

177 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Tri-State Generation and Transmission
Association, Inc.

Docket Nos. ER21-2818-000
EL22-4-000
(consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,
INSTITUTING SECTION 206 PROCEEDING, ESTABLISHING REFUND
EFFECTIVE DATE, AND ESTABLISHING HEARING PROCEDURES

(Issued October 29, 2021)

1. On September 1, 2021, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² Tri-State Generation and Transmission Association, Inc. (Tri-State) submitted proposed revisions to Rate Schedule FERC No. 281³, which sets forth the terms and conditions under which Tri-State members may terminate their Wholesale Electric Service Contract (WESC) and membership in Tri-State, including the methodology and procedures for determining a Contract Termination Payment (CTP). In this order, we accept Tri-State's proposed tariff revisions (Modified CTP Methodology), and suspend them for a nominal period, to become effective November 1, 2021, subject to refund. We also institute a proceeding pursuant to section 206 of the FPA,⁴ establish a refund effective date, and establish hearing procedures.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2020).

³ Tri-State Generation and Transmission Association, Inc., FERC FPA Electric Tariff, Tri-State Wholesale Electric Service Contracts, Rate Schedule No. 281, CTP Methodology, (2.0.0).

⁴ 16 U.S.C. § 824e.

I. Background

A. Tri-State History

2. Tri-State is a wholesale generation and transmission cooperative that provides wholesale power and transmission services to its 42 utility members in Colorado, Nebraska, New Mexico, and Wyoming at cost-based rates pursuant to long-term, all-requirements WESCs. Each of Tri-State's 42 utility members occupies one seat on the Board. Tri-State's utility members are currently obligated to purchase all of their electric service requirements, other than up to five percent under a self-supply option and established thresholds for community solar projects, from Tri-State through 2050.⁵

3. On April 13, 2020, Tri-State filed its CTP methodology (Current CTP Methodology) as Rate Schedule No. 281, with the Commission in Docket No. ER20-1559-000. Tri-State represented that the Current CTP Methodology is designed to calculate the payment a utility member must make to terminate its WESC and exit Tri-State membership. On June 12, 2020, the Commission issued an order accepting Tri-State's Current CTP Methodology for filing, suspended it for a nominal period, to become effective June 13, 2020, subject to refund, and established hearing and settlement judge procedures.⁶

4. In the Current CTP Methodology Order, responding to a protestor concern that certain material terms and conditions were referenced in Tri-State's transmittal letter, but not included in its proposed tariff language, the Commission found that:

[T]o the extent Tri-State seeks to impose an advance notice obligation on withdrawing members or to require Board approval before a member may depart, such terms and conditions would need to be submitted under section 205 and included in Tri-State's tariff under the "rule of reason." Because Tri-State did not include such provisions in its proposed tariff language, those matters are not within the scope of the hearing and settlement procedures ordered herein.⁷

⁵ *Tri-State Generation & Transmission Ass'n, Inc.*, 170 FERC ¶ 61,221, order on reh'g, 172 FERC ¶ 61,180 (2020).

⁶ *Tri-State Generation and Transmission Ass'n, Inc.*, 171 FERC ¶ 61,207 (2020) (Current CTP Methodology Order).

⁷ *Id.* P 43 (citations omitted).

5. On July 14, 2020, Tri-State filed a Buy Down Payment Methodology (BDP Methodology) in Docket No. ER20-2417-000, designed to calculate the one-time payment a Tri-State utility member electric distribution cooperative or public power district must make to become a partial requirements member. On September 11, 2020, the Commission accepted the BDP Methodology for filing, suspended it for a nominal period, subject to refund, and established hearing and settlement judge procedures. The Commission consolidated the proceeding for the BDP Methodology with the ongoing proceeding for the Current CTP Methodology in Docket No. ER20-1559-000, et al.⁸

6. Subsequently on November 10, 2020, Tri-State filed Board Policy 124, which established capacity limitations for partial-requirements service and the open season process for utility members that wish to become a partial requirements member. On January 8, 2021, the Commission accepted Board Policy 124 for filing, suspended it for a nominal period, subject to refund, established hearing and settlement judge procedures and consolidated the proceeding with the ongoing hearing and settlement judge proceedings Docket No. ER20-1559-000, et al.⁹

7. On March 16, 2021, Tri-State filed Board Policy 125 in Docket No. ER21-1449-000 (CTP Procedures Filing). Tri-State's CTP Procedures Filing proposed the terms by which a member would be able to access CTP calculations and request withdrawal from Tri-State. On May 14, 2021, the Commission rejected the CTP Procedures Filing, without prejudice, holding that it "impose[d] excessive and unjustified barriers to utility members seeking information to assess whether to terminate their WESCs with Tri-State."¹⁰

8. On June 17, 2021, the Commission issued a Show Cause Order in Docket No. EL21-75-000 (Show Cause Proceeding).¹¹ The Commission identified three specific aspects of Tri-State's tariff that it preliminarily found to be unjust and unreasonable: (1) that Tri-State's tariff, including its bylaws, do not provide clear and transparent procedures for utility members to obtain a CTP calculation; (2) that Tri-State's Current CTP Methodology fails to provide for pre-termination calculations or any rules governing how such calculations are to be performed; and, (3) that the Current CTP Methodology in Tri-State's tariff may be impermissibly vague because it lacks detailed procedures

⁸ *Tri-State Generation and Transmission Ass'n, Inc.*, 172 FERC ¶ 61,216 (2020).

⁹ *Tri-State Generation and Transmission Ass'n, Inc.*, 174 FERC ¶ 61,009 (2021).

¹⁰ *Tri-State Generation and Transmission Ass'n, Inc.*, 175 FERC ¶ 61,114, at P 52 (2021) (CTP Procedures Order).

¹¹ *Tri-State Generation and Transmission Ass'n, Inc.*, 175 FERC ¶ 61,229 (2021) (Show Cause Order).

governing when and how a utility member may obtain a CTP calculation. However, the Commission explicitly stated that the actual formula of the Current CTP Methodology was outside the scope of the proceeding.¹²

9. On July 19, 2021, Tri-State filed a response to the Show Cause Proceeding asking that the Commission hold the proceeding in abeyance until it made a subsequent section 205 filing. On August 19, 2021, the Commission issued an order rejecting Tri-State's request for abeyance.¹³ On September 1, 2021, Tri-State filed the Modified CTP Methodology and on September 2, 2021, it filed an answer to the Show Cause Order.

B. Filing

10. Tri-State proposes to replace the effective Current CTP Methodology with the Modified CTP Methodology. Under the Modified CTP Methodology, a departing member's CTP is the greater of: (1) the net present value of Tri-State's estimated lost revenues that result from the utility member's departure prior to the expiration of its WESC, minus (i) the incremental revenues that Tri-State would receive from selling the withdrawing utility member's load into the wholesale market, (ii) any subsequent revenue Tri-State would receive from the departing utility member if the utility member becomes an Open Access Transmission Tariff (OATT) customer, and (iii) the present value of the departing utility member's accrued, unpaid patronage capital balance; or (2) the departing utility member's *pro rata* share of Tri-State's total debt and other obligations.¹⁴

11. Tri-State states that, as compared to the Current CTP Methodology, the Modified CTP Methodology is transparent and easy to replicate, eschewing subjective assumptions and forecasts and relying instead upon historical member power purchases, historical power sale transactions, and readily accessible published U.S. government forecasts. Tri-State explains that another key difference is that the Modified CTP Methodology provides a departing member with an immediate credit for its ownership interest in Tri-State (i.e., its patronage capital), and credits the departing member with the OATT-

¹² *Id.* n.15 (“To be clear, the formula for how to calculate a CTP contained in the CTP Methodology is outside the scope of this show cause proceeding. That issue is being addressed in Docket No. ER20-1559-000.”).

¹³ *Tri-State Generation and Transmission Ass’n, Inc.*, 176 FERC ¶ 61,105 (2021) (August Order Denying Abeyance).

¹⁴ Transmittal at 8-9.

related revenues reasonably expected to be received by Tri-State if the departing member becomes a Tri-State OATT customer after its withdrawal.¹⁵

12. Tri-State explains that the Current CTP Methodology computes the CTP using Tri-State's Long-Term Financial Forecast (LTFF) methodology. Tri-State states that, in order to address concerns regarding transparency, verifiability, and subjective or biased data inputs, it will no longer use the LTFF to calculate CTPs, and will strike this provision in its tariff. Tri-State further explains that the inputs used in the Modified CTP Methodology are readily available data sources, including FERC Electric Quarterly Reports, Energy Information Administration reports, Tri-State Eastern and Western Interconnection OATT rates, Tri-State balance sheet data, and Treasury Department data, as well as the members' own load and patronage capital account information. As such, Tri-State states that the Modified CTP Methodology can be replicated by Tri-State's members without the need to access proprietary modeling software or the LTFF.¹⁶

13. Tri-State explains that it seeks to strike the example calculations currently provided in Rate Schedule FERC No. 281, because those examples are based on the Current CTP Methodology, which is to be replaced with the Modified CTP Methodology.¹⁷

14. Tri-State also states that it proposes to amend the Current CTP Methodology by adding clear and objective contract termination procedures that will permit an orderly and equitable exit process for members that wish to withdraw from Tri-State. Tri-State explains that the Current CTP Methodology does not include procedures governing the withdrawal of members that elect to exit, and that it initially sought to include such procedures in a separate rate schedule; however, the procedures it filed were rejected without prejudice by the Commission, in part, because the procedures permitted Tri-State's Board of Directors to veto a member exit if the Board determined that the exiting member's departure would have a material adverse effect on Tri-State. Tri-State states that the Modified CTP Methodology addresses these concerns by eliminating this discretion and allowing a utility member to exit upon simply providing the requisite notice and paying the calculated CTP.¹⁸

15. Tri-State explains that, under the Modified CTP Methodology, a utility member that desires to terminate its membership in Tri-State would need to: (1) provide a two-

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 9-10.

¹⁷ *Id.* at 10.

¹⁸ *Id.*

year advance notice of its intent to withdraw from Tri-State and terminate its WESC (rather than the three-year notice period initially proposed by Tri-State); and (2) pay its CTP to Tri-State on the date of withdrawal, as calculated pursuant to the Modified CTP Methodology.¹⁹

16. Tri-State explains that the two-year notice requirement is intended to allow sufficient time for any required regulatory approval and resolution of ancillary transactions, including a situation where the withdrawing utility member seeks a transfer of transmission-related facilities and equipment in connection with the termination of its WESC, and that it is based on the timeline for consummation of the recent withdrawal of former utility member Delta-Montrose Electric Association (Delta-Montrose), including obtaining regulatory approval and arranging for the transfer of certain transmission-related equipment and facilities, which took approximately two years.²⁰

17. Tri-State reiterates that, under the Modified CTP Methodology, Tri-State's Board of Directors has no discretion to prevent a utility member from exiting, so long as the withdrawing member pays its CTP and provides a two-year advanced notice of its intent to withdraw from Tri-State and terminate its WESC.²¹

18. Tri-State states that the Modified CTP Methodology establishes procedures and rules by which interested members can obtain pre-termination CTPs in order to make an informed decision regarding early termination of their WESCs and withdrawal from Tri-State. Tri-State explains that it has included provisions in its Modified CTP Methodology that implement the following procedures and rules: (1) Tri-State will provide CTP calculations to all of its members on an annual basis, regardless of whether a member intends to exit Tri-State; (2) a CTP calculation produced under the Modified CTP Methodology is the actual termination payment that will be assessed to a member if it elects to provide Tri-State with notice of its intent to exit Tri-State within 12 months from the date of calculation; and, (3) Tri-State will not charge its members an administrative fee to produce their annual CTP calculations.²²

19. Tri-State avers that the Modified CTP Methodology will allow the members to make fully informed decisions about whether to remain in Tri-State. Tri-State adds that the Modified CTP Methodology remedies the concerns identified by the Commission in

¹⁹ *Id.* at 10-11.

²⁰ *Id.* at 11.

