

BACKGROUND INFORMATION FOR TRI-STATE 1041 PERMIT RESOLUTION
PERMITTING AUTHORITY MEETING DATE: November 22, 2022

TO: Board of Commissioners, Prowers County Colorado sitting as the Permitting Authority for 1041 Permitting

FROM: Darla Scranton Specht, Esq., Special County Attorney for 1041 matters

SUBJECT: A Resolution setting forth the findings and conclusions in support of approval of the APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT

ATTACHMENT: Proposed Resolution to Approve and Issue a 1041 Permit for that portion of Tri-State’s 230-Kilovolt Transmission Project located in Prowers County

SUMMARY

Attached is a proposed Resolution setting forth the findings and conclusions of the Board of County Commissioners, Prowers County, Colorado (sitting as the Permitting Authority for 1041 permitting) approving Tri-State Generation and Transmission Association, Inc.’s APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT (1041 Permit) and issuing the 1041 Permit in the form set forth in Appendix A to the Resolution.

BACKGROUND

Tri-State Generation and Transmission Association, Inc. (“Tri-State”) is seeking a 1041 Permit from the Permitting Authority to site the portion of the transmission line known as the Burlington-Lamar 230-Kilovolt Transmission Project to be located in Prowers County, Colorado, which will provide needed infrastructure to address reliability needs of Tri-State’s electricity transmission system. Several solar and wind developers are currently actively seeking leases for proposed projects to interconnect with Tri-State’s Burlington-Lamar 230-Kilovolt Transmission Project.

FINANCIAL IMPLICATIONS

Approval of this Resolution will not have a negative impact on Prowers County’s finances. Approval of this Resolution will include payment by Tri-State of Prowers County’s staff, attorney and independent contractor costs and other costs through a financial deposit from Tri-State. Future consideration and approval of 1041 permit applications of solar and wind projects which may be located in Prowers County will generate additional annual property taxes and costs reimbursements collected by Prowers County.

STAFF RECOMMENDATIONS

The Staff Recommendations were presented to the Permitting Authority at a public hearing on August 3, 2022, and Staff indicated at the August 3, 2022 hearing that Tri-State’s requested amendments to the Staff Recommendations were acceptable to Staff.

RESOLUTION NO. 2022-17

A RESOLUTION TO APPROVE TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.'S PROWERS COUNTY APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT

WHEREAS, on May 10, 2022, Tri-State Generation and Transmission Association, Inc. (“Tri-State”) submitted a final APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT for the portion of the transmission line project located within Prowers County, Colorado; and

WHEREAS, Tri-State is a member-owned and member-governed not-for-profit cooperative power supplier with a mission to provide its member systems a reliable, affordable and responsible supply of electricity; and

WHEREAS, Tri-State currently has forty-five (45) members, which includes forty-Two (42) electric distribution cooperatives and public power districts spanning four (4) states and providing electricity to more than one million (1,000,000) consumers across approximately 200,000 square miles; and

WHEREAS, in the first half of 2022, Tri-State issued a request for proposals for new energy sources focused on renewable and carbon-free projects, inclusive of wind, solar, hydroelectric, geothermal, or biomass energy, and energy storage projects that can be in place in the year 2025; and

WHEREAS, issuance of a 1041 permit for the portion of the Burlington-Lamar 230-KiloVolt Transmission Project that is located in Prowers County by the Prowers County 1041 Permitting Authority is a necessary part of Tri-State’s plans for transmission and reliability of electrical power to Tri-State’s members; and

WHEREAS, Tri-State’s final APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT was determined complete and a public hearing was held on the completed 1041 permit application on August 3, 2022; and

WHEREAS, the Prowers County 1041 Permitting Authority has considered the Staff Recommendations, Tri-State’s presentation and comments and comments submitted by the public;

NOW, THEREFORE, BE IT RESOLVED BY THE 1041 PERMITTING AUTHORITY OF PROWERS COUNTY, COLORADO, that:

1. The APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT is hereby **APPROVED**.
2. The Prowers County 1041 Permit – Tri-State Generation and Transmission, Inc. Application for Site Selection and Construction of Major Facilities of a Public Utility Burlington-Lamar

230-KiloVolt Transmission Project in the form attached to this Resolution as Appendix A, is hereby **APPROVED**.

