

171 FERC ¶ 61,207
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. ER20-1559-000

ORDER ACCEPTING AND SUSPENDING CONTRACT TERMINATION
PAYMENT METHODOLOGY AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued June 12, 2020)

1. On April 13, 2020, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a Contract Termination Payment (CTP) Methodology designed to calculate the payment a Tri-State utility member electric distribution cooperative or public power district (Utility Member) must make to terminate its wholesale energy service contract (Wholesale Service Contract) with Tri-State.³ As discussed below, we accept the CTP Methodology for filing, suspend it for a nominal period, to become effective June 13, 2020, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. Tri-State is a wholesale generation and transmission cooperative that provides wholesale power and transmission services to its 43 Utility Members in Colorado, Nebraska, New Mexico, and Wyoming at cost-based rates pursuant to long-term all-

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ On April 17, 2020, Tri-State submitted an errata filing to correct typographical errors in its April 13, 2020 transmittal letter and certain exhibits.

requirements (Wholesale Service Contracts). A 43-seat Board of Directors controls Tri-State, with each of Tri-State's 43 Utility Members occupying one seat on the Board. Tri-State's existing Utility Members are obligated to purchase not less than 95% of their requirements for wholesale energy from Tri-State through 2050.

3. In December 2019, following the admission of a new member that was not an electric cooperative or a governmental entity, Tri-State submitted multiple filings to the Commission. On March 20, 2020, the Commission found that Tri-State became subject to the Commission's jurisdiction on September 3, 2019 as a result of Tri-State's admission of a new member that was not a Utility Member.⁴

II. Filing

4. Tri-State states that the Wholesale Service Contracts provide the revenue necessary for Tri-State to plan, build, operate and maintain its generation and transmission system. Tri-State explains that the Wholesale Service Contracts and revenues to be received thereunder are pledged to Tri-State's lenders and provide assurance that Tri-State will be able to continue to earn sufficient revenue to repay its debt obligations and to meet ongoing and future costs.⁵

5. Tri-State states that Utility Members have from time to time sought to withdraw from Tri-State and terminate their Wholesale Service Contracts before the stated expiration date, and that it currently addresses such requests on a case-by-case basis. According to Tri-State, these case-by-case determinations have led to disputes with and among Utility Members over contract termination payments. Tri-State states that it experienced expensive and protracted litigation in the withdrawal proceedings of Shoshone River Power, Inc. (Shoshone) in the mid-1980s, five Nebraska-based Utility Members in 2009, Kit Carson Electric Cooperative (Kit Carson) in 2016, and Delta-Montrose Electric Association (Delta-Montrose) in 2019.⁶ Tri-State also states that within the past year, two more Tri-State Utility Members have filed complaints before the Colorado Public Utilities Commission (Colorado Commission) requesting a determination of the exit charge that would apply to their withdrawal, although they

⁴ *Tri-State Generation and Transmission Ass'n, Inc.*, 170 FERC ¶ 61,224, at P 82 (2020) (Declaratory Order).

⁵ Transmittal at 2.

⁶ *Id.* at 3.

have not provided a notice of withdrawal to Tri-State or stated the date on which they would seek to withdraw.⁷

6. Tri-State explains that in the Declaratory Order, the Commission declined to declare that it had exclusive jurisdiction over Tri-State's exit charges at that time, but instructed:

If Tri-State seeks to place matters regarding its exit charges before the Commission, it should make an appropriate filing at the Commission, which could include a filing setting forth a methodology for determining such charges.⁸

7. Tri-State states that this filing will serve to place the issue of Tri-State's exit charges before the Commission and is intended to invoke the Commission's exclusive jurisdiction over that issue, thereby preempting state proceedings concerning the same issue, as suggested in the Commission's Declaratory Order. Tri-State states that it intends to file separately a limited request for rehearing regarding the Commission's Declaratory Order, which requests, *inter alia*, that the Commission declare that as of this FPA section 205 filing, state proceedings regarding the justness and reasonableness of Tri-State's exit charges are preempted.⁹

