

BEFORE THE BOARD OF DIRECTORS OF MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC., a non-regulated electric utility of the State of Colorado

**IN RE THE MATTER OF:
THE CONSIDERATION OF FOUR STANDARDS ADDED TO SECTION 111(d) OF
THE PUBLIC UTILITIES REGULATORY POLICIES ACT BY THE ENERGY
INDEPENDENCE AND SECURITY ACT OF 2007**

FINAL DECISION OF THE BOARD

Entered November 20, 2008

I. STATEMENT

1. The Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.), as amended by the Energy Independence and Security Act of 2007 (hereinafter “The Act” or “PURPA”) requires each non-regulated electric utility with total annual retail electric sales greater than 500 million kilowatt-hours to “...consider [certain standards established by the Act, as amended] and make a determination concerning whether or not it is appropriate to implement such standard[s] to carry out the purposes of this chapter.” 16.U.S.C.2621(a).

2. 16 U.S.C 2621 (a) further provides: “...Nothing in this subsection prohibits any ... nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.”

3. The “purposes of this chapter” are set forth in 16.U.S.C. 2611 as follows:

“The purposes of this chapter 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.”

These three purposes form the criteria/benchmarks against which the consideration of whether to accept, reject, modify or defer implementation of each of the standards established by The Act should be measured, in other words, whether implementation of a standard will encourage one or more of the three “purposes of the chapter.”

4. Mountain View Electric Association, Inc. (hereinafter “The Association”) is an electric utility holding a certificate of public convenience and necessity from the Colorado Public Utilities Commission. It is non-regulated by virtue of a vote of its members pursuant to 40-9.5-104 C.R.S. The Association has annual energy sales in excess of 500 million kilowatt-hours, and thus it is required to comply with the above-stated provisions of The Act.

5. On April 18, 2008, the Board of Directors (hereinafter “The Board”) of The Association resolved that The Association commence the process of considering the adoption of

the standards set forth in 16 U.S.C. 2621 (d) (16) - (19), namely: integration of energy efficiency into utility resource plans, rate designs to promote energy efficiency investments, consideration of “smart-grid” investments, and provision of time-based pricing and generation source information to consumers. [It should be noted that the Act inadvertently numbered these as 16, 17, 16 and 17 rather than 16 - 19.]

6. On April 18, 2008, The Board adopted, by resolution, “Special Procedural Rules for Consideration of PURPA Title I Standards as Required by the Energy Independence and Security Act of 2007” (hereinafter “The Rules”) and “PURPA Title I Amendments Schedule for Compliance.” (hereinafter “The Schedule.”)

7. Prior to June 1, 2008, The Association: (1) sent a Notice of PURPA Implementation to Larry Mansueti, Director State and Regional Assistance, Office of Electricity Delivery and Energy Reliability, United States Department of Energy; (2) sent a Notice of PURPA Implementation to all members of record by publication and mailing of a *Colorado Country Life* issue containing the notice to each one; (3) established an e-mail link to “PURPA Hearing Board” for the purpose of receiving inquiries or comments, and posted the Notice of PURPA Implementation and The Rules on the Association web page: www.mvea.coop.

8. On July 17, 2008, The Board held a Pre-Hearing Conference to respond to procedural matters, in accordance with The Rules at its Falcon Operations Center, 11140 East Woodmen Road, Falcon, Colorado. No one attended the Conference as a member or non-member interested party.

9. July 24, 2008 was set by The Rules as the deadline for filing a Notice of Intervention to become a party to this consideration process. No notices were filed.

10. According to The Rules, August 7, 2008 was set as the deadline to identify expert witnesses, and September 30, 2008 was set as the deadline for filing Pre-filed Testimony. Staff identified its witnesses prior to the witness deadline and filed its testimony prior to the filing deadline. No other witnesses were identified by anyone, and no other testimony was filed.

11. October 9, 2008 was set by The Rules as the deadline for filing a Notice of Intent to Participate in the Public Hearing scheduled for October 21, 2008. By resolution passed September 16, 2008. The Board resolved “that if no member filed a Notice of Intent to Participate in the PURPA Part 1 compliance process by close of business on October 9, 2008, that the Public Hearing ... scheduled for October 21, 2008 be canceled, and that The Board would decide on implementation of standards contained in the 2007 amendments to PURPA Part 1 based solely on the written record.” No such Notice of Intent to Participate was filed.

