



July 3, 2007

Jim Hartman
Eastern Plains Transmission Project
Western Area Power Administration
5555 East Crossroads Blvd.
Loveland, CO 80538

Re: Comments on Proposed and Alternative Routes for the Eastern Plains Transmission Project

Dear Mr. Hartman:

Western Resource Advocates (WRA) is writing to express our concerns about the proposed and alternative routes for the Eastern Plains Transmission Project (EPTP). WRA currently opposes the project because it will support Tri-State Generation and Transmission Association, Inc.'s (Tri-State) proposed coal-fired generation facility in Holcomb, Kansas. However, WRA recognizes that additional transmission is needed for new renewable energy and state-of-the-art gas generation to access the grid. WRA urges Western to consider the set of five issues detailed below when preparing the draft environmental impact statement (EIS) for the EPTP. These comments are meant to supplement the comments WRA already submitted to Western Area Power Administration (Western) on September 29, 2006.

1. The future of Tri-State's coal-fired generation facility is uncertain.

The EPTP is overly reliant on Tri-State's proposed coal-fired generation facility. The future of the Tri-State's coal project is uncertain because of permitting and legal issues. First, the permits for the proposed generation project have not been issued by the Kansas Department of Health and Environment (KDHE). Second, Sarah and Ray Dean, residents of Lawrence, have filed a lawsuit claiming that KDHE must regulate carbon dioxide emissions from the burning of coal.

The lawsuit may prevent Tri-State's coal plant from being granted a permit. The legal argument forming the basis of the Deans' complaint relies on a recent U.S. Supreme Court decision. The Court held that carbon dioxide emissions and other greenhouse gases are air pollutants as defined in § 302(g) of the Clean Air Act. 42 U.S.C. § 7602(g); *Massachusetts v. EPA*, ___ U.S. ___, 127 S. Ct. 1459-60., 1455 (2007). Further, the Court held that because carbon dioxide is within the Clean Air Act's definition of "air pollutant," the U.S. Environmental Protection Agency has the authority to regulate carbon dioxide. *Id.* at 1462. Similar to the federal Clean Air Act, Kansas Air Quality Regulations prohibit the construction of a new major stationary source of air pollutants or a major modification of an existing source without a prevention of significant deterioration

construction permit issued by KDHE. Clean Air Act § 165(a), 42 U.S.C. § 7475(a); K.A.R. § 28-19-350. The Deans claim that KDHE must take carbon dioxide emissions into consideration when deciding whether to issue a permit for Tri-State's propose coal-fired generation facility.

The EPTP is in a precarious position. Tri-State's coal project is the one major project moving the EPTP forward. If Western and Tri-State want the EPTP to be a success by providing economically sound, reliable, diverse power to its customers, then the partners should consider looking to renewable energy and gas generation as a reasonable alternative to the risky coal proposal.

2. The draft EIS should consider renewable energy and state-of-the-art combined cycle natural gas-fired generation facilities as reasonable alternatives to Tri-State's proposed coal-fired generation facility.

In light of the uncertainty surrounding the Tri-State's proposed generation facility, the EIS should consider renewable energy and gas alternatives. An EIS must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). The analysis of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. A federal agency preparing an EIS is required to "[r]igorously explore and objectively evaluate" a full range of reasonable alternatives, including those not within the jurisdiction of the lead agency, and devote "substantial treatment to each alternative considered in detail," while briefly discussing the reasons for eliminating other alternatives from detailed study. *Id.* In the Tenth Circuit, a "rule of reason" guides both the choice of alternatives as well as the extent to which the EIS must discuss each alternative. *Custer County Action Ass'n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir. 2001).

