

171 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tri-State Generation and Transmission  
Association, Inc.

Docket Nos. ER20-932-000  
ER20-932-001  
ER20-728-000

ORDER ACCEPTING SERVICE AGREEMENTS AND NOTICE OF  
CANCELLATION

(Issued May 8, 2020)

1. On December 31, 2019, in Docket No. ER20-728-000, Tri-State Generation and Transmission Association, Inc. (Tri-State) submitted, pursuant to section 205 of the Federal Power Act<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> a notice of cancellation of a Network Integration Transmission Service Agreement (NITSA) and a Network Operating Agreement (NOA) with Arkansas River Power Authority (Arkansas River) (together, Original Arkansas River Agreements). On January 21, 2020, in Docket No. ER20-932-000, as supplemented on February 4, 2020<sup>3</sup> and amended on March 10, 2020, Tri-State filed an unexecuted NITSA and an executed NOA to replace the Original Arkansas River Agreements.<sup>4</sup> As discussed below, we accept the unexecuted NITSA and executed NOA, effective February 25, 2020, and the notice of cancellation of the Original Arkansas River Agreements, effective December 31, 2019, as requested.

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. § 35.13 (2019).

<sup>3</sup> In its February 4, 2020 supplement, Tri-State states that due to eTariff restrictions it used a tariff record proposed effective date of February 1, 2020 instead of the intended January 1, 2020 effective date. This supplement revised the tariff effective date to January 1, 2020 but made no changes to the January 31, 2020 filed tariff record.

<sup>4</sup> Tri-State filed the unexecuted NITSA to be designated as Service Agreement No. 207 and the executed NOA to be designated as Service Agreement No. 106.

## I. Background

2. In December 2019, Tri-State submitted numerous filings in anticipation of becoming a public utility subject to the Commission's jurisdiction, including, as relevant here, an Open Access Transmission Tariff (OATT) and 246 pre-existing service agreements under its OATT including the Original Arkansas River Agreements. In Docket No. ER20-728-000, on December 31, 2019, Tri-State submitted a notice of cancellation of the Original Arkansas River Agreements, explaining that the agreements expired under their own terms on December 31, 2019 and stating that the parties were negotiating a new NITSA and NOA to be filed with the Commission with an effective date of January 1, 2020. On January 21, 2020, Arkansas River protested the notice of cancellation and requested that the Commission either withhold action on the notice of cancellation until replacement agreements were filed or deny the notice of cancellation.<sup>5</sup>

3. In an order issued on March 20, 2020,<sup>6</sup> the Commission accepted Tri-State's OATT for filing, effective February 25, 2020, and established hearing and settlement procedures. The Commission also accepted numerous service agreements, including the Original Arkansas River Agreements, effective February 25, 2020, and held in abeyance Tri-State's notice of cancellation of the Original Arkansas River Service Agreements until replacement agreements are approved by the Commission.<sup>7</sup>

## II. Tri-State's Filings

4. In its January 31, 2020 filing, Tri-State states that, at the request of Arkansas River, it was submitting the agreements in their unexecuted forms.<sup>8</sup> Tri-State explains that the NITSA (Service Agreement No. 207) conforms with the *pro forma* NITSA under Attachment F of Tri-State's OATT and that the specifications to the unexecuted NITSA include the term, network resources and loads, and ancillary service charges, among others.<sup>9</sup> Tri-State states that the parties agreed to the provisions of the unexecuted NITSA, except for the exclusion of a self-supply option for Schedule 2 (Reactive Supply

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<sup>5</sup> Arkansas River Comments, Docket No. ER20-728-000, at 10 (filed Jan. 21, 2020).

<sup>6</sup> *Tri-State Generation & Transmission Ass'n, Inc.*, 170 FERC ¶ 61,222, at P 102 (2020) (March 20 Order).

<sup>7</sup> *Id.*

<sup>8</sup> Tri-State January 31 Transmittal at 1.

