170 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Tri-State Generation and Transmission Association, Inc. Docket Nos. ER20-686-000
ER20-688-000
ER20-688-001
ER20-726-000
ER20-728-000
EL20-25-000

ORDER ACCEPTING OPEN ACCESS TRANSMISSION TARIFF AND SERVICE AGREEMENTS, INSTITUTING SECTION 206 PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 20, 2020)

1. On December 26, 2019, December 27, 2019, and December 31, 2019, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed, pursuant to Federal Power Act (FPA)[1] section 205 and Part 35 of the Commission's regulations,[2] an Open Access Transmission Tariff (OATT), service agreements between Tri-State and various transmission customers, and notices of cancellation of certain service agreements.[3]

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[1] 16 U.S.C. § 824d (2018).

[2] 18 C.F.R. pt. 35 (2019).

[3] Between December 23, 2019 and February 10, 2020, Tri-State submitted multiple filings in numerous dockets, including a Stated Rate Tariff, Wholesale Electric Service Contracts (Wholesale Service Contracts), an OATT, rate schedules, service agreements, and applications for market-based rate authority. For purposes of this order, at times we refer to Tri-State's collective filings as Tri-State's Tariff Filings. In addition, on December 23, 2019 in Docket No. EL20-16-000, Tri-State filed a petition for declaratory order (Petition), requesting, among other things, that the Commission find that Tri-State became subject to the Commission's jurisdiction on September 3, 2019.

2. In this order, we accept Tri-State's OATT for filing effective February 25, 2020, and establish hearing and settlement judge procedures, as discussed below. We also institute an investigation pursuant to FPA section 206[4] in Docket No. EL20-25-000 to determine whether Tri-State's proposed formula rate, base return on equity (ROE), formula rate implementation protocols, reactive supply and voltage control service rates, and real power loss factor are just and reasonable, and we establish a refund effective date. We also accept Tri-State's proposed service agreements and a notice of cancellation for filing, effective as of the dates discussed below, and we will hold the two contested notices of cancellation in abeyance.

I. Background

3. Tri-State is a generation and transmission cooperative that provides wholesale electricity to its 43 member electric distribution cooperatives and public power districts (Utility Members) in Colorado, Nebraska, New Mexico, and Wyoming at cost-based rates pursuant to long-term contracts. A 43-seat Board of Directors (Board) controls Tri-State, with each of Tri-State's 43 Utility Members occupying one seat on the Board.

4. Tri-State supplies power to its Utility Members through a portfolio of ownership interests in generation, tolling agreements, power purchase agreements, and open market purchases. Tri-State provides transmission service to its Utility Members via Tri-State's approximately 5,665 miles of high-voltage transmission lines, the majority of which operate as part of the Western Interconnection.[5]

5. In July 2019, Tri-State submitted a set of filings to the Commission in anticipation of becoming a public utility subject to the Commission's jurisdiction.[6] Tri-State

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Orders addressing the Petition and Tri-State's Wholesale Service Contracts, Stated Rate Tariff, rate schedules, service agreements, and applications for market-based rate authority are being issued concurrently with this order.

[4] 16 U.S.C. § 824e.

[5] Tri-State notes that a portion of its transmission facilities supports its load centers in the Eastern Interconnection and is under the functional control of Southwest Power Pool, Inc. (SPP).

[6] *Tri-State Generation & Transmission Ass'n, Inc.*, Docket No. ER19-2440-000, et al. (July 2019 filings). Tri-State's July 2019 filings included a stated rate tariff; Utility Member Wholesale Service Contracts; an OATT; and an application for market-based rate authority.

explained that, under FPA section 201(f),[7] it had been exempt from the Commission's jurisdiction under Part II of the FPA[8] because it was wholly owned by entities that were themselves exempt from the Commission's jurisdiction under FPA section 201(f). Tri-State stated that it would cease to be wholly owned by such entities on or around September 22, 2019, due to the admission of one or more new members/owners (Non-Utility Members) that will not be an electric cooperative or a governmental entity. Tri-State represented that admission of the new Non-Utility Members would cause Tri-State to cease to be wholly owned by entities that are themselves exempt under FPA section 201(f), and that Tri-State will then become a public utility subject to the Commission's jurisdiction. On September 3, 2019, Tri-State filed an amendment to the July 2019 filings notifying the Commission that Tri-State admitted Mieco, Inc. (Mieco), a wholesale energy services company and subsidiary of Marubeni America Corporation, as a new Non-Utility Member. On October 4, 2019, the Commission rejected without prejudice Tri-State's filings, finding that Tri-State provided insufficient cost support for its proposed rates and had failed to comply with the Commission's rate schedule filing requirements.[9]

II. Tri-State's Filings

6. On December 26, 2019, in Docket No. ER20-686-000, Tri-State filed a proposed OATT to establish the rates, terms, and conditions for transmission service over its transmission facilities located in the Western Interconnection.[10] Tri-State states that, until September 3, 2019, it had in place a reciprocity OATT (Reciprocity OATT) pursuant to Order No. 888[11] that the Commission initially approved in 2001, under which

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[7] 16 U.S.C. § 824(f).

[8] 16 U.S.C. §§ 824-824w.

[9] *Tri-State Generation & Transmission Ass'n, Inc.*, 169 FERC ¶ 61,012, at P 22 (2019) (October 2019 Order).

[10] On December 27, 2019, Tri-State filed a supplement to Docket No. ER20-686-000 to include inadvertently omitted testimony. On January 9, 2020, Tri-State filed an errata to the transmittal letter of Docket No. ER20-686-000 to correct typographical errors.

[11] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 77 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998),

Tri-State provided network integration, point-to-point transmission, interconnection, and other transmission-related services on its transmission system to neighboring utilities and other wholesale transmission customers.[12] Tri-State states with respect to the non-rate terms and conditions of transmission service, since September 3, 2019, it has operated under the OATT filed in July 2019.[13] Tri-State states that the proposed OATT is largely based on the Commission's *pro forma* OATT established in Order Nos. 888, 890,[14] and 1000,[15] with certain modifications to accommodate Tri-State's unique circumstances.

7. On December 27, 2019, in Docket No. ER20-688-000, Tri-State filed 246 pre-existing service agreements between Tri-State and numerous counterparties. On January 10, 2020, Tri-State filed an amendment to make corrections to the tariff records for several service agreements.[16]

8. On December 31, 2019, in Docket No. ER20-726-000, Tri-State filed a notice of cancellation of a Long-Term Firm Point-to-Point (PTP) Transmission Service Agreement (TSA) with the City of Gallup. On December 31, 2019, in Docket No. ER20-728-000,

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aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[12] *Tri-State Generation & Transmission Ass'n, Inc.*, 96 FERC ¶ 61,268 (2001).

[13] Tri-State OATT Transmittal at 3.

[14] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[15] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[16] On January 9, 2020, Tri-State filed an errata to the Docket No. ER20-688-000 transmittal letter to correct typographical errors. On January 10, 2020, Tri-State filed an amendment in Docket No. ER20-688-001 in order to correct ministerial errors and to include inadvertently omitted revised agreements. On January 23, 2020, Tri-State supplemented its filing to include clean PDF versions of its service agreements.

Tri-State filed notices of cancellation of a Network Integration Transmission Service Agreement and a Network Operating Agreement with Arkansas River Power Authority (Arkansas River).

9. Tri-State states that it became subject to the Commission's jurisdiction on September 3, 2019, when it admitted Mieco as a Non-Utility Member.[17] Tri-State represents that Mieco supplies natural gas to purchasers throughout the United States, and currently provides natural gas to Tri-State's generation facilities across Tri-State's multi-state region. Tri-State also states that Mieco is not an electric cooperative or a governmental entity, and it is not owned by electric cooperatives or governmental entities in the United States. Tri-State represents that Mieco followed the application procedure for membership set forth in Tri-State's Bylaws and Tri-State accepted Mieco as a Non-Utility Member on September 3, 2019.[18] Tri-State states that, accordingly, as of September 3, 2019, Tri-State is a public utility subject to the Commission's jurisdiction and is no longer exempt from Part II of the FPA because it is no longer wholly owned directly or indirectly by entities that are: (1) states/political subdivisions of a state; or (2) electric cooperatives that are exempt public utilities under FPA section 201(f).[19]

10. Tri-State states that Mieco earns patronage capital[20] in Tri-State pursuant to Mieco's Non-Utility Member Agreement with Tri-State. Tri-State explains that Mieco's patronage account represents an ownership interest in Tri-State that entitles it to a share of the proceeds if Tri-State is dissolved. Tri-State represents that, like Tri-State's Utility Members, Mieco has a vote as a Member on important matters relating to Tri-State's governance, such as amendments to Tri-State's Articles of Incorporation, amendments to Tri-State's Bylaws, and any sale, mortgage, lease, disposition, or encumbrance of any substantial portion of the cooperative's property. Tri-State states that the admission of

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[17] Tri-State notes that, effective November 14, 2019, Tri-State added two additional Non-Utility Members—Ellgen Ranch Company and Olson's Greenhouse of Colorado, LLC. Tri-State OATT Transmittal at 7 n.17.

[18] *Id.* at 7 (citing Tri-State Bylaws, art. I, §§ 1 and 2); Tri-State, Tri-State Wholesale Service Contracts, Rate Schedule No. 259, art. I – Membership, (3.0.0, § 1).

[19] *Id.* at 7-8.

[20] Patronage capital is excess revenue, after operating expenses and costs, that is returned to cooperative members. *Sw. Power Pool Inc.*, 147 FERC ¶ 61,003 (2014).

Mieco as a Non-Utility Member will not affect the rates paid by Tri-State Utility Members or any other parties.[21]

III. Notice of Filings and Responsive Pleadings

11. Notice of the filings in Docket No. ER20-686-000 was published in the *Federal Register*, 85 Fed. Reg. 305 (Jan. 3, 2020), with interventions and protests due on or before January 16, 2020. Notice of the filings in Docket No. ER20-688-000 was published in the *Federal Register*, 85 Fed. Reg. 305 (Jan. 3, 2020), with interventions and protests due on or before January 17, 2020. Notice of the filings in Docket Nos. ER20-688-001, ER20-726-000, and ER20-728-000 was published in the *Federal Register*, 85 Fed. Reg. 3366 (Jan. 21, 2020), with interventions and protests due on or before January 21, 2020.

12. On February 3, 2020, Kit Carson Electric Cooperative, Inc. (Kit Carson) submitted a motion to intervene out-of-time and protest in certain of the Tri-State's Tariff Filings dockets.[22]

13. On February 18, 2020, Tri-State submitted an objection to Kit Carson's motion to intervene out-of-time and a motion for leave to answer and answer to Kit Carson's protest. Tri-State asserts that Kit Carson's motion to intervene out-of-time is unsupported and does not satisfy the requirements of Rule 214. Tri-State claims that Kit Carson's legitimate interests are not at issue in any of the Tri-State proceedings except Docket Nos. ER20-686-000 and ER20-688-000.

14. The Appendix to this order lists the entities that filed notices of intervention, motions to intervene, motions to intervene out-of-time, motions to lodge, protests, comments, and answers.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they filed them. Pursuant to Rule 214(d) of the Commission's Rules of Practice and

[21] Tri-State OATT Transmittal at 7.

[22] Kit Carson submitted its motion in Docket Nos. EL20-16-000, ER20-676-000, ER20-681-000, ER20-683-000, ER20-686-000, ER20-687-000, ER20-688-000, ER20-689-000, ER20-690-000, ER20-691-000, ER20-693-000, ER20-694-000, ER20-695-000, ER20-726-000, ER20-728-000, and ER20-682-000.

Procedure, 18 C.F.R. § 385.214(d) (2019), the Commission grants the late-filed motions to intervene given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

17. Motions to lodge information from other proceedings may be appropriate in some instances to supplement the Commission's record.[23] Here, we find that the evidence contained in the motion to lodge jointly submitted by La Plata and United Power has assisted us in our decision-making process, and we, therefore, grant their motion to lodge.

18. In Docket No. ER20-688-000, a number of entities requested the release of certain service agreements that Tri-State had filed as privileged pursuant to section 388.112 of the Commission's regulations[24] or Critical Energy/Electric Infrastructure Information (CEII) pursuant to section 388.113 of the Commission's regulations.[25] Western Area Power Administration (Western) and EDP Renewables North America LLC (EDP) filed objections to the release by Tri-State of the service agreements.

19. EDP objects to disclosure, arguing that Service Agreement Nos. 700 through 722 include information regarding certain EDP generation facilities that are proposed and/or under development and contain commercial and technical information about these various projects. EDP asserts that disclosure of this information could put EDP at a competitive disadvantage in negotiating commercial arrangements and transactions associated with these potential projects.[26]

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[23] *See, e.g., Cal. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,072, at P 8 (2012).

[24] 18 C.F.R. § 388.112 (2019). United Power Inc., (United Power), Upper Missouri Power Cooperative (Upper Missouri), and Sierra Club requested disclosure of Service Agreement Nos. 700 to 722.

[25] 18 C.F.R. § 388.113 (2019). United Power, Upper Missouri, Sierra Club, Wheat Belt Public Power District (Wheat Belt), EDP and Northwest Rural Service requested disclosure of Service Agreement Nos. 820 and 865.

[26] EDP Objection at 2-4. EDP notes that Sierra Club did not intervene in this proceeding.

20. Western also objects to disclosure, arguing that because Service Agreement Nos. 820 and 865 contain information including single line diagrams, subject to critical North American Electric Reliability Corporation physical and cyber security standards, disclosure of this information could lead to substantial damage to Western's power system and business operations, physical or cyber security, or illicit use of the information by those who do not have authorization to access the information.[27]

21. United Power filed a motion for leave to answer and an answer, requesting that the Commission deny EDP's and Western's objections and direct the disclosure of the service agreements. United Power argues that the objecting parties have failed to demonstrate why it should be denied access when it has executed a protective agreement. United Power claims that review of these service agreements is necessary to evaluate the rates, terms, and charges for services that it receives from Tri-State.[28]

22. Section 388.112 of the Commission's regulations permits any person filing a document with the Commission to request privileged treatment for some or all of the information contained in the document that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act.[29] To obtain privileged treatment, a filer must: (1) include a justification for requesting privileged treatment; (2) designate the document as privileged; and (3) submit a public version of the document with the information that is claimed to be privileged material redacted, to the extent practicable.[30] In addition, when such material is filed in a proceeding to which a right to intervene exists (as is the case here), the filer is required to include a proposed form of protective agreement with the filing.[31] Tri-State has met these requirements.

23. Section 388.112(b) further provides that any person who is a participant in the proceeding or has filed a motion to intervene in the proceeding may make a written request to the filer for the complete, non-public version of the document.[32] The request must include an executed copy of the protective agreement and a statement of the person's right to party or participant status or a copy of their motion to intervene or notice

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[27] Western Objection at 1-2.

[28] United Power Motion to Intervene at 4-6.

[29] 18 C.F.R. § 388.112(a).

[30] 18 C.F.R. § 388.112(b)(1).

[31] 18 C.F.R. § 388.112(b)(2)(i).

[32] 18 C.F.R. § 388.112(b).

of intervention. A filer, or any other person, may file an objection to such disclosure.[33] If no objection to disclosure is filed, the filer must provide a copy of the complete, non-public document to the requesting person within five days after receipt of the written request that is accompanied by an executed copy of the protective agreement. If an objection to disclosure is filed, the filer shall not provide the non-public document to the person or class of persons identified in the objection until ordered by the Commission or a decisional authority.[34]

24. Similarly, section 388.113(d) of the Commission's regulations permits any person filing a document with the Commission to request that the Commission treat some or all of the information contained in the document as CEII that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act. To obtain CEII treatment, a filer must (1) include a justification for requesting CEII treatment; (2) clearly label as CEII; and (3) segregate those portions of the information that contain CEII wherever feasible and submit a public version of the document with the information that is claimed to be CEII redacted, to the extent practicable. In addition, when such material is filed in a proceeding to which a right to intervene exists (as is the case here), the filer is required to include a proposed form of protective agreement with the filing. Tri-State has met these requirements.

25. Section 388.113(g) of the Commission's regulations provides that any person who is a participant in a proceeding or has filed a motion to intervene or notice of intervention in a proceeding may make a written request to the filer for a copy of the complete CEII[35] version of the document.[36] The request must include an executed copy of the applicable protective agreement and a statement of the person's right to party or participant status or a copy of the person's motion to intervene or notice of intervention. A filer, or any other

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[33] 18 C.F.R. § 388.112(b)(2)(iii).

[34] 18 C.F.R. § 388.112(b)(2)(iv).

[35] 18 C.F.R. § 388.113(c) defines CEII as follows:

> [S]pecific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) R elates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act [FOIA], 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure.

[36] 18 C.F.R. § 388.112(g).

person, may file an objection to disclosure and if an objection to disclosure is filed, the filer shall not provide the non-public document to the person or class of persons identified in the objection until ordered by the Commission or a decisional authority.

26. It is common practice for parties to a proceeding to use a protective agreement to gain access to confidential and proprietary information submitted on a non-public basis, while at the same time ensuring such information is neither publicly disclosed nor used by parties for purposes unrelated to their participation in the proceeding.[37] Unless an objecting party meets its burden of proof, the Commission has generally presumed that the use of such protective agreements appropriately balances the interests of filers in protecting their sensitive information against inappropriate disclosure and the right of intervenors to access information necessary to their full and meaningful participation in a contested proceeding.[38]

27. When considering a participant's request to access confidential information, the Commission has found that it is "obligated to balance the interests of a party seeking confidential treatment for information with the interests of parties seeking access to that information."[39] The analysis generally involves three steps: (1) assess whether the information qualifies as confidential; (2) determine whether a particular requester needs access to some or all of the information; and (3) determine what protection is needed for confidential information that will be disclosed under the protective order.[40] However, the "burden is on the party seeking to safeguard information to show that the protective order does not adequately protect its interests."[41]

28. We find that EDP and Western have failed to meet their burden to demonstrate why execution of protective orders by the entities seeking access to the service agreements is insufficient to protect any confidential information or CEII, consistent with sections 388.112 and 388.113 of the Commission's regulations. United Power,

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[37] *See, e.g., West Deptford Energy, LLC*, 134 FERC ¶ 61,189, at P 29 (2011); *S. Co. Energy Mktg., Inc.*, 111 FERC ¶ 61,011 (2005).

[38] *West Deptford Energy, LLC*, 134 FERC ¶ 61,189 at PP 27-29.

[39] *ISO New England Inc.*, 169 FERC ¶ 61,015 (2019).

[40] *Westar Energy, Inc. & Oneok Energy Servs. Co., L.P.,* 115 FERC ¶ 61,034, at 61,095 (2006).

[41] *Empire State Pipeline*, 115 FERC ¶ 61,113, at P 7 (2006) (citing *Mojave Pipeline Co*., 38 FERC ¶ 61,249, at 61,842 (1987) ("The burden is on the party seeking to safeguard information to show that the protective order does not adequately protect its interests.")).

Northwest Rural Service, EDP, and Upper Missouri have filed motions to intervene. To the extent that they have otherwise complied with the access requirements of sections 388.112 and 388.113 of the Commission's regulations, they should be granted access to the requested documents. Accordingly, we direct Tri-State to provide United Power, Northwest Rural Service, EDP, and Upper Missouri copies of the requested service agreements, within five days of the date of this order.

29. We deny Sierra Club's and Wheat Belt's requests as each has failed to follow the requirements of the Commission's regulations because neither filed a motion to intervene in Docket No. ER20-688-000.

B. <u>Substantive Matters</u>

30. As discussed below, we find that Tri-State's proposed generator interconnection procedures, generator interconnection transition procedures, and local and regional transmission planning processes have been shown to be just and reasonable. In addition, we find that Tri-State's proposed formula rate, reactive power and voltage control service rates, and real power loss factor raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures that we order below. We accept Tri-State's OATT for filing to be effective February 25, 2020, and we institute a proceeding pursuant to FPA section 206 in Docket No. EL20-25-000 to determine the justness and reasonableness of Tri-State's OATT. We also establish a refund effective date and establish hearing and settlement judge procedures in Docket No. EL20-25-000.

31. In addition, we find that Tri-State's proposed service agreements have been shown to be just and reasonable and accept them effective February 25, 2020, and accept Tri-State's notice of cancellation for Service Agreement No. 301 effective March 1, 2020, as discussed below. We will hold the contested notices of cancellation of Service Agreement Nos. 102 and 206 in abeyance until replacement agreements are approved by the Commission.

32. Finally, several entities filed, in most or all of the Tri-State Filings dockets, the same comments and/or protests asserting that Tri-State is not subject to the Commission's jurisdiction. We are addressing this issue in an order on Tri-State's Stated Rate Tariff in Docket No. ER20-676-000 that is being issued concurrently with this order and not addressing separately here.[42]

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[42] *See Tri-State Generation & Transmission Ass'n, Inc.*, 170 FERC ¶ 61,221 (2020).

1. Open Access Transmission Tariff

a. Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA)

i. Tri-State's Filing

33. Tri-State explains that its proposed LGIP and LGIA largely conform to the *pro forma* LGIP and LGIA, with the exception of the addition of certain provisions that are intended to facilitate the transition of Tri-State's existing generator interconnection procedures to its proposed LGIP. Tri-State also proposes revisions to clarify the types of interconnection service provided under its OATT.

34. Tri-State's proposed transition procedures are in section 5.1 of Attachment N to Tri-State's OATT. First, section 5.1 provides that any interconnection request that has not executed a study agreement as of September 3, 2019 would proceed under the revised LGIP for the next interconnection study. Section 5.1 further provides that any interconnection request that has executed a study agreement as of September 3, 2019 will proceed with the existing study procedures for that study. However, this does not preclude an interconnection request from an interconnection customer that had, for example, executed a system impact study agreement as of September 3, 2019 from proceeding under the revised facilities study procedure after completion of its system impact study.

35. Next, Tri-State explains that its prior generator interconnection procedures involved an option for the interconnection customer to voluntarily defer executing the facilities study, after the system impact study. Tri-State states that, on September 3, 2019, when it became subject to the Commission's jurisdiction, there were 13 interconnection projects that had been voluntarily deferred. According to section 5.1.1.2 and section 5.1.2 of Tri-State's LGIP, interconnection customers with these interconnection requests were given a 60-day transition period between September 3, 2019 and November 2, 2019 to notify Tri-State of their intent to come out of deferral or withdraw from the queue.[43] Tri-State asserts that it re-studied interconnection requests coming out of deferral and assigned them new queue positions at the beginning of the system impact study queue, in a non-discriminatory manner, while all other existing interconnection requests maintained their current queue positions and will be processed and completed in accordance with Tri-State's proposed LGIP and transition procedures. Tri-State avers that the transition procedures are a reasonable approach intended to

[43] Tri-State explains that of the 13 interconnection requests in deferral on September 3, 2019, nine exited deferral and executed re-study agreements and four withdrew. Tri-State OATT Transmittal at 27.

balance the interests of interconnection customers that took advantage of the deferral option and those that chose to move forward in the study process.

36. Tri-State also proposes a transition process for interconnection customers who have requested specific types of interconnection service under Tri-State's prior generator interconnection procedures. Tri-State explains that section 5.3 of its proposed LGIP explains how interconnection customers will convert from Network Resource and non-Network Resource interconnection services under the prior generator interconnection procedures to Network Resource Interconnection Service (NRIS) and Energy Resource Interconnection Service (ERIS) under the proposed LGIP, respectively.[44]

37. Tri-State states that it is not proposing in this proceeding any revisions to its LGIP and LGIA to incorporate the provisions of Order Nos. 845 and 845-A but intends to make a separate filing to comply with Order Nos. 845 and 845-A.[45]

ii. Protests and Answers

38. Gladstone New Energy, L.L.C. (Gladstone) and Invenergy Solar Development North America, LLC (Invenergy) protest, among other things, Tri-State's proposed LGIP and the transition procedures contained therein. Gladstone states that Tri-State's

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[44] The *pro forma* LGIA defines ERIS and NRIS as follows:

> [ERIS] shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. [ERIS] in and of itself does not convey transmission service.
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> [NRIS] shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. [NRIS] in and of itself does not convey transmission service.

[45] On December 27, 2019, in Docket No. ER20-687-000, Tri-State submitted its Order No. 845 compliance filing.

transition procedures have harmed and will continue to harm Gladstone's project that was in deferral under Tri-State's prior generator interconnection procedures, through delayed implementation of interconnection and increased cost of such interconnection.[46] Invenergy explains that as a result of Tri-State's demoting Invenergy's two of four projects currently in Tri-State's interconnection queue, Invenergy is likely to incur significant network upgrade costs for which it should not be responsible, and potential delays that it would not be subject to if the queue were processed either in accordance with Tri-State's prior generator interconnection procedures or the *pro forma* LGIP.[47]

39. Gladstone and Invenergy argue that Tri-State has not adequately explained why Tri-State will not consider the queue positions of interconnection requests that come out of deferral after September 3, 2019 when deciding how to proceed with the facilities studies. Invenergy argues that Tri-State's proposal allows later-in-time interconnection customers to leap-frog the queue ahead of interconnection customers that took advantage of Tri-State's deferral option. Gladstone explains that although Tri-State proposes to complete facilities studies in the order in which it receives executed facilities study agreements from interconnection customers who were in deferral on September 3, 2019 and chose to exit deferral, such a practice would not take into account when these customers originally submitted their interconnection requests or how long each such request has been in deferral. According to Gladstone, Tri-State may perform facilities studies of interconnection customers who submitted their requests and entered deferral after Gladstone's project, before performing such studies for Gladstone's project, simply because those customers submit executed facilities study agreements before Gladstone. Invenergy asks the Commission to require Tri-State to maintain the queue positions of interconnection customers who came out of deferral, keeping them behind any interconnection customer that had already executed a facilities study agreement at the time they came out of deferral but ahead of any interconnection customer who had not. Invenergy argues that such practice would be consistent with the interconnection customer's expectations when they entered deferral.

40. Gladstone and Invenergy explain that section 4.1 of the *pro forma* LGIP and of Tri-State's proposed LGIP states that, "[t]he Queue Position of each Interconnection Request will be used to determine the order of performing the Interconnection Studies and determination of cost responsibility for the facilities necessary to accommodate the Interconnection Request." Gladstone argues that this principle should apply to the entire interconnection process and that Tri-State's proposed transition process departs from this

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[46] Gladstone Protest at 35.

[47] Invenergy Protest at 7.

principle.[48] Invenergy adds that Tri-State's position is inconsistent with both the *pro forma* LGIP and Tri-State's prior generator interconnection procedures, because they make clear that an interconnection customer's queue position governs priority through the completion of the system impact study, and that once a system impact study is completed, a project could not be demoted behind a project that has yet to complete the system impact study.[49] Invenergy argues that discontinuation of the facilities study agreement deferral process upsets interconnection customers' reasonable expectation that they could defer executing a facilities study agreement for 18 months. Invenergy states that the most equitable course of action is to restore interconnection customers who deferred executing the facilities study agreement to the *status quo ante* such that they maintain the same queue position to which they would otherwise be entitled if the now cancelled deferral process did not exist.

41. Invenergy also argues that Tri-State failed to provide adequate notice of its transition proposal. Invenergy states that the LGIP that Tri-State proposed in its July 2019 OATT filing informed interconnection customers that they must either come out of facilities study agreement deferral or withdraw their interconnection requests by November 2, 2019. Invenergy asserts that this filing did not indicate that projects emerging from deferral would be moved to the end of the interconnection queue. Invenergy explains that it acted in reliance on the July 2019 OATT filing by notifying Tri-State on October 25, 2019 of its intent to execute a facilities study agreement. Invenergy states that five days later, on October 30, 2019, Tri-State issued notice that effective immediately, interconnection customers exiting deferral will be subject to system impact re-study. Finally, Invenergy states that it was not until January 10, 2020, that Tri-State issued a revised interconnection queue indicating that it had moved Invenergy's projects to the bottom of the queue. Therefore, Invenergy asserts that Tri-State should not be permitted to enforce these proposals against interconnection customers who came out of deferral between July 23 and October 30, 2019.[50]

42. Gladstone adds that section 7.6 of the *pro forma* LGIP is the only section in the *pro forma* LGIP that contemplates a system impact re-study. Gladstone explains that *pro forma* LGIP section 7.6 only allows for system impact re-studies under certain conditions, none of which have occurred for its project. Gladstone states that Tri-State has added a new section 5.1.1.2 to its proposed LGIP that allows for re-studies of any projects that come out of deferral, but that this section does not correspond to any part of the *pro forma* LGIP and that the Commission should not consider it consistent with or

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[48] Gladstone Protest at 35-36.

[49] Invenergy Protest at 9.

[50] *Id.* at 12.

superior to the *pro forma* LGIP.[51] Invenergy also asks that the Commission require Tri-State to evaluate whether to re-study the system impact study of any customer exiting deferral on a case-by-case basis, and to limit the system impact re-study to only confirm that upgrades identified in the interconnection studies were still required or to update schedule and cost estimate milestones, consistent with section 7.6 of Tri-State's proposed LGIP.[52]

43. Gladstone asserts that, because Tri-State's transition procedure required its project to be re-studied when it exited deferral, Gladstone experienced a significant increase in network upgrade costs. Gladstone explains that Tri-State's initial system impact study for Gladstone's project indicated that Gladstone would be responsible for network upgrade costs of approximately $30.1 million. However, Gladstone states that Tri-State has included a "higher-queued" 182 MW wind project that is part of Lucky Corridor, LLC's (Lucky Corridor) interconnection request that would cause Gladstone to be responsible for $439.8 million in network upgrade costs.[53]

44. Gladstone explains that its original decision to enter deferral was based on the amount of security Tri-State required to enter the facilities study in Tri-State's prior generator interconnection procedures. Gladstone states that the amount of the security was inconsistent with section 8.1 of the *pro forma* LGIP, and disagreement with Tri-State over this requirement is the reason that Gladstone was forced to place its request for interconnection into deferral. Gladstone explains that, by placing its project in deferral, it risked increased network upgrade costs, delayed interconnection of its project, and continues to risk the potential loss of 100 percent of the Production Tax Credit.[54]

45. Finally, Invenergy notes that Tri-State published an "[NRIS] Availability Report" that establishes a queue position threshold under which interconnection requests will only be studied as ERIS because there is insufficient native load and thus existing generation to displace in the study case.[55] Invenergy states that this adversely impacts two of its projects in Tri-State's queue, both of which were already studied for NRIS and recently came out of deferral (and were moved to the end of the interconnection queue under Tri-

[51] Gladstone Protest at 36-37.

[52] Invenergy Protest at 13.

[53] Gladstone Protest at 38-39.

[54] *Id.* at 37.

[55] Invenergy Protest at 7 (citing "Network Resource Interconnection Service Availability Report" at 21).

State's re-study proposal). Invenergy explains that the cutoff preserves NRIS for projects that entered Tri-State's queue after Invenergy's and either did not enter deferral or exited deferral prior to September 3, 2019. Invenergy states that the availability of NRIS is a fundamental component of the Commission's interconnection requirements, and its elimination is not "consistent with or superior to" the Commission's *pro forma* LGIP.[56]

46. In its February 5, 2020 answer, Tri-State explains that Invenergy's two projects, along with seven other projects that exited deferral and executed re-study agreements, will be assigned queue positions immediately behind Queue Position 4.[57] Tri-State clarifies that NRIS service is therefore available for Invenergy's two projects, as requested, due to their queue positions being above the "threshold," as long as Invenergy executes a facilities study agreement and continues in the interconnection queue after the system impact re-study.

47. Tri-State, however, maintains that its proposed transition procedures are just and reasonable because they: (1) preserve expectations underlying the prior generator interconnection procedures for projects in deferral at the time Tri-State became subject to the Commission's jurisdiction; (2) serve system reliability interests by allowing re-study of projects exiting deferral due to changed circumstances; and (3) afford an orderly mechanism for change-over to the queue management system under the *pro forma* LGIP. Tri-State states that re-studying projects that exit deferral is critical because of the differences in queue management between the prior generator interconnection procedures and the *pro forma* LGIP, and, therefore, Tri-State must consider all relevant impacts on reliability due to the change in circumstances that occurred after a project went into deferral.[58]

48. Tri-State argues that Gladstone has not shown that Tri-State's interim LGIP procedures are unjust and unreasonable because Gladstone's project came out of deferral, its re-study has been completed, and it is in position to execute a facilities study agreement, if it chooses.[59] Tri-State explains that while Gladstone's project was in deferral, Lucky Corridor's Mora Line Project advanced to the facilities study stage by executing a facilities study agreement, taking capacity at key substations in the area of

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[56] *Id.* at 3.

[57] Tri-State explains that these projects will be placed in Queue Positions 5 through 13, based on the order in which they execute facilities study agreements. Tri-State February 5, 2020 Answer at 58.

[58] *Id.*

[59] *Id.* at 59.

Gladstone's project. Tri-State argues that, while the system impact re-study showed increased network upgrade costs for Gladstone, the Mora Line Project was listed in the assumptions to Gladstone's original system impact study and Gladstone was aware that its network upgrade costs could change after the system impact re-study. Tri-State states that Gladstone seeks to address these circumstances in a complaint proceeding pending before the Commission, and Gladstone's protest is outside the scope of the instant filing and irrelevant to the Commission's determination as to whether Tri-State's *pro forma* LGIP is just and reasonable.[60]

49. On February 10, 2020, Gladstone filed an answer, stating that Tri-State's February 5, 2020 answer not only fails to provide information that clarifies the record, but also contains misstatements of fact and law. Gladstone clarifies that it protests Tri-State's OATT filing in this proceeding because Tri-State proposes LGIP transition procedures that differ from the *pro forma* LGIP and have not been shown to be just and reasonable.[61] Gladstone argues that Tri-State's February 5, 2020 answer implies that Gladstone has not been harmed by Tri-State's proposed transition procedures because Gladstone's project has been allowed to come out of deferral. Gladstone disagrees with that implication, arguing that Tri-State's proposed transition procedures allow Tri-State to indefinitely frustrate the development of generation projects that would compete with Tri-State's own coal-fired generation to serve load connected to the Tri-State transmission system.[62] Gladstone also objects to Tri-State's claim that Gladstone should have known that it was in competition for interconnection capacity when it signed the system impact study agreement. Gladstone presents evidence that questions Tri-State's use of data predating Gladstone's original system impact study report to complete the January 2020 re-study of Gladstone's interconnection request, which Gladstone asserts reflects a 14-fold increase in Gladstone's interconnection costs.[63]

50. In its February 12, 2020 answer, Invenergy notes that Tri-State's clarification is not reflected in its tariff language,[64] and requests that the Commission confirm Tri-State's concession of its error and commitment to reordering its interconnection queue so that the nine projects emerging from facilities study agreement deferral maintain their queue

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[60] *Id.* at 59-61 (referring to Gladstone Complaint, Docket No. EL19-97-000 (filed Sept. 11, 2019)).

[61] Gladstone Answer at 2.

[62] *Id.* at 3.

[63] *Id.* at 5-7.

[64] Invenergy Answer at 2.

positions, and that any project impacted by the re-study of the projects emerging from deferral is also considered for re-study to assess its impact on system reliability.

51. In its February 25, 2020 answer, Tri-State contends that the Commission should deny Gladstone's February 10, 2020 answer and leave Gladstone's claims for resolution in its complaint in Docket No. EL19-97-000.[65] Tri-State asserts that Gladstone fails to establish a basis for the Commission to grant relief, and states that the issues Gladstone raises are not necessary to the Commission's determination in the instant proceeding on the justness and reasonableness of Tri-State's proposed OATT. Tri-State reiterates that the re-study provision in section 5.1.1.2 is needed for reliability purposes, and that its re-study of Gladstone's project was consistent with Tri-State's former generator interconnection procedures and complied with Tri-State's proposed LGIP. Tri-State emphasizes that Gladstone had the information available to indicate that there was competition for capacity in the constrained area of Tri-State's system where Gladstone sought to interconnect, and that Gladstone had the ability to assess the risk and make its decision.[66] Tri-State argues that Gladstone's claims that Tri-State is using its LGIP transition procedures to prevent the development of renewable generation projects that wish to interconnect to Tri-State's system and compete against Tri-State's coal-fired generation are unsupported allegations that ignore Tri-State's Responsible Energy Plan.[67] Tri-State states that its proposed LGIP transition procedures did not harm Gladstone, but rather, any increased interconnection costs that Gladstone now faces as a result of the re-study under proposed section 5.1.1.2 are the direct result of Gladstone's own decision to put its interconnection project into deferral back in April 2018.

52. In its February 27, 2020 answer, Tri-State responds to Invenergy's February 12, 2020 answer by clarifying that Invenergy's two projects that came out of deferral should encounter no change in queue position in relation to other projects in Tri-State's queue once the two projects are re-studied and Invenergy executes their facilities study agreements to Tri-State. Tri-State also states that it is re-studying the projects that came out of deferral in the order in which they notified Tri-State of their election to exit deferral, and have frozen all work on studies for projects currently slotted at Queue Positions 14 and lower, anticipating that such studies or re-studies will be required to account for higher-queued projects.[68] Tri-State also notes that it will file executed

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[65] Tri-State February 25, 2020 Answer at 4.

[66] *Id.* at 11.

[67] *Id.* at 11-12. Tri-State states that its Responsible Energy Plan requires the purchase of large amounts of wind and solar energy.

[68] Tri-State February 27, 2020 Answer at 4-5.

facilities study agreements for the projects coming out of deferral as non-conforming service agreements, because the form of agreement for the facilities study agreement that Tri-State submitted as part of its *pro forma* LGIP does not include specific mention of re-studies.[69]

iii. <u>Commission Determination</u>

53. We accept Tri-State's proposed LGIP because we find it to be consistent with or superior to the *pro forma* LGIP. Tri-State's proposed LGIP adopts the Commission's *pro forma* LGIP, with certain exceptions, which Tri-State states are necessary to enable the transition from its existing generator interconnection procedures to its proposed LGIP. We also note that Tri-State has filed revisions to its OATT to comply with Order Nos. 845 and 845-A in Docket No. ER20-687-000, and as Tri-State requests,[70] the Commission will rule on those revisions in that docket.

54. We find that Tri-State has demonstrated that section 5.1 of its proposed LGIP, which contains the transition procedures, is consistent with or superior to the Commission's *pro forma* LGIP. Under proposed section 5.1, customers who were not in deferral as of September 3, 2019 are able to complete the study they are currently undergoing and then move to procedures that are consistent with the Commission's LGIP as soon as they execute a subsequent study agreement. We find that this reasonably balances the expectations of customers who were in the queue prior to Tri-State's transition to Commission jurisdiction with the requirement to adhere to the Commission's *pro forma* interconnection procedures.

55. With respect to Tri-State's proposed transition procedures for interconnection customers who were in deferral as of September 3, 2019, we find that Tri-State's answer addresses many of the issues raised by protesters. Tri-State has reinstated the higher-queued positions of the projects exiting deferral. While these projects may potentially not be in the order under which they first entered the system impact study, Tri-State's method of reordering the projects in the order in which they execute facilities study agreements is consistent with its prior procedures and just and reasonable.

56. With respect to Gladstone's argument that, under section 7.6 of its proposed LGIP, Tri-State was not allowed to conduct a re-study of the projects exiting deferral, we find that section 7.6 controls re-studies of system impact studies during the normal interconnection process. Tri-State's proposed transition procedures state that projects exiting deferral will be subject to re-study, unless Tri-State deems such re-study

[69] *Id.* at 5 n.14.

[70] Tri-State OATT Transmittal at 30.

unnecessary. This practice is consistent with the generator interconnection procedures that were in place when the interconnection requests originally entered deferral.[71] Accordingly, we find that it is reasonable for Tri-State to conduct a re-study of those projects that were in deferral as of September 3, 2019, if necessary. Invenergy further argues that this system impact re-study should be limited to only confirming that upgrades identified in the interconnection studies are still required or to update schedule and cost estimate milestones. We disagree and find that Tri-State may conduct a full system impact re-study in order to assess any impacts on its system that may occur by interconnecting a project.

57. Gladstone argues that, because Tri-State's transition procedure required the Gladstone project to be re-studied when it exited deferral, Gladstone experienced a significant increase in network upgrade costs due to a previously unknown project on a neighboring transmission system. However, we note that Gladstone was aware, as it entered deferral, that re-study was possible once it exited deferral. When an interconnection customer chooses to enter deferral, system conditions and assumptions can change, which can and often does cause network upgrade costs to increase after a re-study. In this instance, the project that caused the increase in network upgrade costs appears to be an affected system[72] project. The Commission has recognized that a transmission provider must incorporate the legitimate safety and reliability needs of an affected system when integrating new generation to the transmission provider's own system.[73] Therefore, we find that the inclusion of the other project as a higher-queued project in Gladstone's system impact study report, and the resulting impact on the estimated network upgrade costs, is a just and reasonable outcome.

58. With respect to Gladstone's discussion of the circumstances under which it entered deferral, including Tri-State's prior study deposit amount, we find that these arguments are beyond the scope of this proceeding because they concern Tri-State's prior

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[71] Tri-State February 5, 2020 Answer at 56.

[72] An Affected System is an electric system other than the transmission provider's transmission system that may be affected by a proposed interconnection. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at P 29 n.32 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[73] Order No. 2003, 104 FERC ¶ 61,103 at P 121.

generator interconnection procedures. We also note that this matter is at issue in a pending complaint before the Commission in Docket No. EL19-97-000.

59. Invenergy argues that Tri-State is limiting the availability of NRIS in its study process by refusing to study customers with certain queue positions for NRIS, and instead, only offering ERIS studies. In response, Tri-State does not deny that this practice is ongoing but rather simply states that Invenergy's projects will not be subject to such limitation. We note that this practice is not included as a part of Tri-State's proposed LGIP or its OATT and is not otherwise on file with the Commission. However, to the extent that Tri-State seeks to limit NRIS due to a lack of deliverability on its system, we remind Tri-State that NRIS and ERIS do not guarantee deliverability, nor do they constitute transmission service, and therefore Tri-State's proffered reason for this limitation appears inconsistent with Order No. 2003.[74]

b. Attachment K - Transmission Planning Process

i. Tri-State's Filing

60. Tri-State proposes to adopt a local transmission planning process that it states is consistent with the process the Commission accepted for Public Service Company of Colorado (PSCo), and proposes to adopt the regional and interregional transmission planning processes that the Commission accepted for other public utility transmission providers participating in the WestConnect Planning Region.[75] Accordingly, Tri-State asserts that its proposed Attachment K is consistent with, or superior to, the *pro forma* OATT and complies with the requirements of Order Nos. 890 and 1000.[76]

ii. Protest and Answer

61. The Colorado Public Utilities Commission (Colorado PUC) states that although Tri-State's proposed regional transmission planning processes appear to directly address the nine planning principles required by Order No. 890,[77] it is unclear whether Tri-State's

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[74] *Id.* P 769; *pro forma* LGIP § 1 (The definition of NRIS and ERIS both explain that "[Network/Energy] Resource Interconnection Service in and of itself does not convey transmission service").

[75] Tri-State states that it has executed the WestConnect Planning Participation Agreement and is a member of the WestConnect. Tri-State OATT Transmittal at 23.

[76] *Id.* at 22-23 (citing *Pub. Serv. Co. of Col.*, 142 FERC ¶ 61,206 (2013)).

[77] The nine planning principles are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution;

proposed local transmission planning process also addresses these principles.[78] The Colorado PUC explains that the Commission has reiterated that Order No. 1000's "Public Policy Requirements apply to both the local and regional transmission planning processes," and that the transmission planning process procedures must "give all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by Public Policy Requirements."[79] The Colorado PUC asserts that in light of Colorado's renewable energy program and the resource planning requirements of Colorado Senate Bill 19-236,[80] further clarity is needed to ensure that all stakeholders will receive a meaningful opportunity to provide input to Tri-State's transmission planning activities.[81]

62. Tri-State asserts that its proposed Attachment K applies Order No. 890's nine planning principles equally to Tri-State's local and regional transmission planning processes, and thus maintains that the Commission should find that both Tri-State's local and regional transmission planning processes comply with the requirements of Order No. 890.[82] Specifically, Tri-State responds that under Attachment K, it will coordinate its transmission planning process with stakeholders at the regional and sub-regional levels, and that transmission planning meetings are open to all affected parties.[83]

63. Second, Tri-State explains that its local transmission planning process incorporates a public policy requirement that allows stakeholders to participate in various outreach

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(7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[78] Colorado PUC Protest at 10-11.

[79] *Id.* at 11 (citing *S. Cent. MCN, LLC*, 164 FERC ¶ 61,114, at P 111 (2018)).

[80] *Id.* (citing *In the Matter of the Proposed Rules Implementing Senate Bill 19-236 Regarding Integrated or Elec. Res. Plans for Wholesale Elec. Cooperatives,* CoPUC Proceeding No. 19R-0408E).

[81] *Id.* at 10-11.

[82] Tri-State February 5, 2020 Answer at 49.

[83] *Id.* n.100.

efforts, including the Colorado PUC Rule 3627-specific meetings and meetings of the Colorado Coordinated Planning Group.[84] Further, Tri-State explains that it will conduct at least one meeting open to the public each year on transmission planning, and will allow stakeholders to propose alternative local transmission solutions.[85] Additionally, Tri-State states that meeting notices will be posted to the Tri-State and WestConnect websites in order to allow stakeholders to determine the necessity of their attendance at the annual meeting.[86]

iii. Commission Determination

64. We find that Tri-State's proposed local and regional transmission planning processes and its interregional transmission coordination process comply with the requirements of Order Nos. 890 and 1000.

65. With respect to local transmission planning, Tri-State proposes procedures comparable to those that the Commission accepted for PSCo.[87] Tri-State's proposed local transmission planning process provides for consideration of data submitted by transmission customers and transmission needs driven by local reliability, economics, and public policy requirements. Tri-State's proposed local transmission planning process also provides for stakeholder participation and input into Tri-State's transmission plan, and for interested parties to evaluate identified project solutions and submit alternative local transmission solutions. Tri-State will make its criteria, assumptions, data used in developing transmission plans, meeting notices, and documents available on its website. We find that Tri-State has provided sufficient detail to allow customers and other interested stakeholders to fully understand how the data and inputs they provide on the local transmission plan will be integrated into the transmission plan. We therefore find

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[84] *Id.* at 50 (referring to Attach. K, § II.D).

[85] Tri-State notes that the meeting would promote discussion of all aspects of transmission planning, including methodology, study inputs, public policy requirements, and study results.

[86] Tri-State OATT, Attach. K, § II.A.6.c.

[87] *Pub. Serv. Co. of Colo*., 142 FERC ¶ 61,206 (2013), *order on reh'g and compliance*, 148 FERC ¶ 61,213 (2014), *order on reh'g and compliance*, 151 FERC ¶ 61,128, *order on compliance*, 153 FERC ¶ 61,072 (2015), *vacated in part sub nom. El Paso Elec. Co.*, 832 F.3d 495 (5th Cir. 2016)).

that Tri-State's proposed local transmission planning process complies with the requirements of Order Nos. 890 and 1000.[88]

66. With respect to regional transmission planning and interregional transmission coordination, Tri-State's proposed Attachment K incorporates the common tariff language for implementing the Order Nos. 890 and 1000 regional transmission planning process for the WestConnect Planning Region and interregional transmission coordination process for the Western Interconnection.[89] Although Tri-State's proposed Attachment K contains two exceptions,[90] we find that these exceptions are just and reasonable and remain consistent with the WestConnect regional transmission planning processes and the Western Interconnection interregional transmission coordination processes. We therefore find that Tri-State's regional transmission planning and interregional transmission coordination provisions in its proposed Attachment K comply with the requirements of Order Nos. 890 and 1000.[91]

67. Regarding the Colorado PUC's concerns, we find that Tri-State's proposed local and regional transmission planning processes meet the requirement to consider transmission needs driven by public policy requirements. In particular, Tri-State's proposed local transmission planning process requires it to conduct a public meeting each year on transmission planning that is open to all stakeholders.[92] Tri-State's transmission planning processes give stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by public policy requirements, as well as alternative local transmission solutions. Tri-State's transmission planning process evaluates alternative solutions on a comparative basis in

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[88] Tri-State OATT, Attach. K, § II.

[89] Tri-State OATT Transmittal at 23 n.71; Tri-State OATT, Attach. K, §§ III, IV.

[90] Tri-State represents that the provisions for the regional transmission planning and interregional coordination processes in its proposed Attachment K are the same as in PSCo's Attachment R, with two limited exceptions: (1) for the Coordination at the Western Interconnection Level (section IV), Tri-State removes the references to the Western Electricity Coordination Council Transmission Expansion Planning Policy Committee because that group is no longer active; and (2) for the Recovery of Planning Costs (section VIII), Tri-State's recovery of costs associated with both the regional planning and interregional coordination processes differs from PSCo's recovery of costs.

[91] *See, e.g.*, *Pub. Serv. Co. of N. M.*, 149 FERC ¶ 61,247 (2014); *Pub. Serv. Co. of Colo.*, 148 FERC ¶ 61,213; *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,052 (2008).

[92] Tri-State OATT, Attach. K, § II.A.6.a.

terms of a solution's ability to mitigate issues over time, capital costs, feasibility, and operational benefits.[93] Further, we find that Tri-State's local transmission planning process is consistent with PSCo's Commission-accepted process, and Tri-State proposes to incorporate the Commission-accepted common tariff language for the regional transmission planning process for the WestConnect Planning Region and interregional transmission coordination process for the Western Interconnection.

c. Formula Rate, Reactive Power, and Real Power Losses

i. Formula Rate and Implementation Protocols

(a) Tri-State's Filing

68. Tri-State proposes a transmission formula rate and implementation protocols under its OATT that provide for the recovery of Tri-State's annual transmission revenue requirement (ATRR) for its transmission facilities in the Western Interconnection. Tri-State states that its filing includes additional detail and cost support as directed by the Commission in the October 2019 Order, and that its formula rate template is substantively similar to the formula rate the Commission approved for Tri-State's transmission facilities in the Southwest Power Pool, Inc. (SPP) region. Tri-State asserts that its formula rate charges are based on its actual costs drawn from audited company records, including Tri-State's 2018 U.S. Department of Agriculture Rural Utilities Service Form 12. Tri-State states that the initial charges will be in effect from the effective date of the instant filing through September 30, 2020, and that a workable populated formula rate spreadsheet is available on Tri-State's Open Access Same-Time Information System.

69. Based on Year End 2018 audited financial records, Tri-State's proposed ATRR for its transmission facilities in the Western Interconnection for the 2019 Current Rate Year (i.e., October 1, 2019 - September 30, 2020) is $135,806,971.[94] Because Tri-State is proposing an effective date of September 3, 2019, Tri-State proposes to utilize the rates approved for the 2019 Rate Year for OATT services during the September 3, 2019 - September 30, 2019 period that falls outside the 2019 Rate Year. Tri-State represents that its proposed base ROE of 9.30 percent and capital structure are based on the Commission-approved settlement of Tri-State's formula rate in SPP with respect to the Eastern Interconnection. Tri-State explains that consistent use of formula rate policies

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[93] *Id.*, Attach. K, § II.A.8.

[94] Tri-State OATT Transmittal at 30.

and procedures would promote continuity and administrative efficiency across its system, and would put transmission customers on either side of the interconnect on the same footing.

70. Tri-State explains that its formula rate implementation protocols are substantively similar to those the Commission approved for Tri-State in the SPP region. Tri-State asserts that the proposed formula rate implementation protocols describe the annual process of updating inputs to the formula rate template to develop charges for the rate year. Under the implementation protocols, Tri-State will post an annual update on or before July 15 of each calendar year. Tri-State explains that the implementation protocols allow an interested party to review Tri-State's work papers and, if necessary, request additional data or support necessary for the party to validate any input in the formula rate.[95] Furthermore, the implementation protocols provide a process for customers to make informal and formal challenges to the Tri-State's annual formula rate update.[96]

(b) <u>Protests and Answer</u>

71. Several protesters contend that Tri-State did not provide sufficient documentation to support its proposed formula rate, which leads to lack of transparency in Tri-State's determination of its formula rate input, proposed ROE, and capital structure. Public Service Company of New Mexico (PNM) questions Tri-State's transmission line facilities included in its ATRR, noting that some facilities listed are owned by PNM.[97] Colorado PUC argues that applying the SPP formula rate methodology to Tri-State's transmission facilities in the Western Interconnection may not lead to just and reasonable results, given the difference in contexts between Tri-State and SPP.[98] Kit Carson argues that the fixed rates in Tri-State's proposed OATT reflect historic costs that were not subject to federal or state regulatory review, and expresses concern that the ATRR and transmission loss rate Tri-State submitted as the basis for its formula rate are lower than what Tri-State currently charges Kit Carson, which suggests a violation of FPA section 205.[99] Arkansas River notes that Tri-State proposes to impose different ROE and capital structures to non-Member customers as compared to its Utility Members, and expresses

[95] *Id.* at 14.

[96] *Id.* at 19.

[97] PNM Comments at 3-4.

[98] Colorado PUC Protest at 10.

