

171 FERC ¶ 61,158
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 No. ER20-1415-000

ORDER ACCEPTING AGREEMENT

(Issued May 26, 2020)

1. On March 27, 2020, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² a non-conforming Interconnection Facilities Study Agreement (Facilities Study Agreement)³ between Tri-State and Gladstone New Energy, LLC (Gladstone). As discussed below, we accept the Facilities Study Agreement, effective February 27, 2020, as requested, subject to the outcome of the complaint proceeding in Docket No. EL19-97-000.

I. Background

2. Tri-State is a generation and transmission cooperative that provides wholesale electricity to its members, which are electric distribution cooperatives and public power districts, for their resale of the power to their retail consumers. 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. 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.⁴ In December 2019, Tri-State resubmitted revised filings, which included, among other documents, an OATT to establish the rates, terms, and

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. Part 35 (2019).

³ The Agreement is designated as Service Agreement No. 723 under Tri-State's Open Access Transmission Tariff (OATT).

⁴ *Tri-State Generation & Transmission Ass'n, Inc.*, 169 FERC ¶ 61,012, at P 22 (2019).

conditions for transmission service over its transmission facilities located in the Western Interconnection (December 2019 Proposed LGIP). On March 20, 2020, the Commission accepted Tri-State's OATT, effective February 25, 2020, and established hearing and settlement judge procedures.⁵ In addition, the Commission found that Tri-State's proposed generator interconnection procedures and generator interconnection transition procedures had been shown to be just and reasonable.⁶

II. Tri-State Filing

3. Tri-State states that on February 28, 2017, EDF Renewable Development, Inc. (EDF Renewables) submitted an interconnection request to Tri-State for a wind project in New Mexico. Tri-State asserts that on June 14, 2017, EDF Renewables and Tri-State executed an interconnection system impact study agreement (SIS Agreement), and on November 3, 2017, EDF Renewables assigned the interconnection request, the SIS Agreement, and the project's queue position to Gladstone.⁷ Tri-State states that on April 9, 2018, it issued the final system impact study report to Gladstone. According to Tri-State, Gladstone exercised its right under the generator interconnection procedures (GIP) in Tri-State's then-effective reciprocity OATT to defer executing a Facilities Study Agreement for up to 18 months.⁸

4. Tri-State states that on September 10, 2019, it notified its interconnection customers with projects in deferral that it had become subject to the Commission's jurisdiction under Part II of the FPA and had begun operating under the terms and conditions of its OATT filed with the Commission in July 2019 and posted on its Open Access Same-Time Information System.⁹ Tri-State states that it also began adhering to the *pro forma* large generator interconnection procedures (LGIP) included in its OATT with interim procedures to transition generation projects that went into deferral under Tri-State's former GIP to the interconnection study process under its new LGIP.

5. Tri-State asserts that on November 14, 2019, Tri-State and Gladstone executed an interconnection system impact re-study agreement in accordance with the interim procedures in Tri-State's *pro forma* LGIP. According to Tri-State, it issued a final

⁵ *Tri-State Generation & Transmission Ass'n, Inc.*, 170 FERC ¶ 61,222 (2020) (March Order).

⁶ *Id.* P 30.

⁷ Tri-State Transmittal at 2.

⁸ *Id.*

⁹ *Id.*

re-study report to Gladstone on January 7, 2020, and Tri-State and Gladstone executed the Facilities Study Agreement on February 27, 2020.¹⁰

6. Tri-State states that the Facilities Study Agreement generally conforms to the terms and conditions of the form of agreement in the *pro forma* LGIP¹¹ that the Commission accepted in the March Order, except that the recitals and section 4 contain references to the re-study of the Gladstone project (rather than just referencing the interconnection system impact study report), and it includes a provision stating that the conclusions of the re-study will be incorporated into the facilities study.

7. Tri-State requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of February 27, 2020 for the Facilities Study Agreement. Tri-State asserts that waiver is appropriate because the Facilities Study Agreement is an executed document negotiated at arms' length between Tri-State and Gladstone that provides for electric service under the terms of Tri-State's conforming OATT, and the proposed effective date will provide certainty and facilitate the completion of the interconnection studies for the project.¹² Tri-State states that waiver is appropriate because the Facilities Study Agreement is a service agreement filed within 30 days of the commencement of service.¹³

A. Notice of Filing and Responsive Pleadings

8. Notice of Tri-State's March 27, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 18,950 (Apr. 3, 2020), with interventions and protests due on or before April 17, 2020. Gladstone filed a timely motion to intervene and protest. On May 1, 2020, Tri-State filed an answer to Gladstone's protest. On May 15, 2020, Gladstone filed an answer to Tri-State's answer.

