

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-526E

IN THE MATTER OF THE PROPOSED RULES RELATED TO ELECTRIC TRANSMISSION
FACILITIES PLANNING, 4 CODE OF COLORADO REGULATIONS 723-3.

**RECOMMENDED DECISION OF
HEARING COMMISSIONER
JAMES K. TARPEY
ADOPTING RULES**

Mailed Date: January 21, 2011

I. TABLE OF CONTENTS

I. STATEMENT.....	2
A. Background.....	2
B. The role of CCPG.....	6
1. Positions of the parties	6
2. Discussion	7
C. The role of non-jurisdictional transmission providers.....	7
1. Positions of the parties	7
2. Discussion	8
D. Single system planning concept	9
1. Positions of the parties	9
2. Discussion	11
E. Contents of transmission plan filing.....	11
1. Positions of the parties	11
2. Discussion	14
F. Economic studies.....	15
1. Positions of the parties	15
2. Discussion	18
G. Government agencies and other stakeholder input.....	18
1. Positions of the parties	18

2. Discussion20

H. Transmission planning proceedings21

 1. Positions of the parties22

 2. Discussion24

I. Coordination of electric transmission and generation planning, and biennial filing requirements26

 1. Positions of the parties26

 2. Discussion29

J. SB 07-100 filings.....30

 1. Positions of the parties30

 2. Discussion30

K. February 1, 2011 filing deadline31

 1. Positions of the parties31

 2. Discussion31

L. Twenty year conceptual planning.....31

 1. Positions of the parties32

 2. Discussion32

II. ORDER.....33

I. STATEMENT

A. Background

1. On July 28, 2010, the Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) regarding the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. Decision No. C10-0797. The NOPR introduced proposed transmission planning rules.

2. In the NOPR, the Commission noted that certain relatively recent legislative and policy changes impacted transmission planning significantly by adding criteria other than cost and reliability into consideration. These changes require a more complex decision making proceeding and a closer involvement by the Commission in transmission planning.

See Decision No. C10-0797, at ¶ 4. The Commission sought to accomplish the following goals, among others, by promulgating the proposed rules: (1) closer coordination of electric generation and transmission planning; (2) availability of comprehensive transmission plans to all stakeholders, prepared in a manner that is transparent and takes into account stakeholder input; and (3) streamlining of the proceeding involved with applications for certificates of public convenience and necessity (CPCN) for transmission projects.

3. In the NOPR, the Commission also designated Commissioner James K. Tarpey as the Hearing Commissioner.

4. The Commission filed the proposed rules accompanying the NOPR with the Colorado Secretary of State for publication in the August 10, 2010 edition of *The Colorado Register*.

5. Several interested parties filed initial comments on October 15, 2010 and reply comments on October 29, 2010. The Hearing Commissioner conducted a rulemaking hearing on November 5, 2010.

6. Following the hearing, the Hearing Commissioner invited the interested parties to submit additional comments addressing certain questions that arose during the hearing. Decision No. R10-1228-I, November 12, 2010.

7. The following interested parties filed written comments and/or orally commented at the rulemaking hearing: Interwest Energy Alliance (Interwest), Western Resource Advocates (WRA), Tradewind Energy and Horizon Energy, LLC (wind developers), Black Hills/Colorado Electric Utility Company, LP, d/b/a Black Hills Energy, Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc. (collectively, utility commenters),

Colorado Counties, Inc., Colorado Independent Energy Association (CIEA), Wyoming Colorado Intertie, LLC (WCI), and the Colorado Coordinated Planning Group (CCPG).

8. Being fully advised in this matter and consistent with the discussion below, the Hearing Commissioner issues the Recommended Decision adopting rules pursuant to § 40-6-109, C.R.S. To the extent specific recommendations made by interested parties are not discussed below, the Hearing Commissioner declines to adopt such recommendations.

9. The Hearing Commissioner notes, as a preliminary matter, that the NOPR and the Recommended Decision both focus on achieving the Commission objectives on a going forward basis, instead of pointing out any deficiencies that may have existed in the past. The Commission has an obligation to ensure that proper transmission planning is taking place in Colorado and that the transmission system is sufficient to satisfy the needs of the Colorado citizens.

10. The following is a general description of the transmission planning process and the Commission planning proceeding as set forth in the adopted rules. The decision will then discuss more specifically the commenters' positions on issues raised with the proposed rules and the Hearing Commissioner's decision on those specific issues.

11. Each of the three jurisdictional electric utilities shall file its ten-year transmission plan with the Commission. The filings shall be made biennially starting with February 1, 2012. Each utility's filing will be based upon its own needs for transmission and shall reflect coordination of projects with all transmission providers in Colorado. Rule 3627(a).

12. The CCPG and the non-jurisdictional utilities and other providers are not required to file any plans with the Commission nor are they required by the adopted rules to coordinate with the jurisdictional utilities in their respective planning processes. They are encouraged to

coordinate with the jurisdictional utilities and they are invited to participate in any subsequent Commission proceedings regarding the transmission plans that are filed.

13. In making their filings with the Commission, each jurisdictional utility is directed to demonstrate compliance with certain requirements and to file specific information. *See* Rules 3627 (b), (c) and (d). The information filed should be sufficient to allow the Commission Staff and other interested persons to understand what transmission projects each utility is proposing and the reasons why; the extent to which the utilities have coordinated their plans with all transmission providers; and the stakeholder outreach that was undertaken by each utility. The goal is that complete information be filed with the Commission on the due date in order to avoid unnecessary delay in the review proceeding.

14. Each utility is directed to provide government agencies and other stakeholders an opportunity for meaningful participation in its transmission planning process. *See* Rule 3627(g). Neither the transmission planning process nor the stakeholder participation is intended to take the place of the siting approval process that will occur later.

15. Once the filings are made by each utility and the Commission has taken the usual steps to make sure the filings are complete and comments from interested persons have been received, the Commission will move forward concurrently with all three filings and schedule workshops and/or hearings. Following the workshop/hearing process, the Commission will issue its decision and address the adequacy of the existing and planned transmission facilities in the state to meet present and future needs in a reliable manner. In its decision, the Commission will address public policy goals and factors that are relevant to its review, will provide direction as appropriate for changes that are needed and the reasons why, and will provide guidance for the next biennial filing by each utility. *See* Rule 3627(h).

16. One of the issues receiving considerable attention during the rulemaking process involves the relationship between the PUC transmission planning proceeding and any subsequent CPCN filings. More specifically, the issue was whether the transmission planning proceeding should be considered as informational only (and not constituting a presumption of need in any subsequent CPCN filing) or adjudicatory (and constituting a presumption of need subsequently). The Hearing Commissioner does not believe the Commission transmission planning proceeding should be categorized as being one or the other. Instead, it makes more sense to talk in terms of the weight that will be given to the Commission transmission planning proceeding in a subsequent CPCN filing. This will depend primarily upon the quality of the information provided, the nature of the stakeholder outreach that has taken place and whether circumstances have changed between the Commission transmission planning proceeding and the CPCN filing. This is specifically addressed in adopted Rules 3206(h) and 3627(i).

B. The role of CCPG

17. The rules proposed in the NOPR contemplate coordinated transmission planning in Colorado will continue to be performed under the auspices of the CCPG. In the NOPR, the Commission stated that it did not intend to materially increase the workload of the electric utilities subject to its jurisdiction and of the CCPG beyond what they are or should be doing.

1. Positions of the parties

18. CIEA, WRA, Interwest, the CCPG, and the utility commenters generally support this approach. Further, in their reply comments, Interwest and WRA state that the CCPG should commit to long range planning and expand its charter, or withdraw. Interwest states that if the voluntary approach envisioned in the proposed rules does not work, additional legislation may be necessary. For its part, WRA adds that activities and organizational structure of the CCPG must

be consistent with transmission planning policies adopted by the Commission, not the other way around. WRA states the Commission should not be unduly concerned by the possibility that non-jurisdictional entities would exit CCPG if its charter is amended.

2. Discussion

19. The Hearing Commissioner notes that the CCPG was formed long before FERC Order 890 and WestConnect came to be. While the Hearing Commissioner recognizes the value of the CCPG in the transmission planning process, he finds that the proper focus of transmission planning rules is the planning performed by the three jurisdictional utilities. It is the prerogative of these utilities to choose to utilize the CCPG to accomplish coordinated transmission planning. The Hearing Commissioner therefore will amend the rules to refer to transmission planning expected of the jurisdictional utilities and delete the references to the CCPG.

C. The role of non-jurisdictional transmission providers

20. The rules proposed in the NOPR require the jurisdictional utilities (Black Hills, Public Service, and Tri-State) to file the ten-year transmission plans and coordinate their plans with all Colorado transmission providers. The plans would be developed under the auspices the CCPG and all of the information prepared as part of the CCPG planning process may be used to support the plan filed with the Commission.

1. Positions of the parties

21. The utility commenters contend that the proposed rules effectively place them in the role of guarantors of the planning process for the whole state, which necessarily includes transmission providers over which the utility commenters and the Commission have no control or jurisdiction. The utility commenters argue that the Commission cannot indirectly exercise jurisdiction over the non-jurisdictional transmission providers in this manner.

22. In their reply comments, wind developers recognize that many CCPG members are not subject to the jurisdiction of the Commission. Wind developers argue that jurisdictional utilities should be responsible for involving stakeholders and analyzing different scenarios for transmission plans submitted to the Commission.

23. CIEA argues that the proposed rules should be amended to require an analysis of any merchant transmission projects proposed during the planning cycle. CIEA argues that transmission upgrades proposed by independent transmission companies should be included in the consideration of regional transmission planning scenarios. Similarly, WCI argues that independent transmission companies should be given an opportunity to sponsor both reliability and economic transmission projects.