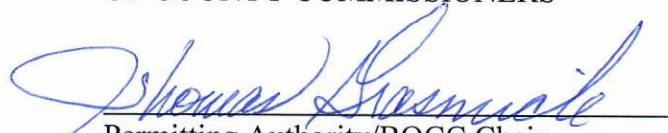
3. Tri-State's requests that for the Prowers County 1041 Permitting Authority to waive the financial security set forth in §2.402 of the *Guidelines and Regulations For Areas and Activities of State Interest, County of Prowers, State of Colorado, Adopted: April 19, 2004, as amended on August 17, 2006 and November 14, 2017* is hereby **APPROVED** with the Prowers County Permitting Authority having considered the following factors:

- a. Tri-State is a not-for-profit cooperative;
- b. Tri-State's purpose for constructing the 230-KiloVolt Transmission Project is to provide consistent and reliable electricity to over one million (1,000,000) consumers, inclusive of consumers located in Prowers County; and
- c. Other financial requirements for Tri-State's Prowers County 1041 Permit for the approximate twenty-two (22) miles of 230-KiloVolte Transmission line located in Prowers County are not being waived.

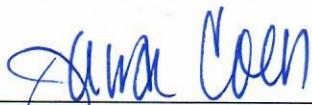
4. This Resolution shall become effective immediately upon passage and approval by a majority of the Prowers County Permitting Authority.

INTRODUCED, PASSED AND ADOPTED this 22nd day of November, 2022.

COUNTY OF PROWERS, STATE OF COLORADO
BY AND THROUGH ITS 1041 PERMITTING
AUTHORITY WHICH CONSISTS OF ITS BOARD
OF COUNTY COMMISSIONERS


Permitting Authority/BOCC Chair

Attest:


Clerk of the Board

Date attested: 11-22-2022

APPENDIX A



PROWERS COUNTY 1041 PERMIT TERMS AND CONDITIONS

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.'S APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY, BURLINGTON-LAMAR 230- KILOVOLT TRANSMISSION PROJECT

- A. **Commitments of Record.** Tri-State shall comply with all statements made in its APPLICATION FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY BURLINGTON-LAMAR 230-KILOVOLT TRANSMISSION PROJECT (“Application”), and the presentation and statements made during the August 3, 2022 Hearing on Tri-State’s Application.
- B. **Conditions Applicable to the Permit.** This Permit is issued with the following mandatory conditions:
1. Tri-State shall make all reasonable modifications to plans as requested by the Prowers County Land Use Administrator, prior to the commencement of any construction on the 230-Kilovolt Transmission Project.
 2. Tri-State shall address any reasonable concerns or objections of any state or local agency or government that may arise during or after construction or maintenance of the 230-Kilovolt Transmission Project.
 3. Before the commencement of construction of the 230-Kilovolt Transmission Project, Tri-State shall submit verification to the Permitting Authority and the Prowers County Land Use Administrator that it has acquired all necessary easements or property rights to complete the 230-Kilovolt Transmission Project.
 4. Before the commencement of construction of the 230-Kilovolt Transmission Project, Tri-State shall submit verification to the Permitting Authority and the Prowers County Land Use Administrator that it has complied with and received all necessary permits and approvals, as applicable, from local and state governmental entities.
 5. At Tri-State’s expense, Prowers County shall hire an agronomist to conduct a pre-construction assessment, during construction assessment(s), a post-construction assessment, and twice per year assessments of the proposed 230-Kilovolt Transmission Project areas, and Tri-State shall comply with all reasonable recommendations of the agronomist to mitigate and minimize adverse impacts from the 230-Kilovolt Transmission Project. If the mitigation requires Tri-State to deal with noxious weeds introduced by the 230-Kilovolt Transmission Project, Tri-State shall create a Noxious Weed Management Plan and provide copy of the plan to the Prowers County Land Use Administrator and the agronomist.
 6. Tri-State shall enter into roadway use agreement(s) with Prowers County for use by Tri-State or its agents of Prowers County roads during construction or maintenance of the 230-

Kilovolt Transmission Project, and Tri-State shall provide sufficient funds to Prowers County to restore or maintain County Roads that are used by Tri-State or its agents or contractors to the preconstruction condition of the 230-Kilovolt Transmission Project.