12. As of October 21, 2008, no e-mails or written correspondence had been received by the Association from the U.S. Department of Energy or any member concerning the standards or the procedures set up for this consideration process.

13. At its regularly scheduled meeting on October 21, 2008, and after an opportunity for members to be heard, at which no member or anyone else other than Directors and staff appeared, The Board noted that the Public Hearing was in fact canceled, and accepted the Pre-Filed Testimony of Association Staff for consideration in preparation of this Decision.

II. FINDINGS.

A. Integration of Energy Efficiency into Utility Resource Plans.

14. This standard, set forth at 16 U.S.C. 2621 (d) (16), as referred to in Section 532 of the 2007 Act, states:

“Each electric utility shall (A) integrate energy efficiency resources into utility, State and regional plans; and (B) adopt policies establishing cost-effective energy efficiency as a priority resource.”

15. The Association contracts with Tri-State Generation and Transmission Association, Inc. (hereinafter “Tri-State”) to meet 100% of its power requirements, subject to the ability of The Association to connect, and net meter or purchase the output from, limited renewable generation resources.

16. The Association must look first to Tri-State, its wholesale energy provider, when considering this standard since Tri-State, as part of its responsibility to provide the Association its power requirements, takes on the task of resource planning for its members. The Association has a limited ability to influence Tri-State decisions as one of 44 Tri-State member systems, each of which has one seat on the Tri-State Board of Directors.

17. Tri-State prepares and files an Integrated Resource Plan with Western Area Power Administration and an Electric Resource Plan with the Colorado Public Utilities Commission. The most recent editions of these plans show the investments that Tri-State has made, or is planning to make, to integrate energy efficiency into its resource base, as well as expected deductions in its peak demand and annual energy loads due to these investments.

18. To achieve reductions in the amount of energy sold, consumers must be willing to participate in energy efficiency programs. As part of its Resource Plan, Tri-State has implemented, and regularly updates, an Energy Efficiency Credits program to provide incentives for consumers to reduce their energy consumption. The Association administers this program and offers additional credits for its members in accordance with its Administrative Policy A-012.

19. In Addition, Tri-State offers a number of other programs to encourage more efficient use of electricity: education and training programs, load research, energy audits and field advisory services, pilot projects, investment in research and development and developing deployment options through third parties.

20. The combined efforts of Tri-State and the Association do strongly support the conservation of energy supplied by the Association. When a consumer installs energy efficiency technologies, he inherently reduces consumption from the Association. In an aggregate sense, this means that providing incentives for such installations conserves energy supplied by the Association.

21. The combined efforts of Tri-State and the Association do support optimization of the efficiency of electric utility facilities and resources. Implementation of energy efficiency technologies by a robust penetration of Association members will result in the ability to serve a larger number of members with a given set of facilities and supply side resources.

22. The combined efforts of Tri-State and the Association support maintenance of equitable rates for the Association's electric consumers. Tri-State has determined that implementation of energy efficiency technologies will provide a cost-effective reduction in its need for supply-side resources, thus extending equitable rates to the Association and through it to the Association's member-consumers.

23. The Association, in conjunction with the other 43 members of Tri-State, can continue to influence Tri-State's actions with regard to the integration of energy efficiency resources through the Association's role in voting on Tri-State's mission and policy formation and on implementation and approval of budget investment decisions.

24. The combined efforts of Tri-State and the Association, together with their continued efforts to seek additional opportunities, meets the standard for integration of energy efficiency resources into their plans.

B. Rate Design Modifications to Promote Energy Efficiency Investments

25. This standard, set forth at 16 U.S.C. 2621 (d) (17), as referred to in Section 532 of the 2007 Act, states:

- “(A) IN GENERAL. - The rates allowed to be charged by any electric utility shall -
- (I) align utility incentives with the delivery of cost-effective energy efficiency; and
 - (ii) promote energy efficiency investments.
- (B) POLICY OPTIONS. - In complying with subparagraph (A), each ...non-regulated utility shall consider -
- (I) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
 - (ii) providing utility incentives for the successful management of energy efficiency programs;
 - (iii) including the impact on adoption of energy efficiency as one of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;

- (iv) adopting rate designs that encourage energy efficiency for each customer class;
- (v) allowing timely recovery of energy efficiency-related costs; and
- (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.”

26. The Association presently contracts with Tri-State Generation and Transmission Association, Inc. to meet essentially 100% of its power requirements. Tri-State’s rate to the Association consists of a flat year-round energy charge and a monthly demand charge based on the Association’s coincident peak demand established during Tri-State’s defined peak periods. This rate design sends a strong price signal to the Association to reduce its coincident peak demand, and thus energy usage, during Tri-State’s peak periods.

