

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. ER20-1045-001

ORDER ACCEPTING AND SUSPENDING
LARGE GENERATOR INTERCONNECTION AGREEMENT
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued May 21, 2020)

1. On February 20, 2020, as amended on April 8, 2020,¹ pursuant to section 205 of the Federal Power Act (FPA)² and section 35.1 of the Commission's regulations,³ Tri-State Generation and Transmission Association, Inc. (Tri-State) filed an unexecuted, Large Generator Interconnection Agreement (LGIA) between Tri-State and Leeward Renewable Energy Development, LLC (Leeward), to be designated as Service Agreement No. 608 under Tri-State's *pro forma* Open Access Transmission Tariff (OATT). In this order, we accept the LGIA for filing, suspend it for a nominal period, to become effective February 25, 2020, subject to refund, and establish hearing and settlement judge procedures.

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 December 2019, Tri-

¹ Tri-State states that it amended its filing to give the Commission more time to act on the original filing, i.e., an additional 60 days, or June 8, 2020. Tri-State reiterates its request for waiver to allow the unexecuted LGIA to have an effective date of February 20, 2020 to correspond to the filing date of the original filing. Tri-State proposes no other changes to the as-filed unexecuted LGIA.

² 16 U.S.C. § 824d (2018).

³ 18 C.F.R. § 35.1 (2019).

State filed, among other documents, an OATT to establish the rates, terms, and conditions for transmission service over its transmission facilities located in the Western Interconnection. In addition, on December 27, 2019, in Docket No. ER20-687-000, Tri-State submitted a filing to comply with the requirements of Order Nos. 845 and 845-A.⁴ On March 20, 2020, the Commission accepted Tri-State's OATT, effective February 25, 2020, and established hearing and settlement judge procedures.⁵

II. Tri-State's Filing

3. Tri-State states that, on August 27, 2018, Leeward submitted an interconnection request for a wind energy generating facility with a generator tie line from the generating facility's collector substation (Panorama Project) to the existing Redtail 115 kV substation (Redtail Substation), with step-up transformers for a total of 145 megawatts (MW) of Network Resource Interconnection Service. On December 11, 2018, Leeward and Tri-State executed a System Impact Study Agreement and Tri-State issued the final System Impact Study report on June 24, 2019. Leeward and Tri-State executed a Facilities Study Agreement on August 6, 2019 and Tri-State issued the final Facilities Study report on November 18, 2019.

4. Tri-State states that, on November 26, 2019, Tri-State tendered a draft LGIA, together with draft Appendices, consistent with the standard form LGIA in Attachment N of Tri-State's OATT, and Tri-State and Leeward engaged in several rounds of negotiations related to the draft Appendices to the LGIA. Tri-State maintains that, on February 6, 2020, Leeward requested an additional 30 days to negotiate the Appendices to the LGIA, and on February 7, 2020, Leeward requested that Tri-State file the LGIA and Appendices, in unexecuted format, with the Commission, if its request for extension was not granted. Tri-State states that it subsequently notified Leeward that it would not grant the 30-day extension and, at Leeward's request, would proceed with filing the unexecuted LGIA and Appendices with the Commission.⁶ Tri-State avers that in the interim, Tri-State and Leeward agreed to comply with the unexecuted LGIA, subject to modification by the Commission, and proceed under its terms and conditions pending action by the Commission.

⁴ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *errata notice*, 167 FERC ¶ 61,123, *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137 (2019), *errata notice*, 167 FERC ¶ 61,124, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

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

⁶ Tri-State Transmittal at 3-4.

5. Tri-State states that the unexecuted LGIA conforms in all respects to the terms and conditions of the *pro forma* LGIA under its OATT, but that Tri-State and Leeward have been unable to reach agreement on certain parts of the LGIA Appendices A, B, and C.⁷

6. First, Tri-State discusses issues that Leeward and Tri-State were unable to agree on concerning Appendix A, which includes information about the Interconnection Facilities, Network Upgrades, Distribution Upgrades, and Contingent Facilities.⁸ Tri-State explains that Articles 5.10 and 11.1 of the LGIA describe the Interconnection Facilities that the Interconnection Customer is responsible for designing, procuring, constructing, installing, owning and/or controlling (Interconnection Customer Interconnection Facilities). Tri-State also explains that Articles 5.1.1 and 11.2 of the LGIA describe the Interconnection Facilities that the Transmission Provider is responsible for designing, procuring, constructing, and installing at the Interconnection Customer's expense (Transmission Provider Interconnection Facilities). Tri-State states that the Facilities Study included in the Transmission Provider's Interconnection Facilities a dead-end structure and proposed to install it inside the Redtail Substation. Tri-State states that this dead-end structure will be the Point of Change of Ownership. According to Tri-State, upon further evaluation it determined that locating the dead-end structure outside of the Redtail Substation was prudent and that the dead-end structure should be installed by Leeward, not Tri-State. Tri-State states that it proposed this change from the Facilities Study to Leeward but that Leeward has not indicated its acceptance of the change, leaving the issue unresolved.