7. Tri-State shall avoid or mitigate interference with any significant wildlife habitat or adversely affect any endangered wildlife species, unique natural resource or historic landmark within the 230-Kilovolt Transmission Project.
8. Tri-State shall implement measures described in the Application during construction of the 230-Kilovolt Transmission Project to minimize deterioration of the air quality in the proposed project area.
9. Tri-State shall comply with all of the following requirements:
 - a. Tri-State Generation and Transmission Association, Inc., shall adhere to its performance standard set forth in the 230-Kilovolt Transmission Project description contained in its 1041 Permit Final Application and that accompanied Tri-State's Special Use Permit Application.
 - b. Personnel from Prowers County shall be granted access on to the property, to the extent of Tri-State's legal authority to do so, at any reasonable time in order to ensure the activities conducted on the property comply with the development standards stated herein and all applicable Prowers County regulations. Annual reviews of the 230-Kilovolt Transmission Project will be conducted by the Prowers County Land Use Administrator at Tri-State's expense. The Prowers County Land Use Administrator shall promptly forward to Tri-State any report generated by the Prowers County Land Use Administrator or staff from annual reviews of the property.
 - c. The 1041 Permit and the Prowers County Special Use Permit shall be limited to the plans show in Tri-State's 1041 Permit Application, the Special Use Permit Application and as mapped at the final hearing of the Permitting Authority, with the exception that any change of placement within the county right of way would not be considered a substantial change to the 1041 Permit, Special Use Permit or Prowers County Underground and Utility Permit.
 - d. Substantial changes from the plans or development standards as shown or stated shall require Tri-State to apply for and obtain the approval of an amendment of the Permit by the Prowers County Permitting Authority before such changes from the plans or development standards are permitted.
 - e. Copies of all appropriate permits and approvals of federal, state and local agencies obtained by Tri-State shall be forwarded to the Prowers County Land Use Administrator.

- f. Prior to and during construction, Tri-State shall notify the Prowers County Road of all activity within the county rights-of-way.
- g. All disturbed areas shall be reclaimed in coordination with the affected landowners to the pre-existing conditions as recommended by the agronomist hired by Prowers County.
- h. On dates and at a times selected by the Agronomist hired by Prowers County, to the extent of Tri-State's legal authority to do so, the Agronomist shall be allowed access to the 230-Kilovolt Transmission Project areas, with notification by the Agronomist to Tri-State Generation and Transmission Association, Inc., of the site visit for the pre-construction, during construction and post-construction site reviews, and once construction of the 230-Kilovolt Transmission Project is completed the Agronomist shall be allowed access to the sites to perform two (2) inspections each year over the course of the 230-Kilovolt Transmission Project. The Prowers County Land Use Administrator shall promptly forward to Tri-State copies of all reports or recommendations of the Agronomist.
- i. Tri-State shall not permanently dispose of waste within the 230-Kilovolt Transmission Project areas.
- j. Tri-State shall store and remove for final disposal in a manner that protects against surface and groundwater contamination all liquid and solid wastes (as defined in the Solid Wastes Disposal Sites and Facilities Act, 30-20-100 C.R.S., as amended);
- k. Tri-State shall manage, store and dispose of waste materials in a manner that controls debris, blowing debris, and other potential nuisance conditions.
- l. To the extent reasonably feasible, Tri-State shall control throughout the 230-Kilovolt Transmission Project areas all fugitive dust, either from construction or transportation of equipment.
- m. Tri-State shall comply with all of the foregoing development standards and noncompliance with any of the foregoing development standards may be reason for revocation of the 1041 permit by the Permitting Authority.
- n. The construction and operation of the 230-Kilovolt Transmission Project must meet or exceed all applicable Federal, State, and local requirements, and the site is to conform to all applicable zoning requirements and be maintained to acceptable standards.

C. **Compliance with Regulatory Requirements.** Tri-State shall comply with all state, county, local and federal regulatory requirements, permits, decrees and other approvals applicable to the development and activity.