<sup>9</sup> Tri-State notes that the previous version of the NITSA, as filed in Docket No. ER20-688-000, did not conform to Tri-State's OATT. *Id.* n.10.

and Voltage Control) ancillary services. Tri-State explains that its *pro forma* NITSA does not provide for a self-supply option for Schedule 2 services, and that upon study of Arkansas River's ability to manage reactive requirements, Tri-State determined that Arkansas River is unable to support the reactive requirements across the transmission system. Tri-State states that because of these reasons, Tri-State has determined that, for reliability purposes and Good Utility Practice, the option to self-supply Schedule 2 services is not available to Arkansas River.<sup>10</sup>

5. Tri-State states that the parties disagree on specific terms of the unexecuted NOA (Service Agreement No. 106), including: (1) balancing authority area (BAA) requirements; (2) operating requirements; (3) load shedding and load shedding equipment; and (4) metering. Tri-State explains that it believes that, consistent with cost causation principles, Arkansas River should be responsible for costs associated with BAA requirements related to service under the NOA.<sup>11</sup> Tri-State states that inclusion of the term "instructions" in the NOA is an essential operating requirement to allow Tri-State to direct Arkansas River to fulfill its reliability obligations.<sup>12</sup> Tri-State explains that, while the transmission customer is typically responsible for managing its load shedding program, Arkansas River may elect for Tri-State to manage the load shedding program by entering an agreement separate from the NOA.<sup>13</sup> Finally, Tri-State states that, consistent with cost causation principles, Arkansas River should be responsible for network meter-related costs associated with Arkansas River's network resources.

6. Tri-State requests waiver of the Commission's 60-day prior notice requirement<sup>14</sup> to allow an effective date for the unexecuted NITSA and executed NOA of January 1, 2020 to correspond with the termination date of the Original Arkansas River Agreements. Tri-State contends that there is good cause to grant the waiver because the unexecuted NITSA provides for electric service under the terms of Tri-State's conforming OATT and the unexecuted NOA sets forth the operating conditions associated with providing the network service, and therefore, pursuant to section 35.3(a)(2) of the Commission's regulations, both the unexecuted NITSA and unexecuted NOA are "Service Agreements"

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 5-6 (citing *Nevada Power Co.*, 153 FERC ¶ 61,306, at P 18 (2015); *Cal. Indep. Sys. Operator Corp.*, 130 FERC ¶ 61,122, at P 112 (2010); *ISO New England, Inc.*, 115 FERC ¶ 61,145, at P 13 (2006)).

<sup>12</sup> *Id.* at 6 (citing its responsibility to maintain North America Electric Reliability Corporation (NERC) standards, NERC Standard TOP-001 at R1 and R3).

<sup>13</sup> *Id.* at 6-7 (citing NERC Standard PRC-006-3).

<sup>14</sup> 18 C.F.R. § 35.3(a)(2) (2019).

and are being tendered for filing with the Commission and posted within 30 days of electric service commencing or a date specified by the Commission, in compliance with the Commission's prior notice requirements.<sup>15</sup>

7. In its March 10, 2020 filing Tri-State submitted an executed NOA with Arkansas River to replace the unexecuted NOA filed on January 31, 2020. Tri-State explains that it agreed to meet with Arkansas River to determine cost responsibility for compliance with BAA requirements. For NERC requirements, Tri-State explains that it added a provision to provide clarity for the respective party's compliance costs. Tri-State states that the parties agreed that the transmission customer will operate in compliance with the transmission provider's instructions, but that the parties will agree on those instructions before implementation. Tri-State states that it will provide Arkansas River with notice, as soon as practical, of redispatch or curtailment plans. Tri-State includes further clarifications on the parties' manual and automatic load shedding responsibilities. Finally, Tri-State explains that the transmission customer will be responsible for owning and maintaining all load-serving meters. Tri-State asserts that the executed NOA was the result of arm's-length negotiation between the parties, and requests that the Commission accept the executed NOA as just and reasonable, effective January 1, 2020. Tri-State reiterates that good cause exists to grant waiver.

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of Tri-State's December 31, 2019 filing was published in the *Federal Register*, 85 Fed. Reg. 889 (Jan. 8, 2020), with interventions and protests due on or before January 21, 2020. The following entities filed timely motions to intervene: Basin Electric Power Cooperative; Colorado Springs Utilities; Delta-Montrose Electric Association; Gladstone New Energy, LLC; Guzman Energy, LLC; Kit Carson Electric Cooperative, Inc.; La Plata Electric Association, Inc.; Nebraska Public Power District; Northwest Rural Public Power District; San Miguel Power Association, Inc.; United Power, Inc.; Upper Missouri Power Cooperative; Western Area Power Administration; and Xcel Energy Services Inc. (Xcel Energy). Arkansas River filed a timely motion to intervene and comments.

