

171 FERC ¶ 61,204
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. EC20-51-000
Guzman Energy, LLC

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued June 9, 2020)

1. On April 17, 2020, pursuant to section 203(a)(1) of the Federal Power Act¹ (FPA) and part 33 of the Commission's regulations,² Tri-State Generation and Transmission Association, Inc. (Tri-State) and Guzman Energy, LLC (Guzman Energy) (together, Applicants) request Commission authorization of a transaction in which Tri-State will assign to Guzman Energy all of Tri-State's right, title, and interest in the Wholesale Electric Service Contract (Wholesale Service Contract) between Tri-State and Delta-Montrose Electric Association (Delta-Montrose) (Proposed Transaction).³
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁴ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ 16 U.S.C. § 824b(a)(1)(A), (B) (2018).

² 18 C.F.R. pt. 33 (2019).

³ Tri-State Generation and Transmission Association, Inc. and Guzman Energy, LLC, Application for Approval of Transaction Under Section 203 of the Federal Power Act, Docket No. EC20-51-000 (filed Apr. 16, 2020) (Application).

⁴ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008); *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B,

I. Background

A. Description of Applicants/Parties

1. Tri-State

3. Applicants state that Tri-State is a wholesale generation and transmission cooperative operating on a not-for-profit basis with its principal place of business in Westminster, Colorado.⁵ Applicants state that Tri-State became a regulated public utility under part II of the FPA on September 3, 2019 when it admitted MIECO, Inc. as a member of Tri-State.⁶

4. Applicants state that Tri-State owns or controls the output of generation facilities throughout the Western Area Power Administration-Colorado Missouri, Public Service Company of Colorado, Tucson Electric Power Company, and Public Service Company of New Mexico balancing authority areas, and purchases power within these balancing authority areas and the Southwest Power Pool, Inc. market. Applicants state that all of this capacity is sold at wholesale primarily to Tri-State's 43 utility members (Utility Members) pursuant to the terms and conditions under its long-term, full requirements Wholesale Service Contracts with its Utility Members, and any remaining capacity is sold at wholesale pursuant to Tri-State's market-based rate authority.⁷

5. Applicants state that Tri-State owns or has capacity interest in 5,668 miles of transmission facilities over which Tri-State transmits electricity to its Utility Members, which in turn provide electric distribution service to 1.3 million retail customers in Colorado, Nebraska, New Mexico, and Wyoming. Applicants state that Tri-State does

116 FERC ¶ 61,076 (2006); *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

⁵ Application at 3.

⁶ *Id.* at 4 (citing *Tri-State Generation and Transmission Ass'n, Inc.*, 170 FERC ¶ 61,221, at P 37 (2020)).

⁷ *Id.*

not sell or distribute retail power,⁸ and has a Commission-approved Open Access Transmission Tariff (Tariff).⁹

6. Applicants state that Tri-State is wholly owned by its Utility Members and its new members (New Members), none of which are regulated as a public utility under part II of the FPA. Applicants state that Tri-State's Utility Members are not affiliates because there is no potential danger of shifting benefits from ratepayers to the shareholders and no Utility Member or New Member holds 10% or more of the voting securities of Tri-State.¹⁰

2. Guzman Energy

7. Applicants state that Guzman Energy is a full-service wholesale power provider headquartered in Denver, Colorado, and focused on providing customized, market-based solutions to address its customers' energy needs. Guzman Energy is authorized by the Commission to make wholesale sales of energy, capacity, and certain ancillary services at market-based rates. Guzman Energy is a direct, wholly owned subsidiary of Guzman Energy Group LLC.¹¹

3. Delta-Montrose

8. Applicants state that Delta-Montrose is a rural electric cooperative based in Montrose, Colorado. Delta-Montrose distributes electric service to its member-owners pursuant to a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission. Applicants state that Delta-Montrose is exempt from Commission jurisdiction because it is a rural electric cooperative that sells less than 4,000,000 megawatt hours of electricity per year.¹²

9. Applicants state that Delta-Montrose is a Utility Member of Tri-State and purchases wholesale power from Tri-State pursuant to the Delta-Montrose Wholesale Service Contract.¹³ Applicants also state that Delta-Montrose is in the process of

⁸ *Id.* at 4-5.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.* at 6.