²¹ *Id.*

²² *Id.*

the Show Cause Order and the August Order Denying Abeyance and is just and reasonable and not unduly discriminatory.²³

20. Tri-State argues that the Modified CTP Methodology is just and reasonable and not unduly discriminatory. Tri-State explains that the Modified CTP Methodology comports with Tri-State's Bylaws, and is consistent with the original overarching principle governing Tri-State's Current CTP Methodology, which is that remaining Tri-State members must be held financially harmless when a utility member seeks to abrogate its WESC and terminate its membership in Tri-State. Tri-State argues that remaining members that adhere to their WESCs should not be harmed when a Tri-State member requests to be released from its freely negotiated, binding, contractual obligations and that the Modified CTP Methodology also establishes a less complicated, less time-intensive, and more transparent methodology for calculating a CTP that protects the financial interests of remaining Tri-State utility members if a member elects early termination of its WESC. Tri-State explains that the Modified CTP Methodology provides in a single rate schedule clear and transparent member exit procedures and rules governing how members can obtain pre-termination CTPs and withdraw from Tri-State, and that its Modified CTP Methodology is just and reasonable, and not unduly discriminatory.²⁴

21. Tri-State argues that the Modified CTP Methodology complies with Tri-State's bylaws and keeps remaining members whole in the event of a member departure. Specifically, Tri-State explains that the Modified CTP Methodology provides that "[a] Member may withdraw from Membership upon compliance with such equitable terms and conditions as the Board of Directors may prescribe provided, however, that no Member shall be permitted to withdraw *until it has met all its contractual obligations to this Corporation.*"²⁵ Tri-State avers that the Modified CTP Methodology calculates a withdrawing member's make whole CTP, a termination payment that keeps Tri-State's remaining members as close as possible to the same position financially as if the exiting member had honored all of the contractual commitments in its WESC for the full term of the contract. Tri-State explains that preserving contract expectations is critical in protecting remaining Tri-State members from suffering adverse financial consequences when a member elects to leave the cooperative before the end of the term of its WESC and that the Commission recognized that "Tri-State is obligated to plan its system and

²³ *Id.*

²⁴ *Id.* at 12.

²⁵ *Id.* at 12-13 (citing Tri-State Generation and Transmission Association, Inc., Tri-State Wholesale Electric Service Contracts, Rate Schedule No. 259, Art. 1-Membership 3.0.0., § 4(a) (Bylaws)) (emphasis added).

acquire the resources necessary to serve the wholesale requirements of each of its members over the full term of the contracts.”²⁶ Tri-State argues that consistent with Commission precedent, the Modified CTP Methodology produces CTPs that reflect the obligations delineated in the WESCs over the full terms of the contracts.²⁷

22. Tri-State argues that to protect remaining Tri-State members from shifted costs and increased rates as a result of member exits, the make whole CTP must be tied to the WESC and the departing member’s long-term revenue commitments to Tri-State. Tri-State explains that if a departing member’s CTP is not connected to the WESC, the economic value of the WESCs would be diminished, thus impairing Tri-State’s ability to secure debt capital at a reasonable cost. Given Tri-State’s \$799.4 million in capital projects planned for completion by 2025, an inadequate CTP would likely result in near-term increases in electricity rates for remaining members.²⁸

23. Tri-State also avers that the Modified CTP Methodology is transparent, replicable and objective, and addresses the transparency concerns identified in the CTP Procedures Order by utilizing publicly available data sources and eschewing subjective assumptions and complex, proprietary modeling programs.

24. Tri-State states that the Modified CTP Methodology establishes comprehensive and clear exit procedures and rules governing pre-termination CTP calculations. Tri-State explains that, because performing a CTP calculation under the modified CTP Methodology is a less time and resource-intensive process, Tri-State will provide CTP calculations to all of its members on an annual basis, regardless of whether a member intends to exit Tri-State. Tri-State notes that the CTP calculations produced under the Modified CTP Methodology will be the actual termination payment that will be assessed to a member if it elects to exit by giving notice to Tri-State within 12 months from the date of calculation. Tri-State explains that the members’ CTP calculations will be updated and delivered to the Tri-State utility membership annually and that Tri-State will not charge its members an administrative fee to produce their annual CTP calculations. Tri-State claims it has already performed CTP calculations for its 42 members under the modified CTP Methodology and has provided those calculations in its response to the Commission’s Show Cause Order. Tri-State argues that the Modified CTP Methodology fully discloses every aspect of Tri-State’s CTP methodology and exit procedures, which

²⁶ *Id.* at 13 (quoting *Tri-State Generation and Transmission Ass’n, Inc.*, 172 FERC ¶ 61,173, at P 32 (2020)).

²⁷ *Id.* (citing *Wabash Valley Power Ass’n, Inc.*, 171 FERC ¶ 61,053, at P 31 (2020); *Tipmont Rural Electric Member Cooperative v. Wabash Valley Power Ass’n, Inc.*, 174 FERC ¶ 61,008, at P 39 (2021)).

²⁸ *Id.* at 14.

will fully inform a member's decision of whether to exit Tri-State and that the Commission should find Tri-State's Modified CTP Methodology, , to be just and reasonable and not unduly discriminatory.²⁹

25. Tri-State requests that the Commission accept the Modified CTP Methodology, without suspension or condition, and allow for an effective date no later than November 1, 2021, the 61st day after the date of this filing.³⁰

26. Tri-State also avers that, although Tri-State is providing CTP calculations in this filing that are valid until March 31, 2022, the Modified CTP Methodology does not set a specific rate or charge payable by Tri-State's members after that date; rather, it provides a methodology for determining CTPs if a member chooses to terminate its WESC before its term expires. Tri-State explains that to complete a member withdrawal, it must make an FPA section 205 filing to amend and terminate the departing member's WESC, which is on file as a FERC rate schedule and that this filing would include the withdrawing utility member's CTP, calculated pursuant to the Modified CTP Methodology, and any necessary cost support information.³¹

II. Notice of Filing and Responsive Pleadings

27. Notice of Tri-State's filing was published in the *Federal Register*, 86 Fed. Reg. 50,340 (Sept. 8, 2021), with interventions and protests due on or before September 22, 2021.

28. K.C. Electric Association and the San Miguel Power Association, Inc. filed timely motions to intervene. Empire Electric Association, Inc., the Midwest Electric Cooperative Corporation (Midwest Electric), Mora-San Miguel Electric Cooperative, Inc., Mountain View Electric Association, Inc., and Socorro Electric Cooperative, Inc., filed supporting comments. Southwestern Electric Cooperative, Inc. and Y-W Electric Association, Inc. filed timely motions to intervene and supporting comments (collectively, Supporting Tri-State Members).

29. Gunnison County Electric Association, Inc., Highline Electric Association, Jemez Mountains Electric Cooperative, Inc., Morgan County Rural Electric Association, Southeast Colorado Power Association (Southeast Colorado), White River Electric

²⁹ *Id.* at 15.

³⁰ *Id.*

³¹ *Id.* at 16.

Association, Inc., and the Wyoming Cooperatives³² filed timely motions to intervene and comments that were generally supportive (collectively, Generally Supportive Tri-State Members). Poudre Valley Rural Electric Association, Inc. and Wheat Belt Public Power Association filed a joint and severable motion to intervene and joint comments generally supportive of the filing (collectively, Poudre Valley and Wheat Belt).

30. Basin Electric Power Cooperative (Basin Electric), Guzman Energy LLC (Guzman Energy), La Plata Electric Association, Inc. (La Plata), Mountain Parks Electric, Inc. (Mountain Parks), Northwest Rural Public Power District (Northwest Rural), Tipmont Rural Electric Membership Corporation (Tipmont), and United Power, Inc. (United Power) filed timely motions to intervene and protests. Springer Electric Cooperative (Springer) filed a timely motion to intervene and an untimely protest. Kristen Taddonio³³ and Liz McIntyre³⁴ separately filed comments opposing the filing.

31. On October 5, 2021, Tri-State filed an answer to the protests. On October 7, 2021, the Wyoming Cooperatives and Basin Electric separately filed answers to United Power's protest. On October 13, 2021, United Power filed an answer to Tri-State and Basin's answers. On October 13, 2021, Basin Electric filed an answer to Tri-State's answer. On October 21, 2021, Poudre Valley filed an answer and an amended answer to Basin Electric and United Power's answers. On October 26, 2021, Basin Electric filed an answer to Poudre Valley's answer.

A. Supportive Comments

32. The Supporting Tri-State Members' comments support the filing, arguing that the Modified CTP Methodology includes transparent and reasonable procedures for utility members to obtain pre-termination CTPs, and, if they so desire, to terminate their WESCs and membership in Tri-State. They specifically support the proposed procedures that: provide all utility members with CTP calculations on an annual basis without a fee; the elimination of Board discretion and subjectivity over the withdrawal process; and, the two-year notice provision. They also support the Modified CTP Methodology because they claim it is transparent, objective, easily replicable, and based on readily accessible public data. They argue that the Modified CTP Methodology will keep the remaining Tri-State members whole and financially unharmed. Therefore, they urge the

³² The Wyoming Cooperatives are: Big Horn Rural Electric Company; Carbon Power & Light, Inc.; Garland Light & Power Co.; High Plains Power, Inc.; High West energy; Niobrara Electric Association; Wheatland Rural Electric Association; and, Wyrulec Company.

³³ Ms. Taddonio is an elected director and board secretary for Mountain Parks.

³⁴ Ms. McIntyre is a director of Mountain Parks.

Commission to accept the filing, or, in the alternative, accept the filing subject to settlement procedures.³⁵

33. The Generally Supportive Tri-State Members argue that while they believe further revisions to the filing are necessary, they note that the Modified CTP Methodology is a “marked improvement” over the proposal in Docket No. ER20-1559-000, et al. These members support Tri-State’s request to consolidate the current filing with the ongoing proceedings, believing that settlement judge procedures are the appropriate forum for addressing revisions.³⁶

B. United Power Protest

34. United Power first asserts that Tri-State implicitly acknowledges that the Current CTP Methodology is unjust and unreasonable, because Tri-State allegedly had no choice but to propose significant changes to it to address the concerns raised in the Show Cause Order.³⁷ Given Tri-State’s “admissions” that the Current CTP Methodology is unjust and unreasonable, United Power believes that the circumstances justify the Commission using its FPA section 206 authority to replace it. United Power asks the Commission to use this authority to substitute the Current CTP Methodology with the balance sheet approach it presents in the testimony of Kurt G. Strunk. United Power further asks the Commission to extend such inquiry to allow for replacement of the BDP Methodology, given the substantial similarities and common issues between the BDP and Current CTP Methodologies.³⁸

35. United Power explains that it has been formally seeking calculation of a just and reasonable exit fee for nearly three years, and had been seeking to reform its relationship with Tri-State for several years before that. United Power states that Tri-State has instead provided it with a series of unjust and unreasonable exit fees, which have increased over time, despite there being less time left on its WESC and Tri-State having less debt outstanding. For example, the exit fee Tri-State calculated in the instant filing is \$400 million more than what Tri-State provided to United Power in 2018, despite having three fewer years on its WESC.³⁹

³⁵ *E.g.*, Midwest Electric Comments at 1-2.

³⁶ *E.g.*, Southeast Colorado Comments at 2-3.

³⁷ United Power Protest at 6-7.

³⁸ *Id.* at 8-9.

³⁹ *Id.* at 10.

