

171 FERC ¶ 61,202  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tri-State Generation and Transmission  
Association, Inc.

Docket Nos. ER20-1541-000  
ER20-1542-000  
ER20-1543-000  
ER20-1545-000  
ER20-1547-000  
ER20-1548-000

ORDER ACCEPTING FILINGS

(Issued June 9, 2020)

1. On April 10, 2020, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> Tri-State Generation and Transmission Association, Inc. (Tri-State) submitted a Membership Withdrawal Agreement (Withdrawal Agreement) with Tri-State member Delta-Montrose Electric Association (Delta-Montrose) in Docket No. ER20-1542-000.<sup>3</sup> On that same day, Tri-State also submitted five associated filings needed to effectuate Delta-Montrose's withdrawal (April 10 filings): four notices of cancellation and Rate Schedule No. 278, an Operations and Maintenance Agreement (O&M Agreement) between Tri-State and Delta-Montrose.<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. § 35.12 (2019).

<sup>3</sup> Tri-State filed the Withdrawal Agreement as Rate Schedule No. 262.

<sup>4</sup> On April 17, 2020, in Docket No. EC20-51-000, Tri-State also filed an Application for Authorization Under Section 203 of the Federal Power Act to assign Delta-Montrose's Wholesale Electric Service Contract to a new supplier. The Commission approved that application in an order issued on June 9, 2020. *Tri-State Generation & Transmission Ass'n, Inc.*, 171 FERC ¶ 61,204 (2020).

As discussed below, we accept the Withdrawal Agreement and notices of cancellation, effective June 10, 2020, and the O&M Agreement, effective June 11, 2020, as requested.

## **I. Background**

2. Tri-State is a wholesale generation and transmission cooperative that provides wholesale power and transmission services to 43 utility member electric distribution cooperatives and public power districts (Utility Members) in Colorado, Nebraska, New Mexico, and Wyoming at cost-based rates pursuant to long-term Wholesale Electric Service Contracts (Wholesale Service Contracts). A 43-seat Board of Directors (Board) controls Tri-State, with each of Tri-State's 43 Utility Members occupying one seat on the Board. Delta-Montrose is a nonprofit electric distribution cooperative in southwestern Colorado and a Utility Member of Tri-State, purchasing wholesale electric power and energy from Tri-State under an existing all-requirements Wholesale Service Contract (Delta-Montrose Wholesale Service Contract).

3. On July 19, 2019, Tri-State and Delta-Montrose executed a settlement agreement that set forth the terms and conditions pursuant to which Delta-Montrose will withdraw from membership in Tri-State (Settlement Agreement) and, in part, describes the intent of the parties to enter into the Withdrawal Agreement.<sup>5</sup>

4. 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, including the Delta-Montrose Wholesale Service Contract. 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 admitting the new member,<sup>6</sup> and accepted, *inter alia*, the Delta-Montrose Wholesale Service Contract, subject to hearing and settlement judge procedures.<sup>7</sup>

5. Tri-State's and Delta-Montrose's Boards of Directors each approved the withdrawal from membership, the termination of Tri-State's obligations under the Delta-Montrose Wholesale Service Contract, and Delta-Montrose's purchase of certain assets and facilities pursuant to the terms and conditions set forth in the Settlement Agreement

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<sup>5</sup> Tri-State Transmittal, Docket No. ER20-1542-000 at 3.

<sup>6</sup> *Tri-State Generation and Transmission Ass'n, Inc.*, 170 FERC ¶ 61,224, at P 82 (2020) (Declaratory Order).

<sup>7</sup> *Tri-State Generation and Transmission Ass'n, Inc.*, 170 FERC ¶ 61,221, at P 80 (2020) (Stated Rate Tariff/Wholesale Service Contract Order).

and Withdrawal Agreement.<sup>8</sup> The parties executed the Withdrawal Agreement on April 10, 2020.

## II. Tri-State's Filings

### A. Withdrawal Agreement

6. Tri-State explains that the Withdrawal Agreement provides the terms and conditions by which Delta-Montrose will withdraw from Tri-State, including that: (1) the withdrawal is pursuant to Article I, section 4 of Tri-State's Bylaws; (2) certain specified contracts between the parties will terminate; (3) Tri-State will assign the Delta-Montrose Wholesale Service Contract to a new supplier; (4) Tri-State will transfer certain assets and facilities to Delta-Montrose, and Delta-Montrose will grant certain easements to Tri-State; and (5) Tri-State will retire and Delta-Montrose will forfeit the current balance of Delta-Montrose's patronage capital<sup>9</sup> allocation for 2019 and prior years arising from Delta-Montrose's membership in Tri-State or Tri-State's supply of power to Delta-Montrose.<sup>10</sup> Tri-State explains that, in connection with the terms and conditions of the Withdrawal Agreement, Delta-Montrose will pay, or will cause the new supplier to pay, \$88.5 million to Tri-State.<sup>11</sup>

7. Tri-State states that the Withdrawal Agreement is just and reasonable, as it is exclusively between Tri-State and Delta-Montrose and is the result of fair, arm's-length negotiations between sophisticated parties. According to Tri-State, the Commission's acceptance of the Withdrawal Agreement would neither adversely impact Delta-Montrose nor harm the public interest because it has been negotiated by the two parties. In addition, Tri-State notes that the Withdrawal Agreement includes a *Mobile-Sierra* provision for any changes to the rates, charges, classifications, terms or conditions.<sup>12</sup>

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<sup>8</sup> Tri-State Transmittal, Docket No. ER20-1542-000 at 3.

<sup>9</sup> Patronage capital is excess revenue, after operating expenses and costs, returned to members of cooperatives.

<sup>10</sup> Tri-State Transmittal, Docket No. ER20-1542-000 at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 4 n.11 (citing *Morgan Stanley Capital Grp. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 545-46 (2008) (*Morgan Stanley*); *NRG Power Mktg., LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165, 174-75 (2010) (*NRG Power*)). The *Mobile-Sierra* provision is contained in section 13.2 of the Withdrawal Agreement.