¹² *Id.* at 7.

¹³ *Id.*

withdrawing from Tri-State and that Delta-Montrose and Tri-State have executed a Membership Withdrawal Agreement with a targeted date of withdrawal of June 30, 2020.

B. Description of the Proposed Transaction

10. Applicants state that the Proposed Transaction is part of a broader series of filings¹⁴ related to the July 19, 2019 settlement agreement and the April 10, 2020 Membership Withdrawal Agreement between Delta-Montrose and Tri-State.¹⁵ The Proposed Transaction consists of Tri-State assigning the Delta-Montrose Wholesale Service Contract to Guzman Energy. Concurrent with Delta-Montrose's withdrawal from Tri-State and subject to the authorization sought in this Application, Tri-State will assign to Guzman Energy the Delta-Montrose Wholesale Service Contract pursuant to the Assignment and Assumption Agreement with Novation.¹⁶ Tri-State will cancel Rate Schedule FERC No. 7,¹⁷ which consists of the Delta-Montrose Wholesale Service Contract, and Guzman Energy and Delta-Montrose will replace the terms and conditions of the Delta-Montrose Wholesale Service Contract under a replacement Wholesale Service Contract (Replacement Wholesale Service Contract), pursuant to which Guzman Energy will supply Delta-Montrose with wholesale power and electric service under Guzman Energy's market-based rate authorization to satisfy Delta-Montrose's power requirements.¹⁸

¹⁴ *Id.* at 8 and n.21. On April 10, 2020, Tri-State filed the Membership Withdrawal Agreement under section 205 of the FPA in Docket No. ER20-1542-000, a Notice of Cancellation of Rate Schedule FERC No. 7 (the Delta-Montrose Wholesale Service Contract) in Docket No. ER20-1543-000, a Notice of Cancellation of Rate Schedule FERC No. 49 (a Facilities Management Agreement between Tri-State and Delta-Montrose) in Docket No. ER20-1545-000, a Notice of Cancellation of Rate Schedules FERC No. 122 through No. 124 (three pre-existing construction agreements between Tri-State and Delta-Montrose) in Docket No. ER20-1547-000, a Notice of Cancellation of Rate Schedule FERC No. 199 (a pre-existing facilities use charge agreement between Tri-State and Delta-Montrose) in Docket No. ER20-1548-000, and an Initial Filing of Rate Schedule FERC No. 278 (Operations and Maintenance Agreement between Tri-State and Delta-Montrose) in Docket No. ER20-1541-000.

¹⁵ *Id.* at 8 and Ex. I-2.

¹⁶ *Id.* at 8 and Ex. I-1.

¹⁷ *Id.* at 8 (Notice of Cancellation of Rate Schedule FERC No. 7 in Docket No. ER20-1543-000 (filed Apr. 10, 2020)).

¹⁸ *Id.* at 8-9.

II. Notice of Filing and Responsive Pleadings

11. Notice of the Application was published in the *Federal Register*, 85 Fed. Reg. 22,727 (April 17, 2020), with interventions and protests due on or before May 8, 2020. Northwest Rural Public Power District, Wheat Belt Public Power District (Wheat Belt), United Power, Inc, and Delta-Montrose filed motions to intervene. On May 1, 2020, Wheat Belt filed an answer in opposition to waiver requests, motions to reject, and an alternative protest and motion to consolidate (Wheat Belt Protest). On May 8, 2020, Delta-Montrose filed a motion to intervene and comments in support of the Application (Delta-Montrose Comments). On May 18, 2020, Tri-State (Tri-State Answer), Delta-Montrose (Delta-Montrose Answer), and Guzman Energy (Guzman Energy Answer) each submitted separate answers to Wheat Belt's Protest. On May 29, 2020, Wheat Belt submitted an answer to the May 18, 2020 answers (Wheat Belt Answer). On June 1, 2020, Delta-Montrose submitted an answer to the Wheat Belt Answer (Delta-Montrose Second Answer).