36. United Power contrasts its experience with those of two recent members that withdrew from Tri-State, Kit Carson Electric Cooperative (Kit Carson) and Delta-Montrose. United Power states that Tri-State initially demanded an exit charge of \$137 million from Kit Carson, but ultimately agreed that \$37 million constituted an exit charge that would “protect[] the interests of all [Tri-State’s remaining] members,”⁴⁰ whereas Tri-State initially demanded an exit charge of \$322 million for Delta-Montrose but eventually agreed to \$62.5 million, describing the withdrawal agreement as “just and reasonable.”⁴¹ United Power concludes that the outcome of these exits demonstrate that Tri-State knows what represents a fair exit fee to withdraw for both remaining and exiting members.⁴²

37. After recounting the extensive history of Tri-State’s CTP methodology, United Power explains that it seeks a just and reasonable exit fee calculation to provide it flexibility in service of its rate payers. United Power states that with only one Board member, it is not represented on Tri-State’s Board in a manner commensurate with its size, because smaller utility members have a larger voting share on a per-ratepayer basis. But even if this representation was equitable, United Power maintains that, because Tri-State’s Board members owe their fiduciary duty to Tri-State, a conflict of interest exists. United Power notes that it wants to move away from Tri-State’s “dirty and expensive” fossil fuel portfolio, has concerns that Tri-State is engaging in “questionable financial management decisions,” and Tri-State’s non-transparent operations.⁴³

38. United Power next argues that the filing is deficient and does not comport with the Commission’s minimum requirements for filings implementing a just and reasonable formulaic rate.⁴⁴ United Power argues that the Modified CTP Methodology is insufficiently transparent. United Power first claims that, despite Tri-State “obviously having workpapers prepared” in order to perform the calculation, Tri-State failed to file any workable spreadsheets that would allow interested parties to review the calculations that produced the utility members’ individual CTP calculations or otherwise review Tri-

⁴⁰ *Id.* at 11 (citing Press Release, Tri-State Generation and Transmission Ass’n, Tri-State and Kit Carson Electric Cooperative Enter Into Membership Withdrawal Agreement (June 27, 2016), <https://www.tristategt.org/tri-stateand-kit-carson-electric-cooperative-enter-membership-withdrawal-agreement>).

⁴¹ *Id.* at 11-12 (citing Initial Filing of Rate Schedule FERC No. 262 (Membership Withdrawal Agreement), Docket No. ER20-1542 (filed Apr. 10, 2020)).

⁴² *Id.*

⁴³ *Id.* at 17-19.

⁴⁴ *Id.* at 19-20 (citing *Sw. Elec. Coop., Inc. v. Soyland Elec. Coop., Inc.*, 95 FERC ¶ 61,254, at 61,885 (2001)).

State's support for its calculations. United Power avers that the Commission has repeatedly emphasized that formulaic rates must be accompanied by supporting documentation and workpapers, with spreadsheets in a workable format. United Power states that Tri-State failed to file basic documentation that would allow interested parties to review the formulas that yielded the utility member-specific CTP calculations. United Power further notes that Tri-State miscalculated the exit fee amounts in its initial response to the Show Cause Order, demonstrating the need for filings that can be confirmed.⁴⁵

39. United Power states that half of the Modified CTP Methodology is completely opaque, because Tri-State did not bother to calculate the debt covenant obligation to demonstrate that it was not the greater of the two methods for calculating exit fees. United Power adds that the debt covenant obligation is not supported by workpapers, formulas, or supporting references either. United Power argues that, given Tri-State's failure to respond seriously to the Commission's section 206 investigation and its blatant attempt to restart these "tortured" proceedings, the Commission should not give Tri-State the luxury of curing these patently obvious defects by way of a deficiency response, because doing so would only further delay resolution of the CTP and reward Tri-State for its "repeated dilatory tactics before the state and federal regulators."⁴⁶

40. United Power next argues that the Modified CTP Methodology should be rejected because it leads to "absurd results," as the exit fees of a subset of members who have sought exit fee calculations⁴⁷ (\$2.51 billion) is enough to retire Tri-State's generation-related debt and generation-related other obligations (\$2.17 billion) with money left over. According to United Power, if expanded to the nine members that have requested CTP figures to date (who own approximately 39% of the year-end 2020 patronage capital), Tri-State would receive \$3.75 billion in CTPs—dwarfing the \$2.17 billion of generation-related debt and other obligations and approaching all of the approximately \$4 billion of liabilities on Tri-State's balance sheet.⁴⁸

41. United Power also avers that the Modified CTP Methodology is conceptually flawed, because: (1) it poorly projects Tri-State's revenues from the departing member through the term of the contract rather than measuring Tri-State's costs; (2) it treats the WESCs as "take-or-pay" contracts and its revenues as guaranteed, rather than

⁴⁵ *Id.* at 20-21.

⁴⁶ *Id.* at 21-22.

⁴⁷ Northwest Rural, Wheat Belt, San Isabel Electric Association, Inc., San Miguel Power Association, Springer Electric, La Plata, and United Power.

⁴⁸ United Power Protest at 23-25.

appropriately reflecting Tri-State's risks that Tri-State itself recognizes as a requirements supplier; (3) it is based on "revenues" arising from the A-40 rate, which is stale and based on non-Commission-compliant rate design principles that incorporate unjust and unreasonable cost shifts, and which (under a Commission approved settlement) must be replaced in 2023; and (4) the "revenues" that Tri-State attempts to project include a gap between the A-40 transmission rate and the OATT that manufactures non-existent stranded transmission costs.⁴⁹

42. United Power states that the Modified CTP Methodology drastically understates mitigation. United Power points to the analysis of its witness, Mr. Strunk, to show that Tri-State's own transaction shows its mitigation is understated. For example, with respect to Tri-State's own coal-fired generation purchase from August 2021, Witness Strunk estimates that Tri-State valued the Laramie River Power Station (Laramie River) energy and capacity all-in at \$41/MWh. United Power states that Witness Strunk explains that these costs may escalate, as coal plants have tended to run less and cost more over time. The value Tri-State assigned to its Laramie River purchase is far above Tri-State's mitigation input of \$31.89/MWh based on EQR data that de-escalates to just over \$20/MWh in 2050, indicating that Tri-State's mitigation is significantly understated. United Power points to this as an example of mitigation that unreasonably drives up the value of the CTP.⁵⁰

43. United Power claims that Tri-State's use of EQR data for capacity transactions is significantly flawed, because the majority of transactions Tri-State relies on to determine the market value of released capacity and energy are classified as energy product transactions. According to United Power, this is because the overwhelming majority of transactions Tri-State uses to determine the value of released capacity are economy energy imbalance trades that incorporate no capacity component. Next, United Power claims that Witness Strunk shows that the load shape of member-distributors would typically have more energy consumption during peak periods and less in off peak periods—the opposite of what Tri-State's selected EQR data measures. United Power represents that the EQR data shows a steep drop in energy trades during on-peak hours. However, the timing of transactions would realistically be precisely the opposite of the energy transactions proposed by Tri-State for use in the CTP formula, because member distributors logically have more energy consumption on-peak and less in off-peak hours. Furthermore, United Power claims that Tri-State's use of EIA forecasts is misplaced and opportunistic in seeking to raise the resulting CTP, because Tri-State uses EIA forecasts of retail prices to extrapolate forecast wholesale energy and capacity prices. Moreover,

⁴⁹ *Id.* at 25-26.

⁵⁰ *Id.* at 26-27 (citing United Power Answer, Exhibit No. UP-0001 (Affidavit of Kurt G. Strunk), Docket No. EL21-75-000, at § IV.B (filed Aug. 3, 2021)).

the EIA forecasts not just retail rates, but also the subset of retail electricity rates that covers generation costs, transmission costs, and distribution costs.⁵¹

44. United Power argues that Tri-State ignores that the 2021 generation subset of the retail electricity prices in the Rockies region is forecasted to be \$60.07/MWh by EIA, nearly double the \$31.89/MWh value Tri-State claims represents market mitigation for energy and capacity. United Power notes that while use of this data is generally flawed, this difference corroborates that Tri-State's mitigation is understated. United Power then explains that Witness Strunk's analysis of forward natural gas prices shows that gas prices—which drive wholesale market prices—are expected to increase; while, as noted above, Tri-State's extrapolation shows declining constant dollar mitigation prices. United Power also argues that if a member departs Tri-State, Tri-State's prudent response should be to optimize its supply portfolio to account for the smaller customer base.⁵²

45. United Power further urges the Commission to reject the Modified CTP Methodology as inconsistent with a utility member's relationship with Tri-State. United Power claims that Tri-State's long-term WESCs demonstrate Tri-State's original purpose: to serve as a resource to provide services and manage investments on behalf of its the utility members. United Power represents that generation and transmission cooperatives like Tri-State were conceived primarily to take advantage of economies of scale by centralizing transmission and generation services and financial management in a single organization, as specifically envisioned under the Rural Electrification Act implemented by the Rural Utilities Service (RUS). United Power represents that the practice of using Requirements Service contracts as collateral derives directly from cooperatives' genesis as borrowers from the RUS and that administration's program requirements.⁵³

46. United Power explains that, to protect the RUS loan program from defaults, the RUS required that borrowers pledge not only the generation and transmission cooperative's underlying assets, but also enter into requirements service contracts like the WESCs with their member-owners to prevent distribution member cooperatives from abandoning their share of debt service obligations prior to the repayment of RUS loans. United Power represents that Tri-State claims that it must use the WESCs in the same manner as collateral for non-RUS debt financing, and that is why Tri-State cannot

⁵¹ *Id.* at 26-28 (citing United Power Answer, Exhibit No. UP-0001 (Affidavit of Kurt G. Strunk), Docket No. EL21-75-000, at § IV.C (filed Aug. 3, 2021)).

⁵² *Id.* at 28 (citing United Power Answer, Exhibit No. UP-0001 (Affidavit of Kurt G. Strunk), Docket No. EL21-75-000, at §§ IV.D– IV.G (filed Aug. 3, 2021)).

⁵³ *Id.* at 29.

provide more flexibility to its utility members or release them from their contracts on reasonable terms, which effectively locks members into taking service from Tri-State.⁵⁴

47. United Power argues that using WESCs for debt collateral is not required for a Commission-jurisdictional generation and transmission cooperative with non-utility members and no RUS loans outstanding. United Power claims that the WESC's terms and Tri-State's governing documents were: (1) premised on RUS oversight, and (2) clearly anticipated that a member could withdraw upon repaying Tri-State for the *pro rata* share of debt and obligations that it incurred to serve the utility member.⁵⁵

48. United Power claims that Tri-State's use of WESCs to secure long-term debt obligations is illogical because it excludes a pre-term buyout right. United Power agrees with Tri-State's argument that lenders are reluctant to lend to Tri-State on terms that extend beyond the WESCs. United Power explains that this is precisely the reason why Tri-State's utility member contracts now reach all the way out to 2050. In 2007, United Power states, Tri-State urged members to extend their contract lengths by 10 years to match anticipated financing for the now-mothballed Holcomb coal plant.⁵⁶

49. United Power argues that if the Commission continues to allow Tri-State to use the WESCs as its "financial backbone" as the remaining terms of the WESCs (all 42 expiring in 2050) wane, lenders will become increasingly averse to lending Tri-State additional funds unless Tri-State can secure WESC extensions. United Power claims that this creates a scenario where members must be allowed to withdraw prior to the full term of the WESC in exchange for a payment that would cover the obligations that Tri-State already incurred to serve that member, as the RUS envisioned for loans it issued itself under this contract. If the members could not withdraw prior to the end of the contract term by extinguishing their share of Tri-State's obligations, United Power asserts that Tri-State would have to either (1) suffer escalating difficulty securing financing as the remaining contract periods drew down or (2) find ways to compel WESC extensions, which would be inappropriate and discriminatory. United Power believes that the only reasonable option is to allow members to exit with a payment commensurate with their obligations, as contemplated in the WESC and Tri-State's governing documents. United Power argues that the WESCs could not have contemplated a construct that could not

⁵⁴ *Id.* at 30-32 (citing Tri-State Filing of FERC Rate Schedule No. 281, Contract Termination Payment Methodology, Docket No. ER20-1559-000, at 3 (filed Apr. 13, 2020)).

⁵⁵ *Id.* at 32-33.