8. Tri-State explains that the CTP Methodology is designed to allow a Utility Member to terminate its Wholesale Service Contract with Tri-State, while leaving the remaining Utility Members financially unaffected. Tri-State asserts that a standardized exit charge will permit an orderly and equitable process that favors no Utility Member or group of Utility Members in one state over those in another state. Tri-State states that its Board overwhelmingly approved the CTP Methodology by resolution on April 9, 2020.¹⁰

9. Specifically, Tri-State explains that the CTP Methodology will be computed by Tri-State using Tri-State's Long-Term Financial Forecast (LTFF) Methodology, as regularly reviewed and maintained within the organization. The LTFF Methodology includes all software, inputs, and assumptions required to prepare a detailed long-term financial forecast of Tri-State's business operations. Tri-State states that, subject to appropriate adjustments based on remaining Utility Members' Wholesale Service

⁷ *Id.*

⁸ Declaratory Order, 170 FERC ¶ 61,224 at P 121.

⁹ Transmittal at 4. Tri-State filed its request for rehearing on April 14, 2020 in Docket No. EL20-16-000.

¹⁰ *Id.* at 4-5.

Contracts terms, individual Utility Member commitments, and Tri-State's financial position at the time of a Utility Member's proposed withdrawal, the exit charge under the CTP Methodology is computed using a mark-to-market, make-whole methodology.

10. The CTP Methodology includes five steps. In step 1, a forecast of Tri-State's total Class A revenue requirement will be made for each calendar year through the minimum term of the Wholesale Service Contract (currently December 31, 2050) under the assumption that all existing Utility Members remain Members of Tri-State and fulfill their obligations under their Wholesale Service Contracts. For every year of the forecast, the Class A revenue requirement will be converted into the appropriate demand and energy rates using the currently effective Class A rate structure. This forecast will be the Base Case forecast representing business as usual.

11. In step 2, a second forecast of Tri-State total Class A revenue requirement will be made for each calendar year through the minimum term of the Wholesale Service Contract (currently December 31, 2050), this time assuming a specific Member's early withdrawal and the extinguishment of its Wholesale Service Contract. For every year of the forecast, the Class A revenue requirement will be converted into the appropriate demand and energy rates using the currently effective Class A rate structure. This forecast will be the Change Case forecast representing the unexpected loss of Member load.

12. In step 3, for each year of the forecast, a demand and energy rate differential for each component of the Class A rate will be calculated. A demand rate differential will be calculated by comparing the components of the Base Case demand rate forecast with the same components of the Change Case demand rate forecast. An energy rate differential will be calculated by comparing the components of the Base Case energy rate forecast with the same components of the Change Case energy rate forecast.

13. Step 4 provides that, for each year of the forecast, the change in rate revenues associated with the Member's early withdrawal will be calculated. The demand rate differential associated with each component shall be multiplied by the corresponding forecasted demand billing units in the Change Case. The energy rate differential shall be multiplied by the corresponding forecasted energy billing units in the Change Case. The resulting revenue change from demand and energy components will be summed, representing the total change in annual rate revenue attributed to the Member's proposed early withdrawal. This is equal to the revenue requirement differential between the Base and Change Cases.

14. Finally, in step 5, a net present value of the revenue requirement differential developed in step 4 will be calculated using a mid-year discounting convention and applying Tri-State's Board-approved weighted average cost of capital as the discount rate. A mid-year discount will be applied to each year of the present value calculation to

account for average cash flow over the course of each year. The current Board-approved weighted average cost of capital is 4.68%.¹¹

15. Tri-State states that its Board will conduct an annual review of the CTP Methodology and make appropriate adjustments, which in turn would be filed with the Commission as may be required under FPA section 205. Tri-State explains that its Board authorized and directed its management to implement the approved CTP Methodology, including such matters as determining the amount of advance notice required to allow Tri-State adequate time to consider the effects of such Utility Member withdrawal on its generation and transmission planning and to calculate the most accurate exit charge under the then-present factors and input assumptions. According to Tri-State, the Board resolution provides that the withdrawal process requires: (1) not less than three years' advance notice of the proposed date of withdrawal; (2) Board approval; and (3) a Board determination that the proposed withdrawal will not have a material adverse effect on Tri-State.¹²

