALJ should be able to conclude that the redacted parts of the Guzman Agreement are privileged work product, because those parts are part of or adjacent to discussions of this Commission proceeding. The ALJ has read and re-read the portions of the Guzman Agreement that have been redacted, and cannot discern that the redacted material is attorney work product.

82. If the ALJ does not find that the redacted material is not work product, Tri-State asks for an *in camera* review of the Guzman Agreement. DMEA argues that no *in camera* review is necessary. The ALJ finds that an *in camera* review is needed.

83. Therefore, DMEA will be ordered to submit to the ALJ, under seal, an unredacted version of the Guzman Agreement for an *in camera* review in three business days from the mailed date of this Decision, **or no later than 5:00 p.m. MST on Thursday, June 6, 2019**. After the *in camera* review, the ALJ will promptly rule on whether or not the redacted portions of the Guzman Agreement are discoverable or are protected by the work product privilege.

84. Most of DMEA's objections to Tri-State's Discovery Requests concerned the scope of permissible discovery by Tri-State. In this Interim Decision, the ALJ has taken an active role in managing discovery and has determined the appropriate scope of Tri-State's Discovery Requests in light of the reasonable needs of this proceeding, and he has tailored discovery to the needs of this proceeding. This Interim Decision grants the Motion to Compel in part, and denies it in part, as discussed in the findings and conclusions herein.

85. As will be ordered in this Interim Decision, counsel for DMEA shall provide complete discovery responses to counsel for Tri-State by hand-delivery within ten calendar days

of the mailed date of this Interim Decision, **or no later than 5:00 p.m. MST on Thursday, June 13, 2019**.

III. ORDER

A. It Is Ordered That:

1. The Motion to Compel Production and Request for Shortened Response Time, filed by Tri-State Generation and Transmission Association, Inc.'s (Tri-State) on May 3, 2019, is granted in part and denied in part, consistent with the discussion, findings, and conclusions in this Interim Decision.

2. Counsel for Delta-Montrose Electric Association (DMEA) shall submit to the Administrative Law Judge for an *in camera* review, an unredacted version of the Guzman Agreement, under seal, in three business days from the mailed date of this Decision, or no later than 5:00 p.m. MST on Thursday, June 6, 2019.

3. Counsel for DMEA shall provide the discovery responses compelled by this Interim Decision to counsel for Tri-State by hand-delivery within ten calendar days of the mailed date of this Interim Decision, or not later than 5:00 p.m. MST on Thursday, June 13, 2019.

4. The Parties shall comply with the discovery ordered and with the deadlines imposed by this Interim Decision.

5. This Decision shall be effective immediately.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge