

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tri-State Generation and Transmission
Association, Inc.

Docket Nos. ER20-676-000
ER20-681-000
ER20-683-000
ER20-686-000
ER20-687-000
ER20-688-000
ER20-689-000
ER20-690-000
ER20-691-000
ER20-693-000
ER20-694-000
ER20-695-000
(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 Commission's disposition of Tri-State's rate filings. NRECA submits these comments to provide additional industry context and respectfully urges the Commission to limit its actions in these proceedings to disposing of the specific rate issues presented.²

COMMENTS

1. NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives are owned

¹ 16 U.S.C. § 824d.

² NRECA timely moved to intervene in these proceedings on January 17, 2020.

by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape.

Electric cooperatives operate at cost and without a profit incentive. NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. The G&Ts generate and transmit power to distribution cooperatives that provide it to the end of line co-op consumer-members. Collectively, cooperative G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives in the nation. The remaining distribution cooperatives receive power directly from other generation sources within the electric utility 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 Commission's disposition of Tri-State's rate filings.

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.⁴ Most G&T cooperatives, however, remain exempted under FPA section

³ See <https://www.electric.coop/electric-co-op-facts-figures-2019/>.

⁴ 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).

201(f) from most provisions of the FPA, including section 205.⁵ Regardless of their present jurisdictional status under Part II of the FPA, however, 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.⁶ 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.⁷

4. 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 and the courts have long recognized the importance of ensuring that public utilities are able to use bilateral long-term wholesale power contracts to provide rate stability for consumers and

⁵ 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).

⁶ 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/>.

⁷ 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 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).

financial stability for utilities to support necessary long-term investments in power-supply and related infrastructure.⁸

5. 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. 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 by rulemaking, the instant proceedings present utility-specific rate issues, and the Commission's orders can and should be limited to deciding those rate issues.

6. Moreover, NRECA urges the Commission to confine its rulings in these proceedings to matters significantly affecting Tri-State's 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 the authority to regulate the public utility's basic corporate organization and governance.⁹ Thus, the Commission's disposition of Tri-State's rate filings should not become a vehicle for imposing indirect corporate organization and governance standards on Tri-State or other Commission-jurisdictional G&Ts.

⁸ See *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527 (2008) (*Mobile-Sierra* doctrine's "public-interest standard" applies to Commission's initial review of freely negotiated wholesale power contracts and to contract challenges by wholesale purchasers and sellers alike). See generally *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

⁹ See *Cal. Indep. System Operator Corp. v. FERC*, 372 F.3d 395, 400-04 (D.C. Cir. 2004).

CONCLUSION

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

Respectfully submitted,

/s/ Randolph Elliott _____

Randolph Elliott
Senior Director, Regulatory Counsel
National Rural Electric Cooperative
Association
4301 Wilson Blvd., 11th Floor
Arlington, VA 22203
703-907-6818
randolph.elliott@nreca.coop

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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 21st day of January 2020.

s/ Randolph Elliott
Randolph Elliott
Senior Director, Regulatory Counsel
National Rural Electric Cooperative
Association
4301 Wilson Blvd., 11th Floor
Arlington, VA 22203
703-907-6818
randolph.elliott@nreca.coop