Wheeler Trigg O'Donnell

Won a $1.25 billion exit fee dispute for an electric distributor against its generation and transmission provider.

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Wheeler Trigg O'Donnell (WTO) lawyers won a groundbreaking $1.25 billion dispute for United Power, Inc. against Tri-State Generation & Transmission, Inc. The ruling is important to Colorado distribution cooperatives and establishes a methodology for calculating just and non-discriminatory terms on which a distribution cooperative may withdraw as a member and owner of a generation and transmission (G&T) cooperative.

The case involved one of the first remote trials in the nation, during which the parties presented 11 live witnesses and thousands of pages of documents. This was also one of the nation's first adjudicative hearings for a cooperative seeking to exit its G&T association. Going forward, electric cooperatives, courts, and regulators across the nation will look to Colorado for guidance as these disputes escalate.

For nearly two years, United Power sought a fair "exit charge" from Tri-State. United Power argued that a net payment of approximately $235 million, after deducting the value of its ownership interest in Tri-State, was fair and reasonable. United Power showed, and the administrative law judge agreed, that its proposal was appropriate and in line with the

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exit charges paid by two other members that recently had withdrawn from Tri-State.

Instead of working toward a reasonable exit charge, Tri-State tried to block United Power from leaving by proposing to charge it $1.25 billion, a discriminatory amount that would have resulted in an enormous and unfair windfall to Tri-State's remaining members.

The judge who heard the evidence sided with United Power and concluded that Tri-State's actions toward it had been unjust and discriminatory. The decision found that "Tri-State pursued a strategy of attempting to thwart the Commission of its jurisdiction" while United Power proposed a "common-sense approach" that would "neither encourage nor discourage members from leaving Tri-State" and treated all members the same. The decision paves the way for United Power to exit Tri-State and pursue cheaper and cleaner power sources for its customers.

Many G&Ts, like Tri-State, are beholden to deep investments in fossil fuels that are expensive, outdated, and inconsistent with current market forces. United Power is one of many cooperatives across the country seeking to modify the inefficient and outmoded G&T structure to provide members with more flexibility and greater access to cleaner and cheaper renewable energy sources.

In winning for United Power, WTO lawyers built on their success for electricity clients. Last year, WTO represented Delta-Montrose Electric Association in its closely watched exit charge dispute with Tri-State, leading to DMEA's successful exit from Tri-State.

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