

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0195E

IN THE MATTER OF THE NEAR-TERM ORGANIZED MARKET ACTIVITIES OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

JOINT COMMENTERS¹ COMMENTS IN RESPONSE TO TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.'S ("TSGT") REPORT ADDRESSING NEAR-TERM ORGANIZED MARKET ACTIVITIES ("Report")

The Joint Commenters submit their Comments in Response to TSGT's Report that was filed on June 12, 2023, in accordance with Hearing Commissioner Blank's Decision No. C23-0268 mailed April 24, 2023. In the related Organized Wholesale Market ("OWM") Rulemaking Proceeding, Docket No. 22R-0249E, Joint Commenters submitted Supplemental Comments on January 12, 2023. Their proposed OWM/RTO Process Framework (the "Process Framework") was attached to their Supplemental Comments. Although that Process Framework has yet to be incorporated in final Commission rules, the Joint Commenters believe it is relevant to how the Commission and interested parties may proceed following TSGT's Report, and these Comments are guided by that Process Framework.

I. BACKGROUND

The Commission opened this non-adjudicative miscellaneous proceeding:

to ensure that the Commission is adequately informed of Tri-State's plans for market participation and to timely highlight our interest in areas of concern previously outlined with organized market participation and our desire that any

¹ Joint Commenters include ADVANCED ENERGY UNITED, CLEAN ENERGY BUYERS ASSOCIATION, CLIMAX MOLYBDENUM COMPANY, COLORADO ENERGY CONSUMERS, COLORADO SOLAR AND STORAGE ASSOCIATION, INTERWEST ENERGY ALLIANCE, SIGNAL TECH COALITION, SOLAR ENERGY INDUSTRIES ASSOCIATION, THE SUSTAINABLE FERC PROJECT, WESTERN GRID GROUP, AND WESTERN RESOURCE ADVOCATES.

participation occur in a way that maximizes benefits for Colorado and Colorado's electricity customers.²

The Commission asked TSGT to file a report detailing its plans “for its loads, resources, and transmission assets in the Western Area Power Administration, Colorado-Missouri Region Balancing Authority to participate in the [Southwest Power Pool] RTO in the Western Interconnection” and to respond to concerns and issues described in the Decision opening this M-docket.³ After receiving any responses to TSGT's Report and any replies, the Commission stated its intention to conduct a workshop in August or September on the information gathered and the issues raised in this proceeding before TSGT's expected commitment to participate in SPP RTO West in October 2023.⁴ Notably, it refers to TSGT's Update filed February 2, 2023, in the OWM Rulemaking, Docket 22R-0249E, which stated that “it appears increasingly likely that [TSGT's] anticipated market entry timeframe may shift to 2026. (Footnote omitted)”⁵ After the forthcoming workshop, TSGT's Report, related comments, and any Commission decisions in this M-docket will be made part of the record in the OWM Rulemaking. As a practical matter, further proceedings and finalization of the OWM rules in Docket No. 22R-0249E have been deferred until the conclusion of this M-docket.

TSGT filed its Report on June 12, 2023. In addition to these Response Comments, the Joint Commenters, collectively and possibly individually, intend to participate in the forthcoming workshop. Joint Commenters also intend to participate

² Dec. C23-0268, ¶ 4.

³ *Id.*

⁴ *Id.*, ¶ 33.

⁵ TSGT's Report at 5.

actively in the OWM rulemaking proceeding when it resumes, which should occur promptly.

II. Regardless of TSGT's Timeline for Joining SPP RTO West, SB21-072 Requires TSGT to Join an OWM, as Defined by Statute and the OWM Rules to be Adopted by the Commission, by 2030.

TSGT is pursuing an accelerated process to accomplish its stated objective to join SPP RTO West. This process has been advancing over several years and appears to have at least two more years to reach conclusion, as TSGT's Report describes at pages 2-7. That section of the Report also explains TSGT's reasons for joining an RTO/OWM more quickly than Public Service Company of Colorado and Black Hills-Electric.