III. Discussion

A. Procedural Matters

12. 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 this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

14. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.²⁰ The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on

¹⁹ 18 C.F.R. § 385.213(a)(2) (2019).

²⁰ 16 U.S.C. § 824b(a)(4).

rates; and (3) the effect on regulation.²¹ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction “will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”²² The Commission’s regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.²³

2. Analysis of the Proposed Transaction

a. Effect on Horizontal Competition

i. Applicants’ Analysis

15. Applicants state that the Proposed Transaction does not raise any horizontal market power issues. Applicants note that the Proposed Transaction does not involve electric generation facilities and will not result in any combination of electric generation facilities between previously unaffiliated entities or the acquisition of generation facilities by Guzman Energy. In addition, Applicants state that the Proposed Transaction does not involve a change of ownership or control of output of electric generation facilities. Applicants assert that the Proposed Transaction only involves the transfer of the Delta-Montrose Wholesale Service Contract and the associated rights and obligations to provide power to Delta-Montrose.²⁴

ii. Commission Determination

16. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.²⁵

²¹ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

²² 16 U.S.C. § 824b(a)(4).

²³ 18 C.F.R. § 33.2(j) (2019).

²⁴ Application at 11.

²⁵ *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

17. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition because it does not involve a change of ownership or control of output of electric generation facilities.

b. Effect on Vertical Competition

i. Applicants' Analysis

18. Applicants state that the Proposed Transaction does not raise any vertical market power concerns. Applicants note that the Proposed Transaction does not involve the transfer of any electric transmission facilities, natural gas facilities, or other inputs to electric power production. Applicants state that neither Guzman Energy nor any of its affiliates owns or controls electric transmission facilities or inputs to electricity products or electric power production that could be used to erect barriers to entry.²⁶

19. Applicants state that Tri-State owns transmission facilities that are owned and operated pursuant to its Commission-approved Tariff. Applicants also state that "any ownership or control by Tri-State or its affiliates of fuel supplies, fuel delivery systems, essential inputs to electric products or inputs to electric power production do not and cannot erect barriers to entry in its relevant markets."²⁷

ii. Commission Determination

20. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.²⁸

21. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. The Proposed Transaction does not

²⁶ Application at 11-12.

²⁷ *Id.* at 12.

²⁸ *Upstate N.Y. Power Producers*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

involve the transfer of any electric transmission facilities, natural gas facilities, or other inputs to electric power production. In addition, Guzman Energy or its affiliates do not own or control electric transmission facilities or inputs to electricity products or electric power production that could be used to erect barriers to entry.

c. Effect on Rates

i. Applicants' Analysis

22. Applicants state that the Proposed Transaction will not have an adverse effect on rates. Applicants note that neither Guzman Energy nor its affiliates provide jurisdictional transmission service or have any captive wholesale requirements customers in the United States. Applicants state that the Delta-Montrose Wholesale Service Contract is a cost-based rate schedule, which will be cancelled and replaced with the Replacement Wholesale Service Contract, pursuant to which Guzman Energy will supply Delta-Montrose with its power supply requirements under Guzman Energy's market-based rate authority.²⁹

23. Applicants state the Proposed Transaction provides no opportunity for the pass-through of transaction-related costs to Delta-Montrose.³⁰

24. Applicants state that upon closing of the Proposed Transaction, the bundled power services provided by Tri-State to its 42 other Utility Members will continue to be provided pursuant to the Commission-approved Wholesale Service Contracts at cost-based rates. Applicants note that the power provided to Delta-Montrose prior to the Proposed Transaction, or a portion thereof, may also be sold by Tri-State to non-Utility Member third parties pursuant to Tri-State's market-based rate authority. Applicants state that the consummation of the Proposed Transaction will not adversely affect the rates charged to Tri-State's wholesale power or transmission service customers.³¹

ii. Commission Determination

25. When the Commission reviews a proposed transaction's effect on rates, the Commission's focus is on the effect the proposed transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the proposed transaction.³² In addition, the

²⁹ Application at 13.