16. Tri-State requests waiver of the 60-day prior notice requirement, requesting an effective date of April 14, 2020. Tri-State states that 18 C.F.R. § 35.11 (2019) allows for a waiver of such notice "for good cause shown."¹³ Tri-State argues that it has been working expeditiously since the Declaratory Order suggested that Tri-State could file an exit fee methodology. Tri-State represents that this filing does not involve a change in rates, nor will it harm its Utility Members, and consequently, an effective date of April 14, 2020, one day after the filing was made, would be appropriate.¹⁴

III. Notice of Filing and Responsive Pleadings

17. Notice of the filing was published in the *Federal Register*, 85 Fed. Reg. 21,845 (Apr. 20, 2020), with interventions and protests due on or before May 4, 2020. On April 17, 2020, United Power filed a motion for an extension of time to file comments

¹¹ Tri-State, Tri-State Wholesale Electric Service Contracts, Rate Schedule No. 281, CTP Methodology (1.0.0).

¹² Transmittal at 5.

¹³ *Id.* at 8 (citing *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089, at n.3 (1992)).

¹⁴ *Id.* at 8-9 (citing *Sw. Power Pool, Inc.*, 113 FERC ¶ 61,014, at P 1 (2005); *New England Power Co.*, 83 FERC ¶ 61,174 (1998); *Avista Corp.*, Docket No. ER20-473-000 (Dec. 27, 2019)).

and interventions to May 11, 2020. On April 24, 2020, United Power's motion was granted.

18. On May 11, 2020, the Colorado Commission filed a notice of intervention and a protest. Poudre Valley Rural Electric Association, Inc., Mountain Parks Electric, Inc., Basin Electric Power Cooperative, Springer Electric Cooperative, Inc., San Miguel Power Association, Inc., Delta-Montrose Electric Association (Delta-Montrose), Arkansas River Power Authority, and Upper Missouri Power Cooperative filed timely motions to intervene. Chimney Rock Public Power District, Panhandle Rural Electric Membership Association, San Isabel Electric Association, Inc., and Continental Divide Electric Cooperative, Inc. (Continental Divide) filed motions to intervene out-of-time.

19. Wheat Belt Public Power District (Wheat Belt), Northwest Rural Public Power District (Northwest), Guzman Energy LLC (Guzman), La Plata Electric Association (La Plata),¹⁵ and United Power, Inc. (United Power) filed timely motions to intervene and protests, and 14 members of the Colorado General Assembly (Colorado Legislators) filed comments.

20. On May 13, 2020, Wyrulec Company (Wyrulec), High West Energy (High West), White River Electric Association, Inc. (White River), Southwestern Electric Cooperative, Inc. (Southwestern), Sierra Electric Cooperative, Inc. (Sierra), Carbon Power and Light Company (Carbon), and Socorro Electric Cooperative, Inc. filed comments. On May 18, 2020, Wheatland Rural Electric Association, Big Horn Rural Electric, Garland Light & Power Company, High Plains Power, Inc., and Niobrara Electric Association (collectively, Wheatland) jointly submitted comments. Also, on May 18, 2020, Highline Electric Association, KC Electric Association, Morgan County REA, Mountain View Electric Association, Poudre Valley REA, Southeast Colorado Power Association, and Y-W Electric Association (collectively, Highline) jointly submitted comments. On May 19, 2020, Gunnison County Electric Association (Gunnison), certain members of the Tri-State Board,¹⁶ and Sangre de Cristo Electric Association, Inc. (SDCEA) submitted comments. On May 20, 2020, Otero submitted comments. On June 4, 2020, eight members of the Wyoming Legislature filed an answer (Wyoming Legislators).