[99] Kit Carson Protest at 8-9.

concern that Tri-State does not provide customers a meaningful opportunity to review annual updates.[100] Kit Carson requests that the Commission suspend Tri-State's proposed formula rate and related filings, subject to refund with interest, and establish hearing procedures to determine whether the proposed rates violate the standards of the FPA.[101]

72. In its answers, Tri-State argues that it has provided necessary data and supporting documentation on its formula rate inputs, which allow an interested party to validate the inputs and replicate the calculations.[102] Tri-State reiterates that its formula rate relies on actual costs from the prior year, and its template includes a mechanism to make corrections due to input errors or changes in accounting practices. Tri-State argues that its use of base ROE and capital structure included in its formula rate in SPP is reasonable to ensure a consistent approach in developing Tri-State's formula rates across its entire transmission system. Tri-State clarifies that all Tri-State Utility Members and customers, including Tri-State's separate marketing division, Tri-State Power Management (TSPM), receive network transmission service at the same rates under the OATT. Tri-State explains that TSPM then transmits power to members through Wholesale Service Contracts.[103]

ii. Reactive Supply and Voltage Control – Schedule 2

(a) Tri-State's Filing

73. Schedule 2 of the Tri-State OATT provides the rates for Tri-State's provision of reactive supply and voltage control from its generating facilities connected to its transmission facilities in the Western Interconnection and reflects a cost-based annual revenue requirement of approximately $2.54 million. Tri-State represents that it calculated its proposed cost-based revenue requirement in accordance with the methodology the Commission approved in *American Electric Power Service Corporation*[104] Tri-State further represents that its proposed cost-based revenue

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[100] Arkansas River Protest at 19, 32.

[101] Kit Carson Protest at 9-10 (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 582 (1981)).

[102] Tri-State February 5, 2020 Answer at 34-35.

[103] Tri-State February 18, 2020 Answer to Kit Carson at 7-8.

[104] Tri-State OATT Transmittal at 20 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (approving a methodology for reactive power cost recovery that develops an allocation factor to sort

requirement reflects the fixed capability component, which is designed to recover the ongoing cost to own, operate, and maintain that portion of Tri-State's total investment in the facilities that is attributed to the units' capability to produce reactive power. Tri-State notes that Tri-State followed the *pro forma* OATT in developing this rate schedule, which does not explicitly include a self-supply option for reactive power, in contrast to Tri-State's prior non-jurisdictional tariff that allowed self-supply.[105]

(b) <u>Protest and Answers</u>

74. Arkansas River asserts that Tri-State's rate for reactive supply and voltage control has not been shown to be just and reasonable. In particular, it highlights that the proposed rate is based on a revenue requirement of $2,543,530 ($1.09/kW-Year), which is significantly higher than the revenue requirement in the current Tri-State tariff of $472,113, and it contends that the new rate has not been sufficiently supported.[106] Arkansas River further argues that "Tri-State's proposal to eliminate the self-supply option, without permitting the opportunity for compensation for dispatching [Arkansas River] resources is unjust and unreasonable."[107] Arkansas River explains that its member Lamar Light and Power has been responding to Tri-State's directives to help maintain transmission voltage and adjust for reactive power, and therefore should be compensated.[108]

75. Arkansas River contends that the revenue requirement includes assets that Tri-State plans to retire in the near future, which cumulatively represent over 30 percent of the Schedule 2 revenue requirement. Arkansas River explains that because the Schedule 2 rates established in this proceeding will remain in effect until the Commission acts on a filing under FPA section 205 or 206, the rates should be based on the generating units that are expected to provide reactive supply and voltage control services while those rates are in effect.[109]

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the annual revenue requirements components between real and reactive power production)).

[105] *Id.* at 20-21.

[106] Arkansas River Protest at 21.

[107] Arkansas River Answer at 4.

[108] Arkansas River Protest at 22; Arkansas River Answer at 4.

[109] Arkansas River Protest at 23-24.

76. In addition, Arkansas River argues that Tri-State does not explain how it derives the "Load Divisor (12-CP MW)" input in the Schedule 2 revenue requirement, and that the company records upon which the input is based are not reconcilable with publicly-available documents. Arkansas River further notes that the load divisor used for the Schedule 2 revenue requirement does not align with Tri-State's average system load used for its ATRR.[110]

77. Arkansas River also contends that Tri-State's proposal with respect to plant investment in reactive power capability warrants further discovery to ensure that: (1) the facilities listed are indeed needed to provide the Schedule 2 service and are not subsidizing costs that should not be borne by transmission customers, particularly since Tri-State's current OATT provides an opportunity for self-supply; (2) the proposed rate does not inappropriately double count for costs that are already captured in Tri-State's fixed charge calculation; and (3) Tri-State's 10 percent allocator for accessory electric equipment for its own facilities is appropriate.[111]

78. Arkansas River argues that Tri-State has not justified the annual fixed charge rates developed and applied to the total investment in reactive power production plants because it incorporates the 6.10 percent cost of capital, inclusive of the 9.30 percent ROE, which has not been shown to be just and reasonable. Arkansas River states that other issues that warrant exploration with respect to Tri-State's proposed annual fixed charge rate include: (1) Tri-State's use of a "levelized annual carrying charge cost approach" similar to other utilities seeking reactive power compensation for generators that have not previously been included in transmission rates; and (2) the appropriateness of the components included in calculating the levelized fixed charge rate, including the operating and maintenance expenses included in the levelized fixed charge rate.[112]

79. In its answer, Tri-State explains that the proposed revenue requirement reflects Tri-State's switch to using actual costs instead of a proxy charge.[113] Tri-State clarifies that 2020 asset retirements will be reflected in Schedule 2 rates at the time of their retirement. Tri-State asserts that the load divisor input is based on data compiled by Tri-State from meter readings and therefore its reference to company records is reasonable. Regarding Arkansas River's claim that the plant investment in the fixed capability

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[110] *Id.* at 24-25.

[111] *Id.* at 26-28.

[112] *Id.* at 29.

[113] Tri-State OATT Transmittal at 20 n.60; Tri-State February 5, 2020 Answer at 42.

component and the annual fixed charge rate need further review, Tri-State further explains its calculations and use of Tri-State engineering estimates as proxy in compiling reactive revenue requirement.[114] Finally, Tri-State states that the *pro forma* OATT does not include language providing for a self-supply option. Tri-State contends that it performed a study and determined that Arkansas River does not have the resources to manage its reactive power requirements.

80. In response, Arkansas River argues that Tri-State has failed to support its conclusion that it cannot make available to Arkansas River the option to self-supply, and its reference to a study not submitted in the record does not meet its burden. Arkansas River asserts that if the Commission is unable to order Tri-State to allow Arkansas River to self-supply Schedule 2 service to the full extent of Arkansas River's capability, a hearing is necessary on this issue.[115]

iii. Real Power Losses

(a) Tri-State's Filing

81. Tri-State proposes a real power loss factor of 3.378 percent for point-to-point and network transmission service, which is based on a study Tri-State performed.[116] For current and excitation losses, the study calculated losses based on varying load and generation levels and for different periods of the year. Tri-State states that because substation power losses are typically unmetered, the study used estimated values based on average consumption. Finally, in the study, Tri-State used the Bonneville Power Administration's "Corona and Field Effects Version 3.1" program to calculate the corona losses. Tri-State added the totals for each of these losses and divided the total by Tri-State's network load to determine the percent system loss. Tri-State weighted the percent system loss based on hours of operation to determine the total weighted real power loss percentage. Tri-State notes that its approach to determine the transmission loss factor is similar to the approach used by PSCo.[117]

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[114] Tri-State February 5, 2020 Answer at 42-46.

[115] Arkansas River Answer at 3-4.

[116] *See* Tri-State OATT Transmittal, Ex. TS-0029.

[117] Tri-State OATT Transmittal at 21 (citing *Pub. Serv. Co. of Colo.*, 151 FERC ¶ 61,018 (2015), *order approving settlement*, 154 FERC ¶ 61,205 (2016) (accepting a settlement including an electric system loss analysis based on power flow studies for

(b) Protests and Answer

82. PNM and Arkansas River contend that Tri-State has not included adequate support for its proposed real power loss factor and methodology to measure losses. PNM states that the preferred methodology to measure losses is typically the direct measurement of transmission losses but notes that Tri-State does not use meters to determine the actual system losses. PNM also questions whether radial lines and point-to-point transmission service that Tri-State provides to others are included in its loss calculations.[118] Additionally, Arkansas River and Kit Carson are concerned that Tri-State's proposed real power loss factor is lower than the real power loss factor they are currently subject to as Tri-State customers.

83. In its answer, Tri-State further explains the inputs to its transmission system loss factor. Tri-State states that while PNM owns certain facilities Tri-State used for its ATRR calculation, Tri-State also owns transmission facilities at these substations. Tri-State also clarifies that it does not have lower voltage underbuilt facilities on transmission structures or lower voltage underbuilt facilities in substations.[119] Tri-State notes that the calculated real power loss factor is based on power flow models that account for the physical nature of Tri-State's transmission system and measures all necessary types of system losses over several operational conditions. Tri-State also notes that this method is similar to that used by PSCo.[120] Tri-State argues that using a measured loss rate methodology as suggested by Arkansas River and PNM must be done by a balancing authority, which Tri-State is not. Tri-State also asserts that Arkansas River's request to reconcile the proposed lower real power loss factor with the prior higher real power loss factor is misplaced, stating that Tri-State's prior real power loss factor is not at issue in this proceeding, as this proceeding only relates to the proposed real power loss factor in the OATT. Tri-State argues that no "apples-to-apples" comparison is possible or relevant because its system loss study included lines, transformers, and upgrades that were not part of Tri-State's prior system study and loss calculation.[121]

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different system conditions to calculate the losses for transmission lines, transforms, and corona losses)).

[118] PNM Comments at 3-4.

[119] Tri-State February 5, 2020 Answer at 51-54.

[120] *Id*. at 51-52.

[121] *Id.* at 54.

iv. Commission Determination

84. As an initial matter, we are unpersuaded by Arkansas River's argument that Tri-State's proposal is unjust and unreasonable because it does not allow customers to self-supply reactive supply and voltage control. We find this aspect of Tri-State's proposal to be consistent with or superior to the *pro forma* OATT, which does not require transmission providers to provide transmission customers with the option to self-supply this service.[122]

85. However, we find that Tri-State's proposed OATT raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures that we order below. Our preliminary analysis indicates that Tri-State's proposed formula rate, ATRR, reactive supply and voltage control service rates, and real power loss factor have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For example, we cannot determine, based on the record before us, whether the proposed ROE and other data inputs are appropriate to include in Tri-State's formula rate and ATRR. Tri-State's filing also raises concerns about the derivation of the load divisor and the fixed charge rates developed and applied to the total investment in reactive power production plants. We additionally cannot determine based on the record whether Tri-State's proposed real power loss factor is just and reasonable. Therefore, because we consider Tri-State's filing an initial rate, we accept Tri-State's proposed OATT for filing to be effective February 25, 2020, and we institute a proceeding pursuant to FPA section 206 in Docket No. EL20-25-000 to determine the justness and reasonableness of Tri-State's proposed OATT. We also establish a refund effective date and establish hearing and settlement judge procedures in Docket No. EL20-25-2000.

86. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date. In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206**,** and we do so here as

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[122] "The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation or Other Sources." *Pro forma* OATT, I. 3 "Ancillary Services."

well.[123] That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-25-000 in the *Federal Register*.

87. FPA section 206(b) also requires that, if no final decision is rendered by the conclusion of the180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the section 206 proceeding in Docket No. EL20-25-000 for hearing and settlement procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within 12 months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by March 19, 2021, we expect that, if the proceeding does not settle, we would be able to render a decision by May 9, 2022.

88. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[124] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.[125] The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

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[123] *See, e.g., Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

[124] 18 C.F.R. § 385.603.

[125] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

2. Service Agreements and Cancellations

a. Tri-State's Filings

89. Tri-State filed 246 pre-existing service agreements between Tri-State and various transmission customers and states that it does not propose any changes to the agreements. The service agreements include: network operating agreements (NOAs), network integration transmission service agreements (NITSAs), PTP TSAs, generation interconnection agreements, system impact study agreements, and various operation and participation agreements. Tri-State asserts that the agreements deviate from the *pro forma* agreements under the proposed OATT in order to describe unique system requirements and to specify the negotiated terms of the agreements such as effective date, costs, and services to be provided.

90. Tri-State describes that the agreements fall under three categories: (i) agreements executed under Tri-State's Reciprocity OATT before September 3, 2019, when Tri-State asserts that it became FERC-jurisdictional; (ii) agreements predating Tri-State's Reciprocity OATT or entered into after September 3, 2019; and (iii) WestConnect agreements. Specifically, the WestConnect agreements include: the WestConnect Point-to-Point Regional Transmission Service Participation Agreement filed by WestConnect among its members to enable regional market enhancements;[126] the WestConnect PTP Regional Transmission Service Tariff for Tri-State, a *pro forma* agreement filed by each FERC-jurisdictional WestConnect member; and a concurrence to the WestConnect Planning Participation Agreement filed by Arizona Public Service Company, the designated filing entity.[127]

91. Tri-State asserts that it negotiated the rates, terms, and conditions of these existing contracts with the respective parties on an arm's-length basis at the time the contracts were executed. Tri-State argues that the Commission should presume these "freely negotiated" transmission and transmission service-related agreements satisfy the just and reasonable standard.[128] Tri-State asserts that this presumption may be overcome only if

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[126] *See WestConnect*, 143 FERC ¶ 61,291 (2013).

[127] *See Arizona Pub. Serv. Co.,* 151 FERC ¶ 61,128 (2015).

[128] Tri-State Docket No. ER20-688-000 Transmittal at 12 (quoting *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Cty*, 554 U.S. 527, 530 (2008)). Under the *Mobile-Sierra* doctrine, the Commission must presume that the rate established in a freely negotiated wholesale-energy contract meets the "just and reasonable" requirement imposed by the FPA. The presumption may be overcome only if the Commission concludes that the contract seriously harms the public interest.

the Commission concludes the agreements "seriously harm [] the public interest,"[129] which requires a finding that the existing rate would "impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory."[130]

92. Tri-State separately filed a notice of cancellation for a PTP TSA with the City of Gallup designated as Service Agreement No. 301 under the proposed OATT. Tri-State asserts that the TSA expired pursuant to its own terms on December 31, 2019, and that the parties have entered a new replacement agreement that conforms to the OATT.

93. Tri-State also filed notices of cancellation for a NITSA and affiliated NOA with Arkansas River designated as Service Agreement Nos. 102 and 206, respectively, under Tri-State's OATT. Tri-State asserts that the agreements expired pursuant to their own terms on December 31, 2019. On January 21, 2020, as supplemented on February 4, 2020 and amended on March 10, 2020, Tri-State filed a replacement NITSA and NOA with a requested effective date of January 1, 2020.[131]

b. Protests and Answers

94. Empire Electric Association, Inc. (Empire), K.C. Electric Association (K.C. Electric), Highline Electric Association (Highline), and Midwest Electric Cooperative (Midwest) state that the Commission should review each service agreement under the *Mobile-Sierra* "public interest" standard applicable to pre-existing agreements negotiated at arm's-length.[132] Conversely, the Colorado PUC questions whether the service

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[129] *Id.* (quoting *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Cty*, 554 U.S. at 530).

[130] *Id.* (citing *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348, 355 (1956)).

[131] In Docket No. ER20-932-000, Tri-State filed an unexecuted conforming NITSA and an unexecuted NOA with Arkansas River to be effective January 1, 2020, designated as Service Agreement Nos. 207 and 106, respectively. In that filing, Tri-State notes that Arkansas River had a right to request continued transmission service and that the parties attempted to execute a new NITSA and NOA before the termination of the original agreements, but that the parties could not reach agreement on certain terms. In Docket No. ER20-932-001, Tri-State filed an amendment to replace the unexecuted NOA with an executed NOA.

[132] Empire Comments at 4; K.C. Electric Comments at 4; Highline Comments at 5; Midwest Comments at 5.

agreements are just and reasonable, and are the results of arm's-length negotiations due to the reduced bargaining power of Tri-State members because of high membership exit fees.[133] The Colorado PUC emphasizes that the Commission should conduct careful review of the service agreements because future contract modifications hinge upon their approvals.[134] La Plata argues that the *Mobile-Sierra* presumption is inapplicable to unilaterally-established tariffs and agreements under them.[135] Kit Carson requests that the Commission suspend Tri-State's proposed transmission service contracts and related filings, subject to refund with interest, and establish hearing procedures to determine whether the proposed rates violate the standards of the FPA.

95. Arkansas River protests the cancellation of Service Agreement Nos. 102 and 206. Arkansas River states that it has a right to continued transmission service from Tri-State in accordance with the rollover rights in section 2.2 of Tri-State's OATT, under either an amendment to the existing service agreement or a new service agreement. Arkansas River states that it provided notice of its intention to continue taking service on December 31, 2018, one year prior to the expiration date of its NITSA.[136] Arkansas River argues that the Commission should withhold action on the notices of cancellation until it accepts a replacement NITSA and NOA, thereby ensuring continuity of service.[137] Alternatively, Arkansas River requests that the Commission deny the notices of cancellation.[138]

96. In its answer, Tri-State states that the Colorado PUC's general claim that the service agreements may not be just and reasonable is unfounded.[139] Tri-State explains that, except for PTP TSAs with Delta-Montrose Electric Association, the service agreements are between Tri-State and non-member parties. Tri-State maintains that the preexisting service agreements are the result of arm's-length negotiations that do not harm the public interest and should therefore be accepted as filed.

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[133] Colorado PUC Protest at 18.

[134] *Id.* at 18 (citing *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. at 546).

[135] La Plata Protest at 9.

[136] Arkansas River Comments at 8.

[137] *Id.* at 9.

[138] *Id.* at 10.

[139] Tri-State February 5, 2020 Answer at 61-62.

97. Tri-State counters Arkansas River's claim that by executing its rollover rights, it has the right to continued service under the terminating NITSA and NOA. Tri-State states that while the Commission allows customers to exercise rollover rights, service is not continued under the pre-existing contract, but rather exercised through the rates, terms, and conditions set forth in the OATT.[140] Tri-State asserts that the NITSA terms clearly state that continued service will be provided either under a revised agreement or under a new service agreement.

98. Tri-State explains that, while the parties were unable to reach an agreement on the terms of the new NITSA and NOA, Tri-State has filed the unexecuted NITSA and NOA, at Arkansas River's request, to maintain uninterrupted service. Tri-State states that its continuous service under the terms of the new, unexecuted NITSA and NOA is consistent with the Commission's policy in *Ameren Services*.[141] Tri-State argues that although in *Ameren Services*, the Commission accepted the unexecuted NITSA and NOA for filing, subject to refund, and established hearing procedures, the unexecuted NITSA and NOA here are "not within the scope of this docket" and the cancellation should be approved in this filing, as requested.[142]

c. <u>Commission Determination</u>

99. We accept the service agreements for filing. As a threshold matter, we find that, contrary to Tri-State's contention, the *Mobile-Sierra* presumption applies to some but not all of the service agreements at issue. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's-length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitutes contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption.[143]

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[140] *Id.* at 64 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,665; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,195; *Arizona Pub. Serv. Co.*, 162 FERC ¶ 61,005, at P 16 (2018)).

[141] *Id.* at 65 (citing *Ameren Servs. Co.,* 101 FERC ¶ 61,066 (2002)).

[142] *Id.* at 66.

[143] *E.g., Linden VFT, LLC v. Pub. Serv. Elec. and Gas Co.*, 161 FERC ¶ 61,264, at P 27 (2017); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 18 (2017); *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 127 (2013), *order on reh'g and compliance*,

100. We find that those service agreements Tri-State has filed that pre-date Tri-State's Reciprocity OATT, and other service agreements Tri-State has filed that were not executed under the Reciprocity OATT, embody individualized rates, terms, and conditions that apply only to sophisticated parties who negotiated them freely at arm's-length. Although the Colorado PUC questions the ability of Tri-State members to negotiate the service agreements freely, the Colorado PUC has not provided adequate evidence to show that such negotiations were not arm's length. Further, we note that this concern raised by the Colorado PUC would not apply to the service agreements that Tri-State negotiated with non-member third parties. Accordingly, we find that the *Mobile-Sierra* presumption applies to these service agreements and thus conclude, given a lack of evidence that these service agreements seriously harm the public interest, that they are just and reasonable.

101. In contrast, we find that the service agreements executed under Tri-State's Reciprocity OATT that pre-date September 3, 2019, embody generally applicable rates, terms, or conditions. Similarly, we find that the WestConnect Tariff embodies generally applicable rates, terms or conditions, as do the related Participation Agreements entered thereunder. Accordingly, we find that the *Mobile-Sierra* presumption does not apply to these agreements. We find that Tri-State has adequately justified the deviations of its various service agreements from the *pro forma* agreements under the OATT. We note that these service agreements consist of preexisting agreements among predominantly third-party counterparties that have not protested these filings.

102. Further, we accept the uncontested notice of termination for Service Agreement No. 301. We hold the notices of termination in Service Agreement Nos. 102 and 206 in abeyance until replacement agreements are approved by the Commission. We note that Tri-State filed replacement agreements on January 21, 2020 and March 10, 2020, in Docket Nos. ER20-932-000 and ER20-932-001, respectively. Accordingly, the Commission will separately determine in Docket Nos. ER20-932-000 and ER20-932-001 whether those replacement agreements are just and reasonable.

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149 FERC ¶ 61,048, at P 94 (2014) (citations omitted); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 177 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,127, at P 108 (2014) (citations omitted).