³⁰ *Id.*

³¹ *Id.*

³² *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 5

Commission evaluates whether the proposed transaction could result in an adverse effect on rates to wholesale requirements or transmission customers.³³ The Commission has said that, if an applicant is unable to pass through transaction-related costs because its existing contracts do not allow for such pass-through, then the transaction will have no adverse effect on rates for such customers.³⁴

26. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on rates. As Applicants note, neither Guzman Energy nor its affiliates provide jurisdictional transmission service. With regards to Delta-Montrose as a wholesale requirements customer, Applicants explain that, after Delta-Montrose completes its withdrawal from membership in Tri-State, Guzman Energy will supply power to Delta-Montrose pursuant to the Replacement Wholesale Service Contract pursuant to Guzman Energy's market-based rate authority. We find that the transition from cost-based rates to market-based rates in this instance is not adverse because the affected buyer, Delta-Montrose, agreed to that change. In addition, Applicants represent that the Proposed Transaction provides no opportunity for the pass-through of transaction-related costs to Delta-Montrose.

27. Further, Tri-State's 42 other Utility Members will continue to be provided bundled power services pursuant to the Commission-approved long-term, full requirements Wholesale Service Contracts at cost-based rates. Although Applicants provide no description of the nature of these contracts in the Application, the Commission notes they are stated rate contracts that cannot be changed unless Tri-State files an application under FPA section 205.³⁵

(2016).

³³ *Id.*

³⁴ *Id.* P 7.

³⁵ See *Tri-State Generation and Transmission Association, Inc.*, 170 FERC ¶ 61,221 (2020) (accepting the Wholesale Service Contracts between Tri-State and each of its 43 utility members and a Stated Rate Tariff establishing stated rates for the service Tri-State provides to its utility members pursuant to the terms of the Wholesale Service Contracts). We remind Applicants that they are required to submit with their Application all relevant information necessary for the evaluation of the Application for compliance with the Commission's section 203 public interest standard, and that a description of the nature of their contracts should have been submitted with the Application.

d. Effect on Regulation

i. Applicants' Analysis

28. Applicants state that the Proposed Transaction will not have an adverse effect on regulation. Applicants note that the Proposed Transaction will not diminish the Commission's regulatory authority or create a regulatory gap or shift regulatory authority between the Commission and any state commission. Applicants note that the Proposed Transaction will not result in any entities or facilities being removed from the Commission's jurisdiction. Applicants state that the Proposed Transaction will not affect the ability of any state regulatory authority to regulate retail rates. Applicants note that the Proposed Transaction will not have an adverse effect on state regulation and will not impair the Commission's or any state's commission's jurisdiction over Applicants or their affiliates.³⁶

ii. Commission Determination

29. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.³⁷ As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.³⁸ Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Proposed Transaction will not result in any entities or facilities being removed from the Commission's jurisdiction. The Proposed Transaction will not affect the ability of any state regulatory authority to regulate retail rates. Finally, we note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

³⁶ Application at 14.

³⁷ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

³⁸ *Id.*

e. **Cross-Subsidization**

i. **Applicants' Analysis**

30. Applicants state that the Proposed Transaction falls under one of the three “safe harbor” transactions that the Commission has previously stated are unlikely to present cross-subsidization concerns. Applicants state that the Proposed Transaction is a bona-fide, arms-length exchange involving only non-affiliates, and the Proposed Transaction is not a merger or consolidation of a traditional utility with a franchised service area.³⁹

31. Nonetheless, Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.⁴⁰

ii. **Commission Determination**

32. Based on Applicants' representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

³⁹ Application at 15.