2. Discussion

24. The Hearing Commissioner notes that Public Service, Black Hills, and Tri-State collectively serve about 85 percent of the load in Colorado. He also notes that all transmission providers, both jurisdictional and non-jurisdictional, fully participate in the preparation of the annual ten-year plan prepared under the auspices of CCPG and summarized by WestConnect.

25. The Commission is not attempting to exercise jurisdiction over non-jurisdictional providers. The proposed rules contemplated that only jurisdictional utilities will be required to file their ten-year transmission plans with the Commission. The adopted rules are therefore revised to more clearly reflect that proposition. *See* Rule 3627(a) and (g). The adopted rules place no requirements on the non-jurisdictional transmission providers.

26. The Hearing Commissioner notes that non-jurisdictional providers historically have been active participants before the CCPG and expects that participation will not change due to the new rules. The Hearing Commissioner acknowledges and appreciates the willingness of

the non-jurisdictional providers to continue to coordinate information related to their transmission plans with the filings made by the jurisdictional utilities. The purpose of these coordinated filings will be to provide the Commission and all stakeholders with a comprehensive overview of transmission planning in Colorado.

27. The adopted rules will allow the jurisdictional utilities to note in their filings the extent of cooperation on the part of non-jurisdictional providers, through CCPG or otherwise, in the preparation of transmission plans. *See* Rule 3627(a)(I)(D). The adopted rules do not require the jurisdictional utilities to be responsible for others.

28. Regarding merchant transmission projects, the Hearing Commissioner believes it that is important for all stakeholders to participate in all phases of transmission planning process, including identification and evaluation of alternatives. The Hearing Commissioner expects that jurisdictional utilities will give fair consideration to merchant transmission proposals when developing their transmission plans.

D. Single system planning concept

1. Positions of the parties

29. The rules proposed in the NOPR would require the ten-year transmission plans to be consistent with the single-system planning concept, defined as a collective use of the existing transmission system and making the appropriate additions, upgrades and enhancements to the system as if the transmission system were owned by a single entity.

30. The utility commenters assert that the CCPG conducts planning using the single-system planning concept and the focus of the CCPG planning process is to determine whether there is an electrical need for new facilities. The utility commenters add that the single-system planning concept must be put in the context that each utility owns and operates its own separate

transmission system, that there is no common dispatch of generation resources except under the emergency conditions, and utilities have no rights to use another utility's transmission system outside of that prescribed in the Open Access Transmission Tariffs. Therefore, they request the Commission clarify its understanding of the single-system planning concept.

31. The utility commenters further argue that the concept that a transmission system should be planned as if it were owned by one entity ignores the fact that numerous transmission providers and stakeholders have different interests and each would plan a statewide transmission system differently. The utility commenters request that the Commission consider the limitations of the concept of single system planning in a non-restructured state. In their supplemental comments, the Utility Commenters clarified their understanding of the single-system planning concept to mean that it should 1) ensure that a proposed project does not negatively impact the system of any other transmission provider or the overall transmission system in the near-term and long-term planning horizons; 2) avoid duplication of facilities; and 3) in appropriate cases, encourage the development of joint projects where a proposed line serves the mutual needs of more than one transmission provider and/or stakeholder.

32. In its reply comments, CIEA observes that the information provided for purposes of the CCPG planning, while presented in a collaborative and open stakeholder process, is based on the individual system reliability inputs and self-interest of the CCPG transmission providing members. CIEA contends that the CCPG planning represents the interests of individual utilities, rather than the interests of the state as a whole. CIEA concludes that joint planning that identifies the needs of the state for the timely construction of a robust and reliable transmission network designed to make available to Colorado ratepayers the most efficient and economic generation

resources rather than just the reliability needs of utilities or transmission service providers should be the objective of the Commission transmission planning rules.

2. Discussion

33. The Hearing Commissioner understands the single-system planning concept to mean that, if several utilities have facilities in a common geographical area, the needs of each utility are aggregated and the transmission system performance is evaluated as a whole. Once deficiencies in the transmission system are identified, alternatives are developed and evaluated from a technical perspective (e.g., as if the transmission system were owned by a single entity). The preferred alternatives are selected on technical merits alone and issues regarding ownership, construction responsibility, and financing responsibility are resolved at a later time. In reality, the Hearing Commission recognizes that many other factors enter into transmission providers' rationale for choosing their preferred alternatives. Therefore, the Hearing Commissioner will replace the nomenclature of "single system planning" in the proposed rules with the more definitional language offered by the utility commenters. *See* Rule 3627(a)(I).

E. Contents of transmission plan filing

34. The rules proposed in the NOPR require each utility to file information supporting its ten-year transmission plan to be filed simultaneously with its plan.

1. Positions of the parties

35. The utility commenters contend the main component of the ten-year transmission plan is a list of proposed transmission projects and alternatives, as well as information regarding both. The utility commenters further claim the proposed rules appear to elevate background information over the transmission plan itself. The utility commenters argue the transmission planning rules should specifically identify the backup information necessary to understand and

evaluate the filed plans, not require the submission of every conceivable piece of data that may have contributed to the development of the plan.

36. Likewise, the CCPG argues that the proposed rules contemplate filing of voluminous amounts of data. The CCPG also argues that this detailed information would not be useful to the Commission in making decisions related to adequacy of ten-year transmission plans.

37. In Decision No. R10-1228-I, the Hearing Commissioner invited interested parties to comment on what data should accompany transmission plans filed either on an informational or an adjudicatory basis.

38. The utility commenters state that the rules should require that the following information be filed with the transmission plan in support of any particular transmission project:

- Relevant load forecasts;
- Relevant resource planning information;
- Description of need, including information related to external considerations such as state and federal policy initiatives that relate to the need for the project;
- A description of the stakeholder process used in the development of the plan, and a summary of stakeholder input and alternatives presented;
- Studies relied on to support the need for any project reflected in the plan that would require a CPCN;
- The identification of alternatives, if any, that were considered but not included in the plan, and the reasons for exclusion; and
- CCPG or other relevant coordinated planning reports and studies.

39. The utility commenters state that, in addition to a description of the transmission planning process and stakeholder involvement, the materials supporting a ten-year transmission plan should identify the base assumptions used in individual studies and in the overall planning

process; project alternatives considered; high level cost estimates for proposed projects and the alternatives considered; and an explanation of why the proposed projects are the best alternatives for meeting the identified needs. The utility commenters do not believe that the utilities should be required to submit all power flow models, all system-wide load and resource forecasts and plans, or the various and multitudinous data that supports and underlies each of the studies and analyses submitted in support of a particular project.

40. CIEA notes that transparency is required for transmission planning. CIEA points out that Order 890, issued by the Federal Energy Regulatory Commission (FERC) lists the following minimum criteria for transparency in the transmission planning process:

- The transmission provider must disclose to all customers and other stakeholders the basic criteria, assumptions and data that underlie its transmission plans. Key inputs include load forecasts, customer demand response data, basis for generator dispatch in power flow cases, economic information, base case and change case data.
- The transmission provider must provide in writing and make available the basic methodology, criteria and processes that it uses to develop its transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied.
- The information provided by transmission customers must enable customers, other stakeholders or an independent party to replicate the results of planning studies and thereby reduce the incidence of after the fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion.
- Transmission providers must make available their transmission plans and related studies. It is important that FERC, stakeholders, neighboring transmission providers and affected state authorities have ready access to this information in order to facilitate coordination and oversight.
- Transmission providers must make available information regarding the status of upgrades identified in their transmission plans.
- Transmission providers should make as much transmission planning information publicly available as possible, consistent with protecting the confidentiality of customer information.

41. CIEA argues that the utilities should not have any problems complying with the transparency principles since they already comply with Order 890. CIEA contends that ensuring compliance with these transparency standards should be the focal point of the rules adopted in this docket.

42. In its supplemental comments, Interwest states that transmission plan filing must include a comparative analysis of reasonable alternatives. Interwest also argues that, in order to accomplish transparency, transmission plans must include all stakeholder comments and written responses thereto.

2. Discussion

43. The Hearing Commissioner notes that FERC requires that transmission planning be open, transparent, and coordinated. He finds that a description of stakeholder participation and input in the development of the transmission plan should be filed with the Commission as part of the transmission plan. The Hearing Commissioner also agrees with the FERC that making this information publicly available will reduce the incidence of after-the-fact disputes and facilitate stakeholder participation and Commission oversight of that process.

44. The Hearing Commissioner also notes that the requirement for the utilities to file supporting information is not a new requirement imposed by the Commission. To the contrary, this information is already required by the transmission tariffs adopted by all three jurisdictional utilities, WestConnect, and the CCPG charter. The Hearing Commissioner will therefore require the three jurisdictional utilities to file the information necessary to meet the FERC transparency requirements to support their transmission plans, but he will not list every specific piece of information. *See* Rule 3627(c). The information required by Rule 3627(c)(I) through (VII) was developed taking into account the suggestions of the utility commenters and CIEA as well as the

needs of the Commission in evaluating the ten-year transmission plans. To the extent that this information is voluminous, the utilities may provide a specific, operational weblink to the data in supporting their transmission plans in lieu of filing the data itself.

F. Economic studies

45. The proposed rules would require that the jurisdictional utilities file any economic studies performed since the last transmission plan filing. The proposed rules define economic studies as studies that evaluate transmission upgrades not necessarily needed for reliability, but nevertheless reduce the cost of serving load. The proposed rules, however, do not contain an independent requirement to perform economic studies.

1. Positions of the parties

46. WRA contends that economic studies are central to transmission planning and are required by the FERC Order 890. Production dispatch models and/or capacity expansion models, which incorporate economic data, are essential to producing both a twenty-year conceptual plan and a ten-year plan.