WRA encourages Western to consider the full scope of reasonable alternatives to the Tri-State's coal generation facility in the draft EIS for the EPTP. While Tri-State's coal-fired generation facility is the only major generation project proposed, it would be reasonable for Western to consider an alternative that looks at the EPTP transmitting new wind energy and state-of-art fossil fuel generation such as a combined cycle plant fired by natural gas. Tri-State has publicly stated that it intends to pursue a combined cycle plant fired by natural gas in southeastern Colorado.¹

WRA encourages Western to consider replacing Tri-State's proposed coal-fired generation facility with more diverse, cleaner, and less carbon dioxide polluting energy sources. WRA requests that the draft EIS provide the following information: (1) the quantity of renewable energy Tri-State plans to develop and deliver to its customers; (2) how much extra capacity the EPTP will provide for renewable energy transmission; (3) information demonstrating whether or not the EPTP will be fully subscribed in terms of available transfer capacity; and (4) whether the

¹ The Denver Business Journal, *Tri-State Postpones Power Plant*, <http://www.bizjournals.com/denver/stories/2007/04/02/daily55.html?surround=lfm>, April 5, 2007 (accessed June 29, 2007); High Country News, *The Winds of Change*, http://www.hcn.org/servlets/hcn.Article?article_id=15466, May 2, 2005 (accessed June 29, 2007).

proposed transmission lines and substations are strategically located to best facilitate the tie in of planned and potential wind generation sites.

3. The draft EIS should consider Xcel's renewable energy development and need for transmission.

WRA requests that Xcel Energy's (Xcel) renewable energy generation and transmission plans be considered in the draft EIS. The construction of EPTP will increase the amount of electricity that can be transmitted from new sources of power. As a result, the project will provide additional transmission capacity for Tri-State's proposed coal-fired power plant. Environmental impacts from EPTP and other connected, cumulative, and similar actions must be analyzed in a holistic manner, with all reasonably foreseeable direct, indirect, and cumulative impacts disclosed as NEPA requires. Otherwise, there will be segmentation of environmental analysis and a failure to fully disclose to the public the environmental impacts of this project.

A NEPA document must include an analysis of three types of actions. 40 C.F.R. § 1508.25. It must consider actions that are connected, cumulative, and similar. *Id.* at § 1508.25(a). Connected actions are those which are "closely related," including those that "[c]annot or will not proceed unless other actions are taken," or those that are "interdependent parts of a larger action and depend on the larger action for their justification." *Id.* at § 1508.25(a)(1). Cumulative actions are those that "have cumulatively significant impacts and should therefore be discussed in the same impact statement." *Id.* at § 1508.25(a)(2). Similar actions include those that have "common timing or geography." *Id.* at § 1508.25(a)(3). In order to assess "significance," NEPA requires consideration of "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts." *Id.* at § 1508.27(b)(7).

Xcel's proposed renewable energy development and transmission needs should be considered connected actions or similar actions in the draft EIS of the EPTP. The Governor of Colorado recently enacted two pieces of legislation, HB 07-1281 and SB 07-100, which mandate Xcel (1) to generate 20 percent of the utilities energy from renewable energy sources by 2020;² and (2) to establish "renewable energy zones" in which Xcel can recover the costs of building transmissions during the construction process, rather than waiting until construction is complete.³ As a result of these two laws, Xcel has identified significant renewable energy potential (especially wind) in the same area where the EPTP is being proposed. WRA is concerned that there is a lack of coordination between Xcel, Western, and Tri-State regarding renewable energy resource development in the EPTP area.

There may be significant synergies between the new law to requiring Xcel to identify areas where new transmission capacity for renewable energy is needed and the EPTP. The EPTP falls within "Zone 2" of Xcel's energy resource zones. Xcel has indicated that it is relying on the construction of the EPTP to tie in its renewable energy resources in that area.⁴

² Colo. Rev. Stat. § 40-2-124 (Lexis 2007); Colo. H. 1281, 66th Gen. Assembly, 1st Sess. (2007)

³ Colo. Rev. Stat. § 40-2-126 (Lexis 2007); Colo. Sen. 100, 66th Gen. Assembly, 1st Sess. (2007)

⁴ Xcel Energy, *PSCo Senate Bill 100, Transmission Study Group*, http://www.rmao.com/wtpp/Sb100/SB-100_TSG_June14.pdf, at slide 8 (accessed on July 3, 2007).