8. Tri-State requests that the Commission accept the Withdrawal Agreement, without suspension or condition, and grant an effective date of June 10, 2020. According to Tri-State, granting the proposed effective date will allow the parties to move forward to satisfy the conditions precedent to closing the withdrawal transaction. Tri-State also states that, due to the limited scope of the Withdrawal Agreement, it requests waiver of the requirement to provide an estimate of transactions and revenues and other additional cost support information under 18 C.F.R. § 35.12. In support of this request, Tri-State explains that the Withdrawal Agreement does not establish rates, nor does it cover the delivery of wholesale power to Utility Members, but rather addresses the unique circumstance of Delta-Montrose's withdrawal from membership in Tri-State. Tri-State asserts that the Withdrawal Agreement reflects a pragmatic bargain.<sup>13</sup>

**B. April 10 Filings**

9. Tri-State states that, in accordance with the terms and conditions of the Withdrawal Agreement, the parties must execute numerous agreements as a condition precedent to allow for Delta-Montrose's withdrawal from membership in Tri-State.<sup>14</sup> Therefore, as described below, Tri-State also submitted the April 10 Filings, which relate to the Delta-Montrose withdrawal.

10. In Docket No. ER20-1541-000, Tri-State filed Rate Schedule No. 278, an O&M Agreement with Delta-Montrose, which establishes the terms and conditions for service, ownership, operation, maintenance, repair, and replacement responsibilities for certain transmission facilities. Tri-State states that the O&M Agreement is just and reasonable as it is exclusively between Tri-State and Delta-Montrose and is the result of arm's-length negotiations between sophisticated parties. According to Tri-State, the Commission's acceptance of the O&M Agreement would neither adversely impact Delta-Montrose, nor harm the public interest because it has been negotiated by the two parties. Tri-State also requests waiver of the requirement to provide an estimate of transactions and revenues and other additional cost support information under 18 C.F.R. § 35.12, stating that the O&M Agreement does not establish rates, nor does it cover the delivery of wholesale power to Utility Members, but rather addresses the parties' obligations for operations, maintenance, and management of certain transmission-related facilities as a result of Delta-Montrose's withdrawal.

11. In Docket No. ER20-1543-000, Tri-State filed a notice of cancellation of Rate Schedule No. 7, the Delta-Montrose Wholesale Service Contract. Tri-State notes that while the Withdrawal Agreement provides that Tri-State will assign its rights and obligations under the Delta-Montrose Wholesale Service Contract to a third-party power

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.*

supplier upon the effective closing date of Delta-Montrose's withdrawal, Tri-State will no longer be a party or have obligations under that contract. Therefore, Tri-State requests that the Commission cancel Rate Schedule No. 7.

12. Tri-State states that section 1.1.2 of the Withdrawal Agreement provides that Tri-State will terminate certain contracts with Delta-Montrose identified in Schedule 1.1.2 of the Withdrawal Agreement. Accordingly, Tri-State requests cancellation of Rate Schedule No. 49, a facilities management agreement (Docket No. ER20-1545-000); Rate Schedule Nos. 122 through No. 124, three pre-existing construction agreements (Docket No. ER20-1547-000); and Rate Schedule No. 199, a facilities use charge agreement (Docket No. ER20-1548-000).

13. Tri-State requests an effective date for the notices of cancellation as of the date on which Delta-Montrose's withdrawal from membership will become effective. Tri-State requests an effective date for the O&M Agreement as of the day following the date on which Delta-Montrose's withdrawal from membership will become effective. Tri-State states that it will submit an informational filing to the Commission reflecting the actual effective date once it is known.

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

14. Notice of Tri-State's filings was published in the *Federal Register*, 85 Fed. Reg. 21,228 (Apr. 16, 2020), with interventions and protests due on or before May 1, 2020. Basin Electric Power Cooperative, Guzman Energy LLC, and United Power, Inc. filed timely motions to intervene. Northwest Rural Public Power District (Northwest) filed a timely motion to intervene and a protest. Delta-Montrose filed a timely motion to intervene and comments. Wheat Belt Public Power District (Wheat Belt) filed a timely motion to intervene and an answer in opposition to waiver requests, motions to reject, and alternative protest and motion to consolidate (Wheat Belt Protest). San Miguel Power Association, Inc. filed a motion to intervene out-of-time in Docket No. ER20-1542-000. On May 18, 2020, motions for leave to answer and answers to the Wheat Belt Protest were filed by Delta-Montrose (Delta-Montrose May 18 Answer) and by Tri-State (Tri-State May 18 Answer). On May 29, 2020, Wheat Belt filed a motion for leave to answer and answer to the Delta-Montrose May 18 Answer and Tri-State May 18 Answer (Wheat Belt Answer). On June 1, 2020, Delta-Montrose filed a motion for leave to answer and answer to the Wheat Belt Answer (Delta-Montrose June 1 Answer). On June 3, 2020, Tri-State filed an answer to the Wheat Belt Answer (Tri-State June 3 Answer).<sup>15</sup>

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<sup>15</sup> Except for the motion to intervene out-of-time filed by San Miguel Power Association, Inc. and the protest filed by Northwest in Docket No. ER20-1542-000, all of the pleadings were filed in each of the six captioned dockets.

### A. Comments and Protests

15. Delta-Montrose supports Tri-State's filings, stating that the Settlement Agreement constitutes a compromise between Delta-Montrose and Tri-State of financial obligations triggered by Delta-Montrose's withdrawal and resolution of various disagreements between the parties, including litigation before the Colorado Public Utilities Commission (Colorado Commission), the Commission, and Colorado state courts. Delta-Montrose explains that the parties' disputes were ultimately resolved in the Settlement Agreement reached in July 2019 and that the Withdrawal Agreement and O&M Agreement resulted from those arm's-length settlement negotiations.<sup>16</sup>

16. Wheat Belt, a Utility Member, filed a protest arguing that the Withdrawal Agreement and the April 10 Filings should be rejected without prejudice because Tri-State has not satisfied its burden of demonstrating that its bilateral agreement with Delta-Montrose does not impose stranded costs on remaining Utility Members or require an improper cost subsidy.<sup>17</sup> Wheat Belt argues that, given that the Commission recently acknowledged that Tri-State's exit charges directly affect its wholesale rates,<sup>18</sup> Tri-State should be required to comply with cost-support requirements under 18 C.F.R. § 35.12 to ensure that Delta-Montrose's exit charge fully captures its cost responsibility and is sufficient to hold remaining Utility Members harmless from the adverse impact of Delta-Montrose's withdrawal and early termination of the Wholesale Service Contract.