47. WRA argues that the definition of economic studies should be clarified to provide the studies include a production dispatch modeling tool or capacity expansion modeling tool. It also recommends a clarification that economic studies can be used to evaluate alternate futures as part of the ten-year and twenty-year planning processes. WRA also states that examples listed in proposed Rule 3627(e)(III) could be interpreted as constraining such studies and therefore should be removed.

48. WRA acknowledges that, according to the CCPG charter, the CCPG neither conducts nor has a role in conducting economic studies. However, WRA believes that economic studies should be conducted through the CCPG to ensure transparency, consistency, and an open

stakeholder process. Therefore, WRA recommends that the Commission order the jurisdictional utilities to attempt to amend the CCPG charter and then formally review the charter amendments.

49. The utility commenters note that FERC requires the utilities to perform economic studies and this requirement is incorporated in their transmission tariffs. The utility commenters also state that the proposed rules are unclear as to who is expected to perform economic studies, since CCPG specifically states that it will not perform economic studies. The utility commenters also contend the final rules adopted in this docket should identify which economic studies should be performed.

50. The CCPG states that it does not support an expansion of its charter. The CCPG also indicates that it is not willing to perform economic studies in the future.

51. In its reply comments, CIEA states that, if the CCPG is not willing to perform economic studies, the Commission should require the utilities to provide such information when filing for approval of their transmission plans or for CPCNs.

52. In their reply comments, the utility commenters argue that the tools suggested by WRA typically are used by Regional Transmission Organizations (RTOs) and since Colorado does not have an RTO, it is not appropriate for Colorado. The utility commenters state that typically the savings realized by optimizing security-constrained economic dispatch models are not sufficient to justify the cost of the transmission line.

53. In Decision No. R10-1228-I, the Hearing Commissioner invited all interested parties to comment whether a definition of economic studies consistent with FERC Order 890 would address the definitional concerns expressed at the hearing on November 5, 2010 or to provide an alternate definition.

54. In its additional comments, Interwest supports inclusion of the FERC definition into the rules, but argues the definition should be expanded to include the economics of alternate and regional generation expansion alternatives.

55. CIEA also supports inclusion of the FERC definition of economic studies in the proposed rules. Further, CIEA stresses the importance of the upgrades to transmission facilities necessary to integrate new generation resources or loads on an aggregated or regional basis.

56. WRA favors adding language to the proposed rules that provides further direction on the tools that should be used for economic planning and their role in evaluating alternative future scenarios in the ten and twenty year planning horizons. WRA states that the purpose of undertaking economic studies is to determine the need for transmission under projected future conditions, where both load and resource locations are subject to change.

57. Wind developers state that one purpose of economic studies is to evaluate the impacts of congestion, or insufficient transmission capacity. Wind developers argue that these economic studies are necessary to obtain the information on what transmission projects should be completed, in what order and in what size voltage, to cost-effectively transport the electricity from the areas presently experiencing insufficient transmission to load.

58. The utility commenters assert that including a definition of economic studies in the rules would address the concerns expressed at the hearing on November 5, 2010. The utility commenters also assert that economic studies should be defined in a way that includes consideration of congestion, alternatives including transmission and other investments, and integration of new resources.

2. Discussion

59. The Hearing Commissioner finds that economic studies are an integral component of both transmission and generation expansion planning. Consistent with the FERC Order 890, economic studies, in the context of transmission planning, include an evaluation of whether the transmission upgrades or other investments, not otherwise needed for reliability, can reduce the costs of serving native load. The Hearing Commissioner thus will amend the rules to include a definition consistent with FERC Order 890. *See* Rule 3627(d).

60. The Hearing Commissioner does not believe that a clarification as to what party would perform the economic studies is necessary since this is adequately addressed in the FERC Order 890 and utility transmission tariffs. It is the responsibility of the stakeholders participating in the planning process to request the necessary and appropriate economic studies. The Hearing Commissioner does not find it is necessary to specify in the adopted rules the tools to be used in conducting economic studies.

G. Government agencies and other stakeholder input

61. The proposed rules require utilities to actively engage government agencies and other stakeholders in the planning process, before finalizing specific projects in the transmission plan.

1. Positions of the parties

62. Interwest contends that local government, land use planning, environmental, and public policy perspectives can all be useful in transmission planning. Interwest adds that such stakeholder input can lead to earned stakeholder consent and streamlined transmission planning and CPCN proceedings before the Commission.

63. The utility commenters argue the rules should eliminate any references to stakeholder outreach concerning issues that will be better addressed within siting, permitting, and environmental processes. The utility commenters do not believe that outreach on siting issues in a transmission planning proceeding would be productive. The utility commenters point out that transmission corridors are not yet identified at the planning stage of transmission project development and argue that requiring input of potential affected landowners interested primarily in siting issues will only make planning more difficult. The utility commenters agree, in general, that broad stakeholder input is appropriate but argue that the CCPG accommodates stakeholder participation.

64. In its reply comments, CIEA supports early stakeholder involvement, arguing that stakeholders will have to be dealt with at some point in the process and early involvement generally can reduce the level of misinformation and uncertainty among the interested parties in the planning process.

65. In Decision No. R10-1228-I, the Hearing Commissioner invited interested parties to comment on what level of outreach for stakeholder input is appropriate to county, municipal, and other government agencies in the transmission planning parties. The Hearing Commissioner also inquired whether outreach should be conducted in a different manner depending on whether the transmission planning docket will be an informational docket or an adjudicatory docket.

66. In supplemental comments, Colorado Counties, Inc. (CCI) and Colorado Municipal League (CML) support the increased outreach towards local government in the transmission planning process. CCI and CML state there should be candid conversations about a transmission project while it is still in the conceptual stage and before the relationship takes on a more formal, quasi-judicial tone. The proposed outreach will also benefit local governments in

the preparation of land use plans for future development (such as designating areas for possible transmission infrastructure).

67. WRA focuses on the level of outreach that it believes must occur for a project to receive a rebuttable presumption of need. WRA argues that, in order for the public to be given an opportunity to review and comment on the plans to address the potential environmental and cultural resource impacts, a public hearing addressing the plans will need to take place.

68. The utility commenters state that a higher level of participation in the planning process by stakeholders, especially the Commission Staff is important. The utility commenters state that the existing planning process is open, although county, municipal, and other government agencies have not shown much interest in participating. The utility commenters argue that if the transmission plans are filed on an informational basis, the outreach to potentially affected county, municipal, and government agencies is neither practicable nor necessary. However, they express a willingness to send meeting notices to CCI and CML, and make these organizations responsible for keeping their constituents apprised of projects that may be of interest to their jurisdictions. In addition, utility commenters state that potentially affected counties should be directly notified in an adjudicatory proceeding.

2. Discussion

69. The Commission has an interest in getting stakeholder input early in the planning process. The Hearing Commissioner finds that meaningful stakeholder input can resolve many issues early in the planning process.

70. The Hearing Commissioner believes that active outreach is necessary. The Hearing Commissioner agrees with the utility commenters that broad stakeholder participation is difficult to achieve; hence the reason for active outreach contemplated in the

rules. The Hearing Commissioner disagrees, however, that such outreach is impractical and unnecessary.

71. The intent of the proposed rules is to seek high level input from government agencies and other interested parties on projects and alternatives when the process is still at the conceptual stage, prior to identification of preferred alternatives. In determining the appropriate level of stakeholder outreach, the Hearing Commissioner recognizes that specific rights-of-way are not yet identified at this stage of the transmission planning process. The utilities therefore should not be expected to address specific siting or rights-of-way issues at that time. Likewise, while the Hearing Commissioner agrees that environmental considerations must be taken into account in the overall development of a transmission plan, the level of analysis will be less detailed than in the project development stage.

72. The stakeholders also will have an opportunity to raise their concerns with the Commission after a transmission plan is filed. Finally, the Hearing Commissioner recognizes that not every piece of stakeholder input can or will be incorporated into a final transmission plan.

73. The Hearing Commissioner finds that a modification to the proposed rules is not needed. However, if future experience indicates that the utilities' outreach is not eliciting adequate stakeholder participation or is unduly burdensome on the utilities, the Commission will consider modifying the rules appropriately.

H. Transmission planning proceedings

74. The nature of transmission planning dockets that would follow the transmission plan filings was extensively discussed during the rulemaking hearing. Further, in Decision No.

R10-1228-I, the Hearing Commissioner specifically invited interested parties to comment on whether transmission plans should be filed on an informational or an adjudicatory basis.

1. Positions of the parties

75. In its comments, Interwest argues that informational filings would not be helpful to stakeholders and the Commission because these filings only indirectly impact transmission investment and approval decisions. Interwest expresses a preference for investment grade due diligence information developed in planning that can support investment decisions and produce expert level evidence, data, and information. This information would then support Commission findings of fact and conclusions of law.

76. CIEA argues that transmission plans filed with the Commission pursuant to the proposed rules should be subjected to an evidentiary hearing at which the assumptions, theories, forecasts, etc., included in the transmission plans will be subject to inquiry and analysis through a participatory hearing process conducted by the Commission. CIEA states that, if transmission plans were filed only on an informational basis, there would be no certainty that the Commission would have an opportunity to meaningfully review and enforce the outcome of a transmission plan. Likewise, stakeholders would not have an effective voice in shaping the transmission plan necessary to accommodate new resources if transmission plans are filed only on an informational basis.

77. WRA argues that if the transmission plan filings are not adjudicated, a rebuttable presumption of need would be inappropriate. WRA argues that the public must have a forum to raise the issues on the transmission plan, either in a formal transmission plan docket or in a CPCN proceeding. WRA further states there is some merit in filing the transmission plan on an

informational basis, as this would lower the level of information detail and public outreach required.