9. Notice of Tri-State's January 31, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 8270 (Feb. 13, 2020), with interventions or protests due on or before February 24, 2020. Xcel Energy filed a timely motion to intervene and Arkansas River filed a timely motion to intervene and protest. On March 11, 2020, Tri-State filed an answer to Arkansas River's protest and on March 26, 2020, Arkansas River filed an answer to Tri-State's answer.

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<sup>15</sup> Tri-State January 31 Transmittal at 8.

10. Notice of Tri-State's March 10, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 14,936 (Mar. 16, 2020), with interventions or protests due on or before March 31, 2020. In its March 26, 2020 filing, Arkansas River filed comments to the March 10 filing and an answer to Tri-State's March 11 answer..

### 1. Arkansas River Protest

11. Arkansas River protests numerous provisions and aspects of the unexecuted NITSA as unjust and unreasonable including its: (1) Schedule 2 ancillary services; (2) rollover rights; (3) transmission losses; (4) lack of a reference to the control area operator; and (5) lack of terms for addressing Tri-State joining a regional transmission organization (RTO) or independent system operator (ISO) in the future; and (6) Arkansas River's right to continuous service. Arkansas River explains that Tri-State removed the option to self-supply Schedule 2 ancillary services from its *pro forma* NITSA, and subsequently from the unexecuted NITSA.<sup>16</sup> Arkansas River believes that the Commission should direct Tri-State to allow Arkansas River to receive a credit towards its Schedule 2 rate for dispatching Arkansas River resources to provide Reactive Supply and Voltage Control service, and that Schedule 2 should permit Arkansas River the opportunity to secure such service from the "Control Area Operator."<sup>17</sup> Arkansas River argues that Tri-State also excluded a former provision from the unexecuted NITSA which clarifies Arkansas River's rollover rights under Tri-State's OATT. Additionally, Arkansas River states that Tri-State excluded a former provision which allowed Arkansas River to self-provide transmission losses or provide compensation for transmission losses. Arkansas River also notes that Tri-State fails to reference how Arkansas River will acquire ancillary services through the control area operator, Public Service Company of Colorado (PSCo).<sup>18</sup> Further, Arkansas River states that Tri-State excludes a provision that would require Tri-State to provide Arkansas River with a one-year written notice of termination of the NITSA, should Tri-State join an RTO/ISO.<sup>19</sup> Finally, Arkansas River argues that Tri-State's commencement date provision to allow service to start on the latter of three dates (requested date, upon completion of construction of facilities, or upon the effective date permitted by the Commission) does not provide Arkansas River with the assurance of continuous service.<sup>20</sup>

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<sup>16</sup> Arkansas River Protest at 10-13.

<sup>17</sup> *Id.* at 12.

<sup>18</sup> *Id.* at 13-16.

<sup>19</sup> *Id.* at 16-17.

<sup>20</sup> *Id.* at 17-18.

12. Arkansas River also protests numerous provisions of the unexecuted NOA. Specifically, Arkansas River takes issue with the lack of any provision requiring Tri-State to notify Arkansas River of a redispach or curtailment event. Arkansas River also argues that the unexecuted NOA rendered it solely responsible for the costs of complying with any BAA, and that doing so is unjust and unreasonable. Arkansas River further argues that requiring it to operate consistent with Tri-State's "instructions" is vague, and that in the alternative, Arkansas River and Tri-State need to agree on requirements in advance.<sup>21</sup> Arkansas River objects to Tri-State's load shedding equipment provisions, calling them unjust and unreasonable. Finally, Arkansas River protests Tri-State's requiring Arkansas River to replace its existing meters and bearing the costs of doing so.<sup>22</sup> Arkansas River requests that the Commission suspend the unexecuted NITSA and the NOA for a nominal period to ensure refund protection and establish hearing and settlement procedures to address the justness and reasonableness of the protested provisions.<sup>23</sup>

## 2. Tri-State Answer

13. Tri-State argues that that Arkansas River raises several additional issues and new language that it argues should be included in the unexecuted NITSA and NOA but that Tri-State states were not part of the original discussions between the parties for the first time in its protest. Tri-State contests Arkansas River's argument that exercising its rollover rights under the expired NITSA renders the unexecuted NITSA unjust, unreasonable, unduly discriminatory, and preferential, because the unexecuted NITSA lacks specific language contained in the expired NITSA.<sup>24</sup> Tri-State asserts that, according to Commission precedent, a customer that exercises its rollover rights does not continue to receive service under its pre-existing contract.<sup>25</sup> Tri-State asserts that,

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<sup>21</sup> *Id.* at 18-20.