¹⁵ On May 12, 2020, La Plata filed an amendment to its protest to correct an error.

¹⁶ These Board members represent the following Tri-State Utility Members: Mountain View Electric Association, Big Horn Rural Electric, Garland Light and Power Company, Highline Electric Association, High West, Jemez Mountains Electric Cooperative, KC Electric Association, Morgan County REA, County Electric Cooperative, Inc. (Otero), San Isabel Electric Association, San Luis Valley REC, Sierra, Socorro, Southeast Colorado Power Association, Wheatland Rural Electric Association, White River, Wyrulec, and Y-W Electric Association.

21. On May 18, 2020, Delta-Montrose and Tri-State filed answers to the protests and on May 26, 2020, Wheat Belt filed an answer to the protests. On May 28, 2020, Tri-State filed an answer to Wheat Belt's answer and on May 29, 2020, Wheat Belt filed an answer to the answers filed by Delta-Montrose and Tri-State on May 18, 2020. On June 1, 2020, Delta-Montrose filed an answer. On June 3, 2020, La Plata filed an answer. On June 4, 2020, United Power filed an answer. On June 5, 2020, Wheat Belt filed an answer to United Power's answer. On June 11, 2020, Tri-State filed an answer to La Plata, United Power, and Wheat Belt's answers.

A. Comments and Protests

22. Several Tri-State Utility Members state that while two Colorado Utility Members do not agree with Tri-State's transition to becoming subject to the Commission's jurisdiction, a large majority of Tri-State Utility Members support this action.¹⁷ Wyrulec and Continental Divide state that they support Tri-State's CTP Methodology. Continental Divide and Otero encourage the Commission to preempt the Colorado Commission from adjudicating exit fees for Tri-State Utility Members. The Wyoming Legislators also support the filing.

23. Colorado Legislators request that the Commission decline to take jurisdiction over the matter and reject the CTP Methodology. They argue that the Commission's acceptance of this filing could harm ratepayers, including United Power and LaPlata, who have ongoing exit fee complaint proceedings pending before the Colorado Commission seeking just, reasonable, and non-discriminatory exit charges. Colorado Legislators express concern that the CTP Methodology would lead to unjust and unreasonable exit charges that would make United Power and LaPlata's withdrawals financially impossible, to the detriment of their ratepayers. Colorado Legislators add that if the Commission declines to take jurisdiction over the matter and rejects Tri-State's filing, the Colorado Commission will be able to continue the United Power and La Plata proceedings.¹⁸ Similarly, United Power argues that there remains significant uncertainty as to whether Tri-State is subject to the Commission's jurisdiction, and that devoting Commission resources to address it is impractical given that the CTP Methodology could be unwound.¹⁹

24. Several protestors argue that Tri-State provides insufficient support to meet its burden of demonstrating that the proposed CTP Methodology is just, reasonable, and not unduly discriminatory. They argue that the CTP Methodology raises issues that cannot

¹⁷ *E.g.*, Sierra Comments at 1; Carbon Comments at 2.

¹⁸ Colorado Legislators Protest at 1-2.

¹⁹ United Power Protest at 28-29.

be resolved based on the record and, if it is not rejected outright, the Commission should set it for hearing and settlement judge procedures.²⁰ Commenters state that Tri-State's CTP Methodology is unjust and unreasonable because parties cannot calculate the charge that will be produced by the methodology.²¹ Guzman contends that inputs to the CTP Methodology are unjust and unreasonable because they are not specific, and Utility Members cannot evaluate their correctness.²² La Plata argues that Tri-State's CTP Methodology is patently deficient under FPA section 205 and the Commission's "rule of reason" because it omits practices that significantly affect rates. According to La Plata, Tri-State's proposed CTP Methodology consists of a single page of substantive tariff provisions that describe four steps to calculate a CTP, but the actual methodology is contained in the unfiled LTFF Methodology, which can be amended at will by Tri-State.²³