27. Given the strong pricing signal created by Tri-State’s rates, the Association’s rates to its members must be designed in such a way that they do not promote energy usage, leading to higher peak demands, in peak periods rather than non-peak periods. Thus rates promoting energy efficiency must result in reduced energy usage throughout the day, or at least during peak periods.

28. As a cooperative, the Association has no incentive to increase revenues beyond the cost of service.

29. The Association offers a number of retail rates to its consumers, other than the special pass-through rate for Schriever Air Force Base, where the incremental rate for energy sold to its consumers is higher than the incremental cost of such energy to the Association, due to the recovery of some consumer related and capacity costs and margins in the incremental energy rates. The incremental energy rates are thus not artificially low.

30. The Association has an opportunity to adjust its rate designs to create the correct environment for energy conservation for energy efficiency programs to be cost effective for the Association.

31. The Association promotes the sale of energy efficient lighting, offers a number of rebates and administers Tri-State’s rebate program for energy efficient heating, cooling, refrigeration and motors. Combined with these rebates, the Association’s incremental energy rates allow timely recovery of energy efficiency related costs by consumers.

32. Since the rebate programs offered and administered by the Association result in increased energy efficiency at least as much during peak periods as during non-peak periods, the costs of the rebate programs to the Association should be timely recovered.

33. The Association offers demand response programs through use of residential time-of-use rates and large power load management rates. The Board also takes administrative notice that the Association offers its residential consumers the opportunity to participate in a demand response program that benefits them through its Power Partners program that remotely controls residential water heaters.

34. The Association offers home energy audits and provides information on its energy efficiency programs and links to other programs through its website and publications.

35. The rate designs of the Association do not give members any disincentives to energy efficiency, and therefore support the conservation of energy supplied by the Association.

36. The Board of Directors of the Association regularly reviews the rates that the Association offers to its members to insure that they remain equitable.

C. Consideration of Smart Grid Investments.

37. This standard, set forth at 16 U.S.C. 2621 (d)(18) [(16)sic, as referred to in Section 1307 of the 2007 Act], states:

“A) IN GENERAL.— Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors including –

- (I) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance: and
- (vi) societal benefit.

“B) RATE RECOVERY. – Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

“C) OBSOLETE EQUIPMENT. – Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system [and] to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.”

38. Subsections B and C of this standard do not apply to the Association as it is not regulated by the Colorado Public Utilities Commission, and hence does not need authorization to recover any of its costs.

39. Subsection A of this standard can be read to require that the Association should consider purchasing system equipment with “smart grid functions” before it invests in “non-advanced” system equipment.

40. Section 1306 of The Act defines “smart grid functions” as follows:

“(1) the ability to develop, store, send and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to device, grid, or utility operations, to or from or by means of the electric utility system, through one or a combination of devices and technologies.

“(2) the ability to develop, store, send and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to device, grid, or utility operations to or from a computer or other control device.

“(3) the ability to measure or monitor electricity use as a function of time of day, power quality characteristics such as voltage level, current, cycles per second, or source or type of generation and to store, synthesize or report that information by digital means.

“(4) the ability to sense and localize disruptions or changes in power flows on the grid and communicate such information instantaneously and automatically for purposes of enabling automatic protective responses to sustain reliability and security of grid operations.

“(5) the ability to detect, prevent, communicate with regard to, respond to, or recover from system security threats, including cyber-security threats and terrorism, using digital information, media and devices.

“(6) the ability of any appliance or machine to respond to such signals, measurements, or communications automatically or in a manner programmed by its owner or operator without independent human intervention.

“(7) the ability to use digital information to operate functionalities on the electric utility grid that were previously electro-mechanical or manual.

“(8) the ability to use digital controls to manage and modify electricity demand, enable congestion management, assist in voltage control, provide operating reserves, and provide frequency regulation.

“(9) such other functions as the Secretary [of Energy] may identify as being necessary or useful to the operation of a Smart Grid.”

41. The Association has already made significant investments in smart grid technologies. These investments include roughly \$3 million in a Supervisory Control and Data Acquisition system (SCADA) that monitors approximately 90 percent of its system. The Association has deployed Advanced Metering Infrastructure (AMI) for 254 of its commercial and industrial customers, allowing either the customer or the Association to control load during peak periods and to verify that the load was reduced. Approximately 1450 of its residential customers

participate in its Power Partners demand response program for control of water heaters, and approximately 90 percent of the Association’s residential customers have ERT (encoder/receiver/transmitter) meters, giving the Association the ability to collect meter readings from remote locations.

