

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tri-State Generation and Transmission
Association, Inc.

Docket Nos. ER19-2440-000
ER19-2441-000
ER19-2441-001
ER19-2442-000
ER19-2444-000
ER19-2444-001
ER19-2474-000
(not consolidated)

**COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION**

Tri-State Generation and Transmission Association, Inc., (Tri-State) initiated these proceedings by submitting tariffs, contracts, and rate schedules for filing with the Commission pursuant to section 205 of the Federal Power Act (FPA).¹ The National Rural Electric Cooperative Association (NRECA) does not take a position on the disposition of Tri-State’s submissions. NRECA submits these comments to provide additional industry context and respectfully urges the Commission to limit its orders to disposing of the specific rate issues presented in these proceedings.²

¹ 16 U.S.C. § 824d.

² NRECA timely moved to intervene in these proceedings on August 23, 2019; that unopposed motion makes NRECA a party. *See* 18 C.F.R. § 385. 214(c). Certain of NRECA’s comments address arguments made in answers filed by the Colorado Public Utilities Commission (CoPUC). *See* Answer of the Colorado Public Utilities Commission to Notice of New Member and Request for Partial Waiver (Sept. 12, 2019); Motion for Leave To Answer and Answer of the Colorado Public Utilities Commission (Sept. 4, 2019). The Commission’s rules prohibit making an answer to an answer absent leave from the decisional authority. 18 C.F.R. § 385.213(a)(2) (2019). But the Commission accepts answers that provide information that will assist it in its decision-making process. *See, e.g., PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,134, at P 14 (2019) (accepting answer that “provided information that has assisted us in our decision-making process”); *Electric Energy, Inc.*, 168 FERC ¶ 61,130, at P 26 (2019) (same). NRECA is submitting these comments to provide such assistance to the Commission, and, to the extent they answer the CoPUC’s answers, NRECA moves that the Commission accept these comments for filing on that basis.

COMMENTS

1. NRECA represents nearly 900 local electric cooperatives operating in 48 states. America's electric cooperatives power over 20 million businesses, homes, schools, and farms across 56 percent of the nation's landmass and serve one in eight (42 million) consumers. NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. The G&T cooperatives generate and transmit power to distribution cooperatives that provide it to the end-of-the-line co-op consumer-members. Collectively, G&T cooperatives provide power to nearly 80 percent of the nation's distribution cooperatives. The remaining distribution cooperatives receive power from other generation sources within the electric sector. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.³

2. NRECA does not take a position on the disposition of Tri-State's rate filings in these proceedings. Thus, NRECA takes no position on whether Tri-State is subject to the rate-filing requirements of section 205 of the FPA and the Commission's regulations or whether its submissions comply with those requirements. In addition, NRECA does not take a position on whether Tri-State's submissions comply with section 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA),⁴ the Commission's regulations, or any state laws or regulations. And NRECA takes no position on whether the Commission should address such non-FPA issues in this proceeding, in another proceeding, or defer them for resolution at another time or by another body.

³ See <https://www.electric.coop/electric-co-op-facts-figures-2019/> . With the addition of Block Island Utility District to membership in NRECA in 2019, NRECA's members are in 48 states. See <https://www.electric.coop/block-island-utility-district-nreca-rhode-island-electric-cooperative/>

⁴ 16 U.S.C. § 824a-3.

3. Tri-State is not the first G&T cooperative to file rate schedules and tariffs with the Commission pursuant to section 205 of the FPA. Several G&T cooperatives have rates on file with the Commission and operate successfully as Commission-jurisdictional public utilities.⁵ Most G&T cooperatives, however, remain exempted under FPA section 201(f) from most provisions of the FPA, including section 205.⁶ Regardless of their present jurisdictional status as public utilities, G&T cooperatives operate under an established cooperative business model that is built on democratic member governance and control; not-for-profit operation; long-term planning; and sustainable development of their communities.⁷ In the case of G&T cooperatives, the wholesale power contracts between a G&T cooperative and its member distribution cooperatives constitute the primary security for the loans used to finance the G&T's operation. The Commission has recognized that the distinctive ownership and governance characteristics of cooperatives align the interests of the cooperative with its members, obviating the need for some traditional utility regulatory measures such as the Commission's affiliate-abuse rules.⁸

⁵ See, e.g., *Deseret Gen. & Trans. Co-op.*, Docket No. ER17-1158-000 (Apr. 19, 2017) (letter order accepting revised wholesale power agreements); *Golden Spread Elec. Coop.*, Docket No. ER19-2083-000 (Aug. 6, 2019) (letter order accepting revisions to wholesale power agreements); *Old Dominion Electric Coop.*, Docket No. ER10-2607-000 (Nov. 1, 2010) (letter order accepting revised market-based rate tariff); *Wabash Valley Power Ass'n*, Docket No. ER10-2612-000 (Oct. 27, 2010) (letter order accepting formulary rate tariff).