<sup>22</sup> *Id.* at 20-23.

<sup>23</sup> *Id.* at 8, 24.

<sup>24</sup> Tri-State Answer at 6.

<sup>25</sup> *Id.* at 7 (citing *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 75 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), *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)).

additionally, the expired NITSA clearly articulated that continued transmission service would fall under either an amendment or a new service agreement.<sup>26</sup>

14. Tri-State maintains that Arkansas River lacks the capability to self-supply Schedule 2 service, and that the resources that enable Arkansas River to self-supply reactive power and voltage control requirements are on Arkansas River's distribution system and, therefore, not under the control of the control area operator.<sup>27</sup> Additionally, Tri-State asserts that Arkansas River's request for the opportunity to secure Schedule 2 service from the control area operator should be rejected, as Arkansas River is raising the issue for the first time in its protest. With respect to rollover rights under the unexecuted NITSA, Tri-State explains that no direct language under the NITSA is required to secure Arkansas River's rollover rights, because having a contract term of five years or more automatically guarantees rollover rights under Section 2.2 of Tri-State's OATT.<sup>28</sup> In response to Arkansas River's request for an option to either replace transmission losses or reimburse losses with monetary compensation, Tri-State explains that its current practice is to accept only monetary compensation for losses<sup>29</sup> and that the Commission has found that practice to be just and reasonable.<sup>30</sup> Tri-State also disagrees with Arkansas River's request to expressly recognize the control area operator, PSCo, to supply ancillary services Schedules 3, 4, 5, and 6, because Tri-State's conforming OATT Attachment B already provides that the control area operator will provide such services. Further, Tri-State rejects Arkansas River's request that the NITSA include a notice provision should Tri-State join an RTO/ISO. Tri-State explains that the *pro forma* NITSA does not include a notice provision to join an RTO/ISO and that, should Tri-State join an RTO/ISO, it would be required to file a notice of cancellation with the Commission and such process would provide Arkansas River with ample time to protest the cancellation.<sup>31</sup> Finally, Tri-State requests that the Commission disregard Arkansas River's claims that the unexecuted NITSA does not provide continuous service. Specifically, Tri-State

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 8-9.

<sup>28</sup> *Id.* at 11-12 (citing Tri-State, OATT, § 2.2).

<sup>29</sup> *Id.* at 13 (explaining that Arkansas River historically provided only monetary compensation for transmission losses and citing to the former NITSA, Service Agreement No. 206, which allowed the option to replace or reimburse losses but locked the customer into the selection for the entire term of the agreement).

<sup>30</sup> *Id.* at 13-14 (citing *Ariz. Pub. Serv. Co.*, 155 FERC ¶ 61,112, at P 125, *order on reh'g*, 156 FERC ¶ 61,227 (2016)).

<sup>31</sup> *Id.* at 15 (citing 18 C.F.R. §35.15 (2019)).

argues that section 6.0 of the unexecuted NITSA is so similar to Tri-State's Commission-approved reciprocity OATT that Arkansas River cannot make the case that it is unjust and unreasonable.<sup>32</sup> Tri-State also asserts that it has recognized Arkansas River's rollover rights by requesting an effective date of January 1, 2020, and further, it has continued to provide service under the rates, terms, and conditions of the unexecuted NITSA and executed NOA.<sup>33</sup> Tri-State asserts that there is no gap in the continuity of Arkansas River's service under the unexecuted NITSA.<sup>34</sup>

15. Tri-State explains that, in filing the executed NOA, the NOA-related issues in Arkansas River's protest are now moot. Tri-State requests that the Commission grant Tri-State's motion for leave to answer, reject the Arkansas River protest, and approve the unexecuted NITSA as just and reasonable without establishing hearing and settlement proceedings. Tri-State asserts that the unexecuted NITSA conforms with the *pro forma* NITSA under Tri-State's OATT and reiterates that Arkansas River cannot self-supply Schedule 2 services because it lacks the reactive devices to effectively do so.