⁵⁶ *Id.* at 36-37.

sustain itself in this way, further corroborating the voluntary withdrawal construct enshrined in Tri-State's WESC and Bylaws that United Power describes above.⁵⁷

50. Finally, United Power argues that the Commission should use a balance sheet approach to member exit fee calculations because it appropriately measures the exiting member's *pro rata* share of debt and obligations. United Power claims it has consistently advocated for the balance sheet approach as a simple and relatively precise method to measure the obligations Tri-State has incurred in order to provide service to the departing member. Importantly, United Power argues that the balance sheet approach tracks the commitments made by member-distributors to cover the costs of the generation and transmission cooperative's debt and produces CTPs sufficient to allow Tri-State to pay down the obligations that it assumed on behalf of the departing member(s), net of the departing member's patronage capital balance. In support, United Power has filed its workable spreadsheet and workpapers, such that its submission is not deficient to justify the proposed formulaic rate.⁵⁸

51. United Power argues that, unlike the Modified CTP Methodology, the balance sheet approach properly accounts for the member's expected future transition to a third-party OATT customer and omits debt and obligations attributed to transmission. According to United Power, the exiting member will end up paying for use of and a return on equity on existing transmission assets the member itself financed through its revenues, as Tri-State keeps the OATT transmission assets that serve the member. United Power adds that the exited-member will also contribute to future expansion of Tri-State's rate-base eligible system through future network service rates. Additionally, United Power argues that, as Witness Strunk observes, recent transactions show that transmission assets have traded at more than net book value in the marketplace, in some cases by multiples; suggesting a premium on the transmission assets that Tri-State gets to keep.⁵⁹

52. United Power notes that while Tri-State did not file its debt covenant obligation workpapers that would allow Witness Strunk to fully examine how Tri-State's "debt and other obligations" floor is calculated, there are several conceptual flaws that inflate Tri-State's calculation even of a members' *pro rata* share of obligations. United Power states that Witness Strunk explains that use of member billings goes against Tri-State's stated goal of the Modified CTP Methodology to avoid year-to-year price swings. Given high growth or sudden load loss can and does happen to members across Tri-State's system, United Power claims that use of billings would lead to wild swings in the CTP from year-

⁵⁷ *Id.* at 38.

⁵⁸ *Id.* at 39.

⁵⁹ *Id.* at 39-40.

to-year. United Power adds that Witness Strunk suggests a longer historical look-back based on patronage capital to determine the portion of Tri-State's outstanding obligations owing to debt service. United Power also claims that use of member billings also overstates United Power's share, both because (1) United Power has grown at a fast pace over the past three years, and (2) United Power's member billings are overstated due to flaws in the A-40 rate design. Further, United Power argues that Tri-State's use of unconsolidated financial statements overstates Tri-State's obligations by failing to net out obligations that Tri-State owes to itself through intercompany obligations among Tri-State and its subsidiaries. United Power believes that this serves no purpose other than to inflate even the debt covenant obligation portion of Tri-State's proposal.⁶⁰

53. Finally, United Power disputes Tri-State's claims that the BDP Methodology is providing members with contract flexibility. United Power argues that no partial requirements memberships have been formed as a result of the "open season," and there is no indication that any such memberships were formed. United Power argues that the Commission should include the BDP Methodology within the FPA section 206 investigation alongside the CTP Methodology to ensure they are proportional to one another and reflect Tri-State's costs rather than faulty revenue projections.⁶¹

C. La Plata Protest

54. La Plata states that although Tri-State's Bylaws provide that a utility member may withdraw on equitable terms and conditions, the right of a utility member to withdraw from Tri-State and terminate its WESC has been an empty promise to La Plata. La Plata explains that, for over two years, Tri-State has evaded La Plata's request for an exit charge calculation and has gone to great lengths — even subjecting itself to the jurisdiction of this Commission — to avoid calculating a just and reasonable exit charge for La Plata. La Plata asserts that at nearly half a billion dollars, the CTP provided for La Plata through the Modified CTP Methodology defies the FPA's requirement that rates be just and reasonable.⁶²

55. La Plata requests that the Commission find Tri-State's existing procedures related to the processing and calculation of CTPs are unjust and unreasonable and proceed to establish a replacement rate and either reject the Modified CTP Methodology or otherwise find that Tri-State has not shown the Modified CTP Methodology to be just and reasonable. La Plata states that it does not oppose Section I.B of the proposed

⁶⁰ *Id.* at 40 (citing United Power Answer, Ex. No. UP-0001 (Affidavit of Kurt G. Strunk), Docket No. EL21-75-000, at §§ V.C–V.D (filed Aug. 3, 2021)).

⁶¹ *Id.* at 41-42.

⁶² La Plata Protest at 2-3.

Modified CTP Methodology concerning the following: (1) the provision of CTP calculations to all utility members on an annual basis; (2) maintaining the annual CTP calculation as the utility member's actual payment amount, to be valid for a period of 12 months; and (3) the provision of CTP calculations to all utility members without an administrative fee.⁶³

56. However, La Plata argues that the proposed two-year advance notice period for a utility member to terminate its WESC and withdraw from Tri-State has not been shown to be just and reasonable and that a one-year advance notice period is appropriate. La Plata states that the Commission has explained that a notice period is designed so that utilities can plan their systems properly and avoid the costs of overbuilding assets in reliance on all customers remaining. La Plata asserts that the two-year notice requirement operates as an unnecessary constraint and delay mechanism and that Tri-State does not provide any evidence or explanation for why a two-year notice period is required to ensure fairness to remaining utility members.⁶⁴

57. La Plata argues that the Modified CTP Methodology would disadvantage departing utility members and create an unreasonable difference in CTPs that is unduly discriminatory or preferential. La Plata states that Tri-State has not explained how the Modified CTP Methodology's approach is consistent with the Commission's explanation that the "purpose of the exit charge is to compensate Tri-State for the costs that it has incurred or has an obligation to incur in the future to satisfy its service obligations under the [WESC] with the departing member." In particular, La Plata argues that Tri-State has not justified the use of a lost revenues approach with a length of contract that equates to a 2050 termination date for the WESCs, and that it is noteworthy that the WESCs were extended in 2007 based on the need for Tri-State to obtain financing to expand the Holcomb Generating Station. La Plata states that Tri-State is no longer pursuing that expansion and, thus, the reason underlying the extension of the WESCs to 2050 does not support the use of a 2050 termination date. Additionally, La Plata asserts that the portfolio of resources that Tri-State may procure to provide electric service in future years is itself unknown, and that those resources' performance and operation and maintenance expenses will vary. As such, La Plata contends that the use of a lost revenue approach tied to 2050 will not result in a just and reasonable calculation.⁶⁵

58. La Plata asserts that there are also flaws with the Modified CTP Methodology's determination of the offsets to lost revenue from the departing utility member, stating that

⁶³ *Id.* at 22-24.

⁶⁴ *Id.* at 25.

⁶⁵ *Id.* at 28-29 (citing *Tri-State Generation and Transmission Ass'n, Inc.*, 172 FERC ¶ 61,173 at P 32).

Tri-State has not justified its method to estimate the annual revenue it will receive by selling the departing utility member's load in the wholesale power market, and therefore, that Tri-State has not shown that its proposed market pricing estimate process will provide an appropriate measure of projected revenues. Additionally, La Plata asserts that the Modified CTP Methodology fails to properly take into account utility members' patronage capital, stating that a departing utility member's unpaid patronage capital would be discounted as part of the offset to the lost revenue, which is contrary to how patronage capital was treated with the departures of Kit Carson and Delta Montrose, where the member's cash payment to Tri-State was determined after applying the undiscounted patronage capital of the members to the members' early termination fee.⁶⁶

59. La Plata argues that Tri-State appears to state that the calculation of a member's debt covenant obligation is an appropriate method for determining the member's CTP amount; however, this approach would only apply if it results in a CTP greater than what is calculated using the lost revenues approach. La Plata asserts that from these two choices Tri-State has not explained which method will produce CTPs that compensate Tri-State for the costs that it has incurred or has an obligation to incur in the future to satisfy its service obligations under the WESC, or if neither or both would be consistent with this principle. La Plata explains that although Tri-State explains why the debt covenant obligation is used to establish a floor for a departing utility member's CTP, it is unclear which debt or obligations comprise the sum of the debt and obligations that are used to determine the departing utility member's pro rata portion. La Plata explains that a portion of the \$3.3 billion debt figure relates to Tri-State's transmission system, and Tri-State has not explained if transmission-related debt is part of a departing utility member's debt covenant obligation, even if that member continues to be a transmission customer and by contrast, the Modified CTP Methodology's lost revenues calculation provides for an offset of assumed transmission revenues from a departing utility member. La Plata states that it is also unclear how a utility member's patronage capital relates to the calculation or payment of a member's debt covenant obligation.⁶⁷

60. La Plata argues that the Modified CTP Methodology appears designed to be prohibitively expensive for a utility member contemplating termination of its WESC as demonstrated by the approximately \$9.125 billion aggregate amount of the Tri-State utility members' CTPs. La Plata explains that Tri-State's debt as of December 31, 2020 is approximately \$3.3 billion. La Plata asserts that the sum of the calculated CTPs shows that the Modified CTP Methodology does not produce just and reasonable rates.⁶⁸

⁶⁶ *Id.* at 29-30.

⁶⁷ *Id.* at 30-31.

⁶⁸ *Id.* at 31-32.

61. La Plata further argues that the Modified CTP Methodology will produce results that are unduly prejudicial when compared to exit charges recently implemented for Kit Carson in 2016 and Delta Montrose in 2020. La Plata concludes that the Modified CTP Methodology would impose an undue prejudice and disadvantage on utility members who were not able to formalize their exit from Tri-State prior to the filing of the Modified CTP Methodology (or the CTP Methodology filed in Docket No. ER20-1559, for that matter), contrary to the requirements of the FPA.⁶⁹

62. La Plata states that Tri-State's filings show that the Current CTP Methodology is not just and reasonable and must be replaced. La Plata argues that Tri-State now acknowledges that the Current CTP Methodology does not meet the requirements of the FPA and, thus, the Commission should investigate the calculation and formulas for CTPs under FPA section 206 and use its authority thereunder to order a just and reasonable replacement rate. La Plata argues that the Modified CTP Methodology has not been demonstrated to be just and reasonable, and as such should be rejected as deficient or, alternatively, the Commission should confirm that all aspects of the Methodology are now properly within the scope of the FPA section 206 investigation in the Show Cause Proceeding and the Commission should investigate the Modified CTP Methodology under FPA section 206 and conduct a hearing to establish a replacement rate. La Plata also requests that the Commission deny the request to dismiss the Show Cause Proceeding. La Plata explains that in order to expedite the resolution of these CTP matters, La Plata supports consolidation of Docket Nos. EL21-75 and ER21-2818 with the existing proceedings in Docket No. ER20-1559.⁷⁰

D. Poudre Valley and Wheat Belt Protest

63. Poudre Valley and Wheat Belt express concern about a lack of transparency regarding the inputs to the Modified CTP Methodology, the complexity and time-intensive nature of the calculation, and the difficulty of confirming the justness and reasonableness of the resulting CTP calculation. They also express concern that Tri-State may attempt to impose terms and conditions that have not been filed with and approved by the Commission on members that have requested a CTP calculation. Poudre Valley and Wheat Belt advocate for a simplistic formula that is based on a transparent and objective determination of the actual costs Tri-State incurred to serve a withdrawing member.⁷¹

⁶⁹ *Id.* at 32-35.

⁷⁰ *Id.* at 37-40.

⁷¹ Poudre Valley and Wheat Belt Protest at 3-4.

64. Poudre Valley and Wheat Belt state that Tri-State's modifications constitute substantial improvement as compared to the Current CTP Methodology. Poudre Valley and Wheat Belt represent that Tri-State's Modified CTP Methodology responds to concerns about the lack of transparency, difficulty in replicating and verifying the reasonableness of the resulting calculation, and use of subjective or biased data inputs by proposing to eliminate use of the LTFE as an input to the CTP calculations. Poudre Valley and Wheat Belt state that the Modified CTP Methodology moves closer to the structure that would be a just and reasonable framework for calculating exit charges, and recognizes Tri-State's ability to mitigate stranded costs by including offsets within the calculation that account for power or transmission service that Tri-State can provide to third parties. They add that the Modified CTP Methodology provides a departing member with a credit to account for its ownership interest in Tri-State (i.e., its patronage capital) while eliminating the discretion of Tri-State's Board to veto a member's decision to withdraw.⁷²

65. Poudre Valley and Wheat Belt state that key remaining issues include the appropriate inputs to be used to establish the competitive market value estimate and ensuring that members' patronage capital is afforded appropriate treatment in the calculation. Poudre Valley and Wheat Belt ask the Commission to consolidate Docket Nos. EL21-75 and ER21-2818 with the existing proceedings in Docket No. ER20-1559.⁷³

E. Basin Electric Protest

66. Basin Electric requests that the Commission reject the Modified CTP Methodology because to permit Tri-State to apply it to Tri-State's Eastern Interconnection utility members prior to December 31, 2050 would permit Tri-State's breach of its Eastern Interconnection Wholesale Power Contract with Basin Electric, pursuant to which Tri-State agreed to purchase all requirements from Basin Electric through December 31, 2050. Basin Electric argues that Tri-State's Eastern and Western Interconnection utility members are not similarly situated because Tri-State has two separate wholesale power contracts with Basin Electric: the first provides for Basin Electric to serve as Tri-State's all requirements supplier in the Eastern Interconnection and the second addresses Basin Electric's sale and delivery to Tri-State, and Tri-State's purchase and receipt from Basin Electric, of fixed scheduled quantities of electric power and energy in the Western Interconnection.⁷⁴ Basin Electric explains that any changes to the Wholesale Power Contract and Tri-State's obligations under it would need to be negotiated with Basin Electric prior to taking effect and, because Basin Electric and Tri-

⁷² *Id.* at 5-6.

