

Decision No. R20-0010-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
VACATING PREHEARING CONFERENCE**

Mailed Date: January 6, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 5, 2019, United Power, Inc. (United) 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 of this Proceeding is set forth in previously issued Decisions and is repeated here as necessary to put this Decision into context.

3. 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.

4. By Decision No. R19-1021-I (mailed on December 18, 2019), the Administrative Law Judge (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.

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

6. By Decision No. R19-1046-I (mailed on December 30, 2019), the ALJ ordered 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. If the Parties agreed on available dates for the oral argument, United was ordered to advise the ALJ by January 5, 2020,¹ of the preferred date(s). The ALJ indicated he would thereafter vacate the prehearing conference.

7. In the morning of January 3, 2020, the Commission published its Agenda for its January 8, 2020 Weekly Meeting (CWM). The Agenda lists the instant Proceeding as a Discussion Item, as follows: "Discuss whether to hold this proceeding in abeyance pending a jurisdictional decision in Proceeding Nos. 19F-0620E and 19F-0621E."²

¹ The date of January 5, 2020 stated in Decision No. R19-1046-I was a typographical error. The correct due date should have been January 6, 2020.

² Tri-State has filed a motion to dismiss with similar jurisdictional arguments in Proceeding Nos. 19F-0620E and 19F-0621E. Proceeding No. 19F-0621E is a formal complaint filed by United against Tri-State relating *inter alia* to a reasonable fee for United to exit Tri-State.

8. In the afternoon of January 3, 2020, United and Tri-State filed a Joint Motion to Set Oral Argument on Respondent's Motion to Dismiss for January 14, 2020 (Joint Motion).

9. In light of the filing of the Joint Motion, the ALJ will vacate the prehearing conference for January 7, 2020 at 9:30 a.m.

10. Given the Commission's intention to deliberate at the January 8, 2020 CWM on whether to hold this Proceeding in abeyance pending a jurisdictional decision in Proceeding Nos. 19F-0620E and 19F-0621E, the ALJ will not schedule the oral argument on Tri-State's Motion to Dismiss in this Proceeding.

11. Depending on the results of the Commission's determination about its subject matter jurisdiction at the January 8, 2020 CWM, the ALJ may issue additional interim decisions to address procedural matters including, but not limited to, rulings on motions, filing of additional briefs, a procedural schedule for litigating this Complaint, and dates for an evidentiary hearing on the Complaint.

12. 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. The prehearing conference set for January 7, 2020 at 9:30 a.m. by Decision No. R19-1021-I (mailed on December 18, 2019) is vacated.

2. United Power, Inc. and Tri-State Generation and Transmission Association, Inc., as well as their counsel, shall continue to comply with the Advisements previously provided in Decision No. R19-1021-I.

3. 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