1. Gladstone Protest

9. Gladstone states that the Commission should reject the Facilities Study Agreement. Gladstone explains that it executed the Facilities Study Agreement under protest so that its project would not be withdrawn from Tri-State's interconnection queue.

¹⁰ *Id.* at 3.

¹¹ *Id.* (citing Tri-State OATT, Attach. N., app. 4).

¹² *Id.*

¹³ *Id.* (citing 18 C.F.R. § 35.3(a)(2) (2019); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *reh'g denied*, 65 FERC ¶ 61,081 (1993)).

Gladstone argues that Tri-State has not demonstrated a legitimate need for a system impact re-study for Gladstone's interconnection request, and therefore Gladstone does not agree with the reference to the system impact re-study in the recitals and section 4 of the Facilities Study Agreement. Gladstone also alleges that Tri-State has not demonstrated that good cause exists to grant waiver of the Commission's prior notice requirement.¹⁴

10. Gladstone explains the history of its interconnection request in Tri-State's interconnection queue. Gladstone states that the initial cost of the proposed interconnection facilities and network upgrades identified in Tri-State's April 9, 2018 final system impact study report was \$31.7 million. Gladstone states that it disputed the cost in a letter dated April 19, 2018, and thereafter exercised its right under Tri-State's former GIP to defer executing a Facilities Study Agreement for up to 18 months.¹⁵ Gladstone states that on June 24, 2019, it sent Tri-State a notice to proceed with the interconnection facilities study and requested that Tri-State take its interconnection request out of deferral. Gladstone states that it explained to Tri-State that it had provided sufficient security to Tri-State according to section 8.1 of Tri-State's *pro forma* LGIP, which Gladstone states Tri-State represented to the Commission that it was following for reciprocity purposes.¹⁶ Gladstone states that it requested again that Tri-State proceed with the facilities study on July 31, 2019, September 3, 2019, and September 10, 2019.¹⁷ Gladstone argues that, upon exiting deferral, Tri-State required Gladstone to submit to a system impact re-study, a condition that Gladstone alleges was entirely absent from Tri-State's former GIP.¹⁸

11. Gladstone states that Tri-State issued the results of its system impact re-study on January 7, 2020. According to Gladstone, Tri-State's report found for the first time that Gladstone's interconnection request was studied with one higher-queued project, the 182-MW Don Carlos Wind Farm (Don Carlos), connecting with the Mora Line Transmission Project (Mora Line). Gladstone adds that the Mora Line is not in Tri-State's interconnection queue, but rather is in Lucky Corridor LLC's (Lucky Corridor) generation interconnection queue. Gladstone states that the report also listed for the first time the Mora-Arriba 115kV transmission line as a contingent facility that will accommodate Don Carlos as a component of the Mora Line. Gladstone states that

¹⁴ Gladstone Protest at 8-9.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 5.

as a result of the new projects included in the re-study, the system impact re-study report now indicates that the total cost of network upgrades and interconnection facilities that Tri-State has assigned to Gladstone is \$439.8 million.¹⁹

12. Gladstone states that on January 27, 2020, pursuant to section 7.4 of the July 2019 Proposed LGIP, Gladstone requested all supporting documentation and workpapers Tri-State used to conduct the system impact re-study in order to confirm whether these proposed facilities have been properly included in the re-study. Gladstone states that in its response to Gladstone's request, Tri-State also provided copies of the Transmission Construction and Interconnection Agreement between Public Service Company of New Mexico (PNM) and Lucky Corridor regarding the Mora Line, dated January 29, 2018 (PNM-Lucky Corridor Agreement). Gladstone disputes Tri-State's decision to rely on the PNM-Lucky Corridor Agreement and Tri-State's claim that the PNM-Lucky Corridor Agreement "occurred while [Gladstone's] project was in deferral."²⁰ Gladstone explains that the PNM-Lucky Corridor Agreement was accepted on March 27, 2018,²¹ and Tri-State did not issue Gladstone's original system impact study report until later, on April 9, 2018.

13. Gladstone also questions Tri-State's use of Lucky Corridor's system impact study for Don Carlos, dated March 27, 2019, which states that the Tri-State facilities study was waiting to begin pending finalization of the generation interconnection system impact study. Gladstone alleges that there is no indication in Tri-State's queue that a queue position was ever assigned to the Don Carlos project, a facilities study was ever performed, or that Don Carlos executed a GIA with Tri-State. Gladstone contends that if such a study was performed, under the *pro forma* LGIP, all prior queued generation projects, such as Gladstone's, should have been considered in the base case for Don Carlos, and that project should have been responsible for any network impacts, not Gladstone.²²

2. Tri-State Answer

14. Tri-State contends that Gladstone asks the Commission to reject Tri-State's filing because Gladstone objects to the re-study and its inclusion in Gladstone's facilities study

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ *Pub. Serv. Co. of N.M.*, Docket No. ER18-885-000 (Mar. 27, 2018) (delegated order).