### 3. Arkansas River Answer

16. In response to Tri-State's answer, Arkansas River explains that the filing utility has the burden to show that a service agreement is just and reasonable, and that when that has not been done, the Commission may suspend an agreement and establish hearing and settlement procedures.<sup>35</sup> Arkansas River takes issue with Tri-State's statement that Arkansas River raises new issues in its protest that were not part of the original discussions between the parties. Arkansas River states that it declines to comment on the confidential settlement discussions between the parties and asserts that the purpose of the Commission's notice of filing is to give customers the opportunity to comment on proposed rates, terms and conditions of service.

17. Arkansas River continues to protest the exclusion of language in the NITSA concerning its rollover rights, arguing that while the unexecuted NITSA references Part III of Tri-State's OATT, rollover rights described in Section 2.2 do not appear in that

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<sup>32</sup> *Id.* at 16 (citing *Tri-State Generation and Transmission Association, Inc.*, 96 FERC ¶ 61,268 (2001)).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 17.

<sup>35</sup> Arkansas River Answer at 6 (citing *Ameren Servs. Co.*, 101 FERC ¶ 61,066, at P 17 (2002); *Duke Energy Corp.*, 93 FERC ¶ 61,319 at 62,092 (2000), *order on reh'g*, 94 FERC ¶ 61,142 (2001)).



part. Arkansas River requests that the NITSA include transparent language granting Arkansas River's rollover rights, as was included in the expiring NITSA.<sup>36</sup>

18. Arkansas River also reiterates its opposition of the express exclusion of reference to the control area operator, PSCo, with respect to its ancillary service arrangements. Arkansas River states that the Commission has explicitly directed that transmission customers identify ancillary service arrangements in service agreements, and in this case, Schedule 2 service from PSCo must be specified.<sup>37</sup> Further, Arkansas River asserts that Tri-State's failure to reflect Arkansas River's reserved right to secure Schedule 2 service from PSCo is inconsistent with Order No. 888 and is unjust and unreasonable. Specifically, Arkansas River argues that under Order No. 888, because Tri-State is not a control area operator, Arkansas River has the right to have Tri-State serve as its agent to secure ancillary services or to secure services directly from the control area operator.<sup>38</sup>

19. In addition, Arkansas River states that it seeks to replace rather than compensate for losses and argues that Tri-State's answer, which denies any option for Arkansas River to replace transmission losses, incorrectly references the superseded OATT and the expiring NITSA and does not provide a valid argument. Finally, Arkansas River restates its opposition to the omission of one-year written notice should Tri-State join an RTO/ISO. Arkansas River counters Tri-State's claim that it would be required to provide notice of termination per the Commission's notice requirements, stating that the Commission's 60-day notice requirement can be waived.<sup>39</sup> Arkansas River states that retaining a notice provision in the NITSA will resolve uncertainty and the expenditure of unnecessary resources should Tri-State join an RTO/ISO.

20. Arkansas River states that it agreed with Tri-State on terms and conditions for the NOA after Tri-State made its original filing. Arkansas River asserts that it was able to resolve the concerns articulated in its protest, with respect to the unexecuted NOA, but clarifies some of the statements in Tri-State's answer. Specifically, Arkansas River clarifies that the manual load shedding program is Arkansas River's and not Tri-State's.

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 10-11 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, (cross-referenced at 78 FERC ¶ 61,220 at P 11), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248, at 62,094).

<sup>38</sup> *Id.* at 11 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036, (cross-referenced at 75 FERC ¶ 61,080 at 31,716) ("The customer may have the transmission provider act as agent or may secure the ancillary services directly from the control area operator.")).

<sup>39</sup> *Id.* at 14 (citing 18 C.F.R. § 35.15(a)).

Arkansas River also clarifies that it has not agreed to the terms of the unexecuted NITSA, as is suggested in section 13.0 of the executed NOA.<sup>40</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

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

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

##### **B. Substantive Matters**

23. We accept the unexecuted NITSA and the executed NOA, effective February 25, 2020, and the notice of cancellation, effective December 31, 2019, as discussed below.

24. With respect to Schedule 2 (Reactive Supply and Voltage Control) service, consistent with the *pro forma* OATT, Tri-State's OATT does not require Tri-State to provide transmission customers with the option to self-supply this service. In Order No. 888-A the Commission clarified that a customer is allowed to supply at least part of the reactive power service it requires.<sup>41</sup> However, this does not compel the transmission provider to allow the customer to self-supply Schedule 2 service. Tri-State's OATT states that Schedule 2 services will be provided either directly by Tri-State or indirectly by Tri-State through an arrangement with the Control Area Operator.<sup>42</sup> Accordingly, we find Tri-State's Schedule 2 service provision of the unexecuted NITSA to be just and reasonable.