Nevertheless, TSGT is defined as a "transmission utility" by SB21-072, §40-5-108(1)(b), CRS. As such, Colorado law requires it to join an OWM as defined by SB21-072 by 2030, subject to possible waiver of that requirement if it can prove it qualifies. SB21-072 defines an OWM as an RTO or ISO that meets ten specified criteria. The Report addresses each of the criteria in only a cursory way, relying in large part on FERC general rule requirements and FERC's approval of SPP's RTO in the Eastern Interconnect in 2004.⁶ That is insufficient proof for the Commission to rely on for an OWM finding.

The ten SB21-072 criteria require extensive and competent factual evidence and findings by the Commission based on the evidence presented at an adjudicatory hearing, with sworn testimony, opportunities for discovery, responsive testimony from intervenors, and statements of position. While helpful, TSGT's Report, informal responsive comments, and only one of three Commissioners presiding in an M-

⁶ Report, § II, pp. 10-20.

docket is insufficient for a Commission decision. An adjudicatory proceeding with its due process protections for all parties is required for the Commission to have sufficient, competent evidence to make the necessary findings and conclusions about whether SPP RTO West qualifies as an OWM.

The OWM rules to be adopted in Docket 22R-0249E will define the adjudication process the Commission will follow to reach its conclusions whether an RTO or ISO meets the criteria to qualify as an OWM. It also will further define and clarify the ten SB21-072 criteria that must be met to qualify as an OWM.

TSGT's timeline with SPP RTO West apparently will advance ahead of final adoption of OWM rules and subsequent OWM adjudicatory proceedings to determine whether TSGT's choice of SPP RTO West qualifies as an OWM. That cannot be a foregone conclusion just because of TSGT's previous commitment. TSGT's timeline, therefore, puts it at risk that the Commission may conclude that SPP RTO West fails to meet one or more of the ten SB21-072 OWM criteria. Consequently, TSGT may be challenged to meet the 2030 deadline unless any deficiencies found by the Commission are corrected promptly. That would be more difficult after all terms and conditions of TSGT's participation in SPP RTO West are finalized.

That unfortunate result could be mitigated by adoption of the Joint Commenters' Process Framework as explained in the next section.

III. The Stakeholder Process Described in the Process Framework Could be Adapted to TSGT's Circumstances, Prior to Adoption of OWM Rules.

The Joint Commenters summarized the first step of the three-step Process Framework in their Supplemental Comments filed in the OWM rulemaking on January 12, 2023, as follows:

The first step prescribes Commission Information Meetings (“CIMs”), stakeholder meetings, technical conferences, and other types of informal proceedings with detailed presentations of RTO options by Colorado Transmission Utilities, RTO entities, other experts, and stakeholders that address the OWM qualification criteria in SB21-072 and public interest issues. They would build on information and analyses already generated in Docket 19M-0495E, but also include updated information, analyses, and evaluations, with opportunities for stakeholders and the Commission to ask questions and seek additional information as needed for a full vetting of potential OWM options. The broadly stated objective would be to gather all relevant information and move toward consensus on major issues, particularly factual matters.

As applied to TSGT and its plan to join SPP RTO West, the Process Framework need not be adopted and prescribed by the OWM rules. It can be implemented before any rules are finalized.

The workshop contemplated for late August or early September in this M-docket would be the first session. The results of that workshop would be the basis for a few additional sessions, each with a prescribed agenda of specific topics to advance the discussion from the prior session. The workshops’ goal would be to bring forth information on relevant topics related to the OWM statutory criteria where details are currently lacking and fully vet contested issues with an aim toward achieving as much consensus as possible. The plan could set an end date for the sessions, perhaps at the end of 2023 or early 2024.

