

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

PROCEEDING NO. 18F-0866E

DELTA-MONTROSE ELECTRIC ASSOCIATION,

COMPLAINANT.

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**MOTION TO INTERVENE OUT OF TIME OF
THE COLORADO ENERGY OFFICE OR, IN THE ALTERNATIVE, FOR LEAVE TO
PARTICIPATE AS *AMICUS CURIAE***

The Colorado Energy Office (“CEO”) by and through its undersigned counsel, respectfully requests that the Commission grant its motion to intervene out of time as a matter of right or permissively, or in the alternative, grants the CEO leave to participate as *amicus curiae*.

Rule 1400(a) Conferral

1. Pursuant to Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1-1400(a), the CEO conferred on this motion with the current parties in this proceeding: Delta-Montrose Electric Association (“DMEA”) and Tri-State Generation and Transmission Association (“Tri-State”). DMEA does not oppose the relief CEO requests. Tri-State opposes the motion and reserves the right to respond.

Grounds for Intervention

2. The CEO has a statutory mandate to:
- (a) Sustain the Colorado energy economy and promote all Colorado energy;
 - (b) Promote economic development in Colorado through energy-market advances that create jobs;
 - (c) Encourage Colorado-based clean and innovative energy solutions

that include traditional, clean, and renewable energy sources in order to encourage a cleaner and balanced energy portfolio; (d) Promote energy efficiency; (e) Increase energy security; (f) Lower long-term consumer costs; and (g) Protect the environment.¹

3. The CEO carries out its mandate, in part, by intervening in PUC proceedings where it can bring a unique perspective representing the interests of Governor's office and the state of Colorado as a whole. Under § 40-6-108(2)(b), C.R.S., the CEO "shall be granted leave to intervene as a matter of right, upon a timely filing of a petition or other pleading in accordance with this section, in adjudicatory matters affecting gas or electric utilities; except that the office shall not be a party to any individual complaint between a utility and an individual."

4. The CEO recognizes that this intervention request comes after the 30-day intervention period ending on January 9, 2019, established by the Commission's Notice of Hearing filed on December 10, 2018; however, the CEO asks the Commission to find good cause for its late-filed intervention. Governor Jared Polis appointed Will Toor as CEO's new director, and Mr. Toor took office on January 14, 2019. Mr. Toor was not able to review the Complaint and make a decision to participate in this proceeding until January 17, 2019, and with the holiday weekend, January 22, 2019, was the earliest that CEO could file this motion. The CEO asserts that this late-filed intervention will not prejudice any other parties in this proceeding because the Commission has not ruled on any of the requests for intervention, nor has it established a procedural schedule.

5. This proceeding is a Complaint filed by DMEA, an electric cooperative association, against Tri-State, a generation and transmission association that supplies DMEA with electricity under a wholesale electric service contract.² DMEA wishes to

¹ § 24-38.5-101(1), C.R.S.

² Compl. ¶¶ 1-4.

withdraw voluntarily from its membership with Tri-State in order to take advantage of less expensive renewable generation resources and enable economic development in its service territory.³ DMEA asserts that the exit charge Tri-State has offered DMEA is unjust, unreasonable, and discriminatory, and DMEA asks the Commission to set a reasonable charge.⁴

6. Although this is a complaint case against a utility, DMEA is not an individual and the issues raised by this proceeding will affect more than just DMEA as a member of Tri-State. DMEA serves approximately 28,000 members in Delta, Montrose, and Gunnison Counties.⁵ The outcome of this proceeding will determine whether these 28,000 customers must remain tied to the wholesale rates and generation mix of Tri-State or set the just and reasonable price that these 28,000 customers must pay to be relieved of those obligations. Pursuant to § 24-38.5-102, C.R.S., the CEO works with communities in Delta, Montrose, and Gunnison Counties and DMEA to promote “clean and renewable energy,” “energy efficiency technologies and practices,” and “energy storage systems.”⁶ These changes may only be possible if the Commission sets a just and reasonable charge for DMEA to withdraw from Tri-State. Additionally, CEO’s participation in this proceeding will further its mandate of “lower[ing] long-term consumer costs”⁷ for Colorado customers of DMEA and of the other members of Tri-State. Thus, the CEO’s mission and statutory authority serve as a legally protected right affected by this proceeding sufficient to justify intervention as of right under Rule 1401(b) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-1401(b).

³ Compl. ¶¶ 5-7.

⁴ Compl. ¶¶ 10-15, 18.

⁵ Compl. ¶ 2.

⁶ See § 24-38.5-102(1)(a), C.R.S.

⁷ See § 24.38.5-101(1)(f), C.R.S.

7. If the Commission does not permit the CEO to intervene as a matter of right, the CEO asks the Commission to grant it permissive intervention under Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1-1401(c). The CEO's mission and statutory mandate, as stated above, serve as a pecuniary and tangible interest in this proceeding. The just resolution of this proceeding will likely also affect other members of Tri-State in Colorado, whose electric generation mix and whose customer's energy rates fall within the CEO's statutory mandate. If the Commission sets a just, reasonable, and nondiscriminatory exit charge for DMEA, it will serve to protect the remaining members of Tri-State—and by extension, their individual customers—from the burden of having to pay additional costs associated with DMEA's exit. Additionally, if the Commission prescribes a formula to establish a just and reasonable exit charge, it may allow other members of Tri-State to exit voluntarily and fairly in order to pursue additional renewable energy generation and economic development in their service territories.

8. The CEO does not currently know precisely what evidence, if any, it will bring forward in this proceeding; however, the CEO's intervention will not broaden the issues raised in this proceeding.

9. No other intervener can represent the mission of the CEO and the interests of the Governor's office.

Alternative Request to Participate as *Amicus Curiae*

10. If the Commission denies the CEO's request to intervene, the CEO asks alternatively for permission to participate as *amicus curiae* pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 CCR 723-1-1200(c). As *amicus curiae*, the CEO intends to address any legal issues that arise or have arisen in this proceeding, including Tri-State's Motion to Dismiss asserting that the Commission does not have jurisdiction to hear this Complaint.

WHEREFORE, the CEO respectfully requests that the Commission grant its permission to intervene out of time as a matter of right or permissively, or in the alternative, to participate as *amicus curiae*. The CEO requests all pleadings, correspondence, discovery and other documents be served on the following individuals:

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<p>Lindsey Stegall Jocelyn Durkay Colorado Energy Office 1580 Logan Street, Suite 100 Denver, CO 80203 lindsey.stegall@state.co.us jocelyn.durkay@state.co.us</p>	<p>Electronic documents only to: Barbara Dory barbara.dory@coag.gov</p>

Respectfully submitted this 22nd day of January, 2019.

PHILIP J. WEISER
Attorney General

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