

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

PROCEEDING NO. 20A-0164E

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IN THE MATTER OF THE APPLICATION OF DELTA-MONTROSE ELECTRIC ASSOCIATION AND TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR AN ORDER APPROVING THE TRANSFER OF CERTAIN TRANSMISSION ASSETS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FROM TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. TO DELTA-MONTROSE ELECTRIC ASSOCIATION.

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**DECISION APPROVING TRANSFER OF TRANSMISSION  
ASSETS AND CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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Mailed Date: June 26, 2020  
Adopted Date: June 26, 2020

**I. BY THE COMMISSION**

**A. Statement**

1. By this Decision, we approve the transfer of certain transmission assets from Tri-State Generation and Transmission Association, Inc. (Tri-State) to Delta-Montrose Electric Association (DMEA) (together, Joint Applicants) and transfer of the Certificate of Public Convenience and Necessity of the Cimarron Substation.

**B. Background**

2. On April 13, 2020, Joint Applicants filed their Joint Application pursuant to § 40-5-105, C.R.S., Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1303 of the Commission's Rules of Practice and Procedure, and Rules 4 CCR 723-3-3002 and 3104 of the Commission's Rules Regulating Electric Utilities, jointly requesting an order approving the transfer of certain transmission assets and certificates of public convenience and necessity (CPCN) from Tri-State to DMEA as described in the Joint Application. According to the Joint Application, Joint

Applicants seek this asset transfer to effectuate certain provisions of the settlement agreement between DMEA and Tri-State, dated July 19, 2019 (Settlement Agreement), whereby, among other things, the Joint Applicants agreed that Tri-State would transfer certain of its transmission and related utility assets to DMEA.<sup>1</sup> In addition, Joint Applicants seek expedited approval of the Joint Application no later than June 22, 2020. The Joint Applicants assert that approval of the Joint Application is in the public interest and should therefore be approved by the Commission.

3. Joint Applicants entered into a Purchase and Sale Agreement, dated April 10, 2020 regarding the transfer of the transmission assets set forth in this Joint Application.<sup>2</sup>

4. Additionally, Joint Applicants provide accounting information that summarizes Tri-State's accounting treatment for the assets subject of the Joint Application to be transferred to DMEA. According to Joint Applicants, the proceeds for the assets subject to the Joint Application are \$18,337,796.00.<sup>3</sup> Joint Applicants represent that the amounts set forth in Attachment G represent the estimated proceeds, offset by the net book value and consideration of assets to be transferred at a future date which results in the estimated gain.

5. The transfer of transmission assets resulted from the Settlement Agreement entered into between Joint Applicants on July 19, 2019 in settlement of the complaint proceeding filed by DMEA against Tri-State in Proceeding No. 18F-0866E (as well as Case No. 2019CV31054 in Adams County District Court). Joint Applicants indicate the terms of the Settlement Agreement include that DMEA is withdrawing as a member of Tri-State; DMEA is receiving the transmission and related assets from Tri-State that are the subject of the Joint

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<sup>1</sup> The Settlement Agreement is attached to the Joint Application as Attachment E.

<sup>2</sup> The Purchase and Sale Agreement is attached to the Joint Application as Attachment F.

<sup>3</sup> The accounting treatment is attached to the Joint Application as Attachment G.

Application; and, DMEA is to pay Tri-State an agreed upon withdrawal payment.<sup>4</sup> The Joint Applicants claim Tri-State's accounting treatment is in accordance with 18 Code of Federal Regulations, Chapter 1, Subchapter C, Part 101 – Uniform System of Accounts, Electric Plant Instruction, 5. Electric Plant Purchased or Sold, F.

6. According to the Joint Applicants, the amounts set forth in Attachment G represent the estimated proceeds, offset by the net book value and consideration of assets to be transferred at a future date, which results in the estimated gain. The figures in Attachment G are estimated as of the anticipated closing date of June 30, 2020 are based on the best available information as of the date of the filing.

7. A statement by DMEA disclosing accounting entries under the Uniform System of Accounts, including plant acquisition adjustments, gain or loss proposed on the books before and after the transaction is attached to the Joint Application as Attachment H.

8. The terms of the Settlement Agreement also provide that Tri-State is transferring to DMEA, transmission and interconnection related assets necessary for DMEA to be served entirely by the bulk-electric system and/or a Network Integration Service Agreement with Tri-State and other transmission providers. A complete list of the assets to be transferred from Tri-State to DMEA subject to Commission jurisdiction is attached as Attachment I to the Joint Application.