78. The utility commenters state that they are not opposed to filing transmission plans with the Commission, but they expect that the Commission will grant a rebuttable presumption of need for projects contained in such plans. The utility commenters argue that, without such a presumption, it is difficult to see how streamlining of the CPCN process can be achieved. The utility commenters explain that, if a project has been granted a presumption of need, the burden in a subsequent CPCN proceeding would be on the party or parties challenging the need to rebut the presumption. These parties would need to prove that the Commission erred in its earlier determination that the proposed project was consistent with the approved transmission plan.

79. Public Service also argues that a ten-year transmission plan should be viewed as a whole. Tri-State and Black Hills envision a case-by-case approach, such that a rebuttable presumption of need would not necessarily be accorded to all projects included in the ten-year transmission plan filed with the Commission. Tri-State and Black Hills contend that if the Commission will require extensive information before a rebuttable presumption of need may attach, they would prefer to have an option of seeking the presumption only for specific projects.

80. The utilities believe that extensive information and evidentiary processes are not needed to support a presumption of need. However, if the Commission concludes that extensive information and process are required before a presumption of need can attach, the utilities would prefer to file transmission plans on an informational basis and reserve evidentiary presentations for CPCN proceedings. During the hearing, Public Service stated that going through evidentiary

hearings on the issues of need twice, in both a transmission planning docket and a CPCN docket, would be duplicative and would slow down, not streamline the process.

81. In its reply comments, CIEA requests that the Commission amend the proposed rules to require a hearing on the adequacy of the plan, if requested by any party, and clarify that the plan can be approved or modified based on evidence produced at the hearing. CIEA states that a presumption of need should come only with a comprehensive transmission plan that also involves economic studies, an assessment of all alternatives, and equitable consideration of stakeholder input.

82. In their reply comments, wind developers state that if the Commission intends to grant a presumption of need to projects contained within a transmission plan, then transmission plans should be subject to a heightened level of scrutiny.

2. Discussion

83. The Hearing Commissioner agrees with Public Service that litigating the same issues twice would be duplicative and counter-productive. The Hearing Commissioner also agrees with WRA that a rebuttable presumption of need would not be appropriate if transmission plans are not adjudicated. In such a proceeding, the parties disputing need for a project would not have the same opportunity to litigate the issue to the same extent as in an adjudicatory proceeding.

84. The Hearing Commissioner therefore finds that upon the filing of the transmission plans by the three jurisdictional utilities, the Commission will open a single miscellaneous docket. The proceeding conducted in this miscellaneous docket will make the comprehensive ten-year transmission plans and supporting information available to stakeholders and other interested persons in a transparent manner. The Hearing Commissioner notes that current SB 07-

100 proceedings will serve as a model for the initial stages of the transmission planning proceedings. These proceedings will also include an opportunity for stakeholders to file comments, for the Commission to pose additional questions to the utilities, either on its own motion or following a request of a stakeholder, and for the utilities to present information at workshops and/or hearings. The Commission will review the plans and supporting information, the written comments, and the information obtained at the workshop(s) and/or hearing(s), and will issue a written decision regarding compliance with these rules and the adequacy of the existing and planned transmission facilities in this state to meet the present and future energy needs in a reliable manner. These proceedings will provide an opportunity for the Commission to offer policy guidelines to the utilities to be used in the preparation of the next biennial transmission plan filing, in a manner similar to interpretative rules. See Rule 3627(h).

85. Even though transmission plans will not carry a rebuttable presumption of need, the utilities shall reference the most recent biennial ten-year transmission plan in any subsequent CPCN application for individual projects contained in that plan. The CPCN application may rely on the information contained in the plan and the decision of the Commission on review of the plan, absent a change in circumstances. See Rules 3206(h) and 3627(i). The weight given to such information will depend on the quality of information presented and other factors discussed in this Recommended Decision. In other words, given sufficient documentation in the biennial ten-year transmission plan for the project under review and if circumstances for the project have not changed, the applicant may rely substantively on the information contained in the plan and the Commission's decision on the review of the plan to support its application.

86. The proposed rules and the NOPR envision that the Commission will review and issue a decision on the adequacy of the filed transmission plans and the process used to develop

the plans and offer policy guidelines to the jurisdictional utilities. The Hearing Commissioner agrees with the utility commenters and wind developers that the rationale by which the Commission will determine adequacy of a transmission plan should be clarified in the adopted rules. The Hearing Commissioner therefore amends the rules accordingly. See Rule 3627(a) and (b). However, the Hearing Commissioner declines to specify in the rules the rationale to be used by the utilities for evaluating their alternatives. The rules only contemplate that the jurisdictional utilities will provide the rationale that they used to select their preferred alternatives. The rationale should be defined with input from stakeholders.

87. A number of participants have requested that the Commission indicate in advance, the public policies and the environmental considerations that each utility needs to take into account during its particular transmission planning process. For purposes of the initial filing (i.e., February 1, 2012), the Hearing Commissioner declines to do so. These issues should be explored by the utilities and the stakeholders and the Commission will address these issues during the transmission planning proceedings that occur during 2012 when it has specific plans before it from the three utilities.

I. Coordination of electric transmission and generation planning, and biennial filing requirements

88. One of the Commission objectives in the NOPR is closer coordination of electric generation and transmission planning. The proposed rules, however, contain no language related to such coordination.

1. Positions of the parties

89. In its comments, CIEA argues there should be a clearly articulated tie-in between the electric resource planning rules and the proposed transmission planning rules. CIEA claims that the Commission should specifically link these two planning activities in a fashion that both

coordinates the timing and facilitates consideration of the results from one docket for one type of planning to the next.

90. The utility commenters note that a transmission plan will not necessarily address all of the generation that developers may propose through Requests for Proposals (RFPs). The utility commenters believe it is appropriate for the Commission to require the filing of transmission plans in advance of the Phase II of the Electric Resource Plan (ERP), but it will not be a cure-all for the “chicken or the egg” problem underlying transmission planning.

91. The utility commenters also argue that since the electric resource planning cycle is four years, the Commission should only require submission of transmission plans every four years. The utility commenters also argue that the Commission should allow for some flexibility in the ten year plans, because unanticipated generation additions and short term factors may lead to the addition of unanticipated projects.

92. The utility commenters also note that, in many cases, the location of generation resources may not be known until after the ERP process is complete. They argue it is premature to compare the merits of different generation resources in a transmission planning docket. They note that just because a transmission project is identified in a transmission plan does not mean it will actually be built in the timeframe identified in the plan.

93. In reply comments, utility commenters argue that determination of transmission needs should not be limited to the generation additions expected as a result of the next resource plan.

94. In Decision No. R10-1228-I, the Hearing Commissioner invited interested parties to comment on the coordination of transmission planning and electric resource planning dockets.

95. In response, Interwest suggests that proposed rules should require transmission information to be completed and ready before filing of Phase I of the ERPs, so that there is no question about what transmission will be available, where, and when. This would require filing, consideration and determination of transmission plans before October 2011 and October of each filing year thereafter.

96. CIEA strongly supports the coordination of the transmission planning and electric resource planning. CIEA argues that transmission plans should be filed every two years because they will be an invaluable source of information for both potential generation resource providers and other stakeholders interested in the status of transmission development.

97. WRA states that coordination of transmission and generation planning is essential to success of a coordinated electric plan for Colorado. WRA states that information from the ERPs must be incorporated into the ten-year transmission plan, and certainty of transmission is essential to a successful electric resource plan.

98. Black Hills contends that a transmission planning docket becomes relevant to the ERP process only if it precedes an ERP filing cycle; otherwise, coordination of the two would be impossible. During Phase II of the ERP, the utility solicits and evaluates competitively bid generation resources and previously known or approved transmission projects become the basis for the utility to determine the resource portfolio. Such transmission projects would be approved in an earlier Rule 3206 process, certificated in CPCN proceedings, or known from earlier SB-100 or transmission plan filings. This would make the resource bid evaluation in an ERP process rational and transparent because of the reference to the known or approved transmission projects.

99. Public Service favors filing of transmission plans on a four year cycle and agrees that, if filed in advance of the resource plan, transmission plans may be beneficial in informing

both phases of the resource plan. Public Service notes that if the Commission requires filing of transmission plans every two years as contemplated in the proposed rules, coordination between the resource plan and the transmission plan becomes less important (e.g., easier) as transmission plans will be filed frequently enough to provide prospective bidders with relatively current transmission information.

100. For its part, Tri-State notes it is subject to a different resource planning process, approved by the Commission in Decision No. C10-0101, mailed February 4, 2010 in Docket No. 09I-041E. That resource planning process does not entail separate phases and contemplates joint resource and transmission planning schedules.

2. Discussion

101. The Hearing Commissioner notes that utilities currently prepare ten-year transmission plans annually for filing with WECC. The Hearing Commissioner finds that a transmission plan that is filed only once every four years will become stale, but is not convinced that annual filings are necessary. The adopted rules therefore will retain the two year filing cycle, with the caveat that utilities may amend their plans when necessary. The Hearing Commissioner also agrees with Public Service that filing of ten-year transmission plans every two years facilitates better coordination of transmission and generation planning.

102. The Hearing Commissioner determines that, due to their individual complexities, generation and transmission planning should be addressed in separate proceedings. However, he also recognizes that there is an interrelationship in the planning for both generation and transmission. Both generation and transmission plans are fluid and the utility must constantly adapt to changing circumstances. The timing of the biennial filing of transmission plans assures that the best available transmission information is used in the electric resource plan proceedings.

It also gives the Commission an opportunity to present its findings on the ten-year transmission plans and its transmission policy guidance before the beginning of Phase II of the ERPs.