The activities and projects that Xcel may undertake to meet the state laws may be considered to be connected or similar to the EPTP. Under 40 C.F.R. § 1508.25(a)(1), Xcel's plans are connected because the new renewable energy development "cannot or will not proceed unless other actions are taken previously or simultaneously." *Id.* Xcel may be depending on the construction of the EPTP to meet its obligations under the new laws to transmit more renewable energy to its customers. Under 40 C.F.R. § 1508.25(a)(3), Xcel's activities to comply with the State's renewable energy laws may be considered as similar actions in the EPTP draft EIS. Xcel's proposals and need for new renewable energy generation and transmission may have "timing" and "geography" in common with the EPTP.

WRA requests that the draft EIS consider whether (1) Xcel's potential actions are connected and/or similar actions; (2) Xcel will have access to tie-in with EPTP; and (3) the proposed or alternative routes would change if Xcel's renewable energy generation and transmission needs were taken into consideration as a part of the EPTP, particularly given known areas of high wind energy potential and existing interconnection requests for wind projects.

4. The cumulative impacts of Tri-State's proposed coal-fired generation facility should be thoroughly analyzed in the draft EIS.

WRA requests a thorough analysis of cumulative impacts of the EPTP. The EPTP will allow for Tri-State's proposed coal-fired power plant to connect in order to transmit energy to customers. Tri-State's proposed generation facility should be considered under cumulative impacts because it will have a significant impact on the environment and will contribute climate change.

The three types of impacts to be studied in a NEPA document are those that are direct, indirect, and cumulative. 40 C.F.R. § 1508.8.; *See also* 40 C.F.R. § 1502.16.(d), 1508.9(b). Direct effects are those that are caused by the action and occur at the same time and place. *Id.* at § 1508.8(a). Indirect effects are those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). A project's "cumulative impact," is

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Id. at § 1508.7 (emphasis added).

The EPTP draft EIS legally must analyze the full impact, including climate change, of power generation sources. The greenhouse gas emissions from Tri-State's proposed coal-fired power plant will have a significant impact on the environment. The U.S. Supreme Court has stated that "the harms associated with climate are serious and well recognized." *Massachusetts*, 127 S. Ct. at 1455. Attorney Generals of California, Connecticut, Delaware, Maine, New York, Rhode Island,

Vermont and Wisconsin have also expressed concerns regarding carbon dioxide emissions resulting from Tri-State's proposed coal-fired station.

Tri-State's proposed coal generation facility is also a connected action. In addition to analyzing the cumulative impacts of the plant, the EIS should consider the proposed coal plant as a connected action as it will not be constructed unless and until it has transmission access. The EPTP is enabling Tri-State's coal project to move forward. Once again, we encourage Western to thoroughly analyze Tri-State's generation project under cumulative impacts and as a connected action in the draft EIS.

5. The proposed and alternative routes will cause significant environmental impacts.

If the EPTP is constructed, WRA urges Western and Tri-State to design, construct, and maintain the right-of-ways (ROWs) in a manner that will create minimal environmental impact. The siting of the transmission lines, especially ones as large as the lines proposed for EPTP, may cause significant environmental damage. WRA urges Western to consider the following topics in the draft EIS.

Air Quality

WRA requests that all direct, indirect, cumulative effects on air quality as a result of the construction, operation, and maintenance of EPTP be analyzed. This includes fuel use, vehicle emissions, air toxics, particulates, and hazardous air pollutants. The Draft EIS must also look at the project's effects on airsheds. All reasonably foreseeable future emission sources associated with the project should also be analyzed. The EIS should also demonstrate whether or not the project will comply with state and federal air pollution standards.

Aquatic Species and Habitats

WRA requests that all direct, indirect, and cumulative effects to aquatic species and habitat be considered in the draft EIS. The draft EIS should demonstrate the extent to which the potential activities associated with the EPTP could impair the overall integrity of aquatic ecosystems.

Endangered Species

WRA requests that Western analyze all direct, indirect, and cumulative effects to threatened, endangered, and proposed or candidate species listed in the Federal Endangered Species Act. In addition, Western must also take into consideration state-listed species, sensitive and other special status species, designated critical habitats, crucial wildlife habitats, and any other species in need of conservation.