7. Second, Tri-State states that Leeward has not indicated its acceptance or rejection of the contingent facilities identified in the LGIA as required for Leeward's interconnection request. Tri-State explains that in the System Impact Study it identified

⁷ Appendix A includes information about the Interconnection Facilities, Network Upgrades, Distribution Upgrades, and Contingent Facilities. Appendix B provides the milestones for the proposed project. Appendix C includes details related to the interconnection, including the generating facility, Point of Change of Ownership, and Point of Interconnection.

⁸ Contingent facilities are "those unbuilt Interconnection Facilities and Network Upgrades upon which the Interconnection Request's costs, timing, and study findings are dependent, and if delayed or not built, could cause a need for Re-Studies of the Interconnection Request or a reassessment of the Interconnection Facilities and/or Network Upgrades and/or costs and timing." *Pro Forma* LGIP § 1 (Definitions).

several elements on or near the “TOT 3”⁹ that exceeded their normal thermal rating on the transmission system due to the addition of Leeward’s proposed generating facility. Tri-State explains that it included these elements—known as the Wayne Child Project¹⁰—as contingent facilities required prior to the Leeward generating facility’s in-service date in order to mitigate negative impacts to the transmission system. Tri-State notes that section 3.8 of its current LGIP, which establishes a method to identify contingent facilities, was not effective when Tri-State executed the System Impact Study Agreement and commenced the System Impact Study for the Leeward project, and therefore the Wayne Child Project facilities were not identified using the term “Contingent Facilities.” However, Tri-State states that section 3.8 was effective when Leeward and Tri-State executed the Facilities Study Agreement and performed the Facilities Study, and accordingly it identified these network upgrades as contingent facilities in the Facilities Study report.¹¹

8. Tri-State explains that, based on its studies, the contingent facilities must be completed and in-service prior to Leeward taking full interconnection service from Tri-State in order to mitigate thermal overloads on the transmission system due to Leeward’s generation facility. Tri-State further asserts that Leeward did not object to the inclusion of these facilities as contingent facilities when Tri-State presented the Facilities Study to Leeward for comment.¹² Tri-State asserts that it understands that Leeward now objects to the inclusion of the Laramie River Station – Wayne Child 345 kV line and the Wayne

⁹ TOT 3 is Western Electricity Coordinating Council Path 36 and is defined by the following transmission lines crossing the border between Northeast Colorado and Southeast Wyoming: Archer-Ault 230kV; Laramie River Station – Ault 345 kV; Laramie River Station – Keota 345 kV; Cheyenne-Owl Creek 115 kV; Sidney-Sterling 115 kV; Sidney-Spring Canyon 230 kV; Terry Ranch Road-Ault 230 kV. Tri-State Transmittal at n.18.

¹⁰ Tri-State explains that the Wayne Child Project, which is expected to be in service in 2022, consists of: (1) Wayne Child 345/230 kV, 600 MVA transformer; and (2) Laramie River Station – Ault 345 kV line, Laramie River Station – Wayne Child 345 kV line, and Wayne Child – Keota 345 kV line rating increases. *Id.* at 7.

¹¹ Tri-State asserts that, in compliance with Order Nos. 845 and 845-A, Tri-State’s LGIP contains the method used by Tri-State to identify contingent facilities to be included in the LGIA. Tri-State references the LGIP’s definition of “Contingent Facilities,” LGIP section 3.8 – Identification of Contingent Facilities, and LGIP section 3.8.1 – Method for Identifying Contingent Facilities. *Id.* at 6.

¹² *Id.* at 7.