J. SB 07-100 filings

103. The proposed rules are silent on the coordination between the transmission filing required by SB 07-100 and the ten-year transmission plans. The Hearing Commissioner invited all interested parties on the coordination between the two filings.

1. Positions of the parties

104. Interwest recommends either coordinated or simultaneous filings. CIEA suggests simultaneous filings, in order to facilitate the presentation of a comprehensive transmission plan. WRA argues that whether the ten-year transmission plan is filed simultaneously with the SB 07-100 report or a few months later is immaterial so long as the SB 07-100 reports and the transmission plans are consistent with each other.

105. The utility commenters contend that if the transmission plan will be considered in an adjudicatory docket, it should be filed after the SB 07-100 report so that utilities can incorporate any feedback provided by the Commission in the SB 07-100 docket. Public Service and Black Hills prefer that the timing of the transmission plan coincide with the Rule 3206 filing in April. Tri-State takes no position on this matter since it does not file SB 07-100 reports.

2. Discussion

106. The Hearing Commissioner declines to delay the timing of the transmission plan filings contemplated in this rulemaking, in order to maintain the coordination of transmission and generation planning. However, he notes that it may be appropriate to review the timing of the ten-year transmission plans, the SB 07-100 reports, and Rule 3206 filings at a future time.

K. February 1, 2011 filing deadline

107. The proposed rules require that transmission plans be filed February 1, 2011 and February 1 of each even year thereafter.

1. Positions of the parties

108. The CCPG and the utility commenters contend that a February 2011 filing date is not realistic. CIEA recommends that the Commission require utilities to coordinate transmission and generation planning cycles beginning with the 2011 electric resource planning requirement under the existing ERP Rules. CIEA requests that the Commission implement rules that contemplate final transmission plans approved by the Commission no later than six months prior to the issuance of utility RFPs in Phase II. This timeframe would allow prospective bidders to review the approved transmission plan for the purpose of developing their generation projects at locations where additional transmission will be available. Finally, Interwest advocates for an abbreviated filing in 2011 that is still sufficient to fulfill the SB 100 requirements and provide inputs for the 2011 ERPs.

2. Discussion

109. The Hearing Commissioner agrees that the first instance of coordination between transmission and generation planning should be in 2012 with the filing of the transmission plans on February 1, 2012, sufficiently ahead of Phase II of the electric resource plans. The rules will be modified accordingly. *See* Rule 3627(a) and (d). The Hearing Commissioner contemplates informal workshops in 2011 to clarify the expectations for the first filing in 2012.

L. Twenty year conceptual planning

110. The proposed rules require the utilities to file a conceptual long range plan that looks twenty years into the future. This conceptual long range plan considers projected system

needs for various credible alternatives. The ten year plan should be consistent with, and give an appropriate consideration to, the conceptual long range plan.

1. Positions of the parties

111. The utility commenters argue since there are no present requirements to perform conceptual long range planning focusing on Colorado, this proposed requirement would translate into substantially increased work for the three jurisdictional utilities. Even though the CCPG has formed a study group to perform long range Colorado transmission planning, it is in a startup mode and has not yet produced a deliverable study.

112. In their reply comments, wind developers argue that in the twenty year timeframe the utilities should develop a range of options to present to the Commission and the stakeholders.

2. Discussion

113. The Hearing Commissioner finds that the value of a twenty-year conceptual plan is to analyze potential “what if” scenarios. He envisions that these analyses will include scenarios such as high and low load growth rates, federal carbon tax initiatives, and drought scenarios, rather than in-depth transmission project studies.

114. However, it is clear from the comments filed by the interested parties that the requirements for such conceptual long-range scenarios need further definition. Therefore, the Hearing Commissioner will delay the filing date of the first of these scenarios until February 1, 2014. In the decision on the first biennial review of the ten-year transmission plans (filed February 1, 2012) the Hearing Commissioner expects the Commission to provide the utilities with guidance for the scenarios to be included in the 2014 filing. See Rule 3627(e).

II. ORDER**A. It Is Ordered That:**

1. Commission Rules pursuant to 4 *Code of Colorado Regulations* 723-3-3206(h) and 723-3-3625 through 3627, contained in Attachment A to this Order are adopted consistent with the discussion above.

2. This Recommended Decision shall be effective on the day it becomes a Decision of the Commission, if that is the case, and is entered as of the date above.

3. Pursuant to § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the interested parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a person seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that person must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Hearing Commissioner and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

5. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JAMES K. TARPEY

Hearing Commissioner

ATTEST: A TRUE COPY

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

Doug Dean,
Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-526E

IN THE MATTER OF THE PROPOSED RULES RELATED TO ELECTRIC TRANSMISSION FACILITIES PLANNING, 4 CODE OF COLORADO REGULATIONS 723-3.

ORDER ON EXCEPTIONS

Mailed Date: March 23, 2011
Adopted Date: March 17, 2011

TABLE OF CONTENTS

I. BY THE COMMISSION	2
A. Statement	2
B. Western Resource Advocates	3
1. Best cost	3
2. Load forecasts	5
3. Economic studies.....	6
C. CIEA.....	7
1. Independent transmission companies	7
2. Transmission planning proceedings	8
D. Tri-State	10
1. Jurisdictional exceptions	10
2. Additional exceptions.....	11
a. Rule 3627(b)(III).....	11
b. Rule 3627(b)(IV).....	12
3. Rule 3627(e)(II).....	12
E. Utilities	13
1. Rule 3627(c)(VI)	13
2. Rule 3627(b)(II)	16
3. Filing date.....	17
4. Transmission base case and supporting data.....	18

5. Applicability of the rules to forthcoming CPCN applications19

F. Adopted Rules Not Discussed20

II. ORDER.....20

A. The Commission Orders That:20

B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING March 17, 2011.....22

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions filed on February 10, 2011 by Colorado Independent Energy Association (CIEA); Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy, Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc. (Tri-State) (collectively, Utilities); Tri-State;¹ Western Resource Advocates (WRA); and Interwest Energy Alliance (Interwest)² to Recommended Decision No. R11-0077 (Recommended Decision). On February 24, 2011, CIEA and the Utilities each filed a response to the exceptions of other parties. Being fully advised in the matter and consistent with the discussion below, we address these exceptions in turn.

2. Hearing Commissioner James K. Tarpey (Hearing Commissioner) discussed the procedural history of this rulemaking docket in the Recommended Decision, issued on January 21, 2011, at ¶¶ 1-7. We incorporate that statement of procedural history in this Order and will not reiterate it here, except as needed to provide context to our rulings. We proceed directly to a discussion of the arguments presented by each interested parties on exceptions.

¹ Tri-State filed exceptions both jointly with Public Service and Black Hills, addressing issues of concern to all three utilities, as well as supplemental exceptions on its own behalf.

² Interwest wholly joins the exceptions filed by WRA and does not present any additional arguments.

B. Western Resource Advocates**1. Best cost**

3. WRA states that Rule 3627(b)(I), as adopted, does not define the term “best cost.”

It further argues that this term is not defined elsewhere in the Colorado statutes or Commission Rules and is not easily understood by all industry participants. WRA therefore recommends that the Commission amend Rule 3627(b)(I) as follows:

Best cost is defined as balancing cost, risk, and uncertainty and includes costs associated with avoiding, minimizing, and mitigating impacts to natural and cultural resources (defined herein as recreational, wildlands, fish, wildlife, plant life, scenic, historic, cultural, religious, archeological, and water).

WRA argues that wildlife, wild lands, and cultural issues can constrain transmission planning. It further states that the Environmental Data Taskforce, working within Scenario Planning Steering Group of the Western Electricity Coordinating Council (WECC) is currently researching on how to incorporate these constraints. WRA argues that the results of this research could be presented in the ten year transmission plan and can serve as a model for planning and budgeting for natural and cultural constraints at the statewide planning scale.

4. In response, CIEA argues that these specific environmental considerations should not be made a part of the rules. However, CIEA agrees that the Commission should clarify what is meant by the term “best cost.”

5. For their part, the Utilities argue that the main flaw with WRA’s proposal is that transmission planning occurs when specific transmission corridors are not yet determined. The Utilities argue they cannot detail recreational, wildlands, fish, wildlife, plant life, scenic, historic, cultural, religious, archeological, and water impacts for each transmission project listed in a ten year transmission plan. The Utilities explain that they consider these issues only at a very high level, to provide a general characterization of environmental resource and land use

conditions in an area to identify obvious obstacles to a particular proposal. The Utilities contend that a detailed consideration of these issues is unrealistic and would amount to a required environmental impact statement for every planned transmission project, even one that may never come to fruition and does not involve any federal lands or federal loan guarantees. The Utilities conclude that WRA's proposal, if adopted, would result in needless litigation and delay at the transmission planning stage.

6. We agree with WRA that transmission planning should incorporate an evaluation of impacts to natural and cultural resources. The basic issue, however, is what level of analysis is appropriate at the preliminary transmission planning stage, when possible rights-of-way have not been identified. WRA points out that WECC is currently addressing this basic issue, but has not yet identified a solution. If and when WECC develops a methodology to evaluate impacts on natural and cultural resources before identification of specific rights of way, we may incorporate such a methodology into our transmission planning rules. However, we decline to amend the rules to require that transmission planners perform an analysis that does not yet exist yet and for which the environmental community has not yet developed the tools.

7. On the other hand, we clarify that "best cost" is not equivalent to the "least initial construction cost." Further, the lowest long-term cost may be different from the lowest short-term cost. Further, to properly account for societal and environmental concerns, "best cost" may be higher than the theoretically possible "least cost." The Commission uses the term "best cost" to mean a balance of societal and environmental considerations; operational and maintenance concerns; short and long term planning opportunities; and initial construction costs. The proper balance of these concerns will be unique to each project. We incorporate this clarification into Rule 3627(b)(I), to read as follows:

The efficient utilization of the transmission system on a best-cost basis, considering both the short-term and long-term needs of the system. Best cost is defined as balancing cost, risk, and uncertainty, and includes proper consideration of societal and environmental concerns, operational and maintenance requirements, consistency with short-term and long-term planning opportunities, and initial construction cost.