17. Wheat Belt further argues that there is no basis to claim that waiver of cost-support requirements is appropriate because the Withdrawal Agreement addresses the "unique circumstances of Delta-Montrose's withdrawal."<sup>19</sup> Wheat Belt maintains that Delta-Montrose has remained a Tri-State Utility Member during recent and important business matters such as the decision for Tri-State to become subject to the Commission's jurisdiction, approval of large capital expenditures, and establishment of a standardized exit fee methodology. Wheat Belt contends that Tri-State's filings do not contain any evidence to support findings that different treatment is warranted for Delta-Montrose or that Delta-Montrose is not similarly situated to Tri-State's other Utility

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<sup>16</sup> Delta-Montrose Comments at 3-4.

<sup>17</sup> Wheat Belt Protest at 3 n.5. Wheat Belt states that, while the deficiencies in Tri-State's evidentiary presentation center on Tri-State's filings in Docket Nos. ER20-1542-000 and ER20-1543-000, Wheat Belt's request for relief also pertains to Docket Nos. ER20-1541-000, ER20-1545-000, ER20-1547-000, and ER20-1548-000 given the interrelationship of the filings.

<sup>18</sup> *Id.* at 7-8 (citing Declaratory Order, 170 FERC ¶ 61,224 at P 120).

<sup>19</sup> *Id.* at 8 (citing Tri-State Transmittal, Docket No. ER20-1542-000 at 5).

Members. Wheat Belt therefore argues that the Commission should find that Tri-State did not support its request for waiver of the cost-support requirements and should reject the Withdrawal Agreement for failing to comply with applicable requirements.<sup>20</sup>

18. Wheat Belt disagrees with Tri-State's statements that the Withdrawal Agreement is exclusively between Tri-State and Delta-Montrose and that it is the result of fair, arm's-length negotiations between sophisticated parties. Wheat Belt argues that, because a member's participation within the cooperative involves an interrelationship between Tri-State and the other Utility Members, "Tri-State's [Wholesale Service Contracts] are 'not . . . routine arm's-length requirements contract[s] between unrelated, private for-profit parties.'"<sup>21</sup> Wheat Belt argues that while Tri-State has fiduciary obligations to its Utility Members, it cannot be presumed that the negotiated settlement produces fair outcomes for remaining Utility Members. Specifically, Wheat Belt asserts that Tri-State's status as a pass-through entity does not necessarily create the same incentives that remaining Utility Members would have to strike a hard bargain that ensures the resulting rates do not require a cross subsidy.

19. According to Wheat Belt, Tri-State bears the burden under section 205 of the FPA to prove by substantial evidence that the exit charge is just and reasonable and not unduly discriminatory. Wheat Belt claims that, to satisfy this burden, Tri-State must demonstrate that the exit charge reflects the cost responsibility Delta-Montrose would have borne had it remained a Utility Member throughout the full term of the Delta-Montrose Wholesale Service Contract.<sup>22</sup> Wheat Belt contends that, because Tri-State failed to explain the methodology used to establish Delta-Montrose's exit charge or provide any related documentation, analysis or testimony, Tri-State did not meet its burden to demonstrate that the exit charge is sufficient to cover those costs and avoid imposing a cross subsidy on remaining Utility Members.<sup>23</sup> Wheat Belt also contends that it is unduly

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<sup>20</sup> *Id.* at 9-10.

<sup>21</sup> *Id.* at 12 (quoting *Tri-State Generation and Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 874 F.2d 1346, 1357 (10th Cir. 1989) (*Shoshone*)).

<sup>22</sup> *Id.* (citing *Midwest Indep. Sys. Operator*, 135 FERC ¶ 61,255, at P 18 (2011)).

<sup>23</sup> Specifically, Wheat Belt points to four examples of costs that it argues Tri-State should explain in the context of accounting for Delta-Montrose's exit fee: (1) \$876.6 million in capital costs Tri-State agreed to incur while Delta-Montrose was a Utility Member; (2) millions of dollars that Tri-State's Colorado Utility Members avoided when the Colorado Commission suspended certain rate increases; (3) accelerated depreciation and stranded costs incurred to comply with Colorado Clean Air statutes and policies; and (4) Delta-Montrose's share of the \$3.397 billion in long-term debt recorded in Tri-State's

discriminatory to afford Delta-Montrose a negotiated exit charge while proposing that all other Utility Members be governed by the pending Contract Termination Payment methodology submitted by Tri-State in Docket No. ER20-1559-000.<sup>24</sup>

20. Finally, Wheat Belt argues that if the Commission does not reject Tri-State's filings, it should consolidate the Withdrawal Agreement proceeding in Docket No. ER20-1542-000 with the Contract Termination Payment methodology proceeding in Docket No. ER20-1559-000 because the two proceedings involve the same questions of law and fact.<sup>25</sup> Northwest also argues that these proceedings should be consolidated.<sup>26</sup> Wheat Belt also requests that the Commission: (1) condition its acceptance of the Withdrawal Agreement on a requirement that Tri-State protect remaining Utility Members from any negative effects of Delta-Montrose's early termination; and (2) require certain revisions to the Withdrawal Agreement to protect the rights of remaining Utility Members. For example, Wheat Belt asserts that the Commission should require modifications to section 13.2 of the Withdrawal Agreement to specify that the ordinary just and reasonable standard applies to non-parties and the Commission acting *sua sponte* rather than the heightened *Mobile-Sierra* "public interest" standard.<sup>27</sup>

## **B. Answers**

### **1. Delta-Montrose May 18 Answer**

21. Delta-Montrose argues that the Commission should accept the Withdrawal Agreement and related filings as just and reasonable. Delta-Montrose notes that the Settlement Agreement was executed prior to Tri-State becoming subject to the Commission's jurisdiction as the result of arm's-length negotiations amid litigation in Colorado state courts and before the Colorado Commission. It further notes that the

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financial statements. *Id.* at 14-15 (citing Docket No. ER20-1559-000, Ex. TS-PLB at 7:7-9).

<sup>24</sup> *Id.* at 10. On April 13, 2020, in Docket No. ER20-1559-000, Tri-State filed a Contract Termination Payment methodology to establish a standardized exit charge methodology that applies to future Utility Member withdrawals.

<sup>25</sup> *Id.* at 15-16.

<sup>26</sup> Northwest Protest at 13-14.

<sup>27</sup> Wheat Belt Protest at 15-17.



Settlement Agreement was endorsed by a Colorado state administrative agency representing the interests of the Governor and State of Colorado.<sup>28</sup>

22. Delta-Montrose next argues that the *Mobile-Sierra* presumption applies to the Settlement Agreement and Withdrawal Agreement. Delta-Montrose avers that *Mobile-Sierra* applies to challenges by third parties to the agreement, and it can only be overcome if a party shows that the agreement is the product of fraud or if the contract seriously harms the public interest.<sup>29</sup> Further, Delta-Montrose states that the Withdrawal Agreement and Settlement Agreement specifically stipulate that Commission review will be subject to the “public interest” application of the just and reasonable standard.<sup>30</sup>

23. Delta-Montrose disputes Wheat Belt’s allegations that the Commission should reject the filings for insufficient cost support demonstrating that the other Tri-State Utility Members are held harmless. Delta-Montrose argues that the Withdrawal Agreement is subject to the presumption of reasonableness under the *Mobile-Sierra* doctrine and that the FPA contemplates abrogation of these agreements “only in circumstances of unequivocal public necessity,” which Wheat Belt has failed to demonstrate.<sup>31</sup> Delta-Montrose adds that where the public interest application of the just and reasonable standard applies, the contract is presumed to be just and reasonable, and the Commission may reject or change the agreement only if it finds that: (1) the agreement is the result of fraud, duress or market manipulation by one of the contracting parties, or (2) the rate imposes such an excessive burden on other wholesale purchasers as to violate the public interest. Delta-Montrose states that it is insufficient for purposes of meeting the public interest application of the just and reasonable standard to show that the agreement results in higher rates for other customers or in the charging of rates that exceed cost of service.<sup>32</sup>

24. Delta-Montrose argues that Wheat Belt’s protest offers no evidence that could provide the basis for a finding that the Settlement Agreement or the Withdrawal Agreement were the result of fraud, duress, or market manipulation on Delta-Montrose’s part or that any rates or terms of those agreements impose an excessive burden within the meaning of *Mobile-Sierra*. Delta-Montrose further argues that Wheat Belt’s statement

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<sup>28</sup> Delta-Montrose May 18 Answer at 5-6.

<sup>29</sup> *Id.* at 7 (citing *NRG Power*, 558 U.S. at 174; *Morgan Stanley*, 554 U.S. at 530).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 8 (citing *Morgan Stanley*, 554 U.S. at 545).

<sup>32</sup> *Id.* at 8-9 (citing *Morgan Stanley*, 554 U.S. at 550, 554).

that *Mobile-Sierra* should not apply to third party challenges is directly contrary to the Supreme Court's holding in *NRG Power*.<sup>33</sup>

25. Delta-Montrose also disputes Wheat Belt's contention that it would be unduly discriminatory to allow Delta-Montrose to withdraw under a different set of rules than will apply to future Utility Members. Delta-Montrose argues that, under the FPA, it is not unduly discriminatory to treat a party that reached a negotiated settlement differently than a party that did not.<sup>34</sup> In addition, Delta-Montrose argues that it is uniquely situated compared to Tri-State's other Utility Members, because: (1) Delta-Montrose is the only Utility Member whose Wholesale Service Contract terminates in 2040 (the rest terminate in 2050); (2) Delta-Montrose is the only Utility Member with a settlement governing its exit; (3) Delta-Montrose is the only Utility Member with an exit approved by the Tri-State Board; (4) as part of its consideration under the Settlement Agreement, Delta-Montrose gave up rights that it would otherwise have with respect to certain Tri-State filings; (5) Delta-Montrose is the only Utility Member to have discontinued enforcement of its rights in proceedings pending in state district court and before a state public utilities commission; and (6) Delta-Montrose is the only Utility Member whose exit resulted in litigation that culminated in a settlement agreement and which has exhausted Tri-State's internal dispute resolution mechanism.<sup>35</sup>

26. Delta-Montrose also disputes Wheat Belt's suggestion that the instant proceeding should be combined with the Contract Termination Payment proceeding in Docket No. ER20-1559-000. Delta-Montrose argues that the two proceedings are based on different issues of law, fact, and parties, with the instant case addressing how to implement a settlement agreement for one Utility Member, while the other proceeding involves Tri-State seeking to establish a uniform exit methodology for all future Utility Member exits. Delta-Montrose concludes that, consequently, combining the proceedings would not be administratively efficient.<sup>36</sup>

## **2. Tri-State May 18 Answer**

27. Tri-State asserts that Wheat Belt's protest contains factual omissions and misstatements, and improperly seeks to abrogate the Settlement Agreement negotiated at arm's-length between Tri-State and Delta-Montrose before Tri-State became subject to the Commission's jurisdiction. Tri-State states that Wheat Belt also ignores the history

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<sup>33</sup> *Id.* at 9-10 (citing *NRG Power*, 558 U.S. at 165, 176).

<sup>34</sup> *Id.* at 12 (citing *Town of Norwood v. FERC*, 202 F.3d 392 (1st. Cir. 2000)).

<sup>35</sup> *Id.* at 13-14.

<sup>36</sup> *Id.* at 13-15.

and unique circumstances surrounding the Settlement Agreement, which was unanimously approved by Tri-State's Board composed of representatives of each of the Utility Members, including Wheat Belt.<sup>37</sup> Tri-State states that it has met its burden of demonstrating that the Withdrawal Agreement is just and reasonable, and requests that the Commission reject Wheat Belt's protest, and approve Tri-State's filings, without modification.