42. Smart Grid investments have the potential to conserve energy and/or reduce usage at certain times, if coupled with demand response programs that provide incentives for consumers to reduce usage during peak periods.

43. Smart Grid investments make rate options practical for consumers, which can lead to more equitable rates.

D. Smart Grid Information

44. This standard, set forth at 16 U.S.C. 2621 (d)(19) [(17)sic, as referred to in Section 1307 of the 2007 Act], states:

“A) STANDARD. – All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

“B) INFORMATION. – Information provided under this section, to the extent practicable, shall include:

(I) PRICES. – Purchasers and other interested persons shall be provided with information on –

(I) time-based electricity prices in the wholesale electricity market; and

(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) USAGE. – Purchasers shall be provided with the number of electricity units, expressed in kWh, purchased by them.

(iii) INTERVALS AND PROJECTIONS. – Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) SOURCES. – Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

“C) ACCESS. – Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to

that purchaser.”

45. All of the Association’s retail rates, including its time-based rates, are available on the Association’s website, and they are available in written form upon request.

46. Since the Association purchases all of its electricity from Tri-State at wholesale, the Association looks to Tri-State for information on sources of power and wholesale pricing, but Tri-State’s ability to obtain this information is constrained by the markets within which it operates. There is no real-time wholesale electricity market operating at this time in the state of Colorado, so time-based wholesale electricity pricing information, including day-ahead projections, is not available. Likewise, time-based information on sources of generation and greenhouse gas emissions is not available.

47. Association members have access to information on sources of generation and greenhouse gas emissions at an annual planning level of detail by links to Tri-State Integrated Resource Plan documents on the Association’s website.

48. Association customers are provided with their electricity usage, expressed in kWh on a monthly basis on their power bill.

49. Tri-State provides the Association 30 minute load data. The Association can assist those member-consumers, who are interested in changing their energy consumption patterns to shift load from the Association’s coincident peak during Tri-State peak periods, in obtaining this load data directly from Tri-State.

50. The information supplied and made available by the Association to its members supports the conservation of energy supplied by the Association by giving the members the information they need to make intelligent decisions about the installation of energy efficient appliances and technologies.

III. DECISION

51. The standard on inclusion of energy efficiency in integrated resource planning is adopted without the need for further action by The Association.

52. The Association shall continue, through its role as a member of Tri-State, to encourage Tri-State to continue to consider implementation of energy efficiency programs as a primary resource, and shall look for opportunities to work within Tri-State policies to increase implementation of such programs on the Association’s system.

53. The standard on designing rates to align utility incentives with the delivery of cost-effective energy efficiency and on promoting energy efficiency investments is adopted as modified by this Decision.

54. The Association shall continue to administer Tri-State rebate programs, offer rebates and offer other incentives to its members to encourage them to make energy efficiency investments. The Association shall continue to publicize these programs on its website and through its print publications.

55. The Association shall conduct a cost-of-service and rate design study during the coming year to develop rate designs that support energy efficiency programs offered by the Association.

56. The Association shall evaluate alternative rate designs as they present themselves to determine whether they encourage more efficient use of electric energy by its members, and shall consider adoption of rate designs that show promise of achieving this goal.

57. The Rate Recovery and Obsolete Equipment portions of the Smart Grid Investments standard are rejected, since they are not applicable to a utility, such as the Association, that is not subject to rate regulation.

58. The General portion of the Smart Grid Investments standard is adopted as modified by rejecting any implication that the Association convert its existing system to a smart grid.

59. The Association shall evaluate purchase of equipment that is compatible with its SCADA system and capable of being integrated into a smart grid before purchase of equipment that would not be capable of integration.

60. The Smart Grid Information standard is adopted as modified by deleting provisions that require updates of pricing or other information on not less than a daily basis..

61. The Association shall make information on generation sources available to its members through its website as the information becomes available from Tri-State.

62. The Association shall continue to assist its members, who are interested in using it to change their energy consumption patterns, to obtain peak load data from Tri-State as it becomes available.

63. The Association, through its membership in Tri-State, will encourage Tri-State to develop systems to provide load and generation sources information on as current a basis as is economically practical.

BY THE BOARD