8. We therefore grant, in part, and deny, in part, the exceptions filed by WRA on this ground.

2. Load forecasts

9. WRA argues that the Commission should modify Rule 3627(c)(II) to require the utilities to include data on load forecast reductions arising from distributed generation (DG) and utility energy efficiency programs. WRA argues that this data is important to understand the reasonableness of the load forecasts and to identify how state and federal policies have been incorporated into the transmission planning process. WRA proposes the following language to accomplish this goal:

The load forecasts, load forecast reductions arising from distributed generation and utility sponsored energy efficiency programs, and controllable demand side management data including the interruptible demands and direct load control management used to develop the transmission plan.

10. In response, the Utilities state they have no objection to this proposal if the words “net metered” are added, as follows:

The load forecasts, load forecast reductions arising from **net metered** distributed generation and utility sponsored energy efficiency programs, and controllable demand side management data including the interruptible demands and direct load control management used to develop the transmission plan.

The Utilities state they already estimate load forecast reductions arising from their demand side management programs and DG, to the extent of net metered DG. The Utilities also argue that the

Commission should not create new load forecasting requirements through the transmission planning rules. Tri-State further argues that, even with the addition of the words “net metered,” it would not be appropriate to include in the rule load reductions associated with DG. Tri-State states that it is obligated to serve the loads of its members, regardless of whether DG owned and operated by third parties is available and online. Tri-State argues that, at most, the ten year transmission plan should consider the effect of net metered DG on load forecasts based on appropriate assumptions concerning the availability of such generation.

11. We agree to modify Rule 3627(c)(II), as proposed by WRA and modified by the Utilities. We therefore grant, in part, the exceptions filed by WRA on this ground. The intent of the rule is to require the utility to report the load that transmission system must be designed to support. We also clarify it is not appropriate, in the transmission planning docket, to explore the issues related to the reasonableness of the load forecast and energy efficiency programs, and compliance with state and federal policies related to energy efficiency.

3. Economic studies

12. Finally, WRA proposes certain wording changes to Rule 3627(d), to clarify the purpose of conducting economic studies and to better align the final rule with FERC Order 890 expectations. In response, the Utilities state they have no objection to WRA’s proposal, with the understanding that the only economic studies that will be required will be those performed under FERC Order 890 since the last biennial filing. The Utilities believe that the rule as modified by WRA does not require anything further.

13. We agree that the wording changes to Rule 3627(d) proposed by WRA provide a needed clarification and therefore grant the exceptions filed by WRA on this ground.

C. CIEA**1. Independent transmission companies**

14. In its exceptions, CIEA contends that the rules, as adopted in the Recommended Decision, do not specifically require the participation and inclusion of independent transmission companies (ITCs) in the development of transmission plans. CIEA further argues that the rules, while acknowledging the importance of participation by all stakeholders, do not require a fair and equal consideration of ITC projects and input as compared to transmission projects identified the utilities. CIEA argues that the rules need more specific language to accomplish these goals. It adds that the ITCs should be given the opportunity to sponsor both reliability and economic transmission projects.

15. In response, the Utilities argue that the Commission should deny these exceptions. The Utilities argue that the rule changes proposed by CIEA are unnecessary, since Rule 3627(g) already requires utilities to conduct outreach to all stakeholders and identify alternative solutions. The Utilities state that they will give fair consideration to merchant transmission proposals when developing their transmission plans. The Utilities further wish to clarify that Rule 3627(g) would not require them to independently conduct studies that would support alternative projects, only that they fairly consider those proposed alternatives. The Utilities add that they cannot be responsible for entities that may not be subject to Commission jurisdiction. The Utilities point out that ITCs do not have the same obligations to ratepayers or to the Commission.

16. We note that the rules, as adopted in the Recommended Decision, provide that all stakeholders, including the ITCs, can participate also in the transmission planning process and present appropriate arguments to the Commission during our review if they believe their input was not fairly considered in the development of transmission plans. We do not believe that any rule language specific to the ITCs is necessary. Further, alternative transmission proposals,

including merchant projects, will be within the scope of transmission planning dockets, to the extent they bear on the adequacy of the proposed transmission plan.

17. Finally, we note that the Commission has no direct jurisdiction over ITCs, which may affect the degree to which the Commission can address the matters related to these stakeholders in its transmission planning proceedings. We note that FERC is currently addressing these issues in a rulemaking pending before it.³ If and when FERC makes policy decisions on these issues, it may be appropriate to amend the transmission planning rules at that time. Regardless, the issue of ITC constructed projects, cost recovery for those projects, and how those projects are balanced against utility projects will be an issue for Commission investigation and discussion in the future.

18. We deny the exceptions filed by CIEA on this ground.

2. Transmission planning proceedings

19. CIEA argues that the Commission should hold evidentiary hearings in connection with transmission planning proceedings. CIEA argues that, at evidentiary hearings, parties could subject the transmission plans to a more pointed analysis than might otherwise occur through the workshop process. It contends that the parties should have full rights of cross-examination and argument in addressing the sufficiency of proposed transmission plans.

20. CIEA also takes exceptions to Rule 3627(i), which, as adopted, provides that the utilities may substantively rely on the information contained within a transmission plan and the Commission decision on the review of that plan in subsequent CPCN applications for individual projects contained in the transmission plan. CIEA argues that this language is too vague and that a presumption of prudence language should be used instead.

³ June 17, 2010 FERC Notice of Proposed Rulemaking concerning Transmission Planning and Cost Allocation, RM10-23-000.

21. In response, the Utilities generally argue that the Hearing Commissioner struck a reasonable compromise between, on one hand, evidentiary hearings for the ten year transmission plans, which would result in a presumption of need for individual projects contained in the plans in a later CPCN proceeding and, on the other hand, an informational process only that would not result in any benefits to the utilities in later CPCN proceedings. The Utilities also argue that an open and inclusive stakeholder process lends itself toward workshops rather than litigation.

22. We agree with the Utilities that the Hearing Commissioner appropriately balanced competing considerations in the Recommended Decision. These considerations, *inter alia*, are as follows: (1) Commission review of state wide transmission plans in a comprehensive manner; (2) opportunity for stakeholders to participate in an open and transparent manner; (3) a resolution of transmission CPCN applications in a more streamlined manner, by enabling the stakeholders and the Commission to be able to better assess the need for a transmission project and how it fits into a larger state wide transmission plan; (4) an opportunity for the Commission to offer guidelines to the utilities to be used in preparing future transmission plans and CPCN applications; and (5) providing some benefits to the utilities in later CPCN proceedings while taking into account the possibility of changed circumstances between the filing of ten year transmission plans and CPCN applications, especially with respect to transmission projects slated for later years of the ten year plan. Further, we agree that litigating the issues related to need twice, in a transmission planning docket and a CPCN docket, would be duplicative and would slow down, rather than streamline the process.

23. Rule 3627(h), as adopted in the Recommended Decision, allows the Commission to hold workshop(s) and/or hearing(s) on filed transmission plans and this flexibility is necessary because these plans may contain a wide variety of transmission proposals. By way of example,

the utilities may have very detailed information on projects that they will be filing an application for a CPCN in the near future or only preliminary information on projects that are slated for later years of a ten year plan. The projects in the second category may not be sufficiently “ripe” for a hearing and are more appropriately explored in a workshop instead. Similarly, the “substantial reliance” language accommodates this gradation among proposed transmission projects, while the “presumption of need” standard lends itself to an all or nothing outcome. We therefore deny the exceptions filed by CIEA on this ground.

D. Tri-State⁴

1. Jurisdictional exceptions

24. Tri-State takes exception to the phrase “jurisdictional electric utilities” and states it does not concede that the Commission has jurisdiction over its electric transmission facilities. Tri-State argues that in a recent docket that considered revisions to the resource planning rules for generation and transmission cooperatives, the Commission acknowledged the jurisdictional arguments made by Tri-State. Decision No. C10-1001, mailed February 10, 2010, in Docket No. 09I-041E. Tri-State states that, without waiving its jurisdictional argument, it will voluntarily conduct its transmission planning function and provide ten-year transmission plans and twenty-year conceptual long-range scenarios consistent with the adopted rules. Tri-State requests that the Commission, in its order on exceptions, acknowledge that Tri-State has agreed to voluntarily conduct its transmission planning function consistent with the adopted rules, and does not waive its arguments with respect to the Commission’s transmission planning jurisdiction.

25. We take note of Tri-State’s position regarding the Commission’s jurisdiction over its electric transmission facilities. We also reiterate our position in Docket No. 09I-041E and, as

⁴ We note that certain issues discussed by Tri-State in its supplemental exceptions are also discussed by the Utilities in the joint exceptions. We will address these issues in the next section.

in that docket, we are willing to set jurisdictional issues aside here to proceed with the new rules adopted in the Recommended Decision. We find good cause to replace the phrase “jurisdictional electric utilities” with the language that more closely mirrors Title 40. We will therefore amend Rule 3625 to state that the new transmission planning rules shall apply to “all electric utilities in the state of Colorado except municipally owned utilities and cooperative electric associations that have voted to exempt themselves from regulation pursuant to § 40-9.5-103, C.R.S.” We will replace the term “jurisdictional electric utilities” with the term “electric utilities” elsewhere in the transmission planning rules.