⁶ See 16 U.S.C. § 824(f). See also *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 917–18 (9th Cir. 2005); *Salt River Project Agr. Improvement and Power Dist. v. FPC*, 391 F.2d 470 (D.C. Cir. 1968); *Dairyland Power Coop.*, 37 FPC 12 (1967).

⁷ Cooperatives around the world operate according to the same set of principles and values, adopted by the International Co-operative Alliance. These include seven cooperative principles: (1) open and voluntary membership; (2) democratic member control; (3) members' economic participation; (4) autonomy and independence; (5) education, training, and information; (6) cooperation among cooperatives; and (7) concern for community. These principles are a key reason why electric cooperatives operate differently from other electric utilities. See <https://www.electric.coop/seven-cooperative-principles%e2%80%8b/>.

⁸ Thus, the Commission treats electric cooperatives that are public utilities not exempted by FPA section 201(f) as “not subject to the Commission's affiliate-abuse restrictions, based on a finding that transactions of an electric cooperative with its members do not present dangers of affiliate abuse through self-dealing” because “the cooperative's members are both the ratepayers and shareholders.” Market-Based Rates for

4. NRECA is confident that the Commission will decide the rate issues presented by Tri-State's submissions based on the record in these proceedings, just as it has addressed previous section 205 rate filings by other G&T cooperatives. But NRECA respectfully submits that the Commission need not and should not use these proceedings to establish broad policies or procedures applicable to all Commission-jurisdictional G&T cooperatives. While general principles of administrative law allow the Commission the discretion to establish policy by adjudication rather than rulemaking, the instant proceedings present utility-specific rate issues, and the Commission's orders should be limited to deciding those issues.

5. For example, one issue is whether Tri-State's submissions comply with section 205 under a "rule of reason" that requires the filing of practices that "significantly affect" rates, terms, and conditions of service.⁹ NRECA does not take a position on that issue. But NRECA urges the Commission to confine its rulings to the instant rate proceedings. While all electric cooperatives work to deliver affordable, reliable and safe electric service to their communities, they differ depending on the specific needs of their communities; and through democratic processes, they adopt different specific cooperative-governance and rate-determination practices and procedures. NRECA submits that broad, one-size-fits-all G&T rate-filing requirements are unnecessary to

Wholesale Sales of Electric Energy, Capacity & Ancillary Services by Public Utilities, Order No. 697, 72 Fed. Reg. 39,904, 39,966, FERC Stats. & Regs. ¶ 31,252 at P 526 (2007). *See also* Cross-Subsidization Restrictions on Affiliate Transactions, Order No. 707, 73 Fed. Reg. 11,013, 11,021 (Feb. 29, 2018), FERC Stats. & Regs. ¶ 31,264, at P 49 (same).

⁹ *See, e.g., PacifiCorp*, 127 FERC ¶ 61,144 at P 11 (2009). *See also City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (finding that utilities must file "only those practices that affect rates and service *significantly*, that are reasonably *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous" (emphasis original)).

comply with section 205 of the FPA, contrary to the flexibility inherent in a “rule of reason,” and in any event not supported by the instant record.

6. Moreover, NRECA urges the Commission to confine its rulings in these proceedings to matters significantly affecting Commission-jurisdictional *rates*. The Commission’s authority under section 205 of the FPA to regulate practices significantly affecting a public utility’s Commission-jurisdictional rates is well-established; but it does not give the Commission authority to regulate the public utility’s basic corporate organization and governance.¹⁰ Thus, the Commission’s decision on what matters Tri-State should include in its filed rate schedules because they significantly affect its Commission-jurisdictional rates should not become a vehicle for imposing indirect corporate organization and governance standards on Commission-jurisdictional G&Ts.

CONCLUSION

NRECA requests that the Commission decide the issues presented in these proceedings consistent with the principles above.

Respectfully submitted,

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¹⁰ See *Cal. Indep. System Operator Corp. v. FERC*, 372 F.3d 395, 400-04 (D.C. Cir. 2004).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Arlington, Virginia, this 25th day of September 2019.

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