

Control Number: 46936



Item Number: 337

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**SOAH DOCKET NO. 473-17-3539  
PUC DOCKET NO. 46936**

**APPLICATION OF  
SOUTHWESTERN PUBLIC  
SERVICE COMPANY FOR  
APPROVAL OF TRANSACTIONS  
WITH ESI ENERGY, LLC AND  
INVENERGY WIND  
DEVELOPMENT NORTH  
AMERICA, LLC, TO AMEND A  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY FOR WIND  
GENERATION PROJECTS AND  
ASSOCIATED FACILITIES IN HALE  
COUNTY, TEXAS AND ROOSEVELT  
COUNTY, NEW MEXICO, AND FOR  
RELATED APPROVALS**

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**BEFORE THE STATE OFFICE**

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PUBLIC UTILITY COMMISSION  
FILING CLERK

**OF**

**ADMINISTRATIVE HEARINGS**

**SOAH ORDER NO. 14  
GRANTING MOTIONS TO COMPEL**

On October 16, 2017, Southwestern Public Service Company (SPS) filed a Motion to Compel Responses to SPS's First Set of Requests for Information to Tri-County Electric Cooperative, Inc. (Tri-County) and Golden Spread Electric Cooperative, Inc. (Golden Spread) (First Motion) and Request for Expedited Ruling. On October 19, 2017, Tri-County filed a response the First Motion.

On October 17, 2017, SPS filed a Motion to Compel Responses to SPS's Second Set of Requests for Information to Tri-County and Golden Spread and Request for Expedited Ruling (Second Motion). On October 20, 2017, Tri-County responded to the Second Motion. Although Tri-County and Golden Spread filed joint responses to the request for information (RFIs), Tri-County represents that it is the sole custodian of the documents requested by SPS. The RFIs in the First Motion are RFIs 1-1 subparts (a)-(1); 1-2 subparts (a)-(1); 1-3 subparts (a)-(1); and 1-8. The RFIs in the Second Motion are RFIs 2-8; 2-16 subparts (a)-(c); 2-17 subpart (d); 2-19 subpart (b); and 2-20 subpart (b).

In the First and Second Motions, SPS requests that the ALJs grant its Motions and require Tri-County to produce the documents and information or allow Tri-County and Golden Spread to

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withdraw their testimony on the issues. Generally, the parties' arguments for both Motions are the same and will be discussed only once, unless it is necessary to provide further explanation.<sup>1</sup>

Tri-County objects to providing the information in both sets of RFIs for the following reasons:

- Tri-County contends that the RFIs request information that is commercially sensitive, specifically, detailed wind power sales proposals (Proposals) submitted pursuant to confidentiality provisions, one of which is additionally subject to a non-disclosure agreement (NDA). Tri-County asserts that the information is not Tri-County's information to disclose as third-party sellers provided the Proposals confidentially and not subject to disclosure pursuant to the terms of the Request for Proposals (RFPs).
- Tri-County further argues that the NDA requires Tri-County to treat the Proposals as confidential, and Tri-County is prohibited from disclosing the information without prior written consent of the other party to the NDA.
- Tri-County acknowledges that Chris Giles, its expert witness, generally discusses the Proposals; however, Tri-County maintains that he has not opened the door in his testimony for SPS to review the Proposals.
- Tri-County contends that the terms of the RFP do not allow it to disclose the information under the Protective Order issued in this case.
- Tri-County also maintains that the information requested by SPS is not necessary for SPS to evaluate whether the responses to the RFP are comparable to the prices and wind projects SPS is proposing in this docket.
- Tri-County further objects to any request for expedited ruling to the extent it limits Tri-County's right to appeal an adverse ruling.

SPS argues that the information it requested in its first and second sets of RFIs should be disclosed, and its Motions granted for the following reasons:

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<sup>1</sup> For RFI 2-8, Tri-County does not believe a ruling is necessary at this time because Tri-County does not have any information response to this question. Tri-County acknowledges its duty to supplement discovery if responsive information becomes available. With Tri-County's representation, the ALJs will not rule on RFI 2-8.

- SPS asserts that the information it requested relates directly to certain claims by Tri-County's and Golden Spread's witnesses, and SPS seeks discovery on those issues to test their claims.
- SPS claims that the existence of a confidentiality agreement or NDA does not provide a reason for Tri-County and Golden Spread to withhold the information. SPS states that the information can be provided pursuant to the Protective Order.

The ALJs grant the First and Second Motions for the following reasons:

- Tri-County's and Golden Spread's expert witnesses, particularly Chris Giles and J. Neil Copeland, opened the door to the issues in their pre-filed testimony. They specifically address this information in their testimony; therefore, the information is relevant and permissible discovery.
- Although the requested information is confidential, it is discoverable and can be provided under the terms of the Protective Order issued in this case.
- Because Tri-County's and Golden Spread's expert witnesses assert that SPS failed to consider other resource options at lower costs, SPS, the party with the burden of proof, has the right to explore whether these claims are true and to address them if necessary.

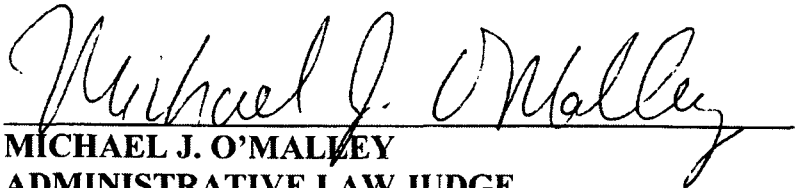
Accordingly, Tri-County shall respond to RFIs 1-1 subparts (a)-(1), 1-2 subparts (a)-(1), 1-3 subparts (a)-(1), and 1-8; and 2-16 subparts (a)-(c), 2-17 subpart (d), 2-19 subpart (b), and 2-20 subpart (b) no later than October 30, 2017. Tri-County will need to obtain permission from the other party involved with the NDA; informing that party that the ALJs have ordered that the information is discoverable. Tri-County shall provide the information under the Protective Order as Highly Sensitive Protected Materials. Finally, Tri-County and Golden Spread may also

withdraw Mr. Giles's and Mr. Copeland's testimony referenced in the RFIs instead of producing the information and documents.

**SIGNED October 23, 2017.**



**WENDY K. L. HARVEL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



**MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**