⁷³ *Id.* at 7-8.

⁷⁴ Basin Electric Protest at 2-3.

State have not agreed to any modifications to their obligations under that contract. Basin Electric states that permitting Tri-State to apply the proposed Modified CTP Methodology to its Eastern Interconnection utility members would be unjust and unreasonable, because of the detrimental effect it would have on Basin Electric's other Class A members, and, by virtue of the nature of cooperatives, also on Basin Electric's Class C Members.⁷⁵

F. Guzman Energy Protest

67. Guzman Energy argues that the Modified CTP Methodology proposed in this docket is an attempt by Tri-State to limit, delay, and hinder its distribution cooperatives' ability to pay their fair share to withdraw from Tri-State in pursuit of competitive alternative power suppliers and that such an outcome runs contrary to the Commission's longstanding commitment to fostering competition. Guzman Energy argues that the Commission has recognized the right of a generation and transmission company's members to exit the organization on just and reasonable terms and in order to ensure that Tri-State's rates are just and reasonable, the Commission must provide a predictable and expedient regulatory process for any distribution cooperative to obtain a just and reasonable exit.⁷⁶

68. Guzman Energy argues that Tri-State's Modified CTP Methodology is unjust and unreasonable because it does not comport with the Commission's requirement that the exit charge be tied to Tri-State's costs to provide service to the departing member.⁷⁷ Guzman Energy argues that an exit fee methodology based upon Tri-State's outstanding debts attributable to the exiting member (*i.e.*, the costs that Tri-State has incurred or has an obligation to incur) is supported by the relevant agreements and the Commission's statements about the exit fee's purpose.⁷⁸

69. Guzman Energy states that the second alternative under the Modified CTP Methodology calculates an exit fee based on the departing member's debt covenant obligation, which is the departing member's *pro rata* share of Tri-State's total debt and other obligations, and that such an approach is more consistent with the Commission's prior findings. But, Guzman Energy states, the Tri-State has not met its burden to demonstrate that this second alternative is just and reasonable, because the Modified CTP

⁷⁵ *Id.* at 3-4.

⁷⁶ Guzman Energy Protest at 3.

⁷⁷ *Id.* at 4 (citing *Tri-State Generation & Transmission Ass'n, Inc.*, 172 FERC ¶ 61,173 at P 32).

⁷⁸ *Id.*

Methodology does not state what constitutes the applicable debt and other liabilities and does not identify or support the aggregate debt and other obligations amount used to determine each member's *pro rata* share.⁷⁹

70. Guzman Energy states that the Modified CTP Methodology produces unjust and unreasonable exit fees and appears to be intended to ensure that no member can reasonably exit from Tri-State, despite the members' rights to do so under the relevant agreements. Guzman Energy explains that the aggregate sum of Tri-State's most recent calculated CTP figures is over \$9 billion (which has only increased over time despite a shorter term remaining on the WESCs); in contrast, Tri-State's long-term debt as of June 30, 2021 is approximately \$3.1 billion. Guzman Energy states that, therefore, if all Tri-State members paid a CTP under the Modified CTP Methodology, Tri-State would have almost \$6 billion in excess cash, and would own its generation and transmission assets debt-free contrary to fact that the cooperatives are the ostensible owners of Tri-State.⁸⁰

71. Guzman Energy states that Tri-State's CTPs, calculated pursuant to the Modified CTP Methodology, are unjust and unreasonable because they remain subject to Tri-State's speculative estimates and discretion in selecting the data inputs and operating assumptions. Guzman Energy states that Tri-State has not supported its method for estimating the annual revenue it will receive by selling the exiting member's load into the wholesale power market and has not shown that the competitive market value estimate is a just and reasonable measure of Tri-State's projected revenues. Guzman Energy states that, given the discretion that Tri-State retains in the selection of key input data and operating assumptions, the proposed methodology does not produce consistent, just and reasonable results. Guzman Energy concludes that the Commission should reject Tri-State's Modified CTP Methodology, or in the alternative, use FPA section 206 proceeding to establish a just and reasonable rate for Tri-State's exit process.⁸¹

G. Northwest Rural Protest

72. Like other protestors, Northwest Rural also argues that the Modified CTP Methodology would result in a windfall for remaining members.⁸² Northwest Rural

⁷⁹ *Id.* at 5.

⁸⁰ *Id.* at 5-6.

⁸¹ *Id.* at 8.

⁸² Northwest Rural Protest at 7-8.

contrasts its CTP results with the \$37 million and \$62.5 million exit fees recently paid by exiting Tri-State members Kit Carson and Delta-Montrose, respectively.⁸³ Northwest Rural claims that the results of the Modified CTP Methodology are more in line with the initial estimates that Tri-State provided to Kit Carson and Delta-Montrose.⁸⁴

73. Northwest Rural argues that the Modified CTP Methodology is, in essence, a revenue protection mechanism for Tri-State, rather than a just and reasonable fee that would appropriately compensate Tri-State for its costs and obligations incurred to serve its members. Northwest Rural cites to a prior Commission order related to Tri-State's jurisdictional status, which held that "[t]he purpose of the exit charge is to compensate Tri-State for the costs that it has incurred or has an obligation to incur in the future to satisfy its service obligations under the Wholesale Service Contract with the departing member."⁸⁵

74. If the Commission does not reject Tri-State's filing, Northwest Rural urges the Commission to consolidate this docket with the section 206 investigation in Docket No. EL21-75, which it asserts will be a more efficient use of resources and lead to a faster resolution. Moreover, given that Tri-State responded to the Show Cause Order in EL21-75 with the instant filing, and that many of the pleadings overlap, Northwest Rural argues that consolidation is necessary for a complete and thorough investigation.⁸⁶

⁸³ Northwest Rural notes that Tri-State purportedly declared Kit Carson's exit fee to "fair and equitable," and suitable to "protect[] the interest of all [Tri-State remaining] members," and the similarly characterized exit fee for Delta Montrose as just and reasonable and not unduly discriminatory. *Id.* at 8 (quoting Tri-State Generation and Transmission Ass'n, Inc., *Tri-State and Kit Carson Electric Cooperative Enter a Separation that Will Serve Both Cooperatives Well* (Jul. 11, 2016), <https://tristate.coop/tri-state-and-kit-carson-electric-cooperative-enter-membershipwithdrawal-agreement>).

⁸⁴ *Id.* at 8-9 (citing Herman K. Trabish, UTILITY DIVE, *Colorado Tri-State Ruling Could Provide Co-Op Exit Template amid Rising Tensions with G&T Providers* (May 13, 2020), <https://www.utilitydive.com/news/colorado-tri-state-ruling-could-provide-co-op-exit-templateamid-rising-ten/577624/>).

⁸⁵ *Id.* at 9-10 (citing *Tri-State Generation and Transmission Ass'n, Inc.*, 172 FERC ¶ 61,173 at P 32).

⁸⁶ *Id.* at 10-11.

H. Springer Protest

75. Springer represents that it has sought to evaluate its options for purchasing wholesale power since 2015 and received an “indicative Mark to Market buyout calculation” from Tri-State of approximately \$126 million. Springer claims that this amount was more than three times what Kit Carson paid to exit, despite both cooperatives having similar load shares.⁸⁷ Springer argues that the new estimate that Tri-State provided under the Modified CTP Methodology increased to \$132 million, which “seems only to be an attempt to make it economically impossible for Springer to fulfill out fiduciary responsibility ... to consider any alternatives.” Springer bases this conclusion on the fact that its load is now 25% lower than in 2015 and six fewer years remain on its WESC. Springer believes that Tri-State’s strategy is to “delay these proceedings for as long as possible.” Consequently, Springer requests the Commission either reject Tri-State’s filing and proceed to a hearing to determine a just and reasonable exit fee or, in the alternative, consolidate this filing with the section 206 investigation in Docket No. EL21-75.⁸⁸

I. Tipmont Protest

76. Tipmont argues that the exit-fee methodology that Tri-State proposes is unjust and unreasonable, producing exit fees that are unreasonable on their face and that the Commission should reject it. Tipmont addresses what it argues are four significant errors in Tri-State’s proposed exit-fee methodology: (1) including transmission assets as a stranded cost; (2) amortizing the departing member’s patronage capital; (3) failing to provide any credit for patronage capital under the alternative provision that calculates the stranded cost obligation as a portion of existing debt; and (4) using real, as opposed to nominal, growth rates in determining the value of released energy and capacity.⁸⁹

77. Tipmont states that Tri-State models its proposal after the Commission’s revenues lost method from Order No. 888, but improperly includes the cost of transmission assets as a stranded cost. Tipmont argues that the Commission’s revenues lost methodology does not permit transmission costs to be recovered as stranded costs, as transmission costs are not stranded when a member stops taking full requirements wholesale service. Tipmont explains that the departing member would continue to use any Tri-State transmission assets covered by its OATT to serve its load in the future and hence the

⁸⁷ Springer Protest at 1.

⁸⁸ *Id.* at 2.

⁸⁹ Tipmont Protest at 3.

transmission costs are not stranded. Tipmont requests that the Commission reject Tri-State's inclusion of transmission assets in the stranded cost obligation.⁹⁰

78. Tipmont argues that Tri-State fails to provide sufficient justification or support for its proposed treatment of the exiting member's patronage capital. Tipmont explains that Tri-State provides for an immediate exit upon expiration of a two-year notice period, but proposes to amortize a departing member's patronage capital over the greater of the remaining term of the WESCs or 20 years with the payments discounted for the time value of money. Tipmont states that Tri-State provides no explanation or justification for why, once a member has paid the full amount of its exit fee and thereby reimbursed Tri-State for any costs stranded by the member's departure, Tri-State should be permitted to continue to retain any of the patronage capital that Tri-State owes to that member. Tipmont concludes that Tri-State's proposal would thus unreasonably provide it cost-free use of a departed member's capital after that member has fully reimbursed Tri-State for all stranded costs.⁹¹

79. Tipmont states that the Modified CTP Methodology makes no provision whatsoever for return of patronage capital under its alternative calculation that uses a pro rata share of Tri-State's debt to calculate the exit fee resulting in a windfall to Tri-State.⁹²

80. Tipmont argues that Tri-State's proposal uses real, rather than nominal, growth rates when determining the value of future energy and capacity sales, significantly understating their value and overstating the stranded cost obligation. Tipmont avers that because Tri-State would sell the released energy and capacity in the future to mitigate stranded costs and be paid in future dollars at the time those sales are executed, Tri-State should use nominal rather than real escalation rates, consistent with Tri-State's actual operations. Tipmont points out that elsewhere, Tri-State discounts revenue stream estimates using a nominal discount rate — U.S. Treasury yield rates that reflect expected inflation — creating a meaningful inconsistency for certain components or subcomponents of revenue stream estimates that Tri-State uses to value its released energy and capacity sales and for discounting the stranded cost obligation.⁹³

⁹⁰ *Id.* at 3-5.

⁹¹ *Id.* at 5-6.

⁹² *Id.* at 6.

⁹³ *Id.* at 6-7.