To date, no significant discussion regarding the terms of potential RTO membership has taken place in a public setting. The Report refers to two stakeholder sessions held on September 7 and November 9, 2022, pursuant to the January 2022 TSGT ERP Settlement Agreement.⁷ However, those sessions apparently were not focused on the OWM criteria prescribed by SB21-072. The

⁷ Report, p. 4.

workshops proposed by the Joint Commenters here would focus on the SB21-072 OWM criteria and the related issues raised by Hearing Commissioner Blank in Decision No. C23-0268, including Interconnection Access, Seams, Emission Tracking, Transmission Expansion and Cost Allocation, and Governance, all of which are particularly important considerations for the Commission's OWM qualification decision and the public interest. After reviewing the Report, some of the Joint Commenters concerns include:

1. Further explanation of progress on GI queue problems, transition plans, and whether the interconnection preference will be given to successful generation bidders in TSGT's Colorado ERP proceedings?⁸
2. Additional information on the Seams issues that will remain and what new issues will arise after joining?⁹
3. Further explanation of progress and any revisions to the draft GHG Dispatch Proposal, when it may be finalized, and other GHG tracking and dispatch rules.¹⁰
4. How can Colorado's representatives on the Regional State Committee and other governance committees and bodies within SPP be confident of protecting Colorado's interests regarding emissions reduction, affordability, and other issues as they arise, and what commitment of staff and other resources will be needed to effectively represent Colorado's interests?¹¹
5. How does TSGT intend to comply with § 40-5-108(1)(a)(IX) when its Colorado generation and transmission assets outside the WACM BA will be excluded from SPP RTO West?¹²
6. What are the current interconnection capabilities and limitations between SPP RTO East and proposed SPP RTO West, how does that affect initial operation of RTO West, what are plans for merging them into a single RTO, what additional facilities will be needed to effect the merger into a single RTO, and what is the estimated cost?

Thorough vetting of these issues in the workshop and stakeholder meetings will facilitate the adjudicatory process for determining if SPP RTO West meets the statutory criteria for an OWM and whether TSGT joining it is in the public interest.

⁸ See Report, § III, pp. 20-24.

⁹ See Report, § IV, pp. 24-30.

¹⁰ See Report, § V, pp. 30-34 and App. D.

¹¹ See Report, § VII, pp. 36-39.

¹² See Report, § II, p. 18.

IV. The OWM Rulemaking Should be Completed As Soon As Reasonably Possible and Should Adopt the Second and Third Steps of the Process Framework So That the Adjudication of (1) Whether SPP RTO West Qualifies as an OWM, and (2) Whether TSGT Joining SPP RTO West Is In the Public Interest, Can be Completed Promptly Under New OWM Rules.

The second and third steps in the Process Framework are a Declaratory Order adjudication of whether an RTO qualifies as an OWM and adjudication in an application or other proceeding of whether it is in the public interest for a transmission utility to join a qualified OWM/RTO. In urgent or other appropriate circumstances, the two proceedings can be consolidated into one. TSGT's imminent plans to make additional commitments toward joining SPP RTO West appear to qualify as such circumstances. Prompt adjudication of both the OWM qualification question and the public interest question is called for because of the *fait accompli* scenario that the Commission would confront in adjudicating those issues after TSGT has joined and is operating in SPP RTO West. Earlier adjudications also may enable the Commission and parties to influence the terms and conditions of SPP RTO West's design and tariff favorably if they occur before finalization of the terms and conditions.

There is, therefore, some urgency to resuming and completing the OWM Rulemaking. Realistically, a new hearing in Docket 22R-0249E probably could not be scheduled before early fall. An order resuming the OWM Rulemaking should solicit additional comments in advance of a hearing date.¹³ Finalizing the OWM rules would both ameliorate the current TSGT situation and provide necessary guidance to Public Service Company and Black Hills-Electric as they develop their

¹³ The rulemaking hearing schedule could run concurrently with the TSGT stakeholder meetings proposed in Section III above.

OWM plans. It would also benefit stakeholders by enabling them to know how to prepare.

There is a much less satisfactory alternative to expedite decisions to address the TSGT situation. That would be to adjudicate whether SPP RTO West qualifies as an OWM and whether it is in the public interest for TSGT to join it before OWM rules are adopted. SB21-072 would provide legal guidance for both cases, supplemented by the Commission's broad regulatory authority, but without the benefit of thoroughly considered and adopted OWM rules.

V. CONCLUSION

The Joint Commenters appreciate the opportunity to respond to TSGT's Report and the Commission's consideration of the foregoing comments.