²² Gladstone Protest at 7.

for its interconnection request.²³ Tri-State argues that Gladstone's protest should be rejected because: (1) Gladstone's protest is a collateral attack on Tri-State's *pro forma* LGIP and the Commission's finding 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";²⁴ (2) Gladstone's claim that Tri-State has not demonstrated good cause to grant waiver of the Commission's prior notice requirement is unclear and unfounded; and (3) Gladstone's protest restates its grievances with Tri-State's processing of Gladstone's interconnection request that are at issue in Gladstone's pending complaint in Docket No. EL19-97-000, and are outside the scope of this proceeding. Tri-State states that, although Gladstone filed a request for rehearing of the March Order, Gladstone's rehearing request does not stay the effectiveness of the March Order.

3. Gladstone Answer

15. Gladstone counters Tri-State's assertion that the non-conforming Facilities Study Agreement should be accepted because it was negotiated at "arm's length," and reiterates that it signed the Facilities Study Agreement under protest²⁵ because otherwise, its interconnection request would be deemed withdrawn.²⁶ Gladstone asserts that it filed the protest in order to preserve its right to continue to protest the study assumptions set forth in the Facilities Study Agreement. Gladstone states that its protest is not a collateral attack on the March Order, and notes that even if the Commission leaves its finding regarding the interim procedures unchanged, Gladstone is within its rights to challenge the application of the interim procedures to its project, as such acceptance does not foreclose interconnection customers from challenging the justness and reasonableness of any re-study of its interconnection request conducted by Tri-State.²⁷ Gladstone therefore requests that, if the Commission accepts the non-conforming Facilities Study Agreement, then it condition its action by making such acceptance subject to the outcome of the request for rehearing of the March Order and a final order of the Commission on Gladstone's complaint in Docket No. EL19-97-000.

²³ Tri-State Answer at 3.

²⁴ *Id.* at 4 (citing March Order, 170 FERC ¶ 61,222 at P 56).

²⁵ Gladstone Answer at 2-3.

²⁶ *Id.* at 4.

²⁷ *Id.*

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motion to intervene serves to make Gladstone a party to this proceeding.

17. 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 unless otherwise ordered by the decisional authority. We accept Tri-State's and Gladstone's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

18. We accept the Facilities Study Agreement, effective February 27, 2020, as requested, subject to the outcome of the pending complaint proceeding in Docket No. EL19-97-000. We find that Tri-State has justified the deviations that reflect that Tri-State conducted a system impact re-study (as opposed to a system impact study) of Gladstone's interconnection request after the request was brought out of deferral. In the March Order, the Commission accepted Tri-State's ability to conduct a system impact re-study as part of the transition procedures for interconnection customers who were in deferral as of September 3, 2019.²⁸ In particular, the Commission found that Tri-State's proposed transition procedures in its December 2019 Proposed LGIP are consistent with the generator interconnection procedures that were in place when the interconnection requests originally entered deferral. Accordingly, the Commission found 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. Tri-State has conducted the system impact re-study of Gladstone's interconnection request, thus we find that it is necessary to reflect this in the Facilities Study Agreement, which is the next phase in the interconnection process.

19. We therefore find that Gladstone's objections to the circumstances under which Gladstone entered and exited deferral are beyond the scope of this proceeding. However, as Gladstone recognizes, this matter is at issue in the complaint pending before the Commission in Docket No. EL19-97-000, regarding whether a system impact re-study of Gladstone's interconnection request was necessary, and we find that the issue is

²⁸ March Order, 170 FERC ¶ 61,222 at PP 55-56.

appropriately addressed in that proceeding.²⁹ Accordingly, we accept the Facility Study Agreement subject to the outcome of the pending complaint in Docket No. EL19-97-000.

20. We grant Tri-State's request for waiver of prior notice to permit the Facilities Study Agreement to become effective on February 27, 2020, as requested, because Tri-State filed the Facilities Study Agreement within 30 days of the commencement of service.³⁰

The Commission orders:

The Facilities Study Agreement is hereby accepted, effective February 27, 2020, subject to the outcome of the pending complaint in Docket No. EL19-97-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁹ Gladstone Protest at 8-9.

³⁰ 18 C.F.R. § 35.3(a)(2) ("Service agreements that are required to be filed and posted authorizing a customer to take electric service under the terms of a tariff, or any part thereof, shall be tendered for filing with the Commission and posted not more than 30 days after electric service has commenced or such other date as may be specified by the Commission."); *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081.