J. Mountain Parks Protest and Individual Mountain Parks Directors Protests

81. Mountain Parks asserts that Tri-State's Modified CTP Methodology represents a substantial improvement over the Current CTP Methodology. However, Mountain Parks states the following issues must be addressed before the proposal can be deemed just and reasonable: (1) the use of an annual revenue stream without allowances for changing situations; (2) the inclusion in the annual revenue stream of a margin on the sales for the remainder of the WESC term, after the member exits; (3) the discounting of the exiting member's equity even though past withdrawing members were given full "face value" for their equity; and (4) the seemingly inconsistent accounting for future sale of energy available from a cooperative's exit. Mountain Parks states that it supports Tri-State's request that the Commission consolidate this proceeding with the settlement judge procedures pending in Docket No. ER20-1559-000, et al.⁹⁴

82. Additionally, Kristen Taddonio, a Mountain Parks director, states that the few Mountain Parks board members remaining from the early 2000s, when the contract with Tri-State was extended from 2040 to 2050, reported that they had agreed to do so under duress. Ms. Taddonio reports that these board members stated that Tri-State threatened to raise rates on any member who did not agree to extend their contract. Ms. Taddonio contends that under that kind of threat, the only choice was to comply, lest members be punished with higher rates for 30+ years, given the litigation risk and expenses. Ms. Taddonio asserts that other directors from different co-ops have corroborated this account and/or offered their own disturbing recollections of the circumstances surrounding these contract extensions. Ms. Taddonio asks the Commission to not reward Tri-State's alleged anti-competitive behavior by allowing exorbitant exit fees to be charged for coerced contract extensions.⁹⁵

83. Elizabeth McIntyre, a Mountain Parks director, argues that the filing is not just and reasonable because it proposes a methodology that is the greater of lost revenues or *pro rata* debt. Ms. McIntyre states that a member that has the good fortune to be growing with projected growth into the future must pay more than its *pro rata* share of Tri State's debt and obligation because they pay the lost revenue calculation, while a member that has poor fortune and load that is projected to shrink in the future is relieved of the purported responsibility to make other members whole, and would simply pay its *pro rata* debt share to exit. Ms. McIntyre explains that there are no Tri-State members in the position where their *pro rata* share of debt is the greater number, but in the future they may be the case. Ms. McIntyre explains that a member with a large or several large

⁹⁴ Mountain Parks Protest at 2-4.

⁹⁵ Kristen Taddonio Protest at 1-2.

municipalities might lose it to municipalization, or a member with significant load from extractive industries might lose that load due to economic or regulatory conditions. In these cases, Ms. McIntyre concludes, a member who leaves early must make others whole, a member who leaves later only pays the *pro rata* portion of debt.⁹⁶

84. Ms. McIntyre explains that Tri-State states the underlying principle of the CTP and the Modified CTP Methodology is to keep the remaining members of Tri State whole, yet no such requirement exists in the WESCs. Ms. McIntyre explains that to her, the contract is designed to secure lenders, not subsidize other Tri State members through make whole payments. Ms. McIntyre urges the Commission to work toward crafting a just CTP that is based on the *pro rata* share of a member's debt and other liabilities, including reclamation, pensions and other costs that Tri-State incurred to provide members with power, and that such a CTP should avoid a make whole approach to subsidize ongoing Tri-State operations for remaining members. Ms. McIntyre explains that Mountain Parks requested an exit calculation nearly two years ago for informational purposes, which Tri-State still has not provided, concluding that this is indicative of the unilateral power Tri-State wields. Ms. McIntyre states that if CTP calculations are used as deferred revenue to decrease rates or cover other operational expenses, eventually the lenders could end up "holding the bag" and that it is her understanding that Tri State did not retire the debt associated with Kit Carson or Delta Montrose, which leaves the remaining members to cover it.⁹⁷

K. Tri-State Answer

85. Tri-State explains that the fundamental dispute turns on whether remaining Tri-State utility members should be made whole if a member chooses to terminate its WESC before the end of the term and that most of Tri-State's utility members support the fundamental make whole/hold harmless principle.⁹⁸ Tri-State argues that basic fairness as well as precedent dictate that utility members honoring their long-term obligations under their respective WESCs should not be harmed if a utility member seeks to be released from its contractual obligations to Tri-State prior to paying for its contractual commitments over the term of its WESC, while protestors contend that an exit charge should merely cover the withdrawing member's *pro rata* share of existing Tri-State debts and obligations on the date they exit. Tri-State states that certain protestors, notably United Power, try to mislead the Commission by questioning the continued importance of long-term full requirements contracts and the entire generation and transmission electric cooperative model, which continues to play a vital role making reliable electric service

⁹⁶ Elizabeth McIntyre Protest at 1.

⁹⁷ *Id.* at 2.

⁹⁸ Tri-State Answer at 3-5.

available to tens of millions of mostly rural customers across vast regions of the United States.⁹⁹

86. Tri-State asserts that the Modified CTP Methodology comports with Tri-State's Bylaws and the Commission's regulations. Tri-State argues that the Modified CTP Methodology produces CTPs that are representative of a utility member's contractual obligations to Tri-State. Tri-State explains that various protestors continue to press the flawed and misleading claim that the Modified CTP Methodology produces CTPs that would result in some sort of windfall for Tri-State, if every Tri-State member withdrew from the cooperative. Tri-State argues that this ignores two critical realities:

(1) Tri-State is a member-owned G&T cooperative; if every member exited Tri-State, the cooperative would be liquidated; and (2) Tri-State is a going concern in which its utility members committed to the generation and transmission cooperative model through 2050. Tri-State states that although United Power complains about a CTP calculation in excess of \$1 billion, Tri-State built out its entire system to serve members like United Power, and the revenue committed under United Power's WESC through 2050 that would be lost if United Power terminates its WESC 27 years early would amount to approximately \$5.6 billion.¹⁰⁰

87. Tri-State asserts that the Modified CTP Methodology appropriately mitigates the financial impact of a member's departure by assuming that Tri-State will resell 100% of the departing member's load into the wholesale market. Additionally, Tri-State argues that despite United Power's protest, the Modified CTP Methodology Filing is well-supported and complies fully with section 205 of the FPA and section 35.13 of the Commission's regulations. Tri-State explains that its Modified CTP Methodology filing provides a detailed, step-by-step description of the Modified CTP Methodology and associated inputs and is supported by testimony and exhibits sponsored by Mr. Patrick L. Bridges, and Mr. Joseph A. Mancinelli, and that the Modified CTP Methodology defines every variable used and explains how each CTP input is calculated. Tri-State states that United Power provides no support for its claim that the Modified CTP Methodology should be judged by standards applicable specifically to transmission formula rates, merely because the Modified CTP Methodology relies on an algebraic formula.¹⁰¹

88. Tri-State asserts that the Modified CTP Methodology complies with Commission and judicial precedent. Tri-State states that United Power's and La Plata's new attack on the Modified CTP Methodology as revenue-based rather than cost-based is misleading and wrong from a ratemaking standpoint. Tri-State explains that the Tenth Circuit

⁹⁹ *Id.* at 6-7.

¹⁰⁰ *Id.* at 7-9.

¹⁰¹ *Id.* at 9-11.

determined the appropriate exit payment that Shoshone River Power, Inc. would be required to pay to Tri-State in order to terminate its WESC before the term ended and that this has served as the precedential lodestar for the make whole approach and the Modified CTP Methodology. Tri-State also states that in *Town of Norwood* the First Circuit held that “there is nothing obviously unreasonable about framing a charge for contract termination that approximates, as of the time of termination, projected revenues promised by the buyer less projected avoided loss for the seller.”¹⁰²

89. Tri-State argues that the Modified CTP Methodology establishes transparent member exit procedures and addresses issues raised in the Commission’s Show Cause Order. Tri-State states that, contrary to protestors’ assertions, Tri-State did not abandon the Current CTP Methodology because it could not justify it; rather, Tri-State proposed adjustments necessary to address the Commission’s concerns regarding transparent and expedient CTP calculations.¹⁰³

90. Tri-State states that the make whole concept and the Modified CTP Methodology are supported by an overwhelming majority of Tri-State’s membership. Tri-State states that the Current CTP Methodology was overwhelmingly approved by Tri-State’s Board of Directors, with only United Power, La Plata and Northwest Rural’s representatives dissenting on a vote on April 1, 2020.¹⁰⁴

91. Tri-State asserts that protestors incorrectly rely on prior pre-Commission jurisdictional agreements. Tri-State explains that the Kit Carson and Delta-Montrose exit agreements pertained to contracts with Tri-State that were ten years shorter in length than the WESCs, and they were agreed to on a case-by-case basis, well before Tri-State developed a standardized approach, as set forth in the currently effective and the Modified CTP Methodology, and that these were black box settlements, which carry no precedential weight in litigated proceedings.¹⁰⁵

92. Tri-State also asserts that United Power improperly relies on Colorado Public Utilities Commission (Colorado Commission) Administrative Law Judge’s decision for support, which had no legal effect. Tri-State states that the Colorado Commission initially stayed the ruling and later dismissed the entire proceeding, and that the

¹⁰² *Id.* at 11-16 (citing *Tri-State Generation & Transmission Ass’n, Inc. v. Shoshone River Power, Inc.*, 874 F.2d 1346 (10th Cir. 1989) (*Shoshone*); *Town of Norwood v. FERC*, 476 F.3d 18 (1st Cir. 2007) (*Town of Norwood*)).

¹⁰³ *Id.* at 16-17.

¹⁰⁴ *Id.* at 18-19.

¹⁰⁵ *Id.* at 19-21.

Commission should not extend deference or weight to the Colorado Commission Administrative Law Judge's recommended decision.¹⁰⁶

93. Tri-State explains that its wholesale power contract with Basin Electric is not implicated by the Modified CTP Methodology. Tri-State argues that Basin Electric's argument that the Commission reject the Modified CTP Methodology because of alleged adverse impacts on Basin Electric's Eastern Interconnection wholesale power contract with Tri-State is based on a misreading of the contract at issue, and is entirely speculative. Tri-State explains that Basin Electric's wholesale power contract with Tri-State does not apply to the actions of a Tri-State utility member under its WESC because the utility member is not a member of Basin, and the exercise of a utility member's right to terminate its WESC is not the transfer of an asset held by Tri-State in the Eastern Interconnection. Tri-State argues that even if Basin Electric's contract applied, Basin Electric's request for injunctive relief in the form of a Commission order preventing Tri-State from implementing the Modified CTP Methodology is premature as no Tri-State utility member in the Eastern Interconnection has requested to leave Tri-State.¹⁰⁷

94. Tri-State requests that the Commission dismiss United Power's Motion to Reject and Replace the Modified CTP Methodology. Tri-State asserts that the Modified CTP Methodology filing does not warrant a section 206 investigation into all of Tri-State's rate schedules. Tri-State refutes the protestors' assertions that Tri-State has engaged in dilatory tactics as entirely unfounded, as Tri-State has been active and responsive in all of the Commission proceedings to which it is a party. Tri-State asserts that United Power seeks to appropriate the Modified CTP Methodology filing to subvert the will of the majority of Tri-State's utility members and unilaterally impose the balance sheet methodology on all members. Tri-State argues that United Power's proposed balance sheet approach is self-serving, flawed and patently unfair to Tri-State's remaining members. Tri-State argues that the balance sheet approach simply ignores hundreds of millions of dollars in revenue/cost of service, less avoided costs, that a departing member freely agreed to pay over the remaining years of their commitment to Tri-State. Tri-State explains that, due to the primarily fixed-cost nature of a generation and transmission cooperative's business, most of Tri-State's \$1.2 billion in annual operating costs could not be promptly reduced after a utility member withdraws and most of the share of fixed costs paid by the withdrawing utility member would be shifted to remaining utility members.¹⁰⁸

¹⁰⁶ *Id.* at 21-23.

¹⁰⁷ *Id.* at 23-26.

¹⁰⁸ *Id.* at 26-33.