9. Attachment I sets out the CPCN status of each asset. Joint Applicants state that no CPCN was required for certain assets, so there is no CPCN to be transferred from Tri-State to DMEA in conjunction with the transfer of those assets. The remaining assets listed in Attachment I, according to Joint Applicants, were originally transferred by the Commission from Colorado-

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<sup>4</sup> See, Attachment E at Section 1.¶

Ute Electric Association to Tri-State in conjunction with the Colorado-Ute bankruptcy. Tri-State maintains it is unable to determine whether Colorado-Ute originally obtained CPCNs for any of the assets subsequently transferred to Tri-State. Joint Applicants argue to the extent any CPCNs existed, in Decision No. C91-1729 in Proceeding No. 91A-589E, the Commission authorized Tri-State “to succeed to all of Colorado-Ute Electric Association, Inc.’s electric utility rights, title, and interest in its utility plant and facilities, and to all certificates, consents, and permits relating to ownership and operation of such plants and facilities.”<sup>5</sup>

10. Regarding those assets originally owned by Colorado-Ute and transferred to Tri-State by Decision No. C91-1729, Joint Applicants request the Commission approve the transfer from Tri-State to DMEA of any CPCNs associated with subject facilities. Joint Applicants represent that the transfer of the transmission assets and CPCNs will result in minimal, if any, difference in the kind of costs of service rendered to customers before and after the asset transfer.

11. Upon review of the Joint Application and the requested relief, the Commission issued Interim Decision No. C20-0411, issued May 27, 2020, in which we expressed concern that inadequate information was provided regarding several issues. We determined that Joint Applicants requested this matter be expedited but offered no support for that proposition other than a single statement that Joint Applicants anticipate a closing date of June 30, 2020. We required additional support from Joint Applicants to determine whether expedited consideration is necessary.

12. We also found Joint Applicants failed to provide information regarding Tri-State’s filings at the Federal Energy Regulatory Commission (FERC) seeking approval of the terms of the Settlement Agreement. We noted Joint Applicants provided no information on the FERC

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<sup>5</sup> *Id.* at 14.

proceedings, such as when a decision was expected from FERC on the withdrawal of DMEA from the Tri-State cooperative, or how the progression of this proceeding and the FERC proceeding affect one another, if at all. We required additional information from Joint Applicants that the progression of the applicable proceedings for approval of the Settlement Agreement and the Transfer of Assets in different venues is appropriate so the Joint Application is at a point where we were comfortable to adjudicate it under our standards.

13. Most troubling was Tri-State's admission that it was unsure whether certain transmission assets previously owned by Colorado-Ute and subsequently transferred to Tri-State by Commission decision were associated with CPCNs. Nonetheless, Joint Applicants requested we approve the transfer from Tri-State to DMEA of any CPCNs associated with subject facilities, with no knowledge whether those CPCNs exist.

14. We determined that should this Commission approve such transfers, there is the risk that in the event of a conflict involving those assets that require proof of the existence of an associated CPCN, the burden would then rest with the Commission to show that it had sufficient evidence to grant the transfer of assets with associated CPCNs that may or may not exist. We found it inappropriate to place such a burden on the Commission. Rather, we noted that Joint Applicants bear the burden to provide any CPCNs associated with transmission assets at issue in this Joint Application proceeding or show that it is not necessary to produce such CPCNs.

#### **1. June 5, 2020 Supplemental Response**

15. On June 5, 2020, Tri-State and DMEA filed their first supplement as requested by the Commission.

16. In the Joint Response, Joint Applicants clarify that the planned closing for the transfer of assets is scheduled to occur at 11:59:59 PM on June 30, 2020 including purchase of

the assets all occurring at the same time. Joint Applicants also clarify that a delayed decision will result in additional costs for DMEA's retail member-owners and additional risk and cost for Tri-State's remaining members from continued ownership and maintenance of the assets after DMEA's withdrawal. A delay of the purchase of the assets could mean DMEA must pay a \$76,000.00 fee each month to Tri-State for use of the Assets post-withdrawal. In order to avoid these cost and operational issues, the parties request approval of the Joint Application as soon as possible.

17. Regarding the impact of the FERC filings for approval of the settlement agreement between Joint Applicants, they believe none of the relevant FERC filings prevent the Commission from deciding the Joint Application. The parties take the position that the filings at FERC are independent of this Joint Application as FERC will not review the asset transfer and its consideration does not overlap with that of the Commission. None of the DMEA withdrawal filings at FERC request approval of the transfer of assets addressed by the Joint Application.