25. The Colorado Commission states that for both the Kit Carson and Delta-Montrose withdrawal proceedings, Tri-State's LTFF-based, mark-to-market methodology resulted in an initial exit charge that was 70% higher than the final amount on which Tri-State ultimately settled. The Colorado Commission argues that Tri-State has not explained how the CTP Methodology, which is also a LTFF-based mark-to-market methodology, will avoid inflated initial calculations such as those in the Kit Carson and Delta-Montrose proceedings.²⁴ Northwest argues that the CTP Methodology is improperly based on projected revenues and calculates payment over an excessively long time period, which will enrich non-withdrawing Utility Members.²⁵ Wheat Belt argues that Tri-State's proposed CTP Methodology violates the cost causation principle by socializing among all Utility Members certain costs that Tri-State incurred to provide wholesale electric service to Utility Members in Colorado and New Mexico.²⁶ Wheat Belt further asserts that the CTP Methodology is unduly discriminatory to the extent it applies to some, but not all, Utility Members, arguing that the terms of the withdrawal agreement with Delta-

²⁰ *E.g.*, Colorado Commission Protest at 7; Guzman Protest at 1.

²¹ United Power Protest at 17-27; Guzman Protest at 9-11.

²² Guzman Protest at 11-13.

²³ La Plata Protest at 27-31.

²⁴ Colorado Commission Protest at 8-9.

²⁵ Northwest Protest at 7-12.

²⁶ Wheat Belt May 11 Protest at 6-10.

Montrose (Withdrawal Agreement) differ substantially from the CTP Methodology.²⁷ Guzman argues that Tri-State's exit fees appear to omit key credits to an existing customer.²⁸

26. Guzman also argues that Tri-State's proposal allows unfettered discretion to the Tri-State Board because it allows the Board to review the CTP Methodology annually and adjust it through a Board resolution. According to Guzman, any rate, term, or condition (such as an exit methodology) must be on file, just and reasonable, and not subject to Tri-State's Board's unfettered discretion.²⁹ Further, Northwest argues that Tri-State's three conditions for withdrawal give its Board unchecked veto power over a Utility Member's ability to withdraw, rendering any decision Tri-State makes regarding a Utility Member's withdrawal arbitrary and capricious.³⁰

27. Several commenters argue that Tri-State has not demonstrated that the proposed CTP Methodology is just and reasonable for the remaining Tri-State Utility Members. United Power argues that the CTP Methodology filing's purpose is to effectively eliminate member exits, not calculate a just and reasonable exit charge.³¹ United Power and Northwest argue that Tri-State's proposed CTP Methodology is discriminatory compared to other member exit charges and inconsistent with the Commission's previous decisions governing member exits.³² La Plata argues that the CTP Methodology will produce rates that unduly prejudice and disadvantage Utility Members seeking to withdraw from Tri-State in the future.³³

28. Guzman argues that the Commission has properly concluded that it shares jurisdiction with the Colorado Commission and asserts that no conflict exists between the Commission's and the Colorado Commission's jurisdiction. Guzman states that neither the Commission nor the Colorado Commission has approved a methodology for determining Tri-State's exit charges.

²⁷ *Id.* at 10-12.

²⁸ Guzman Protest at 13.

²⁹ *Id.* at 6-8.

³⁰ Northwest Protest at 12-13.

³¹ United Power Protest at 4-6.

³² *Id.* at 13-14; Northwest Protest at 13.

³³ La Plata Protest at 37-40.