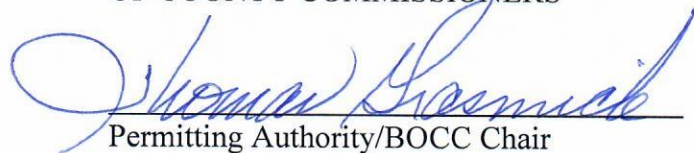
- D. Other Prowers County Regulations.** The 1041 Permit does not constitute an exemption from Prowers County's applicable regulations and codes as they exist now or are later amended, and Tri-State as part of its compliance with the 1041 Permit shall comply with all Prowers County regulations applicable to the 230-Kilovolt Transmission Project. Prowers County has not waived the application of any other land use regulations for 1041 permits.
- E. Scope of Permit and Permit Amendments.** This Permit is limited to the 230-Kilovolt Transmission Project as described in Tri-State's Application, as amended during the public hearing process orally or in writing, and as approved. The Permit conditions includes all agreements and representations of Tri-State made during the public hearing process. Tri-State shall notify the Permitting Authority of any proposed change to the 230-Kilovolt Transmission Project features or operation, and the Permitting Authority shall determine whether an amendment to this Permit would be required to ensure that the changes will not violate any standards in Prowers County's 1041 Regulations and will not violate the terms and conditions of this Permit.
1. If the Permitting Authority determines that any material representation made by Tri-State in the Permit Application or during the public hearing process is false or deliberately misleading, the Permitting Authority may pursue an enforcement action for violation of this Permit.
 2. Any material change in the construction, use or operation of the 230-Kilovolt Transmission Project, together with Tri-State's commitments of record, shall require a 1041 Permit amendment. For these purposes, a material change shall be any change in the 230-Kilovolt Transmission Project which significantly changes the nature of impacts considered in approval of the 1041 permit, including changes resulting from permits issued by other governmental organizations or the appropriate courts of law.
- F. Commencement of Project.** If Tri-State fails to take substantial steps to commence the activities for which the Permit is issued within five (5) years from the date of issuance of this Permit, then the Permit may be revoked or suspended by the Permitting Authority following notice and public hearing. The Permitting Authority may, in its discretion, extend the time period to begin the Permit period upon written request by Tri-State, following a public hearing.
- G. Term of Permit.** The 1041 Permit shall be valid indefinitely for the life of the 230-Kilovolt Transmission Project, provided that Tri-State is in compliance with the 1041 Permit. If shown to be necessary, the Permitting Authority may, in its discretion, extend the term of the Permit upon written request of Tri-State, following a public hearing.
- H. Transfer of Permit.** The 1041 Permit may only be transferred or assigned in whole or in part upon written approval of the Permitting Authority. Any proposed transferee or assignee to the 1041 Permit shall demonstrate that it can and will comply with all terms and conditions of the 1041 Permit.
- I. Costs.** Tri-State has submitted a cost deposit to Prowers County. The cost of Prowers County Land Use Administrator, staff, attorney and independent contractors for the Permit and various documents and reports in connection with this Permit shall be borne by Tri-State. Tri-State shall deposit additional amounts required to maintain at all times the cost deposit at a minimum balance of \$6,000.00 to cover costs incurred by Prowers County. At the request of Prowers County, Tri-State shall deposit additional funds for costs incurred by Prowers County to issue and monitor the 1041 Permit. At the written request of Prowers County, if Prowers County does not have the

expertise to evaluate an alleged violation of the Permit, Tri-State shall be responsible for reasonable costs associated with consultants that may be necessary to determine whether a violation has occurred. Tri-State shall reimburse Prowers County for all staff and legal costs, attorneys' fees, and expert witness fees incurred by Prowers County associated with any legal action threatened or brought in association with the 230-Kilovolt Transmission Project in which Prowers County may be or is joined or named as a party. In addition, Tri-State shall reimburse Prowers County for all legal and expert witness expenses incurred in amending, administering, reviewing or enforcing the Permit and the terms and conditions of the Permit.


- J. Permit Violation.** Failure to comply with any portion of this Permit is a violation of the Permit and the *Guidelines and Regulations For Areas and Activities of State Interest, County of Prowers, State of Colorado, adopted April 19, 2004, as amended on August 17, 2006 and November 14, 2017*, and is subject to the enforcement provisions therein.
- K. Default Provisions.** Default of the Permit shall be governed by §2.403 of the *Guidelines and Regulations For Areas and Activities of State Interest, County of Prowers, State of Colorado, adopted April 19, 2004, as amended on August 17, 2006 and November 14, 2017*. In the event that the Permitting Authority determines that enforcement action is necessary, the Permitting Authority shall enforce the Permit in accordance with the existing enforcement procedures, and Tri-State shall reimburse all of Prowers County's costs and expenses incurred in enforcing the Permit.
- L. Non-Default Disputes.** If a dispute arises pertaining to matters covered by this Permit, other than an alleged violation of this Permit, Tri-State and the Prowers County Land Use Administrator shall first meet to attempt to resolve the dispute. If the dispute cannot be satisfactorily resolved, Tri-State and the Permitting Authority shall meet to attempt to resolve the dispute.
- M. Non-Waiver.** Failure of the Permitting Authority to insist upon strict performance of Tri-State's obligations set forth in this Permit shall not be construed as a waiver of strict performance of Tri-State required by this Permit.
- N. Entire Permit.** This Permit constitutes the entire Permit and supersedes all representations, written or oral, made by Prowers County, the Permitting Authority or Tri-State.

DATE: 11-22-2022

COUNTY OF PROWERS, STATE OF COLORADO
BY AND THROUGH ITS 1041 PERMITTING
AUTHORITY WHICH CONSISTS OF ITS BOARD
OF COUNTY COMMISSIONERS


Permitting Authority/BOCC Chair

Attest:


Clerk of the Board

Date attested: 11-22-2022