Dated: July 12, 2023

Respectfully submitted,

ADVANCED ENERGY UNITED

/s/Brian Turner

Brian Turner, Director
Advanced Energy United
1801 Pennsylvania Ave. NW, Suite 410
Washington, DC 20006
Tel: 202.380.1950, x 3047
E-mail: bturner@advancedenergyunited.org

CLEAN ENERGY BUYERS ASSOCIATION

Heidi Ratz

Heidi Ratz

Deputy Director, Market and Policy Innovation
Clean Energy Buyers Association
1425 K Street Suite 1110
Washington, DC 20005
Tel: 888-458-2322
HRatz@cebuyers.org

CLIMAX MOLBYDENUM COMPANY

By: /s/ Richard L. Fanyo

Richard L. Fanyo, Reg. No. 7238
RLFanyo Law LLC
8012 Routt Street
Arvada, CO 80005
Tel: 303-910-4370
Email: rfanyo@rlfanyolaw.com

Attorney for Climax Molybdenum Company

/s/ Peter M. Ewen

Peter M. Ewen
Regulatory Strategy Lead, Energy and Power Solutions
Freeport-McMoRan Inc.
333 N. Central Ave., Suite 20.146
Phoenix, AZ 85004
480-698-1269
pewen@fmi.com

HOLLAND & HART LLP

/s/Austin Rueschhoff

Austin Rueschhoff, #48278
Holland & Hart LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202
Telephone: (303) 295-8000
Facsimile: (303) 416-4415
darueschhoff@hollandhart.com

ATTORNEYS FOR COLORADO ENERGY CONSUMERS

COLORADO SOLAR AND STORAGE ASSOCIATION

/s/ Mike Kruger

Mike Kruger
President and CEO
Colorado Solar and Storage Association
1536 Wynkoop St., Suite 104
Denver, CO 80202
(303) 333-7342
mkruger@coassa.co

/s/ Ellen Howard Kutzer

Ellen Howard Kutzer, #46019
General Counsel
Colorado Solar and Storage Association
1536 Wynkoop St., Suite 104
Denver, CO 80202
303.333.7342
ekutzer@coassa.co

ATTORNEY FOR COSSA

INTERWEST ENERGY ALLIANCE

/s/ Christopher Leger

Christopher Leger, CO #42013
Interwest Energy Alliance
3433 Ranch View Dr.
Cheyenne, WY 82001
Telephone: 307-421-3300
E-mail: chris@interwest.org

/s/ Lisa Tormoen Hickey

Lisa Tormoen Hickey, CO #15046
Interwest Energy Alliance
P.O. Box 7920
Colorado Springs, CO 80933
Telephone: 719-964-5526
E-mail: lisa@interwest.org

On Behalf of Interwest Energy Alliance

SIGNAL TECH COALITION

/s/ Quinn Antus

Quinn Antus
Executive Director
555 East 8th Avenue, Suite 300
Denver, CO. 80203
Tel: 407-756-3805
quinn@signaltechcoalition.org

SOLAR ENERGY INDUSTRIES ASSOCIATION

/s/ Sara Birmingham

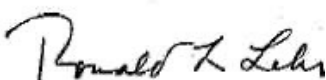
Sara Birmingham
Senior Director State Policy, West
Solar Energy Industries Association
(415) 385-7240
sbirmingham@seia.org

THE SUSTAINABLE FERC PROJECT

/s/ Kelsie Gomanie

Kelsie Gomanie
Advocate
720-317-1297
kgomanie@nrdc.org

WESTERN GRID GROUP

By: 

Ronald L. Lehr
Western Grid Group
4950 Sanford Circle
West Englewood, CO
80113
303 504 0940
rllehr@msn.com

WESTERN RESOURCE ADVOCATES

Nancy L. Kelly

Nancy L. Kelly
Senior Policy Advisor
208-904-0488
nancy.kelly@westernresources.org

Vijay Satyal
Regional Energy Markets Manager
385-722-2551
vijay.satyal@westernresources.org

Parks Barroso, Reg. No. 55468
Staff Attorney
720-927-3058
parks.barroso@westernresources.org
Western Resource Advocates
1536 Wynkoop Street, Suite 500
Denver, CO 80202
Attorney for Western Resource Advocates