29. United Power and La Plata argue that good cause does not exist to grant the requested waiver of the prior notice requirement.³⁴ Wheat Belt and Northwest request that the Commission consolidate the instant proceeding with the proceeding in Docket No. ER20-1542-000, in which Tri-State filed the Withdrawal Agreement with Delta-Montrose. They argue that the two dockets involve analysis of the same questions of law and fact – i.e., defining a just and reasonable methodology to calculate exit charges for Utility Members of Tri-State in order to ensure that remaining Utility Members are held harmless. Further, Wheat Belt and Northwest argue that consolidation would prevent Delta-Montrose from receiving any undue preference or advantage that is not available to Tri-State’s other Utility Members.³⁵

B. Answers

30. In response to the requests to consolidate the two filings, Tri-State and Delta-Montrose argue that the filings involve analysis of different questions of law and fact, and should not be consolidated. Tri-State states that in the CTP Methodology filing it seeks the ability to determine exit charges on a standardized basis going forward, whereas the Delta-Montrose membership withdrawal filing in Docket No. ER20-1542-000 involves a 2019 settlement of contentious litigation and regulatory proceedings before the Colorado Commission and the Colorado courts. Tri-State argues that it would not be reasonable to apply the CTP Methodology retroactively to an arrangement Tri-State negotiated with Delta-Montrose before Tri-State adopted that methodology.³⁶ Delta-Montrose argues that the Withdrawal Agreement filing concerns the Commission’s treatment of negotiated settlements and of the obligations of parties with pre-existing contractual arrangements that pre-date Tri-State becoming subject to the Commission’s jurisdiction. Delta-Montrose contends that these issues are irrelevant to the Commission’s analysis of the proposed CTP Methodology submitted in the instant filing.³⁷

31. In its May 26, 2020 answer, Wheat Belt states that it agrees with the Colorado Commission, Guzman, La Plata, and United Power that Tri-State has failed to meet its burden to demonstrate that its proposed CTP Methodology is just and reasonable and not unduly discriminatory but disagrees about what the Commission should do in response to Tri-State’s failure. Wheat Belt argues that the Commission should accept the CTP Methodology to minimize a regulatory gap between the Commission and the Colorado

³⁴ *Id.* at 8-10; La Plata Protest at 8.

³⁵ Wheat Belt May 1 Protest 15-17; Northwest Protest at 13-14.

³⁶ Tri-State May 18 Answer at 11-14.

³⁷ Delta-Montrose Answer at 15-17.

Commission and asserts that allowing the Colorado Commission to make exit fee decisions that affect Utility Members in other states is unduly discriminatory.³⁸ Wheat Belt urges the Commission to find that it has jurisdiction over the CTP Methodology and avers that accepting the CTP Methodology, subject to investigation, would be the fairest to all parties, because it would provide all interested parties with a forum to efficiently adjudicate complex issues.³⁹

32. Tri-State argues that because the Commission has exclusive jurisdiction over Tri-State's rate and practices, the Commission should not defer to the Colorado Commission.⁴⁰ Tri-State claims that the Withdrawal Agreement is irrelevant to this proceeding because it was a prior agreement that does not create binding precedent for subsequent filings.⁴¹ Tri-State avers that Wheat Belt's cost causation arguments merely re-iterate issues currently undergoing hearing and settlement judge procedures in Docket No. ER20-676-000, et al.,⁴² and that consequently that is the proper forum for these questions.⁴³ Tri-State disputes protesters' arguments about its mark-to-market methodology, arguing that it provides a fair and rational result.⁴⁴ Tri-State contends that its use of the LTFF is just and reasonable because, despite its complexity, it results in just and reasonable rates.⁴⁵ Tri-State claims that its proposed three-year exit period and reservation of discretion to the Board is just and reasonable because a decades-early termination of a 50-year contract requires planning, and moreover is consistent with a recent Commission decision.⁴⁶ Moreover, Tri-State argues that article I, section 4 of its Commission-approved bylaws already allows Tri-State's Board discretion over member

³⁸ Wheat Belt May 26 Answer at 9-11.

³⁹ *Id.* at 11-14.

⁴⁰ Tri-State May 28 Answer at 13-14.

⁴¹ *Id.* at 14-17.

⁴² These dockets address whether Tri-State's stated rate is just and reasonable. Settlement negotiations are currently underway. Order of the Chief Judge Continuing Settlement Judge Procedures, Docket No. ER20-676-000, et al., at 1 (May 7, 2020).

⁴³ Tri-State May 28 Answer at 17.