28. Tri-State also asserts that the burden is on Wheat Belt to demonstrate that the Withdrawal Agreement would seriously harm the public interest.<sup>38</sup> Tri-State states that it expressly agreed with Delta-Montrose that the *Mobile-Sierra* doctrine should apply to the Withdrawal Agreement, which was a bilateral commercial arrangement addressing a specific situation, and not a standard-form transaction. Tri-State explains that in mid-2019, Delta-Montrose was the only Utility Member negotiating an exit, and Tri-State's policy was to handle such withdrawal requests on a case-by-case basis. Tri-State asserts that its Utility Members—including Wheat Belt—had agreed to Bylaws providing that a Utility Member could exit “upon compliance with such equitable terms as the [Board] may prescribe.”<sup>39</sup> Tri-State states that its subsequent decision to propose a more standardized approach for future exit charge requests in a different docket is not relevant to the negotiated litigation settlement with Delta-Montrose.

29. Tri-State disputes Wheat Belt's reliance on the Tenth Circuit's decision in *Shoshone*, arguing that the case did not even mention the *Mobile-Sierra* doctrine, but instead involved a breach of contract action brought by Tri-State to enforce a Utility Member's obligation under its Wholesale Service Contract. According to Tri-State, the issue before the court in *Shoshone* was a matter of contract law—not whether, or under what standard, the contract was just and reasonable under the FPA. In addition, Tri-State argues that Wheat Belt's argument—that the *Mobile-Sierra* doctrine only applies when an agreement is challenged by the parties who made it, and not affected third parties—was made in *NRG Power*, which the Supreme Court rejected. Tri-State contends that if the Commission denied the presumption of justness and reasonableness to a litigation settlement fully negotiated before Tri-State even became subject to the Commission's

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<sup>37</sup> Tri-State May 18 Answer at 2.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> *Id.* at 5 (citing Tri-State Bylaws, art. I, § 4(a)). Tri-State asserts that Utility Members' consent to this policy bespeaks a recognition that a Board dominated by representatives of remaining Utility Members can be trusted to strike a hard bargain to protect those remaining Utility Members from stranded costs.

jurisdiction, it would undermine the sanctity of contracts and Commission policy in favor of settlements.<sup>40</sup>

30. Tri-State states that the Withdrawal Agreement is just and reasonable and not unduly discriminatory, and argues that Wheat Belt's arguments fail to meet the high public interest threshold set by the *Mobile-Sierra* doctrine. Tri-State explains that the FPA permits abrogation of "contractual agreements voluntarily devised by the regulated companies . . . only in circumstances of unequivocal public necessity,"<sup>41</sup> and "[o]nly when the mutually agreed-upon contract rate seriously harms the consuming public may the Commission declare it not to be just and reasonable."<sup>42</sup> Tri-State argues that Wheat Belt provides no evidence that the Withdrawal Agreement results in an exit charge that would impair Tri-State's financial viability, would cast an excessive burden on its remaining Utility Members, or is unduly discriminatory. Tri-State contends that on the contrary, Tri-State's Board, including Wheat Belt's representative, reached unanimous consensus that settlement was the better alternative for Tri-State's remaining Utility Members than continued litigation against Delta-Montrose.<sup>43</sup> Tri-State also notes that a Utility Member that seeks to exit Tri-State in the future would not be similarly situated to Delta-Montrose, and thus should not expect identical terms and conditions.

31. Tri-State disputes Wheat Belt's assertions that the Commission should not waive the cost support requirement of 18 C.F.R. § 35.12. Tri-State asserts that section 35.12 is designed to address transactions that establish a rate for wholesale or transmission services to be provided, and should not be imposed for arrangements that do not establish rates going forward. Tri-State asserts that Delta-Montrose will pay an exit charge within the context of a litigation settlement for the early termination of the Delta-Montrose Wholesale Service Contract, and that charge is subject to the Commission's just and reasonable review jurisdiction, but the cost support requirements of section 35.12 are not designed for such a circumstance. Tri-State claims that the evidence typically required under section 35.12 would not provide a sound basis for the Commission to attempt to second-guess the assessment of litigation risks that led Tri-State to reach the Settlement Agreement.<sup>44</sup>

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<sup>40</sup> *Id.* at 6-7.

<sup>41</sup> *Id.* at 7 (citing *Morgan Stanley*, 554 U.S. at 534).

<sup>42</sup> *Id.* at 8 (citing *Morgan Stanley*, 554 U.S. at 545-46).

<sup>43</sup> *Id.* at 9.

<sup>44</sup> *Id.* at 11.

32. Tri-State argues that the Withdrawal Agreement and Contract Termination Payment methodology proceedings should not be consolidated. Tri-State asserts that the Settlement Agreement and Withdrawal Agreement arose under unique circumstances that raise different issues, and are subject to a standards and review process that are different from those of the Contract Termination Payment methodology.<sup>45</sup> Tri-State explains that with its Contract Termination Payment methodology filing, it seeks the ability to determine exit charges and implement Utility Member withdrawals on a standardized basis going forward, whereas the Withdrawal Agreement involves a 2019 settlement of litigation and regulatory proceedings before the Colorado Commission and the Colorado courts. Tri-State argues that it would not be reasonable to apply the Contract Termination Payment methodology retroactively to an arrangement negotiated before Tri-State adopted that Contract Termination Payment methodology, for this would abrogate the contract agreed to by the parties. Tri-State also argues that using the Delta-Montrose settlement as a yardstick for evaluating the Contract Termination Payment methodology would mistake a settlement for a binding precedent, because the Delta-Montrose settlement involved a one-time negotiated agreement based upon specific facts and circumstances.<sup>46</sup>

### 3. Wheat Belt Answer

33. Wheat Belt reiterates that Tri-State bears the burden of proving that the Withdrawal Agreement meets the statutory standard. However, in response to Tri-State's claims that Wheat Belt has not provided sufficient evidence that the Withdrawal Agreement causes Wheat Belt or Tri-State's remaining Utility Members financial harm, Wheat Belt argues that senior Tri-State officials have recently made statements that conclusively establish that the Withdrawal Agreement negatively impacts remaining Utility Members.<sup>47</sup> Wheat Belt further argues that Tri-State and Delta-Montrose misrepresented material facts by claiming that Wheat Belt voted in favor of, or endorsed, the Withdrawal Agreement. Wheat Belt argues that representatives on Tri-State's Board serve dual roles with fiduciary obligations to both the Utility Member they represent and Tri-State, and therefore, the actions taken by a Utility Member's representative on the Board may not necessarily express the Utility Member's individual views. Wheat Belt also states that it had no knowledge of the details of the July 2019 Settlement Agreement,

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<sup>45</sup> *Id.* at 12.