26. Tri-State also states that, not including itself, other non-jurisdictional transmission providers in Colorado wholly or jointly own more than 2,000 miles of high voltage transmission lines. It explains that it will be difficult to develop a truly comprehensive statewide transmission plan without significant input from non-jurisdictional transmission providers. Tri-State states it is committed to working with all utilities and stakeholders in the development of transmission plans contemplated in the Recommended Decision. Tri-State also states that it will continue to engage all transmission providers in Colorado and adjacent states, to ensure its transmission plans are coordinated with its regional partners.

27. We appreciate the efforts of Tri-State to develop a truly comprehensive statewide transmission plan.

2. Additional exceptions

a. Rule 3627(b)(III)

28. In its exceptions, Tri-State encourages the Commission to clarify the phrase “all legal and regulatory requirements, including renewable energy portfolio standards and resource adequacy requirements” contained in Rule 3627(b)(III). Tri-State encourages the Commission to

do so either in its ruling on exceptions or as part of the informal workshops contemplated prior to the first transmission plan filing in 2012. Tri-State notes that certain requirements do not apply to Tri-State in the same way they apply to Public Service and Black Hills.

29. We agree that the phrase “all legal and regulatory requirements” warrants further clarification. The Commission will do so during the workshops contemplated later this year.

b. Rule 3627(b)(IV)

30. Tri-State states it is not subject to the requirements contained in FERC Order 890 in the same way as Public Service and Black Hills. Tri-State notes that transmission planning is only one aspect of FERC Order 890 and argues that the Commission should adopt the following clarifying language to Rule 3627(b)(IV):

Consistency with applicable transmission planning requirements in the Federal Energy Regulatory Commission (FERC) Order 890. ~~All federal Energy Regulatory Commission (FERC) regulations contained in Order 890.~~

31. We clarify it did not intend to get involved in non-transmission planning issues contained in FERC Order 890. We therefore modify Rule 3627(b)(IV) in the manner suggested by Tri-State.

3. Rule 3627(e)(II)

32. Tri-State contends it is inappropriate for the Commission to require it to submit a twenty year conceptual long range plan that includes possible retirement of existing generation. Tri-State argues that the Commission does not have the same level of oversight over its electric resource planning process. Further, the Commission’s electric resource planning rules that apply to Public Service and Black Hills do not apply to Tri-State. Tri-State states that, instead,

its twenty year conceptual long range plan will include scenarios that are developed as part of the planning conducted at CCPG or authorized by its Board of Directors.

33. We do not believe that conceptual long range transmission planning is the same as generation planning. Evaluation of the possible impact on the transmission system resulting from *possible* retirement of existing generation is not generation planning. This would be just one of several “what-if” type scenarios reviewed by the Commission. By no means will these scenarios bind the utilities for future transmission planning. We deny the exceptions filed by Tri-State on this ground.

E. Utilities

1. Rule 3627(c)(VI)

34. The Utilities contend that the intent of the rules is for the utilities to provide certain studies, reports, and analyses that they customarily generate in connection with proposed transmission facilities so that all stakeholders can participate in an open transmission planning process, not to require any studies or analyses that the utilities do not presently prepare. The Utilities state that project-specific information and analyses contemplated by the adopted rules may exist for major projects that are close to the CPCN filing stage, but not for smaller projects that are within the ordinary course of business. Further, the Utilities explain that they undertake studies and analyses of certain transmission facilities as part of an interconnected system, but do not generate studies and reports specific to an individual project, unless that project is part of an imminent CPCN application. The Utilities conclude that the Commission should clarify that the requirements within the adopted rules detailing contents, compliance, analyses and alternatives may vary according to type and development stage of the transmission facilities.

35. The Utilities also contend the intent of the adopted rules is not to require project-specific documentation and analyses for transmission facilities that are in the ordinary course of business and do not require a CPCN. Instead, the Utilities contend the intent of the adopted rules is to create an open, transparent, and inclusive transmission planning process for larger projects that are outside the ordinary course of business and are more likely to draw stakeholder interest. The Utilities state that they do not ordinarily identify or evaluate alternate solutions for ordinary course of business projects.

36. We agree that the basic intent of the rules is not to require any studies or analyses beyond those necessary to demonstrate compliance with the reliability criteria, FERC Order 890, WestConnect and WECC requirements. The Utilities assert (elsewhere in this docket) that they comply with all of these requirements and annually prepare a ten year transmission plan as part of their WestConnect duties. That plan (a) covers all facilities 100 kV and above; (b) meets all applicable reliability criteria; (c) takes into account all identified or projected system needs; (d) has a study report available for every facility identified in the plan; (e) evaluates a broad range of alternatives, with feasibility and cost analysis to select preferred alternatives; and (f) incorporates relevant material from the WECC long range planning and scenario planning efforts. The rules, as adopted by the Recommended Decision, do not contemplate any studies or analyses beyond the ones that the utilities assert they perform already in preparing their annual ten year plan with WestConnect.

37. We also clarify that appropriate depth of analyses and evaluations of alternatives may vary according to the type of transmission project. For example, a small, localized project will not receive as much attention as a larger, regional project, nor will a project on which action is not needed in the near future receive as much attention as a project that is more imminent.

It is impossible to define what depth of analysis is required for each type of project. The Commission will consider these issues on a case by case basis. To clarify this, we amend Rule 3627(c)(VI) as follows:

The related studies and reports for each new transmission facility identified in the transmission plan including alternatives considered and the rationale for choosing the preferred alternative. The depth of the studies, reports, and consideration of alternatives shall be commensurate with the nature and timing of the new transmission facility.

38. Finally, we note that a comprehensive transmission plan includes both CPCN and non-CPCN projects and decline to make a per se distinction based on the CPCN requirement in the rules. In conclusion, we grant, in part, and deny, in part, the exceptions filed by the Utilities on this ground.

39. The Utilities further argue that Rule 3627(c), as adopted, could be read in a way as to require the information that utilities customarily develop for transmission facilities of 100 kV or greater only for these larger projects, not for smaller projects that do not require a CPCN. The Utilities argue that the requirement to include “transmission base case data for all applicable power flows, short circuit and transient stability analyses” and “related studies and reports for each new transmission facility identified in the transmission plan” in the ten-year transmission plan could reasonably be interpreted to mean that this information should be filed to the extent it has been developed and is available for each project. The Utilities request that Rule 3627(c) be modified accordingly.

40. We agree with this interpretation. We note that, once an individual transmission project is included into the comprehensive transmission plan, the utilities will evaluate the plan in its entirety and the final base cases and reliability analyses will include all components of the

plan. Further, we clarify that analyses of alternatives for a particular project, as applicable, may or may not require a full spectrum of steady-state power flow, transient stability, and short circuit analyses. It is impossible to define what depth of analysis is appropriate for each type of project to properly analyze alternatives. We find that the modification to Rule 3627(c)(VI), as discussed above, sufficiently accomplishes this clarification.

2. Rule 3627(b)(II)

41. In their exceptions, the Utilities request a clarification or a minor change to Rule 3627(b)(II). The rule, as adopted in the Recommended Decision, provides that, “[f]or *each year* covered in the ten year plan,” the plan shall demonstrate compliance with applicable reliability criteria for selected demand levels over a range of forecast system demands (emphasis added). The Utilities argue that one interpretation of this subsection would require thirty assessments for each ten-year plan, i.e., a reliability assessment for (1) summer peak load, (2) winter peak load, and (3) reduced load when renewable generation is maximized for each of the ten years of the plan. The Utilities do not believe that the Commission intended such an interpretation and seek a clarification on this issue. The Utilities argue that this interpretation would go well beyond the reliability assessments performed by the Utilities pursuant to NERC and WECC requirements. The Utilities state that the CCPG annually performs a reliability compliance study that evaluates near term (1-5 year) and long term (6-10 year) scenarios for reliability purposes. The Utilities state that these two assessments are a “spot check” on the regional transmission system for each five year period.

42. We agree with the Utilities that the rule was not intended to require 30 distinct reliability assessments for each ten year plan. However, we do want to ensure that the information provided covers all potential major changes in demand levels that may affect

reliability, as well as covers short term and long term scenarios. We agree that the “[f]or each year covered in the ten year plan” phrase in Rule 3627(b)(II) is unnecessary and open to misinterpretation. We will therefore delete this phrase and amend the rule as follows:

~~For each year covered in the ten year plan, a~~All applicable reliability criteria for selected demand levels over a range of forecast system demands, including summer peak load, winter peak load and reduced load when renewable generation is maximized.

We will clarify the remaining issues raised by the Utilities during the workshop(s) scheduled in 2011.

3. Filing date

43. In their exceptions, both the Utilities and Tri-State encourage the Commission to modify the filing date of transmission plans from February 1 to April 30, to coincide with Rule 3206 filings. The Utilities argue that it would be difficult to develop the information necessary to make the transmission plan filings on February 1, especially in the first transmission planning cycle in 2012. The Utilities contend that they will need to implement the in-house processes to comply with the adopted rules and that it will take significant amount of time to comply with the requirements regarding stakeholder outreach and evaluation of alternative solutions. The Utilities state that a few months are necessary to develop project information after the SB 07-100 filings. The Utilities further argue that, even with a February 1 filing date, it is unlikely that transmission planning proceeding will be completed in time to inform a Phase II ERP docket filed in the same year. For its part, Tri-State adds that its electric resource planning process, as agreed in Docket 09I-041E does not include a Phase II, so the Commission rationale for having transmission plans due on February 1 has limited applicability to it.

44. In response, CIEA argues the Commission should maintain the February 1 filing date as it will allow the coordination of transmission and generation planning. CIEA argues that the delay to April 30 as proposed by the Utilities will defeat this coordination.