18. Joint Applicants submit that the matter is ripe for Commission consideration as it is real, immediate, and fit for adjudication by the Commission. Joint Applicants argue that this Commission's regulatory review is distinct from FERC as there is no other adjudicative or regulatory body slated to authorize the transfer of assets provided in the Purchase and Sale Agreement.

19. As to the most critical aspect of the transfer, CPCNs that may not exist, Joint Applicants state that the transfer involves 11 substations, seven of which were originally owned by Colorado-Ute. Those seven substations were transferred by the Commission from Colorado-Ute to Tri-State as a result of the Colorado Ute bankruptcy (Decision No. C91-1729, Proceeding No. 91A-589E). That Decision does not specify any CPCN numbers associated with those

substations, except for the Cimarron substation. While Tri-State maintains it searched all available Commission decisions, it could find no CPCNs associated with the remaining substations. Nonetheless, Joint Applicants still request that the Commission approve the transfer from Tri-State to DMEA of any CPCNs associated with such facilities without proof of the existence of those CPCNs. Tri-State thinks there is a low probability of a conflicting interest in those facilities that would require proof of the existence of associated CPCNs.

## **2. June 11, 2020 Supplemental Response**

20. Joint Applicants filed an additional supplement on June 11. Joint Applicants provided information about the FERC proceedings initiated by Tri-State on April 10, 2020 and April 16, 2020 under Sections 203 and 205 of the Federal Power Act. When the Joint Applicants submitted their Verified Joint Response to the Commission on June 5, 2020, the DMEA Withdrawal Filings were still pending before FERC. On June 9, 2020, FERC issued two final orders approving the DMEA Withdrawal Filings (together, the FERC Orders). FERC's approval of Tri-State's Section 205 filings is submitted as Attachment Q. FERC's approval of Tri-State's and Guzman Energy LLC's Section 203 filing is submitted as Attachment R. The FERC Orders dispose of all interventions, arguments, and legal issues set forth in the relevant dockets, and represent FERC's approval of DMEA's withdrawal from Tri-State.

21. While parties, including intervenors, in the DMEA Withdrawal Filings may petition for rehearing, Joint Applicants believe the FERC Orders to be definitive and sound with respect to the substantive issues relating to DMEA's withdrawal. As such, Joint Applicants indicate they will move forward with DMEA's withdrawal from Tri-State at 11:59:59 p.m. on June 30, 2020.

### 3. June 19, 2020 Supplemental Response

22. Finally, on June 19, 2020 Joint Applicants filed an additional, unsolicited supplement. In that pleading, Joint Applicants again reiterate the need for expedited treatment of the application for transfer of assets. Joint Applicants now request a decision no later than June 26, 2020 in order to close the purchase and transfer transactions by July 1, 2020.

23. DMEA and Tri-State after all, recognize the Commission's reluctance, expressed in Decision No. C20-0411, to approve the transfer of CPCNs "with no knowledge of whether those CPCNs exist." Joint Applicants further recognize the Commission's concern that approving transfers of unidentified and potentially non-existent CPCNs could unfairly impose a future burden on the Commission "to show that it had sufficient evidence to grant the transfer of assets with associated CPCNs that may or may not exist." Joint Applicants request that the Commission consider approving the Application's transfer of transmission assets and only the specifically identified CPCN for the Cimarron Substation.

24. Joint Applicants again state that timely approval of transfer of these transmission assets and the Cimarron Substation CPCN would allow DMEA and Tri-State to proceed to closing on June 30, 2020, thereby avoiding the additional costs previously identified by the parties and operational complications noted previously. Joint Applicants are not aware of any other potentially unidentified assets and are prepared to close on these known assets as of June 30, 2020. If additional CPCNs associated with the assets are identified in the future, Joint Applicants represent they will promptly include them in a supplemental filing to this Commission or make a new application requesting approval for their transfer.



## II. FINDINGS AND CONCLUSIONS

25. Pursuant to § 40-5-105(1), C.R.S. “[t]he assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe ...”

26. Commission Rule 3002 provides the requirements for a party to file an application with the Commission, including the elements necessary for the Commission to consider the application.

27. Commission Rule 3104 provides the requirements for a utility seeking authority to transfer a CPCN or transfer assets subject to the jurisdiction of the Commission outside the normal course of business.

28. Joint Applicants represent that the Joint Application was filed pursuant to these provisions and all requirements have been met, including the information required in Rules 3002(b) and 3002(c) as pertinent to each party to the transaction. We find Joint Applicants, through the Joint Application, attendant attachments and subsequent supplemental filings provided the information required in conformance with Commission Rules in order for us to render a decision.