95. Tri-State asserts that United Power's attack on the Modified CTP Methodology threatens the generation and transmission cooperative model. Tri-State asserts that if the Commission adopts United Power's position, it risks irreparably damaging the entire generation and transmission sector and adversely impacting every Commission- and non-Commission-jurisdictional generation and transmission cooperative that relies on full requirements contracts. Tri-State claims that if WESCs and other long-term wholesale purchase contracts between generation and transmission cooperatives and their members are abrogated as required under United Power's balance sheet approach, consumers across the country could face an uncertain and fraught financial future.¹⁰⁹

L. Basin Electric's October 7, 2021 Answer

96. Basin Electric requests that the Commission disregard United Power's inaccurate and misleading generalizations regarding a cooperative's ongoing need for long-term wholesale power contracts. Basin Electric argues that United Power's argument ignores the differences between investor-owned utilities and electric cooperatives. Basin Electric explains that the wholesale power contracts generation and transmission cooperatives enter into secure a long-term source of power for the member and provides a long-term revenue stream with which the generation and transmission cooperative could repay obligations incurred by the cooperative on behalf of its members. Basin Electric explains that, unlike an investor-owned utility, cooperatives are owned and governed by their members, which are also their retail and wholesale customers.¹¹⁰

97. Basin Electric asserts that United Power's argument also fails to recognize that, even without outstanding RUS debt, cooperatives still have an ongoing business need for long-term all-requirements wholesale power contracts with their members. Basin Electric explains that, without its wholesale power contracts, a generation and transmission cooperative would not have access to the capital it needs to fulfill its power supply obligations, including necessary investment in transmission and generation infrastructure. Basin Electric explains, that in arguing that wholesale power contracts are no longer needed after a cooperative extinguishes its RUS debt, United Power disregards a major element of the cooperative structure: cooperatives exist to serve their members; without a wholesale power contract, a cooperative would no longer have members to serve. Basin Electric avers that contract extensions are needed from time to time in response to a need for financing for the cooperative to continue to provide reliable service to its members, consistent with the cooperative model.¹¹¹

¹⁰⁹ *Id.* at 34-37.

¹¹⁰ Basin Electric Answer at 3-5.

¹¹¹ *Id.* at 5-7.

M. The Wyoming Cooperatives Answer

98. The Wyoming Cooperatives oppose United Power's motion to reject the Modified CTP Methodology for failure to comply with the Commission's filing requirements. The Wyoming Cooperatives take issue with United Power's statement that "[l]ike the [Current] CTP [Methodology], Tri-State's Modified CTP [Methodology] does not comport with the Commission's minimum requirements for filings."¹¹² The Wyoming Cooperatives note that the Commission did not find that the Current CTP Methodology did not comport with the Commission's minimum requirements, but rather set it for hearing and settlement judge procedures, and urge the Commission to do so again here.¹¹³

N. United Power Answer

99. United Power states that Tri-State's answer does not address the significant substantive issues that United Power raised regarding the patently deficient and facially unjust Modified CTP Methodology proposal. United Power explains that the applicable law and Commission precedent establish the Commission's statutory obligation under FPA section 206 to fix a rate to replace an unjust, unreasonable, or unduly discriminatory one, which is what United Power requested that the Commission do. United Power argues that, in proffering a well-supported alternative framework upon which the Commission may proceed under its broad FPA section 206 authority, United Power seeks only to put an end to Tri-State's pattern of delay.¹¹⁴

100. United Power disagrees with Tri-State's description of the stated rate settlement as the product of collaborative effort, explaining that while it voluntarily agreed to the settlement and will honor it, the settlement Tri-State achieved included provisions that would charge contesting members a higher stated rate than the rest of the similarly situated membership.¹¹⁵

101. United Power asserts that Tri-State's circumstances and actions are unique and not representative of the cooperative construct. United Power objects to Tri-State's framing of United Power's arguments as applicable to all cooperative contracts and generation and transmission associations. United Power states that every cooperative is different, and many have tailored their financing and collateral programs to meet member and

¹¹² Wyoming Cooperatives Answer at 2 (quoting United Power Protest at 19).

¹¹³ *Id.* at 2-3.

¹¹⁴ United Power Answer at 2-4.

¹¹⁵ *Id.* at 5-6.

regional needs. United Power states that Tri-State's individual contracts, governance documents, and its problems, are Tri-State's alone.¹¹⁶

102. United Power avers that Tri-State's attempt to deploy the CTP as an after-the-fact liquidated damages provision is wrong. United Power states that it agrees with Tri-State that its WESC and governance documents must be enforceable and enforced, that generation and transmission service contract revenues secure debt, and that the WESCs' core underlying purpose is to support and secure debt. United Power explains that it interprets Tri-State's contract, and makes clear in its Motion to Reject and Replace the Modified CTP Methodology that generation and transmission associations without RUS loans have much more flexibility in terms of modernizing their businesses than those that have RUS loans and that some distribution cooperatives have negotiated an end to their all-requirements contracts early and amicably. United Power clarifies its point that Tri-State's WESCs (all virtually identical and terminating at the same date) cannot be left to expire pursuant to their terms, and require reform by way of extension, restructuring, or termination, well before reaching the end of their contractual terms.

103. United Power explains that if enough of Tri-State's member-load declines to extend the WESCs and the contracts are not amended or terminated, Tri-State will not be able to obtain financing sufficient to meet its all-requirements service obligations, and this will occur well before the contracts expire in 2050. United Power states that rather than bank on repeated member contract extensions on identical schedules that it may not be able to secure, Tri-State must implement its withdrawal construct, and should administer its buydown program fairly and equitably. United Power asserts that Tri-State's exit construct should not be measured as a contract breach where there is voluntary withdrawal (one that, according to Tri-State's bylaws, the member "may" elect) and that neither contract law nor public policy support an ability for Tri-State to recast its members' requirements contracts as take or pay, or to insert an after-the-fact punitive liquidated damages provision into its WESCs by way of rate schedule.¹¹⁷

104. United Power argues that Tri-State's reliance on *Shoshone* is wrong, hypocritical, and internally inconsistent. United Power explains that Tri-State opportunistically interprets its own contractual commitments in a way that would allow Tri-State to obtain a massive CTP, but would leave Basin Electric's members to absorb any stranded costs associated with a departed distribution member served under Tri-State's all-requirements contract in the Eastern Interconnection. United Power states that Tri-State suggests it would not owe Basin Electric for its share of costs associated with its own reduction of requirements — a reduction that Tri-State will allow only in exchange for a massive fee

¹¹⁶ *Id.* at 6-7.

¹¹⁷ *Id.* at 8-10.

from its distribution member. United Power states that *Shoshone* itself acknowledges its future inapplicability to later Tri-State withdrawals quoting, “any future litigation involving the elimination of requirements of other members of the Tri-State system would require a separate evaluation of how and under what circumstances the requirements were eliminated.”¹¹⁸

105. United Power states that Tri-State mischaracterizes members’ contractual obligations. United Power argues that the Commission has bound Tri-State’s CTP methodology to be one based on costs that Tri-State has “incurred or has an obligation to incur in the future to satisfy its service obligations under the Wholesale Service Contract with the departing member.”¹¹⁹ United Power states that Tri-State characterizes these reasoned findings as *dicta*, favoring instead selective language from a different proceeding that interprets a different cooperative’s set of contracts and bylaws that notably do not include language referring to a member’s *pro rata* share of debt and other obligations.¹²⁰

106. United Power argues that the Delta Montrose Withdrawal Agreement is an express implementation of, Article I, Section 4 of Tri-State’s Amended and Restated Bylaws, and that if the Commission seeks to implement Tri-State’s Bylaws equitably, this agreement is the place to start. United Power argues that Tri-State attacks United Power for being “results oriented” in referring to Tri-State’s recent withdrawal transactions, noting the *Hope* standard for a just and reasonable rate under the FPA is the “end-result test,” as it is “the impact of the rate order which counts.”¹²¹

107. United Power states that Tri-State’s concept of make whole ignores avoidable costs and load uncertainty and is fundamentally flawed in that it assumes Tri-State will never have to modernize its operations or contracts or respond in any way to the demands of competition to which the rest of the public utility sector is subject. United Power argues that Tri-State’s Modified CTP Methodology locks departing members into Tri-State’s current level of costs through 2050, would lock in members’ current billing determinants through 2050 and assumes the Tri-State will engage in imprudent business

¹¹⁸ *Id.* at 10-11 (quoting *Shoshone*, 874 F.2d at 1357-60).

¹¹⁹ *Id.* at 12 (citing *Tri-State Generation and Transmission Ass’n, Inc.*, 172 FERC ¶ 61,173 at P 32).

¹²⁰ *Id.* (citing *Wabash Valley Power Ass’n*, 171 FERC ¶ 61,053 at P 31).

¹²¹ *Id.* at 13 (citing *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)).

practices after member exit by continuing to operate its generation fleet and incur fixed costs in the same manner even if its resources cannot sustain themselves in the market.¹²²

108. United Power requests that the Commission replace Tri-State's unjust and unreasonable Current CTP Methodology with the balance sheet approach (and to the extent necessary, conduct an evidentiary hearing to develop a record based upon the same), and initiate a section 206 investigation on the BDP Methodology in parallel to ensure fair allocation of capacity and proportionality between the CTP Methodology and BDP Methodology. United Power explains that the BDP Methodology is also based on a "mark-to-market" framework like the Modified CTP Methodology, it suffers from many of the same conceptual flaws discussed herein, and likewise calculates windfall payments to Tri-State.¹²³

O. Basin Electric's October 13, 2021 Answer

109. Basin Electric argues that the Commission should not allow Tri-State to implement a CTP methodology that does not provide for Board approval for the termination of a WESC because Basin Electric avers that it allows Tri-State to dispose of assets without the prior written authorization required under Tri-State's Wholesale Power Contract with Basin Electric. Basin Electric represents that, contrary to Tri-State's claims, it is directly affected by the outcome of this proceeding, because Tri-State's contracts are "assets" under the law.¹²⁴ Basin Electric claims that Tri-State's WESCs with its members constitute assets and are, in fact, Tri-State's main source of revenue and a substantial portion of Tri-State's overall assets.¹²⁵ Because Tri-State's WESCs are company assets, Basin Electric reasons that the disposition of Tri-State's WESCs with its Eastern Interconnection utility members is subject to and governed by section 9 of Tri-State's Wholesale Power Contract with Basin Electric. Accordingly, Tri-State is not permitted to "take or suffer to be taken any steps . . . to sell, lease or transfer (or make any agreement therefore) all or a substantial portion of its assets," including any one of its

¹²² *Id.* at 14-15.

¹²³ *Id.* at 18-19.

¹²⁴ Basin Electric October 13 Answer at 2-3 (citing, *e.g.*, *Gen. Television, Inc. v. United States*, 449 F. Supp. 609, 610 (D. Minn. 1977), *aff'd*, 598 F.2d 1148 (8th Cir. 1979) (*General Television*); *Fishman v. Est. of Wirtz*, 594 F. Supp. 853, 863 (N.D. Ill. 1984), *aff'd in part, rev'd in part*, 807 F.2d 520 (7th Cir. 1986)) (*Fishman*).

¹²⁵ *Id.* at 3 (citing Tri-State Generation and Transmission Ass'n, Inc., Informational Filing of 2021 Annual Update, Docket No. ER20-686-000, attach. A, Worksheet C, page 6, line 4, column E (filed Oct. 8, 2021)).

WESCs, “without the approval in writing of” Basin Electric.¹²⁶ Consequently, Basin Electric argues that approval of the Modified CTP Methodology would constitute a breach of contract because it provides all of Tri-State’s utility members with the opportunity to terminate their contract with Tri-State despite Tri-State’s contractual commitments to Basin Electric.¹²⁷

110. Basin Electric also argues that, because Tri-State’s proposed Modified CTP Methodology removes the requirement included in the Current CTP Methodology that the Tri-State board of directors approve the termination of any WESC, the harm is not speculative. By providing each of Tri-State’s utility members with the opportunity to terminate its WESC, Tri-State has taken steps to transfer all or a substantial portion of its Eastern Interconnection assets without obtaining Basin Electric’s prior written approval.¹²⁸

111. Basin Electric acknowledges that the Commission typically does not involve itself in contract-related claims, but argues that the Commission also should not approve a rate schedule that effectively condones an entity breaching its contractual obligations to a third party. Instead, Basin Electric urges that, to the extent the Commission accepts Tri-State’s proposed Modified CTP Methodology, the Commission should do so subject to the requirement that Tri-State require Board approval to terminate the WESC of any Eastern Interconnection member prior to the termination date specified in that member’s WESC.¹²⁹

P. Poudre Valley’s October 21, 2021 Answer

112. Poudre Valley argues that the Commission should set the Modified CTP Methodology for settlement judge procedures, noting the Commission’s policy of promoting settlements.¹³⁰ Poudre Valley disagrees with United Power that the ongoing settlement negotiations are futile and fruitless, and asks the Commission to consider the

¹²⁶ *Id.* (citing Basin Electric Power Cooperative Rate Schedule No. 16A, Wholesale Power Contract, Tri-State G & T Association, Inc. - East, 0.0.0, at § 9).