<sup>46</sup> *Id.* at 14.

<sup>47</sup> Wheat Belt Answer at 4-5.

because Tri-State's Board only discussed the negotiations in closed session and did not allow Board members to share the details of that agreement.<sup>48</sup>

34. Wheat Belt argues that the Withdrawal Agreement is not eligible for the *Mobile-Sierra* presumption.<sup>49</sup> Wheat Belt reiterates the argument that because Tri-State and its Utility Members have different incentives, the *Mobile-Sierra* presumption should not apply to non-signatories of the Withdrawal Agreement. Wheat Belt asserts that, given Tri-State's cooperative structure, the Withdrawal Agreement is not an arm's-length agreement. Wheat Belt argues that *Shoshone* requires that the Commission's analysis of the Withdrawal Agreement look beyond the limited interests of Tri-State and Delta-Montrose. Wheat Belt contends that the Commission's consideration of the Withdrawal Agreement must consider the interests of non-signatory Utility Members.<sup>50</sup>

35. Further, Wheat Belt argues that Tri-State and Delta-Montrose misapply and misinterpret *NRG Power*. First, Wheat Belt argues that *NRG Power* presupposes that the underlying agreement is eligible for *Mobile-Sierra* protection, and Wheat Belt asserts that there is no basis for such a presupposition here. Second, Wheat Belt argues that Tri-State's and Delta-Montrose's interpretation of *NRG Power* is fundamentally flawed because it eliminates important processes that the Supreme Court affirmed in *NRG Power*. Wheat Belt asserts that, in *NRG Power*, the Supreme Court makes clear that non-settling parties challenged the propriety of the *Mobile-Sierra* presumption, the Commission considered those challenges, and ultimately deemed the agreement to be in the public interest. Wheat Belt contends that *NRG Power* does not support the claims of Tri-State and Delta-Montrose that the Commission should automatically impose the *Mobile-Sierra* presumption on non-signatories to the Withdrawal Agreement without any analysis as to whether that result is in the public interest.<sup>51</sup>

36. Wheat Belt argues that Delta-Montrose is similarly situated to Tri-State's other Utility Members for several reasons. First, Wheat Belt contends that, because Tri-State and Delta-Montrose executed the Withdrawal Agreement seven months after Tri-State became subject to the Commission's jurisdiction, the Settlement Agreement negotiated in 2019 cannot serve as the basis for a finding that Delta-Montrose is not similarly situated to Tri-State's other 42 members.<sup>52</sup> Second, Wheat Belt argues that Tri-State and Delta-

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<sup>48</sup> *Id.* at 5-7.

<sup>49</sup> *Id.* at 7.

<sup>50</sup> *Id.* at 9-11.

<sup>51</sup> *Id.* at 11-13.

<sup>52</sup> *Id.* at 13-15.

Montrose executed the Withdrawal Agreement after Tri-State's Board approved the standardized Contract Termination Payment methodology, which applies to existing Utility Members.<sup>53</sup> Third, Wheat Belt contends that the 2040 expiration date of the Delta-Montrose Wholesale Service Contract is not a material difference that justifies preferential treatment.<sup>54</sup> Fourth, Wheat Belt argues that the fact that all Utility Members except Delta-Montrose comply with a five percent cap on self-generation is not a reasonable basis for excluding Delta-Montrose from the standardized Contract Termination Payment methodology.<sup>55</sup> Finally, Wheat Belt argues that Delta-Montrose's voluntary decision to waive certain rights does not justify disparate treatment that requires remaining members to subsidize the early termination of the Delta-Montrose Wholesale Service Contract.<sup>56</sup>

37. In addition, Wheat Belt contends that Tri-State and Delta-Montrose offer no meaningful response to Wheat Belt's opposition to Tri-State's request for waiver of the cost-support requirements in 18 C.F.R. § 35.12. Wheat Belt argues, *inter alia*, that the Commission should not grant a waiver that insulates Tri-State from its requirements under the FPA. Wheat Belt asserts that Tri-State bears the burden of providing substantial evidence to establish Delta-Montrose's financial obligations and to demonstrate that Delta-Montrose's exit charge offsets those obligations. Wheat Belt contends that, if Tri-State does not, or refuses to, meet its burden, there will be no basis for the Commission to conclude that the Withdrawal Agreement does not force remaining Utility Members to subsidize Delta-Montrose's early termination of the Delta-Montrose Wholesale Service Contract and withdrawal from Tri-State. Wheat Belt argues that, in turn, without full cost support, there is no basis for the Commission to find that the Withdrawal Agreement is just and reasonable and not unduly discriminatory.<sup>57</sup>

38. Finally, Wheat Belt argues that the Commission should not review Tri-State's related filings in a vacuum. Wheat Belt notes that Delta-Montrose's early termination of the Delta-Montrose Wholesale Service Contract is the factual predicate for the April 10 Filings and for Tri-State's FPA section 203 application in Docket No. EC20-51-000.<sup>58</sup> Wheat Belt also reiterates its alternative request for consolidation of Docket Nos.

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<sup>53</sup> *Id.* at 15-16.

<sup>54</sup> *Id.* at 16-18.

<sup>55</sup> *Id.* at 18.

<sup>56</sup> *Id.* at 19-20.

<sup>57</sup> *Id.* at 21-24.

<sup>58</sup> *Id.* at 26-27.

