

EMPIRE ELECTRIC ASSOCIATION, INC.
a Colorado non-profit, cooperative electric corporation

**IN RE THE MATTER OF
CONSIDERATION OF STANDARDS SET FORTH IN THE
PUBLIC UTILITIES REGULATION POLICIES ACT
AS AMENDED BY THE ENERGY INDEPENDENCE AND SECURITY ACT OF
2007**

**FINDINGS AND FINAL DETERMINATION
BY THE BOARD OF DIRECTORS
OF EMPIRE ELECTRIC ASSOCIATION, INC.**

As required by the Public Utilities Regulation Policies Act of 1978 (16 U.S.C. Sections 2601, et seq.) (“PURPA”), as amended by the Energy Independence and Security Act of 2007 (“EAct of 2007”), the Empire Electric Association, Inc. (“EEA”) Board of Directors (“Board”) hereby enters its Findings and Final Determination regarding the requirement that EEA consider three applicable standards of PURPA.

FINDINGS

1. PURPA requires non-regulated electric utilities with total annual retail electric sales greater than 500 million kilowatt hours to “. . . consider {certain standards established by PURPA} and make a determination concerning whether or not it is appropriate to implement such standard(s) to carry out the purposes of (PURPA}.” 16 U.S.C. § 2621(a).
2. The purposes of PURPA are to encourage “(1) conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use of facilities and resources by electric utilities, and (3) equitable rates to electric consumers.” 16 U.S.C. § 2611.
3. Under the EAct of 2007, three standards applicable to EEA were added to PURPA: integrated resource planning, rate design modifications to promote energy efficiency, and access to information for time-based rates.
4. EEA is an electric utility holding a certificate of public convenience and necessity from the Colorado Public Utilities Commission and is exempt from regulation by virtue of a vote of its members pursuant to C.R.S. § 40-9.5-104. EEA also holds a certificate of public convenience and necessity from the Utah Public Service Commission. EEA has annual energy sales in excess of 500 million kilowatt hours, and thus it is required to comply with PURPA. EEA is a distribution cooperative and purchases its full wholesale power requirements from Tri-State Generation &

Transmission Association, Inc. ("Tri-State") under a long-term full-requirements contract.

5. On November 21, 2008, the Board passed Resolution 3-2008 formally commencing EEA's consideration of the PURPA standards under EAct of 2007.

6. Notice of the PURPA hearing on October 16, 2009, in the EEA Cortez headquarters was posted in the Cortez Journal on May 26, 2009, and in the Dolores Star on May 29, 2009, in the Mancos Times on May 27, 2009, in the San Juan Record on May 27, 2009, and in the Dove Creek Press on May 28, 2009. The hearing notice was also published on the EEA website on May 21, 2009.

7. The hearing was conducted in Cortez on October 16, 2009, as noticed, with the Board in full attendance and President Bill Bauer presiding in front of certified court reporter Barbara Ellis. EEA General Counsel John Barlow Spear was in attendance. Neal Stephens, General Manager of EEA, and Jim Spiers of Tri-State, provided testimony.

8. General Manager Stephens provided written testimony which identified the statutory requirements for the three applicable PURPA standards. He stated:

A. *Integrated Resource Planning* – PURPA requires each electric utility to integrate energy efficiency into its plans, and adopt policies establishing cost-effective energy efficiency as a priority resource. EEA has developed and implemented currently meets this standard and relies on Tri-State for an Integrated Resource Plan.

B. *Rate Design Modifications to Promote Energy Efficiency Investments* – PURPA requires that rates charged by any electric utility shall align utility incentives with the delivery of cost-effective energy efficiency, and promote energy efficiency investments. EEA has developed and implemented an energy education and training program for its members with an active rebate program for CFL change outs and/or new installations. EEA has also implemented demand side management and energy audit programs for governmental agencies as well as commercial and industrial customers. Further, EEA also offers a net-metering program for its residential and commercial customers.

C. *Information Time-based Rates* – EEA provides direct access, in written or electronic machine-readable form as appropriate, information concerning time-based electricity prices in the wholesale electricity market, along with retail prices or rates that are available to purchasers. Further, members are provided information on the sources of power provided by EEA, including the greenhouse gas emissions associated with each type of generation for intervals during which such information is available on a cost-effective basis. EEA does not directly own or control any generation resources. EEA has begun

discussions, review, and consideration of different rate designs that will promote energy efficiency in a non-discriminatory manner and is budgeting for a rate workshop in 2010 designed to fully explore those concepts.

9. Jim Spiers, Senior Manager responsible for Planning, Rates and Member Services for Tri-State, submitted written testimony. He testified concerning the three PURPA standards:

A. *Integrated Resource Planning* -- Tri-State has a long history of providing energy efficiency credits (EEC) programs and measures to its Members, such as EEA, that the Members can then make available to the member-consumers. In addition in Tri-State's Integrated Resource Plan, filed with Western Area Power Administration in 2007, Tri-State has modeled certain levels of energy efficiency to determine the impact and value of different measures and programs to Tri-State. Based in part on this analysis, Tri-State has made further changes in 2008 to the EEC program, are evaluating expansion and refinement of program elements in 2009 and have surveyed the managers of the Member Systems to determine the programs they would be interested in for implementation with their membership. In energy efficiency efforts the consumer must be willing to participate in energy efficiency. However, there are steps the utility can take to help the consumer in terms of education and training, program and measure offerings, financial contribution, etc. Both EEA and Tri-State have a role in supporting EEA's member-consumers in these regards.