45. We reiterate that coordination of transmission and generation planning is one of the primary goals of this rulemaking. We agree with CIEA that the change of the filing date to April 30 may defeat this goal. We recognize there may be efficiencies in better coordinating the filing requirements of Rule 3206, SB 07-100, and transmission planning rules. Further, we acknowledge that the information required in the various filings may be repetitious. We will address this topic in the future. Further, we understand that, in 2012, the utilities will be complying with the adopted rules for the first time and will take that into consideration in the workshop(s) to be held in 2011. In addition, we note that the utilities currently file their ten year plans with WestConnect and WECC in December, so we believe that the February 1 filing date with is realistic.

46. We also acknowledge that Tri-State's electric resource planning process does not include a Phase II. However, the electric resource planning process applicable to Black Hills and Public Service does include a Phase II. We will maintain the February 1 filing date, as that will allow the transmission planning proceeding to inform the Phase II ERP, which applies to two of the three utilities that will file transmission plans. Regarding its claim of limited resources, we note that Tri-State may file a petition for a waiver from the filing deadline and provide a detailed explanation at that time, rather than argue about this now in the abstract.

4. Transmission base case and supporting data

47. The Utilities request that the Commission delete the references to transmission base case data in Rule 3627(c)(I) and supporting data in Rule 3627(c)(IV).

The Utilities argue that the Commission would still be able to request this information, as additional supporting information pursuant to Rule 3627(h), but the Utilities would not be required to file this data with every transmission plan. The Utilities contend that, for national security reasons, certain data may only be released pursuant to FERC critical energy infrastructure information procedures and with a proper authorization. The Utilities also argue that this data is extremely voluminous and it would be an undue burden on the utilities to provide such data in biennial filings if neither the Commission nor stakeholders wish to review it.

48. We find it is essential for the Commission and stakeholders to have access to the transmission base case data and supporting data listed in Rules 3627(c)(I) and (c)(IV), in order to make the transmission planning process open, coordinated, and transparent. Further, Rule 1100 governs the treatment of confidential and highly confidential information and can be invoked if needed. The Commission is familiar with FERC's CEII requirements, and while that process may be required, there is no valid reason to restrict stakeholders' access to the information at this point. Regarding the contention that the data is voluminous, the data is available in electronic format and we will permit the utilities to provide an active link to the data in lieu of submitting the actual data. Finally, we wish to expedite the transmission planning proceeding as much as possible, which is why Rules 3627(c)(I) and (c)(IV) require the transmission base case data and supporting data to be filed upfront. We deny the exceptions filed by the Utilities on this ground.

5. Applicability of the rules to forthcoming CPCN applications

49. The Utilities argue that, for any CPCN applications that will be filed before the first transmission plans are due on February 1, 2012, the new transmission planning requirements should not be applied retroactively.

50. We agree that the transmission planning requirements adopted in this rulemaking should not be applied to CPCN applications that will be filed before the first transmission plan is due on February 1, 2012. That said, the requirements of FERC Order 890, CCPG, WestConnect, and WECC will remain in place. We also encourage the utilities to reach out to stakeholders, to the extent feasible and to keep in mind the spirit of the new rules, with respect to any such CPCN applications.

F. Adopted Rules Not Discussed

51. All other rules not discussed in this decision are adopted without change from Decision No. R11-0077, and as attached.

II. ORDER

A. The Commission Orders That:

1. Exceptions to Recommended Decision No. R11-0077 (Recommended Decision) filed on February 10, 2011 by Western Resource Advocates are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to the Recommended Decision filed on February 10, 2011 by the Colorado Independent Energy Association are denied, consistent with the discussion above.

3. The exceptions to the Recommended Decision filed on February 10, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy, Public Service Company of Colorado, and Tri-State Generation and Transmission Association, Inc., are granted, in part, and denied, in part, consistent with the discussion above.

4. The exceptions to the Recommended Decision filed on February 10, 2011 by Tri-State Generation and Transmission Association, Inc., are granted, in part, and denied, in part, consistent with the discussion above.

5. The Commission adopts the rules attached to this Order as Attachment A, consistent with the above discussion.

6. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

7. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

8. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

9. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

10. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 17, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

Decision No. C11-0492

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-526E

IN THE MATTER OF THE PROPOSED RULES RELATED TO ELECTRIC TRANSMISSION FACILITIES PLANNING, 4 CODE OF COLORADO REGULATIONS 723-3.

**ORDER DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: May 9, 2011
Adopted Date: April 27, 2011

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application for Rehearing, Reargument, or Reconsideration (Application for RRR) filed on April 12, 2011 by Black Hills/Colorado Electric Utility Company, L.P., doing business as Black Hills Energy; Public Service Company of Colorado; and Tri-State Generation and Transmission Association, Inc. (collectively, the Utilities) to Commission Decision No. C11-0318 issued March 23, 2011. On April 22, 2011, the Colorado Independent Energy Association (CIEA) filed a Motion for Waiver of Commission Rule 1308(a) and for Waiver of Response Time to Allow a Response to the Application for RRR (Motion). CIEA also filed a response to the Application for RRR of the Utilities. Being fully advised in the matter and consistent with the discussion below, we address the Application for RRR and the response.

B. CIEA Motion

2. In its Motion, CIEA requests that the Commission waive Rule 4 *Colorado Code of Regulations* 723-1-1308(a), Rules of Practice and Procedure, to enable it to file a response to

the Utilities' Application for RRR. CIEA states that the proposal for rule language made by the Utilities in their Application is a new proposal and, as such, no party has had an opportunity to consider and comment on the new language. CIEA argues that it should be allowed to respond to the Application for RRR for equity reasons. CIEA also requests that response time to its Motion be waived to expedite the Commission's decision.

3. We agree with CIEA that the proposal made in the Utilities' Application was not raised in this rulemaking proceeding prior to their Application filing. Our decision will be better informed by hearing CIEA's comments. Therefore, we waive response time to the Motion, grant CIEA's request to waive Rule 1308(a), and allow CIEA to respond to the Application for RRR.

C. Application for RRR

4. In their Application for RRR, the Utilities state that they believe the proposed rules on transmission planning are workable, but have concluded that there is one aspect of the rules that should be modified. The Utilities assert that the rules should contain more specific language regarding the treatment of confidential third-party data. The information developed for base case reports is prepared through the Colorado Coordinated Planning Group (CCPG) using Western Electricity Coordinating Council (WECC) data along with CCPG additions. The Utilities point out that WECC has a process in place to safeguard this third-party confidential information through its Data/Information Availability Policy, as attached to the Application for RRR.

5. The Utilities agree that the WECC policy allows for this confidential information to be used in regulatory proceedings, but they want to avoid disputes over access to the

information in the future. The Utilities propose that we add the following language to Rule 3627(a):

(IV) A utility may seek confidential or highly confidential treatment for information that may be included in its filing pursuant to Rule 1100. Where the filing includes confidential information that the utility has obtained from the Western Electricity Coordinating Council (“WECC”), a filing utility may first require that a party seeking access to WECC data obtain appropriate authorization from the WECC.

Application for RRR at p. 3.

6. The Utilities assert that this language will enable the Utilities to ensure that they are giving appropriate confidential treatment to the information obtained from WECC and not a lower standard created by the Commission.

7. In its response, CIEA states that it opposes the addition of this new language. CIEA states that it participated at each stage of this proceeding and objects to the new proposal being presented at this late stage. CIEA asserts that this request could have been proposed and discussed by the parties during the course of the rulemaking when all parties had the opportunity to respond and provide comments.

8. CIEA is also concerned that the proposed rule will present a formidable barrier to the parties’ ability to access confidential information which they need to effectively participate in the Commission’s biennial transmission planning proceedings. CIEA submits that it would be appropriate for the utilities involved to obtain whatever authority for parties to review confidential WECC information and make that information available pursuant to the Commission’s confidentiality provisions. Further, CIEA asserts that parties to the Commission’s docket should not be subjected to the requirement to seek further approval to review confidential information beyond that provided for by the Commission’s Rules of Practice and Procedure.

9. We agree with the issues raised by CIEA and therefore deny the Utilities' Application for RRR. The Utilities' concerns are best handled through the provisions of Rule 1100(a)(III). Specifically, when filing a motion for extraordinary protection

The motion shall include a showing that the information for which extraordinary protection is sought is highly confidential; that the protection afforded by the Commission's rules governing confidentiality provide insufficient protection for the highly confidential information; and that, if adopted, the extraordinary protections proposed by the movant will afford sufficient protection for the highly confidential information. The motion shall be accompanied by the specific form of nondisclosure agreement requested by the party.

10. Any party may make such a motion and request the specifics of the nondisclosure agreement. Further, we note that the WECC Data/Information Availability Policy states that "This policy does not supercede (*sic*) Federal, State, or Provincial law, including public disclosure laws." We balance the stakeholders' need for this information with the avoidance of disputes in the future and err on the side of disclosure until specific arguments are made.

D. Adopted Rules

11. We make no changes to the proposed rules adopted from Decision No. C11-0318, and as attached to this Order.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration to Commission Decision No. C11-0318 filed on April 12, 2011 by Black Hills/Colorado Electric Utility Company, L.P., doing business as Black Hills Energy; Public Service Company of Colorado; and Tri-State Generation and Transmission Association, Inc., is denied.

2. The Motion for Waiver of Commission Rule 1308(a) filed by the Colorado Independent Energy Association is granted and response time is waived.

3. The Commission adopts the rules attached to this Order as Attachment A, consistent with the above discussion.

4. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

5. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

6. A copy of the rules adopted by this Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 27, 2011.**

(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

JAMES K. TARPEY

MATT BAKER

Commissioners

CHAIRMAN RONALD J. BINZ
RESIGNED EFFECTIVE APRIL 8, 2011.