¹²⁷ *Id.* at 4.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Poudre Valley Answer at 5 (citing *State of Maine*, 91 FERC ¶ 61,213, at 61,772 (2000); *The Montana Power Co.*, 77 FERC ¶ 61,110, at 61,434 (2000)).

“overwhelming volume” of comments that support consolidating this proceeding with the ongoing settlement negotiations in Docket No. ER20-1559-000, et al.¹³¹

113. Poudre Valley asks the Commission to reject United Power’s argument that the utility members that timely intervened in the instant proceeding but are not currently part of the ongoing settlement negotiations in Docket No. ER20-1559-000, et al. be prohibited from intervening in that proceeding. Poudre Valley argues that, because these utility members made timely interventions in the instant proceeding, it would be appropriate for them to participate in the ongoing settlement negotiations if the proceedings are consolidated.¹³²

114. Poudre Valley argues that United Power fails meet its burden to demonstrate that an investigation under section 206 of the FPA of the BDP Methodology is appropriate. Consequently, Poudre Valley urges the Commission not to begin such an investigation.¹³³

115. Poudre Valley also disputes Basin Electric’s claims regarding breach of contract. First, Poudre Valley argues that Basin Electric seemed to confirm that Tri-State utility members in the Eastern Interconnection could withdraw from Tri-State in recent pleadings.¹³⁴ Second, Poudre Valley states that Basin Electric’s claims are outside the scope of these proceedings. Third, Poudre Valley urges the Commission to reject the new legal theory Basin Electric advanced in its October 13 answer – that the WESCs themselves are Tri-State assets. Fourth, Poudre Valley argues that the cases Basin Electric cites in that answer do not address the circumstances here, *i.e.*, whether a public utility’s contract with a third party can preclude the public utility from establishing a rate schedule under section 205 of the FPA.¹³⁵

Q. Basin Electric’s October 26, 2021 Answer

116. Basin Electric argues that Poudre Valley’s October 21, 2021 answer includes multiple mischaracterizations and misunderstandings of factual and legal issues raised in Basin Electric’s October 13, 2021 Answer. Basin Electric first clarifies its argument that while prior versions of Tri-State’s CTP Methodology could have resulted in a breach,

¹³¹ *Id.* at 5-7; Poudre Valley Amended Answer at 1.

¹³² Poudre Valley Answer at 7-9.

¹³³ *Id.* at 9-11 (citing 16 U.S.C. § 824e; 18 C.F.R. § 385.206 (2020)).

¹³⁴ *Id.* at 11-13 (citing Basin Electric Answer, Docket No. ER20-2441-000, at 26, 28 (filed Aug. 21, 2020)).

¹³⁵ *Id.* at 13-15.

the Modified CTP Methodology is a breach of Tri-State's contractual obligations. Basin Electric then refutes the characterization that it has to approve modifications to Tri-State's WESCs with Tri-State's members, instead explaining that Tri-State is required to honor its obligations under its Wholesale Power Contracts with Basin Electric. Finally, Basin Electric states that it did not confirm that Eastern Interconnection members could exit Tri-State as Poudre Valley claims. Basin Electric clarifies that its statement that Tri-State would incur few stranded costs if an Eastern Interconnection member reduced purchases from Tri-State and instead purchased directly from Basin Electric reflected the fact that Basin Electric is responsible for 100% of the power supply required to serve Tri-State's Eastern Interconnection members. Basin Electric argues that this means that Tri-State's Eastern Interconnection members are not similarly situated to Western Interconnection members.¹³⁶

III. Discussion

A. Procedural Matters

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

118. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Tri-State's, Basin Electric's, the Wyoming Cooperatives', United Power's, and Poudre Valley's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

119. Our preliminary analysis indicates that Tri-State's Modified CTP Methodology has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Tri-State's filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing procedures ordered below. As discussed more fully below, we accept Tri-State's Modified CTP Methodology, suspend it for a nominal period, to be effective November 1, 2021, subject to refund, and establish hearing procedures.

120. Furthermore, in light of our continuing concerns regarding the ability of Tri-State's utility members to access a just and reasonable methodology for CTP

¹³⁶ Basin Electric October 26, 2021 Answer at 3-5.

calculations,¹³⁷ we institute a proceeding pursuant to section 206 of the FPA, establish a refund effective date as the date of publication by the Commission of notice of its intention to initiate such a proceeding in the *Federal Register*, and consolidate the proceeding in EL22-4-000 with the instant proceeding. Instituting a proceeding pursuant section 206 of the FPA will ensure that, if necessary, the Commission can establish both a just and reasonable methodology for calculating CTPs, and just and reasonable procedures for Tri-State's utility members to obtain those CTPs and withdraw from Tri-State in an orderly manner. We encourage the presiding judge to establish expedited hearing procedures where feasible, in order to facilitate the Commission's resolution of these longstanding disputes. In the importance of timely resolution, we decline to direct settlement procedures, but the Chief Judge may establish such procedures if unanimously requested by the parties.¹³⁸

121. Based on the record before us, we are not making a finding that the proposed procedures to access the Modified CTP Methodology are just and reasonable and not unduly discriminatory and preferential, and, therefore, we include them in the hearing procedures established in this order. However, as an initial matter, we note that the newly proposed procedures to access the Modified CTP Methodology appear to satisfy a number of the Commission's concerns expressed in the CTP Procedures Order. Under the newly proposed procedures, Tri-State would provide CTP calculations annually to all utility members at no charge by April 1, regardless of whether a utility member states an intention to withdraw from Tri-State. In order to terminate its WESC and membership in Tri-State, a utility member must (1) provide a two-year advance notice of its intent to withdraw from Tri-State and (2) pay its CTP to Tri-State on the date of withdrawal, as calculated pursuant to the Modified CTP Methodology. These procedures are clear and transparent. Moreover, the proposed procedures explicitly state that Tri-State's Board of Directors has no discretion to prevent a utility member from terminating its membership in Tri-State, so long as the withdrawing utility member complies with the two requirements.

122. As to the proposed methodology to calculate CTPs, we find that Tri-State's Modified CTP Methodology improves on the Current CTP Methodology in certain respects, in that it is simpler, is easier to replicate as it includes more publicly available data, and can be updated annually for all utility members. This is an improvement over the LTFM methodology employed in the Current CTP Methodology, which is proprietary and significantly more complex, and makes more assumptions. However,

¹³⁷ See Show Cause Order, 175 FERC ¶ 61,229 at PP 13-14.

¹³⁸ Trial Staff is a participant in the hearing procedures. See 18 C.F.R. § 385.102(b), (c) (2020).

notwithstanding these improvements over the Current CTP Methodology, we have significant concerns with aspects of the Modified CTP Methodology, as discussed below.

123. First, we disagree with Tri-State's claims that a CTP methodology must be based on a lost revenues approach to be just and reasonable.¹³⁹ Tri-State cites *Shoshone*, which concerned a breach of contract by a Tri-State utility member and was litigated in court, not before the Commission.¹⁴⁰ Unlike *Shoshone*, we find that if a Tri-State utility member departs using the Modified CTP Methodology, there would be no breach of contract between Tri-State and the departing utility member, because such action would be taken pursuant to Tri-State's tariff, and, therefore, no damages should be due. Furthermore, Tri-State's lost revenues approach resembles the approach taken in Order No. 888 for the recovery of stranded costs, which the Commission has since clarified in *Town of Norwood, Massachusetts v. National Grid USA*¹⁴¹ and, more recently, in *Tipmont Rural Elec. Member Coop. v. Wabash Valley Power Ass'n* by noting that such an approach is not appropriate in these types of contract termination situations.¹⁴² In fact, Tri-State's lost revenues approach may overestimate the CTP payment necessary to make Tri-State's remaining utility members whole, which would both improperly deter utility members from considering departure and potentially provide a windfall to remaining utility members. These risks are particularly troubling, given Tri-State's proposal to adopt a "higher of" approach that would likely all but guarantee that the CTPs are determined using the lost revenues approach and provides the largest payout to Tri-State. Tri-State has proposed two approaches of potentially calculating a CTP – the lost revenues approach and the debt covenant approach – and has not adequately explained why choosing the higher of the two methods is appropriate.

¹³⁹ Tri-State Answer at 11-12 (citing *Shoshone*, 874 F.2d 1346).

¹⁴⁰ *Id.*

¹⁴¹ 112 FERC ¶ 61,099, at P 74 (2005).

¹⁴² *Tipmont Rural Elec. Member Coop. v. Wabash Valley Power Ass'n, Inc.*, 171 FERC ¶ 61,059 (2020) (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 21,639 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

124. We share protestors' concerns that there may be additional mitigation efforts to decrease the amount of revenue that Tri State would otherwise be losing upon a member's exit, and question the viability of accurately and comprehensively calculating a mitigation estimate across the contemplated time horizons under the lost revenues approach to ensure a just and reasonable CTP. Given the number of complications with the proposed lost revenues approach, the hearing should consider whether a CTP methodology based exclusively on a Tri-State utility member's debt covenant obligation or the balance sheet approach is appropriate.

125. With respect to the debt covenant obligation approach, however, Tri-State has not provided workable documents to verify that the inputs are being used as described in the Modified CTP Methodology. Further, under the debt covenant obligation calculation, Tri-State's filing is not clear as to the meaning of "other obligations," whether its method of determining a *pro rata* share of the debt covenant obligation is appropriate, or how patronage capital is being treated. The hearing evaluating the debt covenant obligation and balance sheet approach should examine the appropriate set of calculation inputs, credits, and offsets. For example, United Power argues that the balance sheet approach, unlike Tri State's proposed method, properly accounts for the member's expected future transition to a third-party OATT customer and omits debt and obligations attributed to transmission.¹⁴³ The exit fee calculation method should assess how to address this likelihood that the exiting member will continue to contribute to the fixed and variable costs of Tri State's transmission assets via payments under Tri State's OATT.

126. Regarding Basin Electric's protest, we do not agree that approval of the Modified CTP Methodology itself constitutes a breach of the Eastern Interconnection Wholesale Power Contract. The Modified CTP Methodology only allows utility members the tools by which to exit, and no Tri-State utility member is terminating its WESC at this time.

127. We also decline to consolidate the Modified CTP Methodology with the proceedings currently ongoing in Docket No. ER20-1559-000, et al. Those proceedings include Tri-State's BDP Methodology filings, which, while related to the Current CTP Methodology, are not at issue here. With regard to the requests to consolidate the current proceeding with the Show Cause Order in Docket No. EL21-75-000, we similarly decline to consolidate that proceeding.

128. In cases where, as here, the Commission institutes a proceeding on its own motion under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of publication by the Commission of

¹⁴³ For clarity we confirm that consideration of the balance sheet approach presented by United Power as well as other potential approaches are within the scope of the issues set for hearing.

notice of its intention to initiate such proceeding nor later than five months after the publication date. Section 206(b) permits the Commission to order refunds for a 15-month period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,¹⁴⁴ we will set the refund effective date at the earliest date possible in this docket, i.e., the date of publication by the Commission of notice of its intention to initiate such a proceeding in the *Federal Register*.

129. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the section 206 proceeding in Docket No. EL22-4-000 for hearing procedures, we expect that we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by March 31, 2022, we expect that, if the proceeding does not settle, we would be able to render a decision by January 31, 2023.

The Commission orders:

(A) Tri-State's proposed Modified CTP Methodology is hereby accepted for filing, and suspended for a nominal period, to become effective November 1, 2021, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL22-4-000, concerning the justness and reasonableness of the Modified CTP Methodology, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held

¹⁴⁴ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

concerning the justness and reasonableness of Tri-State's proposed Modified CTP Methodology, as discussed in the body of this order.

(D) 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.

(E) Any interested person desiring to be heard in Docket No. EL22-4-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), within 21 days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(F) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL22-4-000.

(G) The refund effective date in Docket No. EL22-4-000 established pursuant to section 206 of the FPA shall be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (F) above.

(H) 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)

Kimberly D. Bose,
Secretary.