Environmental Justice

WRA requests that the EIS analyze all direct, indirect, and cumulative effects on low-income communities, communities of color, and rural communities. Western should provide a documented evaluation of environmental justice issues to the general public.

Hazardous Materials and Solid Waste

WRA requests that Western analyze the direct, indirect, and cumulative effects of unintentional contaminant leaks and exposure to hazardous materials. The draft EIS should include an

inventory of that identifies all hazardous materials that will be used at the project sites and how the materials will be transported and stored.

Historic and Cultural Resources

Western should perform a full accounting of information on historical, cultural, and archaeological resources in the EPTP area. WRA requests that Western analyze the direct, indirect, and cumulative effects to tribal and cultural resources. In particular, any impacts to the Sand Creek Massacre National Historic Site should be fully analyzed.

Land Use

WRA requests the Western analyze the direct, indirect, and cumulative effects on land use and develop mitigation plans that addresses potential conflicts between Federal, state, public, private and recreational areas. In particular, WRA is concerned that one of the proposed ROWs currently being considered cuts through Colorado Stewardship Trust Lands.

Noxious Weeds

WRA requests that Western analyze measures that can be taken to impede the invasion of noxious weeds. Gravel brought onto construction sites should have to be weed-free. Weeds brought in from off-site on construction and maintenance vehicles and equipment must be interdicted.

Plants and Vegetation

WRA requests that Western analyze all direct, indirect, and cumulative effects on plants and vegetation. Western should develop a mitigation plan in the draft EIS that considers reclamation activities, avoidance of large contiguous tracts of grassland and native prairie, creation of substantial buffers of native vegetation around project components, and timing of construction to avoid plant disturbance during seasonal growth cycles.

Recreational Areas

WRA requests that the EIS analyze all direct, indirect, and cumulative effects on recreational activities located in EPTP area and provide detailed mitigation measures.

Soils

WRA requests that Western analyze all direct, indirect, and cumulative effects on the soils in the planning area. The analysis should consider effects on all soils including exposed soils, muddy unstable clays, sand dunes, sandy soils, blowouts, and sandhills from construction, in addition to wind and water erosion.

Traffic

Heavy truck traffic associated with EPTP could result in wildlife mortality and displacement, particulate and chemical air pollution, and safety hazards for the public. WRA requests that Western analyze all direct, indirect, and cumulative effects of traffic and develop a mitigation plan in the draft EIS.

Visual Resources

EPTP area contains areas of importance for visual resources. These visual resources are important to the residents of the area, tourism, and recreation. The EIS should analyze all direct, indirect, and cumulative effects on visual resources.

Water Resources and Quality

WRA requests that Western disclose the locations of floodplains, waterways, wetlands, and other water resources and map the proposed ROW along with these resources in order to evaluate the potential impact. Western's analysis in the EIS should include all of the direct, indirect, and cumulative impacts on waters of the U.S., wetlands, farmed wetlands, prior converted wetlands, forested wetlands, fens, draws, ephemeral wetlands, playa lakes, flooded and muddy fields, surface water, water quality and supply, aquatic and terrestrial habitat, channel and bank stability, flood storage, groundwater recharge and discharge, sources of primary production, recreation, and aesthetics. The EIS should include a wetlands mitigation plan and incorporate the proper permitting process.

WRA also requests that Western analyze all direct, indirect, and cumulative effects to the water quality of groundwater, surface water, drinking water, municipal water sources, streams, rivers, tributaries, perennial seeps, and springs. In the draft EIS, Western should develop a mitigation plan to restore and maintain water resources and quality.

Wildlife

The siting of transmission lines along with the access roads may negatively impact local wildlife populations. WRA requests that Western analyze all direct, indirect, and cumulative effects of the transmission lines and access roads on wildlife, biological diversity, crucial wildlife habitat, the prairie ecosystem as a whole, breeding and nesting activities, and habitat fragmentation. Special attention should be paid to the impacts of ground nesting bird species, including increased raptor-prey opportunities and habitat avoidance by these species.

WRA would like to thank Western for considering the above issues along with the comments submitted earlier. We look forward to reviewing and commenting on the draft EIS.

Sincerely,

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