Child – Keota 345 kV line rating increases as contingent facilities in the LGIA because Leeward believes that the Panorama Project will relieve loading on these two elements within TOT3 and, if there is any impact, it would be *de minimis*. Tri-State states that it informed Leeward that it could request that Tri-State perform an Optional Interconnection Study¹³ under the LGIP, but Leeward has not pursued this option. Tri-State adds that section 4 of Appendix A also notes that the Laramie River Station and Ault terminal upgrades must be completed by Basin Electric Power Cooperative and Western Area Power Administration, respectively, and it has included those facilities as contingent facilities in Appendix A. Tri-State states that Leeward has not indicated its acceptance or rejection of the inclusion of those facilities.¹⁴

9. Third, Tri-State explains that Appendix B provides the milestones for the proposed project, and that, like section 4 in Appendix A, specific language related to contingent facilities is included. Tri-State states that it understands that Leeward would prefer to remove the references to “contingent facilities” and begin interconnection service whether the contingent facilities are completed or not despite the results of the System Impact Study and Facilities Study. Tri-State states that, while it was aware that Leeward does not believe that the Laramie River Station – Wayne Child 345 kV line and Wayne Child – Keota 345 kV line are contingent facilities, Leeward has not objected to the other contingent facilities identified by Tri-State in section 4 of Appendix A. Tri-State concludes that, assuming for the sake of argument, the two aforementioned lines are not contingent facilities, it would still be appropriate to include the reference to contingent facilities in Appendix B.

10. Fourth, Tri-State states that Appendix C includes details related to the interconnection, including the generating facility, Point of Change of Ownership, and Point of Interconnection. According to Tri-State, Leeward has requested that the Appendix include a one-line diagram of Leeward’s generating facility. Tri-State argues that Leeward’s structure of its generating facility on its end of the Point of Interconnection is not relevant and has no impact on the interconnection request, and therefore, Tri-State has not included the requested one-line diagram in the unexecuted LGIA.

11. Tri-State requests that the Commission grant waiver of the 60-day prior notice requirement and allow the LGIA to be effective on the February 20, 2020 filing date to provide certainty to the parties given that certain milestones set forth in Appendix B

¹³ “Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.” Tri-State-Leeward LGIA at Article 1 – Definitions.

¹⁴ Tri-State Transmittal at 8.

occur within 60 days of Tri-State's filing. Tri-State states that it understands that Leeward also supports the request for the Commission to approve the unexecuted LGIA to be effective concurrent with the filing date.

III. Notice of Filing and Responsive Pleadings

12. Notice of Tri-State's filing was published in the *Federal Register*, 85 Fed. Reg. 11,361 (Feb. 27, 2020), with interventions and protests due on or before March 12, 2020. On March 12, 2020, as supplemented on March 13, 2020 and May 15, 2020, Leeward submitted a motion to intervene and protest. On April 3, 2020, Tri-State submitted an answer to Leeward's protest. On May 19, 2020, Tri-State filed a motion to strike the supplement to the protest of Leeward, or alternatively, a motion for leave to answer and answer.

13. Notice of Tri-State's amended filing was published in the *Federal Register*, 85 Fed. Reg. 20,994 (Apr. 15, 2020), with interventions and protests due on or before April 29, 2020. None was filed.

A. Leeward's Protest

14. In response to the unresolved issues described by Tri-State in its unexecuted LGIA filing, Leeward requests that the Commission find that Tri-State has not shown the LGIA to be just and reasonable and initiate hearing and settlement judge procedures.¹⁵

15. Leeward states that it agrees with Tri-State's proposed changes to Appendix A of the LGIA regarding the location of the dead-end structure. Leeward states that it has no objection to designing, procuring, constructing, and installing the dead-end structure outside the Redtail Substation as an Interconnection Customer's Interconnection Facility.¹⁶

16. Leeward states that it has no issue with the LGIA provisions Tri-State cites, including the definition of contingent facilities and the method for identifying such facilities in the LGIA. However, Leeward states that Tri-State's interpretation and application of the method for identifying contingent facilities, as applied in the LGIA, are inconsistent with Order No. 845 and are unjust and unreasonable. Specifically, Leeward

¹⁵ Leeward Protest at 1-2.

¹⁶ *Id.* at 4.

objects to Tri-State's designation of the Wayne Child Project facilities as contingent facilities.¹⁷

17. Leeward argues that Tri-State mistakenly designated the Wayne Child Project facilities as contingent facilities due to flaws in the study method that Tri-State employed. According to Leeward, Tri-State used a study methodology that is inconsistent with its Network Resource Interconnection Service (NRIS) Availability Report, posted on Tri-State's Open Access Same Time Information System on January 10, 2020. Further, Leeward argues that Tri-State's application of the TOT 3 Study Process to the Panorama Project is inappropriate as it is a path transfer limit study procedure, rather than an NRIS study procedure, which is the service Leeward is seeking from Tri-State.¹⁸ Additionally, Leeward explains that it conducted an independent study demonstrating that, when the Panorama Project's NRIS is evaluated consistent with the NRIS Availability Report, there are no overloads requiring the Wayne Child Project.¹⁹ Leeward further argues that Tri-State incorrectly used the Comanche Generating Station (Comanche) as a sink for the Panorama Project but Comanche is not a Tri-State network resource and is not in the same balancing authority area as the Panorama Project. Leeward argues that Tri-State should have instead used the network resources published in its NRIS Availability Report as a sink and allocated the displaced portion of its reserved capacity to new NRIS customers.