25. While Arkansas River requests that the unexecuted NITSA should expressly state that certain ancillary services are to be provided by the Control Area Operator, PSCo, we do not deem the reference to be necessary. The unexecuted NITSA provides that ancillary services will be "self-provided by the transmission customer" or "acquired from

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<sup>40</sup> *Id.* at 14-15.

<sup>41</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,227.

<sup>42</sup> Tri-State OATT, Schedule 2.

a third party by transmission customer” for Schedules 3, 4, 5, 6, and 9.<sup>43</sup> Additionally, we confirm that Tri-State’s OATT Schedules 3, 4, 5, 6, and 9 explain the option and detail the pass-through of costs charged to the transmission customer should the Control Area Operator perform the function.<sup>44</sup> Accordingly, it is unnecessary to include additional detail in the NITSA and we will not require Tri-State to do so.

26. Although Arkansas River requests the option to either compensate for, or replace, transmission losses, we do not find that Tri-State is required to grant Arkansas River’s request. The Commission requires that a service agreement identify the party responsible for supplying real power loss, but the specific means for accounting for losses is left to the transmission provider to propose.<sup>45</sup> In its *pro forma* NITSA, Tri-State accounts for transmission losses through compensation only. Accordingly, we find Tri-State’s proposal in the unexecuted NITSA to account for transmission losses through compensation to be just and reasonable.

27. Additionally, having found the NITSA just and reasonable, we decline Arkansas River’s request that the unexecuted NITSA include a provision requiring written notice should Tri-State join an RTO or ISO.<sup>46</sup> Furthermore, Tri-State is required to file a notice of cancellation should it need to cancel an agreement before the agreement’s termination date, and we find that such a filing would provide Arkansas River with adequate notice and an opportunity to comment.<sup>47</sup>

28. The Original Arkansas River Agreements expired on December 31, 2019. Accordingly, we accept the notice of cancellation effective December 31, 2019. Tri-State states that in the interim, consistent with Arkansas River exercising its rollover rights, Tri-State has continued to provide Arkansas River network integration transmission service under the rates, terms and conditions of the unexecuted NITSA and

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<sup>43</sup> Unexecuted NITSA, Specification 7.4.2.

<sup>44</sup> Tri-State OATT, Schedules 3, 4, 5, 6, and 9.

<sup>45</sup> See *Ariz. Pub. Serv. Co.*, 143 FERC ¶ 61,280, at P 28 (2013).

<sup>46</sup> See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 59 (2014) (noting that a submitting an FPA section 205 filing “need only demonstrate that its proposed revisions are just and reasonable, not that its proposal is the most just and reasonable among all possible alternatives”); *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at P 254 (2009) (“[E]ven if an intervenor develops an alternative proposal, the Commission must accept a section 205 filing if it is just and reasonable, regardless of the merits of the alternate proposal.”).

<sup>47</sup> 18 C.F.R. §35.15.

executed NOA. As noted above, Tri-State filed its OATT with the Commission in December 2019, which the Commission accepted effective February 25, 2020. In addition, a NITSA and an NOA are service agreements under a tariff. Accordingly, while Tri-State requests a January 1, 2020 effective date for unexecuted NITSA and executed NOA, Tri-State did not have a Commission-accepted OATT on the January 1, 2020 requested effective date. Given that Tri-State's OATT became effective February 25, 2020,<sup>48</sup> we accept the unexecuted NITSA and executed NOA effective February 25, 2020. Consistent with the Commission's March 20 Order, 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 service provided under the agreements without authorization.<sup>49</sup>

The Commission orders:

(A) Service Agreement Nos. 207 and 106 are hereby accepted, effective February 25, 2020, as discussed in the body of this order.

(B) The notice of cancellation for Service Agreement Nos. 206 and 102 is hereby accepted, effective December 31, 2019, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>48</sup> While Tri-State became subject to the Commission's jurisdiction on September 3, 2019, the Commission accepted Tri-State's OATT effective February 25, 2020. March 20 Order, 170 FERC ¶ 61,222 at P 102.

<sup>49</sup> *Id.* P 108.