⁴⁴ *Id.* at 18-24.

⁴⁵ *Id.* at 24-27.

⁴⁶ *Id.* at 27-29 (citing *Wabash Valley Power Ass'n, Inc.*, 171 FERC ¶ 61,053, at PP 24, 30-31 (2020)).

withdrawals.⁴⁷ Finally, Tri-State concludes that there is no basis to suspend or reject its filing, because the filing does not impair any existing rights.⁴⁸

33. On May 29, 2020, Wheat Belt filed an additional answer. That answer focused principally on issues relevant to other dockets; however, Wheat Belt reiterated its position that the instant proceeding should be consolidated with the Withdrawal Agreement proceeding, and that the filings should be viewed comprehensively.⁴⁹ On June 1, 2020, Delta-Montrose filed an additional answer focused on issues relevant to other dockets.

34. In its June 3, 2020 answer, La Plata argues that Tri-State and Wheat Belt have not provided a compelling reason why the filing should be accepted.⁵⁰ La Plata states that previous exit agreements demonstrate that the CTP Methodology is unjust, unreasonable, and unduly preferential.⁵¹ Additionally, La Plata argues that the three-year notice period for exit is unjust and unreasonable.⁵² La Plata concludes that application of the CTP Methodology to La Plata would be unjust, unreasonable, and unduly prejudicial because the Colorado Commission is the appropriate forum for determining its exit charge.⁵³

35. In its June 4, 2020 answer, United Power avers that Tri-State's filing is not made in good faith, and is instead designed to thwart proceedings before the Colorado Commission.⁵⁴ United Power claims that Wheat Belt mischaracterizes the proceedings before the Colorado Commission, and Wheat Belt's own participation in those proceedings, arguing that Wheat Belt had a fair opportunity to participate.⁵⁵ United Power also argues that Tri-State's proposed mark-to-market methodology unnecessarily

⁴⁷ *Id.*

⁴⁸ *Id.* at 29-32.

⁴⁹ Wheat Belt May 29 Answer at 24-27.

⁵⁰ La Plata Answer at 2-6.

⁵¹ *Id.* at 7-11.

⁵² *Id.* at 12-13.

⁵³ *Id.* at 14-15.

⁵⁴ United Power Answer at 2-6.

⁵⁵ *Id.* at 6-8.

creates excessive exit fees designed to deter exits.⁵⁶ United Power adds that use of the LTFE and the discretion afforded to Tri-State's Board will not result in just and reasonable exit fees.⁵⁷

36. In its June 5, 2020 answer, Wheat Belt disputes United Power's characterization of Wheat Belt's rights and participation before the Colorado Commission.⁵⁸

37. In its June 11, 2020 answer, Tri-State disputes the suggestions that the Commission should defer to the Colorado Commission, arguing that the Commission is the best forum to adjudicate these issues.⁵⁹

IV. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

39. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant the late-filed motions to intervene filed by Chimney Rock Public Power District, Panhandle Rural Electric Membership Association, San Isabel Electric Association, Inc., and Continental Divide given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

40. 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 to an answer unless otherwise ordered by the decisional authority. We accept Tri-State, Delta-Montrose, Wheat Belt, La Plata, and United Power's answers because they have provided information that assisted us in our decision-making process.

⁵⁶ *Id.* at 12-18.

⁵⁷ *Id.* at 18-20.

⁵⁸ Wheat Belt June 5 Answer at 2-3.

⁵⁹ Tri-State June 11 Answer at 2-7

B. Substantive Matters

41. The Commission affirmed in the Declaratory Order that it has jurisdiction over any such exit fee and acknowledged that Tri-State could submit a proposed exit fee methodology for our review.⁶⁰ Tri-State elected to do so, and our consideration of Tri-State's proposed exit fee methodology here is consistent with our past practice.⁶¹ Accordingly, with respect to Colorado Legislators' request, we do not decline to assert jurisdiction over Tri-State's proposed CTP Methodology.