18. Concerning Appendix B, Leeward states that it is primarily concerned with Tri-State's refusal to commit to a firm in-service date for the Panorama Project in light of certain contingent facilities that Tri-State argues cannot be finalized in time for the Panorama Project's proposed in-service date. Leeward explains that Tri-State has refused to grant Leeward's request to self-build all or a portion of the Wayne Child Project in order to meet Leeward's December 2021 requested in-service date. Leeward adds that, pursuant to Order No. 845, Leeward should have the right to build these facilities.²⁰

19. With regard to its request that Tri-State include a one-line diagram of the Panorama Project in Appendix C to the LGIA, Leeward argues that such a diagram would provide a level of detail necessary and relevant for customers seeking to interconnect to the system. Leeward adds that the description of the Panorama Project without the inclusion of the diagram does not provide sufficient detail from an

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 5-6.

¹⁹ *Id.* at 6-7.

²⁰ *Id.* at 11 (citing Order No. 845, 163 FERC ¶ 61,043 at P 85).

engineering perspective.²¹ Leeward asks that the Commission find that Tri-State must include the one-line diagram of the Panorama Project in Appendix C to the LGIA.

20. Lastly, in its May 15, 2020 supplement to its protest, Leeward disputes a subset of the costs that Leeward states Tri-State believes are associated with expediting the completion of the Wayne Child Project facilities. Leeward states that, in an April 28, 2020 letter, Tri-State proposed to recover from Leeward a total of \$1.7 million in costs associated with expediting the construction of the Wayne Child Project facilities, \$1.2 million of which stem from costs associated with unplanned generator outages for construction activities. Leeward argues that Order No. 2003 does not permit Tri-State to recover from Leeward costs associated with unplanned interconnection-related outages.²² Leeward also states that Tri-State has insisted that Leeward execute an engineering, procurement, and construction agreement by May 15, 2020, or else Leeward's request to expedite construction of the Wayne Child Project facilities will have been considered withdrawn. Finally, Leeward requests that the Commission set these additional issues for hearing and settlement judge procedures.

B. Tri-State's Answer

21. Tri-State requests that the Commission defer action on its filing until the Commission acts on its Order Nos. 845 and 845-A compliance filing or, if the Commission does not defer action, Tri-State requests that the Commission grant its motion for leave to answer. With respect to the motion to defer action, Tri-State explains that the unexecuted LGIA at issue in this proceeding conforms to the terms and conditions of its *pro forma* LGIA, with one exception, and that it incorporates provisions that Tri-State has proposed to comply with Order No. 845.²³

22. Regarding Leeward's argument that Tri-State's application of the TOT 3 Study Process was flawed, and therefore the Wayne Child Project facilities are not contingent facilities, Tri-State states that section 3.2.2.2 of the *pro forma* LGIP requires that a NRIS study include an analysis of "severely stressed conditions," and therefore Leeward's

²¹ *Id.* at 12-13.

²² May 15, 2020 Supplement to Leeward Protest at 4 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

²³ Tri-State Answer at 2.

contention that the focus should be on the results of a non-stressed study is incorrect. Tri-State notes that the System Impact Study report showed that the addition of the Panorama Project created reliability concerns under severely stressed conditions, and that Leeward did not object to these Network Upgrades in the System Impact Study or Facilities Study reports.²⁴

23. Tri-State also disputes Leeward's argument that Tri-State should not have selected Comanche as the sink in the System Impact Study, noting that Comanche is appropriately selected as the sink due to its electrical remoteness from the study area and, even if network resources to the south, east, and west of Comanche had been selected, the results of the System Impact Study would have been the same.²⁵

24. Tri-State also disputes that it reserved or hoarded transmission capacity rights in its analysis of the Panorama Project. Tri-State asserts that section 3.2.2.2 of the *pro forma* LGIP makes clear that an interconnection request for NRIS, in and of itself, does not convey any right to deliver electricity to any specific customer or point of delivery, and rather, Leeward will need to request network transmission service and have a transmission service study to determine if there is available transfer capability on TOT 3. Tri-State adds that the NRIS Availability Report is not comparable to a NRIS generation interconnection study, and thus Leeward's independent study provides no support to Leeward's position.²⁶

25. Tri-State maintains that its inclusion of the statement in Appendix B that the requested Interconnection Service is subject to the completion of the contingent facilities identified in the unexecuted LGIA is just and reasonable. Tri-State also asserts that it does not agree with Leeward that any portion of the Wayne Child Project constitutes a Stand-Alone Network Upgrade that Leeward can self-build. Further, Tri-State clarifies that it has not told Leeward that the Wayne Child Project cannot be advanced before its estimated in-service date of December 2022. Tri-State states that, at Leeward's request, Tri-State has started analyzing whether the construction schedule can be advanced.²⁷

26. With respect to Appendix C, Tri-State asserts that Leeward's request for the one-line diagram in Appendix C is an attempt to get Tri-State to "approve" a change in the Panorama Project's 145 MW output level in order for it to be viewed as two separate

²⁴ *Id.* at 7-9.