⁴⁰ *Id.* at Ex. M; *see also* 16 U.S.C. §§ 824d, 824e.

f. Other Issues

i. Section 205 Filings

33. Wheat Belt argues that Tri-State's filings in Docket Nos. ER20-1542-000 and ER20-1543-000 are deficient, but Wheat Belt nonetheless asserts that its request for relief pertains to all seven of Tri-State's filings, including this Application, given the interrelationship of the filings.⁴¹ Wheat Belt requests that the Commission reject Tri-State's filings for failure to comply with the cost-support requirements in section 35.12 of the Commission's regulations and to demonstrate that the remaining Utility Members are held harmless from adverse impacts of Delta-Montrose's withdrawal and early termination of the Delta-Montrose Wholesale Service Contract. Wheat Belt argues that, alternatively, the Commission should reject Tri-State's filings for failure to submit the evidence necessary to support findings that: (1) the bilateral agreement with Delta-Montrose does not unduly discriminate against Tri-State's other 42 Utility Members, which will be subject to early termination and withdrawal provisions in Docket No. ER20-1559-000; or (2) improperly shift costs to Tri-State's remaining Utility Members in violation of the FPA's prohibition against unjust and unreasonable rates. Wheat Belt states that if the Commission does not reject Tri-State's filings, it should consolidate Docket Nos. ER20-1542-000 and ER20-1559-000 to help avoid undue discrimination and to address common issues of law and fact that pertain to withdrawal provisions for all of Tri-State's Utility Members.⁴²

34. Delta-Montrose, Tri-State, and Guzman Energy contend that Wheat Belt makes no reference to or attempts to grapple with the Commission's criteria for the evaluation of applications under FPA section 203. Delta-Montrose and Guzman Energy also note that, for purposes of the Commission's review of the Application, nothing in the Wheat Belt Protest should impact the timing or conclusion by the Commission that the Proposed Transaction satisfies the relevant standards for review under FPA section 203.⁴³

35. In its answer, Wheat Belt argues that, rather than focus on whether Tri-State's filings are or are not related, Delta-Montrose's early termination of its Wholesale Service Contract is the factual predicate of the filings. Wheat Belt asserts consequently that it would be imprudent for the Commission to consider the Application without also considering Wheat Belt's demonstration that the Commission's obligation to engage in

⁴¹ Wheat Belt Protest at n.5.

⁴² *Id.* at 2-3.

⁴³ See Delta-Montrose Comments 6-7, Tri-State Answer at 3, and Guzman Energy Answer at 2.

reasoned decision-making precludes it from approving the Membership Withdrawal Agreement.⁴⁴

36. Delta-Montrose argues, in response, that Wheat Belt includes no arguments relevant to the Commission's analysis of applications under section 203 and that, given the lack of any argument concerning the criteria for analyzing section 203 applications, the docket remains uncontested.⁴⁵

ii. Commission Determination

37. We dismiss Wheat Belt's arguments regarding Docket Nos. ER20-1542-000 and ER20-1543-000 as not relevant to our analysis in this proceeding. Regardless of whether Delta-Montrose's early termination of its Wholesale Service Contract is the factual predicate of Tri-State's filings, Wheat Belt fails to raise any arguments with respect to the public interest factors the Commission considers under FPA section 203 in evaluating transactions, including the Proposed Transaction. The Commission will address arguments related to Tri-State's filings in Docket Nos. ER20-1542-000 and ER20-1543-000 in the proceedings in those dockets.

3. Other Considerations

38. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.⁴⁶ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

39. FPA section 301(c) gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public

⁴⁴ Wheat Belt Answer at 26-27.

⁴⁵ Delta-Montrose Second Answer at 2 n.2.

⁴⁶ 16 U.S.C. § 824o.

utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to Public Utility Holding Company Act of 2005⁴⁷ (PUHCA 2005) are subject to the record-keeping and books and records requirements of PUHCA 2005.

40. Section 35.42 of the Commission's regulations requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁴⁸ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which

⁴⁷ 42 U.S.C. §§ 16451-63 (2018).

⁴⁸ 18 C.F.R. § 35.42 (2019); *see also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

the Proposed Transaction is consummated.

(H) Tri-State shall submit proposed accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.