ER20-1542-000 and ER20-1559-000, arguing that the overlap of active parties and material issues between these dockets is clear.<sup>59</sup>

#### 4. Delta-Montrose June 1 Answer

39. Delta-Montrose disagrees with Wheat Belt's argument that, because Tri-State's incentives, as a pass-through entity, are not necessarily the same incentives as Tri-State's Utility Members, the *Mobile-Sierra* presumption does not apply to the Withdrawal Agreement. Delta-Montrose argues that Wheat Belt offers no support for the claim that an agreement is entered into at arm's-length only where one party has the same incentives as non-parties. Further, Delta-Montrose argues that Wheat Belt's explanation of the dual role of Tri-State Board members bolsters the arm's-length nature of the Settlement Agreement as effectuated through the Withdrawal Agreement, as it shows that each of Tri-State's voting Board members confirmed that the freely negotiated Settlement Agreement, resolving a years-long dispute, was in the interests both of Tri-State as a whole and of the individual cooperative Utility Member each voting director represented.<sup>60</sup>

40. Delta-Montrose asserts that Wheat Belt is legally wrong in contending that the *Mobile-Sierra* presumption does not apply in circumstances where the contract affects third parties who may not necessarily have the same incentives of either of the contracting parties. Delta-Montrose disagrees with Wheat Belt's argument that the *Mobile-Sierra* presumption does not apply to challenges brought by non-parties in the Commission's initial review of the agreement. Delta-Montrose contends that these issues were definitively resolved in *Morgan Stanley* and *NRG Power*. Delta-Montrose states that in *Morgan Stanley*, the Supreme Court expressly reversed the decision of the United States Court of Appeals for the Ninth Circuit that the *Mobile-Sierra* presumption did not apply to the Commission's initial review. Further, Delta-Montrose states that in *NRG Power*, the Supreme Court expanded upon *Morgan Stanley* to clarify that the presumption is equally binding on parties to the contract and non-parties alike.<sup>61</sup>

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<sup>59</sup> *Id.* at 24-26.

<sup>60</sup> Delta-Montrose June 1 Answer at 2-4.

<sup>61</sup> *Id.* at 4-6 (citations omitted).



## 5. Tri-State June 3 Answer

41. Tri-State claims that the Wheat Belt Answer quoted certain Tri-State officers out of context. Tri-State represents that the statements made by its officers are consistent with supporting the Withdrawal Agreement and the proposed exit charge methodology.<sup>62</sup>

### IV. Discussion

#### A. Procedural Matters

42. 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 these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant San Miguel Power Association, Inc.'s late-filed motion to intervene in Docket No. ER20-1542-000 given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

43. 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 answer unless otherwise ordered by the decisional authority. We accept the answers filed by Delta-Montrose, Tri-State, and Wheat Belt because they have provided information that assisted us in our decision-making process.

#### B. Substantive Matters

44. We find that the *Mobile-Sierra* "public interest" presumption applies to the Withdrawal Agreement and that there is insufficient evidence on the record to overcome that presumption.<sup>63</sup> Accordingly, we accept the Withdrawal Agreement as just and reasonable, effective June 10, 2020, as requested. We also find the April 10 Filings to be just and reasonable and accept them to be effective on the dates requested, as discussed below.

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<sup>62</sup> Tri-State June 3 Answer at 2-4.

<sup>63</sup> Given that we have found that the *Mobile-Sierra* presumption applies to the Withdrawal Agreement, we agree with Tri-State that the cost support requirements of 18 C.F.R. § 35.12 are not applicable and therefore grant Tri-State's request for waiver in Docket No. ER20-1542-000 of those requirements.

45. As the Commission explained in the Stated Rate Tariff/Wholesale Service Contract Order, the *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption.<sup>64</sup> In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s-length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption.<sup>65</sup> We find that the *Mobile-Sierra* presumption applies to the Withdrawal Agreement because it embodies individualized rates, terms, or conditions negotiated between Tri-State and Delta-Montrose at arm’s-length.

46. We disagree with Wheat Belt that, because Tri-State’s exit charges directly affect Tri-State’s wholesale rates charged to its remaining Utility Members, the *Mobile-Sierra* presumption cannot apply to the Withdrawal Agreement. That an individualized agreement may affect third parties does not negate the applicability of the *Mobile-Sierra* presumption.<sup>66</sup> We further reject Wheat Belt’s related claim that the ordinary just and reasonable standard should apply to non-parties and the Commission acting *sua sponte*. This argument conflicts with the Supreme Court’s determination that the *Mobile-Sierra* doctrine “must control [the Commission] itself, and . . . challenges to contract rates brought by noncontracting as well as contracting parties.”<sup>67</sup>

47. We also find unavailing Wheat Belt’s citation of *Shoshone* to support its claim that the Withdrawal Agreement was not arm’s-length. First, *Shoshone* does not address the *Mobile-Sierra* presumption, and, therefore, that case did not hold that the *Mobile-Sierra* presumption does not apply to any arrangement between Tri-State and its members, as

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<sup>64</sup> Stated Rate Tariff/Wholesale Service Contract Order, 170 FERC ¶ 61,221 at P 44.

<sup>65</sup> *E.g.*, Stated Rate Tariff/Wholesale Service Contract Order, 170 FERC ¶ 61,221 at P 44 (citing *Linden VFT, LLC v. Pub. Serv. Elec. and Gas Co.*, 161 FERC ¶ 61,264, at P 27 (2017); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 18 (2017); *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 127 (2013), *order on reh’g and compliance*, 149 FERC ¶ 61,048, at P 94 (2014) (citations omitted); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 177 (2013), *order on reh’g and compliance*, 147 FERC ¶ 61,127, at P 108 (2014) (citations omitted)).

<sup>66</sup> *See, e.g.*, *NRG Power*, 558 U.S. at 174-175 (citations omitted).

<sup>67</sup> *Id.* at 168.

Wheat Belt seems to suggest. Furthermore, arm's-length transactions are characterized as adversarial negotiations between parties that are each pursuing independent interests.<sup>68</sup> The hallmark characteristic of arm's-length bargaining is that it is negotiated rigorously, selfishly, and with an adequate concern for price.<sup>69</sup> If the negotiating parties have a common economic interest in the outcome of the negotiations, their bargaining is not at arm's-length.<sup>70</sup> The extensive litigation between Tri-State and Delta-Montrose regarding Delta-Montrose's withdrawal from membership demonstrates that their negotiations were adversarial and supports a finding that such negotiations were arm's-length. As a result, to the extent that the relationship between Tri-State and its members discussed in *Shoshone* bears on the question before us, that relationship no longer applies with respect to Delta-Montrose, supporting our finding that the Withdrawal Agreement (which reflects the severing of the cooperative relationship between Tri-State and Delta-Montrose) was negotiated at arm's-length.

48. Having found that the *Mobile-Sierra* presumption applies to the Withdrawal Agreement, we turn to whether there is sufficient evidence in this record to overcome that presumption. For several reasons, we find insufficient evidence in the record to justify such a finding.

