

Decision No. R19-1046-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0691E

UNITED POWER, INC.,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
AMENDING TOPICS FOR DISCUSSION
AT PREHEARING CONFERENCE
AND VACATING HEARING**

Mailed Date: December 30, 2019

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 5, 2019, United Power, Inc. (United or Complainant) filed with the Colorado Public Utilities Commission, a Formal Complaint against Tri-State Generation and Transmission Association, Inc. (Tri-State). That filing commenced the above-captioned proceeding. United and Tri-State are the Parties to this Proceeding.

2. The procedural history is set forth in Decisions previously issued in the above-captioned proceeding and is repeated here as necessary to put this Decision into context.

3. On December 6, 2019, the Commission scheduled an evidentiary hearing on the Complaint for February 25, 2020.

4. On December 6, 2019, pursuant to Rules 1205(a) and 1302(g) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission's Director served on Tri-State an Order to Satisfy or Answer, the Complaint, and an Order Setting Hearing and Notice of Hearing. Respondent was ordered to Satisfy or Answer the Complaint within 20 days, or by December 26, 2019.

5. On December 11, 2019, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was subsequently assigned to preside over this Proceeding.

6. By Decision No. R19-1021-I (mailed on December 18, 2019), the ALJ scheduled a prehearing conference for January 7, 2020 at 9:30 a.m. Decision No. R19-1021-I *inter alia* listed topics to be discussed at the prehearing conference, including a procedural schedule and dates for an evidentiary hearing.

7. On December 26, 2019, Tri-State filed a Motion to Dismiss Formal Complaint or, in the Alternative, to Stay Proceedings (Motion to Dismiss).

8. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, United's Response to the Motion to Dismiss is due 14 days after service of the motion, or no later than January 9, 2020.

9. The ALJ wishes to hear oral argument on the Motion to Dismiss and Response. Moreover, an interim decision adjudicating the Motion to Dismiss should be entered before the ALJ could adopt a procedural schedule and set dates for an evidentiary hearing.

10. At the oral argument, each side will have 30 minutes to present their opening arguments. Tri-State may reserve five minutes of its time for rebuttal argument.

11. The ALJ will order counsel for the Parties to confer prior to the prehearing conference with respect to a mutually agreeable date, after January 9, 2020, for the oral argument on the Motion to Dismiss. Counsel are encouraged to agree to a date in January 2020 that is acceptable to both Parties. The ALJ will order counsel for United to coordinate these discussions. To assist counsel with scheduling the oral argument, the ALJ advises them that the following dates after January 9, 2020 are **not** available: January 10, 13, 15, 16, 22, 23, and 29, 2020.¹

12. If the Parties are able to agree on preferred date(s) for the oral argument by January 5, 2020, United will be ordered to file a pleading by that date advising the ALJ of the agreed upon preferred date(s). Thereafter, the ALJ would vacate the prehearing conference.

13. Because the ALJ must hear argument on the Motion to Dismiss, the Response, and the authorities relied upon by both Parties, before issuing the interim decision adjudicating the Motion to Dismiss, the February 25, 2020 hearing set by the Commission is unworkable and will be vacated.

14. Scheduling oral argument on the Motion to Dismiss only means that the ALJ wishes to evaluate arguments in the Motion to Dismiss and the Response, as well as the authorities relied upon by both Parties, carefully and thoughtfully before issuing an interim decision adjudicating the Motion to Dismiss.

15. Pursuant to § 40-6-108(4), C.R.S., the Commission's final decision in this complaint case must be issued within 210 days after the filing of testimony and exhibits by the Complainant, unless the time limits are waived by the Complainant. Therefore, holding oral

¹ Counsel are encouraged to present two acceptable dates for the oral argument, in order to provide flexibility to the ALJ in case one of the currently available dates has become unavailable.

argument on the Motion to Dismiss and issuing an interim decision adjudicating the Motion to Dismiss will not interfere with any statutory deadline for issuing the Commission's final decision on the Complaint.

16. Depending on the decision on the Motion to Dismiss, other interim decisions may be issued to address scheduling an additional prehearing conference, adopting a procedural schedule, and setting dates for the evidentiary hearing.

17. The Parties and their counsel must continue to comply with the Advisements previously provided in Decision No. R19-1021-I.

II. **ORDER**

A. **It Is Ordered That:**

1. Decision No. R19-1021-I (mailed on December 18, 2019) is amended concerning the topics to be discussed at the January 7, 2020 prehearing conference, consistent with the Statement, Findings, and Conclusions set forth in this Interim Decision.

2. The February 25, 2020 hearing in this Proceeding, set by the Commission, is vacated.

3. Counsel for United Power, Inc. (United) and Tri-State Generation and Transmission Association, Inc. (Tri-State) (together, the Parties) shall confer prior to the prehearing conference with respect to a mutually agreeable date, after January 9, 2020, for an oral argument on Tri-State's Motion to Dismiss Formal Complaint or, in the Alternative, to Stay Proceedings. Counsel for United shall coordinate these discussions.

4. If the Parties are able to reach an agreement on preferred date(s) for the oral argument, United shall file a pleading no later than 5:00 p.m. on January 5, 2020, advising the Administrative Law Judge of the agreed upon, preferred date(s).

5. The Parties and their counsel shall continue to comply with the Advisements previously provided in Decision No. R19-1021-I.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director