In the face of this, there are a number of steps Tri-State is taking with EEA and the other 43 Members to effectively integrate energy efficiency into resource planning, including (i) providing education and training, (ii) utilizing sophisticated modeling of energy efficiency as a resource, (iii) providing financial support to buy down the first cost of programs and measures, and (iv) developing deployment options through third parties. Also, EEA, in conjunction with the other 43 Member-Systems of Tri-State, can continue to influence Tri-State's actions on its behalf through its role in Mission and Policy formulation and implementation, approval of resource acquisition or investment decisions, and approval of budget investment decisions.

B. *Rate Design Modifications to Promote Energy Efficiency Investments* -- Tri-State's wholesale rate design sends a strong signal to EEA and the 43 other Member-Cooperatives to reduce their Member Coincident Demand during Tri-State's Peak Periods. The demand/energy split of 58/42% in Tri-State's wholesale rate structure rewards EEA and its member-consumers for actions that lessen Tri-State's demand requirements. The current rate structure calls for demand pricing based on the Member's highest thirty (30) minute integrated total demand measured in each monthly billing period during the Tri-State Summer Peak Periods or the Winter Peak Periods. This is what is referred to as TPP-MCP rate structure. The Tri-State wholesale rate design is established during periodic review by a Rate Committee comprised of Tri-State Directors, Member Managers/CEOs and Member Directors, supported by Tri-State staff and rate consultants, as necessary. The Rate Committee examines all aspects of wholesale

rate design and makes recommendations to the Tri-State Board for consideration. Ultimately, it is up to the Tri-State Board to adopt the rate design.

Under the current rate design, Tri-State is seeing a reduction in demand revenues, consistent with some Members effectively avoiding their coincident demand during Tri-State's Peak Period. Initial evidence indicates the signal is having the desired effect. In addition to these actions by Tri-State, EEA, in conjunction with the other 43 Member-Systems of Tri-State, can continue to influence Tri-State's actions on its behalf through its role in setting Tri-State's rate structure and in advising on energy efficiency program and measure design that enable EEA and other Members and their member-consumers to participate in such programs. Tri-State has a rate signal that creates certain energy reduction incentives, there are additional steps EEA may consider taking to promote energy efficiency actions through its retail rate structure that are not limited by contract or policies of Tri-State.

C. *Information Time-based Rates* -- Tri-State sends 30 minute, and in some cases, 3 minute load data to EEA that can be, and often is, shared with the member-consumers who are interested in changing their consumption patterns to shift load from Member Coincident Peaks during Tri-State's Peak Periods. EEA has developed time differentiated rates and provides those rate signals to their member-consumers. In addition, Tri-State periodically provides to EEA its resource portfolio by type of fuel. The most recent is included in the Electric Resource Plan filed with the Colorado Public Utilities Commission in October 2007. Also, Tri-State Staff has provided EEA an analysis of the "carbon" footprint or greenhouse gas emissions, taking into account Tri-State's entire generation fleet, power purchases, transmission resources and fleet operations. Tri-State also has information available on the greenhouse gas emissions of the different types of generation in Tri-State's resource mix. Thus, EEA will have data necessary to make whatever disclosure it deems appropriate relative to this Standard. Although Tri-State provides information to EEA as addressed in this Standard, it is up to EEA to determine what information to provide to its member-consumers.

10. No members of the public testified at the hearing.

11. EEA agreed to receive comments from the public after the October 16, 2009, hearing until October 26, 2008, but no comments were submitted.

12. Between the date of the hearing and November 20, 2009, the Board gave consideration to the evidence, presented at the hearing and through the exhibits made part of the record, and applied that evidence to the three PURPA standards.

FINAL DETERMINATION

WHEREFORE, the EEA Board of Directors, after receiving evidence through written testimony of Neal Stephens and Jim Spiers, having reviewed all the exhibits in

the record, and having reviewed the three applicable PURPA standards, and considered them as set forth herein, hereby enters the following Final Determination:

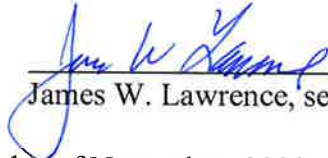
A. EEA complies with the three PURPA standards under the EAct of 2007, including all procedural and time requirements, pertaining to integrated resource planning, rate design modification to promote energy efficiency investments, and access to information for time-based rates.

B. EEA staff shall post this Final Determination on the EEA Website under PURPA and shall make this Final Determination, and its supporting record, available to the public as provided for in the EEA records policy.

C. This Final Determination shall be provided to the United States Department of Energy and to the Colorado Public Utilities Commission.

D. This Final Determination, and the supporting record, shall be held by EEA for seven years at which time the Board may determine whether to retain the files or to destroy them.

THIS FINAL DETERMINATION is made this 20th day of November, 2009, by a unanimous vote of the EEA Board of Directors, and is approved and adopted as the Final Determination of the EEA Board of Directors by Resolution 4-2009.



James W. Lawrence, secretary

Dated at Cortez, Colorado this 20th day of November, 2009.