42. Although we affirm that Tri-State's proposed CTP Methodology is within our jurisdiction, we find that Tri-State's proposed CTP Methodology 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 ordered below. Our preliminary analysis indicates that the CTP Methodology has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

43. La Plata raises concerns that certain material terms and conditions that could apply to withdrawing members are referenced in Tri-State's transmittal letter but not included in the tariff.⁶² We agree that, to the extent Tri-State seeks to impose an advance notice obligation on withdrawing members or to require Board approval before a member may depart,⁶³ such terms and conditions would need to be submitted under section 205 and included in Tri-State's tariff under the "rule of reason."⁶⁴ Because Tri-State did not

⁶⁰ Declaratory Order, 170 FERC ¶ 61,224 at P 121.

⁶¹ See *Southwestern Elec. Coop. Inc. v. Soyland Power Coop., Inc.*, 97 FERC ¶ 61,008, at 61,020 (2001); *Am. Wind Energy Ass'n v. Sw. Power Pool*, 167 FERC ¶ 61,033 (2019); *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,255 (2011); *Sw. Power Pool Inc.*, 114 FERC ¶ 61,273 (2006); *Sw. Power Pool, Inc.*, 113 FERC ¶ 61,014 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221 (2002).

⁶² La Plata Protest at 31.

⁶³ Transmittal at 5.

⁶⁴ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); see 16 U.S.C. § 824d(c) (requiring utilities to file practices affecting jurisdictional rates and charges); 18 C.F.R. § 35.1(a) (2019) (requiring the filing of "full and complete rate schedules and tariffs" that "clearly and specifically set[] forth" practices affecting jurisdictional rates); *Demand Response Coal. v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,061, at P 17 (2013) ("The FPA requires all practices that significantly affect rates,

include such provisions in its proposed tariff language, those matters are not within the scope of the hearing and settlement procedures ordered herein. By comparison, Tri-State's proposed tariff language does reference the LTFF Methodology, and we therefore include that within the hearing and settlement procedures, including the issue of whether, under the "rule of reason," additional detail regarding that methodology must be included in Tri-State's tariff.

44. With regard to Tri-State's request for waiver of the 60-day prior notice requirement, we find that Tri-State has not shown good cause for granting waiver to permit an April 14, 2020 effective date. Although there are circumstances in which the Commission may grant waiver of the 60-day prior notice requirement, none of these circumstances apply in the present case.⁶⁵ Accordingly, we accept the CTP Methodology, suspend it for a nominal period, make it effective June 13, 2020, subject to refund, and set it for hearing and settlement judge procedures.

45. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. 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.⁶⁶ 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.⁶⁷ 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

terms and conditions of service to be on file with the Commission, and these practices must be included in a Commission-accepted tariff rather than other documents.").

⁶⁵ *Cent. Hudson Gas & Elec. Corp*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089; *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993).

⁶⁶ 18 C.F.R. § 385.603 (2019).

⁶⁷ 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 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>).

additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

46. Finally, in general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required and there are common issues of law and fact.⁶⁸ The Commission summarily addressed the issues raised concerning the Withdrawal Agreement without finding a need for a trial-type evidentiary hearing.⁶⁹ Accordingly, given that the Commission accepted the Withdrawal Agreement in Docket No. ER20-1542-000 as just and reasonable, we deny the requests of Wheat Belt and Northwest to consolidate the proceeding in Docket No. ER20-1542-000 with the proceeding in Docket No. ER20-1559-000.⁷⁰

The Commission orders:

(A) The Tri-State CTP Methodology is hereby accepted, suspended for a nominal period, to become effective June 13, 2020, subject to refund, and set for hearing and settlement judge procedures, 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the Tri-State CTP Methodology. 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.

⁶⁸ See, e.g., *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 44 & n.74 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008).

⁶⁹ See *Tri-State Generation and Transmission Ass'n, Inc.*, 171 FERC ¶ 61,202, at PP 35-45 (2020).

⁷⁰ *Id.*

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 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.