²⁵ *Id.* at 10.

²⁶ *Id.* at 8.

²⁷ *Id.* at 15-16.

generating facilities under 80 MW so Leeward can self-certify the generating facility as two Qualifying Facilities under the Public Utility Regulatory Policies Act of 1978.²⁸

27. In its May 19, 2020 Answer, Tri-State asserts that Leeward neglects to identify that the prohibition on allocation of interconnection-related outage costs promulgated in Order No. 2003 was reheard and modified in Order No. 2003-A.²⁹ Tri-State argues that Commission policy allows a transmission provider to propose to recover line outage costs on a case-by-case basis so long as the outage costs are caused by or reasonably related to scheduled transmission line outages associated with the interconnection of interconnection facilities.³⁰ Tri-State maintains that its proposal to allocate the Laramie River Station redispatch costs to Leeward is appropriate in part because Tri-State is only seeking to allocate the Laramie River Station redispatch costs that are incurred solely to accommodate Leeward's expedited schedule. Tri-State also argues that Tri-State's proffer of an engineering, procurement, and construction agreement to capture Leeward's commitment to pay the expediting costs associated with its accelerated in-service date is appropriate given the procedural posture of the underlying LGIA, the timing of Leeward's expediting request, and Tri-State's need for certainty.

IV. Discussion

A. Procedural Matters

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

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

B. Substantive Matters

30. Our preliminary analysis indicates that the LGIA has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential,

²⁸ *Id.* at 18 (citing 16 U.S.C. § 796(17)-(18) (2018)).

²⁹ Tri-State May 19, 2020 Answer at 7 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 647).

³⁰ *Id.* at 8 (citing *So. Co. Svcs. Inc.*, 108 FERC ¶ 61,229, P 26 (2004)).

or otherwise unlawful. We find that the filing raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we accept the LGIA for filing and suspend it for a nominal period, to become effective February 25, 2020, the date that Tri-State's OATT became effective, subject to refund, and establish hearing and settlement judge procedures.³¹

31. However, we make a finding on the merits of two issues. First, because Leeward has stated it does not object to designing, procuring, constructing, and installing the dead-end structure outside the Redtail Substation as an Interconnection Customer's Interconnection Facility, we find that this issue is not in dispute. Accordingly, the language of Appendix A need not be changed in this regard.

32. Second, we decline to require Tri-State to include a one-line diagram in Appendix C of the LGIA. The *pro forma* LGIA requires Appendix C to include "Interconnection Details."³² While neither Order No. 2003 nor the *pro forma* LGIA specify what details are required to be included, *pro forma* LGIA article 9.4 states that "Interconnection Customer shall operate the Large Generating Facility and the Interconnection Customer Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA."³³ This does not require a diagram of any facilities; rather, it specifies the operating conditions for the generating facility and interconnection facilities in order to protect the transmission provider's transmission system. To the extent Tri-State, as the relevant transmission provider, does not believe it needs the full one-line diagram of the Panorama Project to protect its transmission system, we will not require it to be added to Appendix C of the LGIA.

33. 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.³⁴ If the parties desire, they may, by

³¹ 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. *Tri-State Generation and Transmission Ass'n, Inc.*, 170 FERC ¶ 61,222 at P 107.

³² Order No. 2003, FERC Stats. & Regs. ¶ 31,146.

³³ *Pro forma* LGIA art. 9.4.

³⁴ 18 C.F.R. § 385.603 (2019).

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.³⁵ The settlement judge shall report to the Chief Judge and the Commission within 60 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.

The Commission orders:

(A) The LGIA between Tri-State and Leeward is hereby accepted for filing and suspended for a nominal period, to become effective February 25, 2020, subject to refund, as discussed in the body of this order.

(B) 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 sections 205 and 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 the LGIA, 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 (C) and (D) below.

(C) 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 45 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 the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 60 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

³⁵ 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>).

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 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 45 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, or remotely (by telephone or electronically), as appropriate. 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.

(F) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.