49. Under the *Mobile-Sierra* doctrine, the Commission must presume that the rate established in a freely negotiated wholesale-energy contract meets the "just and reasonable" requirement imposed by the FPA.<sup>71</sup> The presumption may be overcome only if the Commission concludes that the contract seriously harms the public interest. Contract challenges must exceed a high bar: "[U]nder the *Mobile-Sierra* presumption, setting aside a contract rate requires a finding of 'unequivocal public necessity' or 'extraordinary circumstances.'"<sup>72</sup>

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<sup>68</sup> *Southwest Power Pool, Inc.*, 149 FERC ¶ 61,048 at P 96 (citing, *inter alia*, Black's Law Dictionary 109 (6th ed. 1991) (defining an arm's length transaction as "a transaction negotiated by unrelated parties, each acting in his or her own self interest . . . . A transaction in good faith in the ordinary course of business by parties with independent interests"))).

<sup>69</sup> *Id.* (citing *Jeanes Hosp. v. Sec'y of Health and Human Servs.*, 448 F.App'x 202, 206 (3d Cir. 2011)).

<sup>70</sup> *Id.* P 97.

<sup>71</sup> *NRG Power*, 558 U.S. at 167 (citation omitted); *Morgan Stanley*, 554 U.S. at 530.

<sup>72</sup> *Morgan Stanley*, 554 U.S. at 550 (citations omitted).

50. The Supreme Court has explained that, when the Commission assesses whether a contract rate received by a public utility is too low to be just and reasonable:

the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory.<sup>73</sup>

An “excessive burden” does not “mean merely the burden caused when one set of consumers is forced to pay above marginal cost to compensate for below-marginal-cost rates charged other consumers.”<sup>74</sup> Wheat Belt argues that Tri-State has not demonstrated that the exit charge will not impose a cross subsidy on Tri-State’s remaining Utility Members. However, Wheat Belt has not met the high bar to show that the exit charge will result in an “excessive burden” on Tri-State’s other Utility Members to justify abrogating the Withdrawal Agreement.<sup>75</sup>

51. Moreover, we disagree with Wheat Belt that the associated exit charge is unduly discriminatory against other Utility Members, because we find that Delta-Montrose is not similarly situated to other Utility Members. Delta-Montrose and Tri-State negotiated the Settlement Agreement and Withdrawal Agreement in accordance with the governing Bylaws at the time the negotiations took place.<sup>76</sup> Other Utility Members similarly had the opportunity to negotiate a withdrawal under the same provision in Tri-State’s Bylaws. The fact that Tri-State has recently proposed a generally applicable tariff provision in Docket No. ER20-1559-000 that will assess remaining Utility Members a standardized exit charge does not render the terms of the Withdrawal Agreement unduly discriminatory, because the proposed exit charge methodology represents a prospective change in the terms and conditions governing exit charge calculations. Accordingly, we are not persuaded by Wheat Belt’s argument that the Withdrawal Agreement is unduly discriminatory and preferential.

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<sup>73</sup> *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348, 354-355 (1956); *see also Morgan Stanley*, 554 U.S. at 533.

<sup>74</sup> *Morgan Stanley*, 554 U.S. at 550.

<sup>75</sup> *See, e.g., Morgan Stanley*, 554 U.S. at 550-51.

<sup>76</sup> Article I, section 4(a) of Tri-State’s Bylaws permits a Utility Member to withdraw “upon compliance with such equitable terms and conditions as the [Board] may prescribe provided, however, that no member shall be permitted to withdraw until it has met all its contractual obligations to this Corporation.”

52. In addition, we accept Tri-State's April 10 Filings as just and reasonable. While Wheat Belt raises specific issues concerning the Withdrawal Agreement, which we have addressed above, neither Wheat Belt nor any other party specifically challenges the April 10 Filings. We agree with Tri-State that the April 10 Filings effectuate certain agreements and cancel other agreements as a condition precedent to allow for Delta-Montrose's withdrawal from membership in Tri-State. We view the O&M Agreement as a necessary contractual arrangement to identify certain responsibilities each party has going forward for certain transmission facilities discussed within the terms of the underlying settlement agreement and Withdrawal Agreement. Further, cancellation of the Delta-Montrose Wholesale Service Contract and the other pre-existing agreements between Tri-State and Delta-Montrose is appropriate because these agreements will no longer be applicable to the parties once Delta-Montrose exits as a member from Tri-State. Therefore, we find that these executed agreements are just and reasonable and consistent with the terms outlined in the Withdrawal Agreement.

53. We accept the O&M Agreement filed in Docket No. ER20-1541-000, effective June 11, 2020, one day after the effective date of the Withdrawal Agreement, as requested. As the O&M Agreement serves the purpose of allocating responsibilities to each party for operation, maintenance and management of certain transmission facilities rather than establishing specific rates for wholesale services, Tri-State's request in Docket No. ER20-1541-000 for waiver of the filing requirements under 18 C.F.R. § 35.12 is also granted. Further, we accept the notices of cancellation of the Delta-Montrose Wholesale Service Contract filed in Docket No. ER20-1543-000 and other pre-existing agreements filed in Docket Nos. ER20-1545-000, ER20-1547-000, and ER20-1548-000, effective June 10, 2020, the same effective date as the Withdrawal Agreement, as requested.

54. Finally, because we are accepting the Withdrawal Agreement as just and reasonable, we deny Wheat Belt and Northwest's requests to consolidate the proceeding in Docket No. ER20-1542-000 with the proceeding in Docket No. ER20-1559-000. In general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required and there are common issues of law and fact.<sup>77</sup> The issues raised in these proceedings are summarily addressed in this order without need for a trial-type evidentiary hearing.

The Commission orders:

(A) The Withdrawal Agreement filed in Docket No. ER20-1542-000 is hereby accepted, effective June 10, 2020, as requested, as discussed in the body of this order.

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<sup>77</sup> 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).

(B) The notices of cancellation filed in Docket Nos. ER20-1543-000, ER20-1545-000, ER20-1547-000, and ER20-1548-000 are hereby accepted, effective June 10, 2020, as requested, as discussed in the body of this order.

(C) The O&M Agreement filed in Docket No. ER20-1541-000 is hereby accepted, effective June 11, 2020, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.