3. Request for Waiver of the Prior Notice Requirement and Effective Date

103. Tri-State requests that the Commission accept its OATT filing without suspension or condition and grant waiver of the prior notice requirements[144] to allow an effective date of September 3, 2019, the date on which Tri-State states that it became subject to the Commission's jurisdiction under the FPA. In the alternative, Tri-State requests that the Commission accept its filings effective one day after the date of filing.[145] Tri-State requests that the service agreements become effective on the date corresponding to the effective date of its OATT filing, except for specific service agreements that it requests become effective on their respective dates of execution.[146] Tri-State asks the Commission to accept the notices of cancellation effective January 1, 2020.

104. Tri-State states that it has made a good faith effort to comply with the prior notice requirements, noting that it made its July filings 60 days before it expected to become subject to the Commission's jurisdiction after admitting Mieco. Tri-State further states that it refiled its tariffs and agreements as soon as possible while meeting the cost support requirements of the Commission's October 2019 Order. Tri-State asserts that denial of waiver in this context would be inequitable and have a significant adverse impact on Tri-State and its members.[147]

105. Tri-State further states that the grant of waiver will not have adverse effects on the purchasers of power, because there is no change to its existing rates. Finally, Tri-State notes that the Commission has exercised its discretion in numerous cases to waive the

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[144] 16 U.S.C. § 824d(d); 18 C.F.R. § 35.11 (2019); *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089, at 61,353-54 & n.3 (1992).

[145] Tri-State OATT Transmittal at 2, 32, 34.

[146] Tri-State specifically requests the following agreements to become effective on the date they were executed: system impact study restudy agreements on various dates; Service Agreement No. 820 on September 12, 2019; Service Agreement No. 824 on October 18, 2019; Service Agreement No. 863 on October 22, 2019; and Service Agreement No. 865 on November 13, 2019.

[147] Tri-State OATT Transmittal at 36.

prior notice requirements where there have been extenuating circumstances, including where previously non-jurisdictional cooperatives have transitioned to FERC jurisdiction.[148]

a. **Commission Determination**

106. We deny Tri-State's request for waiver of the prior notice requirement. FPA section 205 explicitly requires that proposed rates be filed with the Commission at least 60 days in advance of their proposed effective date.[149] While the statute and the Commission's regulations give the Commission the discretion to grant waiver of the 60-day prior notice requirement for good cause shown,[150] the Commission has explicitly stated that, absent extraordinary circumstances, it would not grant waiver of notice when an agreement for new service is filed on or after the day service has commenced.[151]

107. Tri-State has not demonstrated extraordinary circumstances warranting waiver of the prior notice requirement. Thus, we deny Tri-State's request for waiver of the 60-day prior notice requirement and requested effective dates. We accept Tri-State's OATT effective February 25, 2020, 61 days after filing. We accept Tri-State's service agreements effective February 25, 2020, 61 days after filing. We accept Tri-State's notice of cancellation for Service Agreement No. 301 effective March 1, 2020, 61 days after filing.

108. However, although we are not granting Tri-State's request for waiver of the prior notice requirement, we will not require refunds given the unique facts in this case.[152]

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[148] For example, Tri-State notes that the Commission waived prior notice and assigned an effective date of July 26, 2002 to an agreement Sussex Rural Electric Cooperative filed on January 27, 2003. Tri-State OATT Transmittal, at 34-35 (citing *Sussex Rural Elec. Coop.*, 102 FERC ¶ 61,335 (2003)).

[149] 16 U.S.C. § 824d(d). *See also El Paso Elec. Co.*, 105 FERC ¶ 61,131, at PP 9-11 (2003).

[150] 16 U.S.C. § 824d(d); 18 C.F.R. §§ 35.3(a), 35.11 (2019).

[151] *Central Hudson Gas & Elec. Co.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

[152] *See, e.g., Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions . . . in order to arrive at maximum effectuation of Congressional objectives").

Specifically, in light of the unique circumstance of Tri State becoming subject to the Commission's jurisdiction, we will not require Tri-State to calculate or pay refunds for sales made during the time between September 3, 2019 and February 22, 2020 when they made sales under the OATT and service agreements without authorization. Recognizing this circumstance and noting that Tri-State's customers do not ask that the Commission require Tri-State to pay refunds for sales made without authorization, the Commission is exercising its discretion to not order refunds here.

The Commission orders:

(A) Tri-State's OATT and service agreements are accepted for filing, effective February 25, 2020, as discussed in the body of this order.

(B) The notice of cancellation for Service Agreement No. 301 is accepted, effective March 1, 2020.[153]

(C) The notices of cancellation for Service Agreement Nos. 102 and 206 are held in abeyance until replacement agreements are approved by the Commission.[154]

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Tri-State's proposed formula rate, base return on equity, formula rate implementation protocols, and reactive supply and voltage control service rates as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates

[153] Tri-State Generation and Transmission Association, Inc., FERC FPA Electric Tariff, Open Access Transmission Tariff, Service Agreement No. 301, 2.0.0.

[154] Tri-State Generation and Transmission Association, Inc., FERC FPA Electric Tariff, Open Access Transmission Tariff, Service Agreement No. 102, 2.0.0, Service Agreement No. 206, 2.0.0.

the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Any interested person desiring to be heard in Docket No. EL20-25-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), within twenty-one (21) days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(I) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under FPA section 206 in Docket No. EL20-25-000.

(J) The refund effective date in Docket No. EL20-25-000 established pursuant to FPA section 206 shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (I) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Entity	**Docket Numbers**	**Filings**[155]
Alliance Power Incorporated and Colorado Highlands Wind, LLC	ER20-686-000 ER20-688-000	Motion to Intervene Out-of-Time and Comments (Jan. 22, 2020); Motion to Accept Out-of-Time Motion to Intervene and Comments (Jan. 29, 2020)
Arkansas River Power Authority	ER20-686-000 ER20-688-000 ER20-728-000	Motion to Intervene and Comments (Jan. 21, 2020); Motion to Intervene, Protest, Request for Refund Protection, and Hearing (Jan. 21, 2020); Answer (Feb. 19, 2020); Motion to Intervene, Protest, Request for Refund Protection, and Hearing (Feb. 24, 2020)
Basin Electric Power Cooperative	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 13, 2020)
Colorado Independent Energy Association	ER20-688-000	Motion to Intervene (Jan. 17, 2020)
Colorado Public Utilities Commission	ER20-686-000	Notice of Intervention and Response (Jan. 8, 2020); Protest (Jan. 21, 2020)
Colorado Springs Utilities	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 17, 2020)
Delta-Montrose Electric Association	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 13, 2020)
EDP Renewables North America LLC	ER20-688-000	Motion to Intervene and Objection to Disclosure (Jan. 15, 2020)

[155] For entities that filed multiple pleadings, not all of the docket numbers listed apply to each pleading.

Empire Electric Association, Inc.	ER20-686-000 ER20-688-000	Comments (Jan. 21, 2020)
Gladstone New Energy, L.L.C.	ER20-686-000 ER20-688-000 ER20-688-001 ER20-726-000 ER20-728-000	Motion to Intervene, Motion for Extension of Time and Request for Shortened Response Period (Jan. 6, 2020); Protest and Request for Evidentiary Hearing (Jan. 21, 2020); Motion for Leave to Reply and Reply (Feb. 10, 2020);
GridLiance High Plains LLC	ER20-686-000	Motion to Intervene (Jan. 14, 2020)
Guzman Energy, LLC	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 21, 2020)
Highline Electric Association	ER20-686-000 ER20-688-000	Motion to Intervene (Jan. 21, 2020)
Invenergy Solar Development North America LLC	ER20-686-000	Motion to Intervene and Protest (Jan. 21, 2020); Motion for Leave to Answer and Answer (Feb. 12, 2020)
Jemez Mountains Electric Cooperative, Inc.	ER20-686-000 ER20-688-000	Motion to Intervene Out-of-Time (Feb. 5, 2020)
K.C. Electric Association	ER20-686-000 ER20-688-000	Comments (Jan. 21, 2020); Motion to Intervene Out-of-Time and Comments (Jan. 22, 2020)
Kit Carson Electric Cooperative, Inc.	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene Out-of-Time and Protest (Feb. 3, 2020); Motion for Leave to Reply and Reply (Mar. 3, 2020)
La Plata Electric Association, Inc.	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 10, 2020); Protest (Jan. 21, 2020); Motion to Lodge (Mar. 16, 2020)
Lincoln Electric System	ER20-686-000	Motion to Intervene (Jan. 9, 2020)
National Rural Electric	ER20-686-000	Motion to Intervene (Jan.

Cooperative Association	ER20-688-000	17, 2020); Comments (Jan. 21, 2020)
Nebraska Public Power District	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 3, 2020)
Northwest Rural Public Power District	ER20-686-000 ER20-688-000 ER20-688-001 ER20-726-000 ER20-728-000	Motion to Intervene and Comments (Jan. 8, 2020); Motion to Intervene (Jan. 17, 2020); Protest (Jan. 21, 2020)
Old Dominion Electric Cooperative	ER20-686-000 ER20-688-000 ER20-688-001	Motion to Intervene (Jan. 13, 2020)
Public Service Company of New Mexico	ER20-686-000 ER20-688-000	Motion to Intervene and Comments (Jan. 21, 2020); Motion to Intervene (Jan. 21, 2020)
San Miguel Power Association, Inc.	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 13, 2020)
The Midwest Electric Cooperative Corporation	ER20-686-000 ER20-688-000	Out-of-Time Comments (Jan. 22, 2020)
Tri-State Generation and Transmission Association, Inc.	ER20-686-000 ER20-688-000 ER20-688-001 ER20-726-000 ER20-728-000	Answer to Motions for Extension of Time (Jan. 9, 2020); Answer to protests of various parties (Feb. 5, 2020); Answer to Motion to Intervene Out-of-Time and Protest of Kit Carson (Feb. 18, 2020); Answer to Reply of Gladstone New Energy (Feb. 25, 2020); Answer to Answer of Arkansas River (Mar. 5, 2020); Answer to Motion to Intervene and Protest of Arkansas River and Motion for Leave to Answer (Mar. 11, 2020); Answer to Motion to Lodge (Mar. 17, 2020)
United Power, Inc.	ER20-686-000	Motion to Intervene (Jan. 9,

	ER20-688-000 ER20-688-001 ER20-726-000 ER20-728-000	2020); Protest (Jan. 21, 2020); Motion for Leave to Answer and Answer (Jan. 21, 2020); Motion for Leave to Answer and Answer (Feb. 12, 2020); Motion to Lodge (Mar. 16, 2020)
Upper Missouri Power Cooperative	ER20-686-000 ER20-688-000 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 7, 2020)
Western Area Power Administration	ER20-686-000 ER20-688-000 ER20-688-001 ER20-726-000 ER20-728-000	Motion to Intervene (Jan. 15, 2020); Objection to Disclosure (Jan. 15, 2020); Objection to Disclosure (Jan. 24, 2020);
Xcel Energy Services, Inc.	ER20-686-000 ER20-688-000 ER20-728-000	Motion to Intervene (Jan. 6, 2020); Motion to Intervene (Jan. 10, 2020)