29. Under the provisions of § 40-6-109(5), C.R.S. the Commission may consider an application that is uncontested or unopposed through modified proceedings “by affidavit or otherwise without the necessity of a formal oral hearing.” As this proceeding is unopposed, we find it appropriate to consider the Joint Application on the pleadings and affidavits filed.

30. Pursuant to Rule 1500, in a proceeding before the Commission, as the party that seeks Commission approval or authorization, applicant bears the burden of proof with respect to the relief sought and of moving the application forward. Here, Joint Applicants request not only approval of the transfer of transmission assets and CPCNs, but also that the decision be expedited with a decision by June 26, 2020.

31. We are satisfied with the information provided that FERC issued two final orders approving the DMEA Withdrawal Filings and FERC's approval of Tri-State's Section 205 filings (submitted as Attachment Q to the Joint Applicants') June 11, 2020 Supplemental Filing), as well as FERC's approval of Tri-State's and Guzman Energy LLC's Section 203 filing (submitted as Attachment R to the June 11, 2020 Supplemental Filing). We are further satisfied that the FERC Orders dispose of all interventions, arguments, and legal issues set forth in the relevant dockets, and represent FERC's approval of DMEA's withdrawal from Tri-State, allowing this Commission to consider the substance of the Joint Application.

32. The Joint Applicants provided what was described as: "[a] complete list of the assets to be transferred from Tri-State to DMEA that are subject to Commission jurisdiction" as Attachment I; the "Purchase and Sale Agreement" that "provides the definitive terms and conditions of the asset transfer;" and "[a] one-line diagram depicting the relevant portion of the transmission and distribution system and the functions of the assets to be transferred that are the subject of this Joint Application" as Attachment K.

33. The assets can be generally characterized as: the 115 kV to distribution voltage stepdown transformers, certain buses, relays, and protective equipment located in the East Montrose, North Mesa, Doughspoon, Garnet Mesa, Gunnison Valley, Hotchkiss, Bullock, Happy Canyon, South Canal, and Cimarron substations; the entire Juanita substation and all equipment

with exception to the revenue metering equipment; and the 115 kV line between the East Montrose and Peach Valley Substations.

34. Commission Staff conducted a thorough analysis of the assets proposed to be transferred. Based on its research and analysis and recommendation, we find the transfer of assets to be in the public interest. DMEA's withdrawal from Tri-State is complete. We are satisfied that the transfer of assets will allow DMEA to pursue an alternative power supply, local renewable generation, and organizational goals as determined by its Board of Directors and member owners, as represented in the Joint Application. We are additionally satisfied that the transfer of assets will not adversely affect Tri-State's ability to continue to provide safe, reliable, and affordable power and transmission services to its remaining member systems. The assets proposed to be transferred will allow DMEA to provide safe and reliable electricity to its customers in its service territory. We further find that the transfer of assets will ensure the continued public health safety and welfare of DMEA's customers, as well as Tri-State's member systems.

35. Consequently, we approve the transfer of the transmission assets and the Cimarron Substation CPCN as described in detail in the Joint Application. By this approval, we authorize DMEA to succeed to the electric utility rights, title and interest in the applicable Tri-State utility plant and facilities, and to all consents and permits relating to the ownership and operation of such plant and facilities, as fully delineated and described in the Joint Application and attendant attachments.

**III. ORDER**

**A. The Commission Orders That:**

1. The Joint Application of Delta-Montrose Electric Association and Tri-State Generation and Transmission Association, Inc. for an Order Approving the Transfer of Certain Transmission Assets and Certificates of Public Convenience and Necessity from Tri-State Generation and Transmission Association, Inc. to Delta-Montrose Electric Association, Inc. is granted consistent with the discussion above.

2. Delta-Montrose Electric Association, Inc. is authorized to succeed to all of Tri-State Generation and Transmission Association, Inc.'s electric utility rights, title and interest in the utility plant and facilities subject to the Joint Application and to all consents and permits relating to the ownership and operation of such plant and facilities associated with and subject to the Joint Application.

3. The Certificate of Public Convenience and Necessity associated with the Cimarron Substation as identified in Attachment I to the Joint Application is transferred with all rights and duties to Delta-Montrose Electric Association, Inc. consistent with the discussion above.

4. The authority granted by approval of this transfer shall be exercised from and after the effective date of this Decision.

5. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
June 26, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners