**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

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| Tri-State Generation and Transmission Association, Inc. | ) ) ) | Docket Nos. ER21-2818-000<br>EL22-4-000<br>(consolidated) |

# TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.'S BRIEF OPPOSING EXCEPTIONS


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| | |
|---|---|
| BDP | Partial-Requirements Buy-Down Payment |
| BSA | United's Balance Sheet Approach |
| CMVE | Competitive Market Value Estimate |
| CROD | Contract Rate of Demand |
| CTP | Contract Termination Payment |
| DCO | Debt Covenant Obligation |
| DMEA | Delta-Montrose Electric Association |
| EIA | United States Energy Information Agency |
| EQR | FERC Electric Quarterly Report |
| FPA | Federal Power Act |
| G&T | Generation and Transmission |
| GRL | Gross Revenue Loss |
| i | Discount rate |
| IMPE | Initial Market Price Estimate |
| IOU | Investor-owned utility |
| L | Remaining WESC term in years |
| MAE | Material Adverse Effect |
| MCTP | Modified Contract Termination Payment |
| MtM | Marked-to-market |
| MW | Megawatt |
| NPA | Note Purchase Agreements |
| NPV | Net present value |
| NRPPD | Northwest Rural Public Power District |
| OATT | Open Access Transmission Tariff |

| | |
|---|---|
| ORE | OATT Revenue Estimate |
| PCC | Patronage Capital Credit |
| PSCo | Public Service Company of Colorado |
| PPA | Power Purchase Agreement |
| RSE | Revenue Stream Estimate |
| RTO | Regional Transmission Organization |
| SRT | Tri-State's Stated Rate Tariff |
| WAPA | Western Area Power Administration |
| WESC | Wholesale Electric Services Contract |

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Under Rule 711 of the Commission's Rules of Practice and Procedure, Tri-State submits its Brief Opposing Exceptions stated by the Indicated Tri-State Members, Guzman Energy, and United Power.

## I. LIST OF EXCEPTIONS OPPOSED

Tri-State opposes these exceptions to the Initial Decision:

| Indicated Members | |
|---|---|
| The Initial Decision erred in finding that the Indicated Tri-State Members failed to meet their burden to demonstrate the justness and reasonableness of their proposed modifications to Tri-State's lost revenue approach. (Indicated Members Exceptions at 47–62.) | **Discussed below in:** Section IV.F |
| The Presiding Judge's criticism of a full patronage capital credit unsupported. (Indicated Members Exceptions at 57–58.) | Section IV.F |
| The Presiding Judge's criticism of the proposed deferred revenue credit unfounded. (Indicated Members Exceptions at 58–60.) | Section IV.F |
| **Guzman Energy** | |
| The Initial Decision erred in adopting Tri-State's adjustment to Trial Staff's approach for transmission-related debt. (Guzman Exceptions at 5–6.) | Section IV.D.2.b |
| Using Member billings allocation for transmission debt, with no adjustment to account for the portion of Tri-State's transmission-related debt paid by non-Member transmission customers, results in double-collection of transmission debt by Tri-State. (Guzman Exceptions at 7–8.) | Section IV.D.2.b.v |
| **United Power** | |
| The Commission should adopt United's BSA patronage capital debt allocator and reverse the ID's adoption of a "member billings" debt allocator. (United Exceptions at 22–47.) | Section IV.D.1 |

| | |
|---|---|
| The ID incorrectly declined to adopt the BSA's principled cost-based adjustments to its generation-related debt calculation and by doing so ensures double recovery of Tri-State's debt costs. (United Exceptions at 47–53.) | Section IV.D.4 |
| The ID errs in replacing the BSA's reasonable treatment of transmission-related assets with Trial Staff's unworkable "crediting" approach. (United Exceptions at 53–74.) | Section IV.D.2 |
| The ID incorrectly discounts the value of departing members' accrued patronage capital. (United Exceptions at 74–80.) | Section IV.D.3.a |
| The ID errs in disregarding the relevance of the WESC's Shoshone provision. (United Exceptions at 80–82.) | Section IV.B |
| The ID errs in disregarding highly relevant benchmarks for testing the end results of the BSA's exit fees. (United Exceptions at 82–89.) | Section IV.E |
| The combined effect of the ID's alterations renders exit fees too large to be just and reasonable accrued patronage capital. (United Exceptions at 89–91.) | Section IV.A |
| The ID incorrectly rejects United's proposal to require Tri-State to account for exit payment cash as either for immediate debt repayment, debt defeasance, and/or creation of an escrow account dedicated to debt service. (United Exceptions List.) | Section IV.D.5 |
| Appendix A and Appendix B. | Section IV.C; Section IV.D.2.b.iii |

## II. SUMMARY OF BRIEF

As explained in Tri-State's Exceptions, the Initial Decision erred in several key respects, most importantly in its rejection of Tri-State's lost-revenues Modified Contract Termination Payment ("MCTP") Methodology. While several other participants agree that a lost-revenues methodology is required, some participants' exceptions—chiefly those filed by United, a Member that has committed to withdraw, and Guzman, a self-interested competitor of Tri-State—ask the Commission to reject the Initial Decision and instead adopt a balance sheet-based exit charge methodology. These parties, however, intentionally ignore the profoundly negative consequences of their proposal, for not only Tri-State, its Member-owners, and the end-use rural customers they serve—as well as their collective efforts to transition to a reliable, affordable, and clean energy-based future—but also for the contractual and financial structure that is the foundation on which the generation and transmission ("G&T") cooperative model is based.

These participants ask the Commission to disregard the reality that the reliability of the electric utility industry depends on long-term planning, substantial investments in long-lived infrastructure and, in the case of G&T cooperatives, contractual agreements that provide the means to finance and pay for such infrastructure and the services it enables. Instead, they ask the Commission to focus only on the short-term, narrow interests of a limited subset—really only one—of Tri-State's Members.

As the participants' exceptions demonstrate, this case presents a stark question for the Commission to decide: should it permit United to voluntarily terminate its existing 28-year contractual commitments in a way that leaves Tri-State's remaining Members "holding the bag"? United, which is Tri-State's largest Member, has given unconditional notice it will withdraw from Tri-State on May 1, 2024. This case may well decide whether Tri-State survives that departure and can continue to reliably and affordably serve its remaining Members, which serve large portions of rural America.

The MCTP was developed voluntarily by Tri-State's Members and filed as a tariff by which any Member, large or small, rural or urban, can withdraw from Tri-State to follow its own path without harming the remaining Members. It is designed to provide a uniform, transparent, and readily calculable methodology for any Member to leave on terms that honor the essence of the longstanding, mutual commitment to the cooperative that all Tri-State Members made in 2007. Recognizing that each could be either a withdrawing or a remaining Member, the MCTP is supported by the overwhelming majority of Tri-State's Members.

In contrast, United's request to the Commission is fundamentally self interested. United requests that it be permitted to exit on terms that it believes enable it to pursue its own agenda but which would impose substantial additional costs on remaining Members, significantly increase the cost-of-service to Tri-State's smaller rural Members, position Tri-State's lenders to require massive upfront pre-payments of debt, and almost certainly cause the few other large Members with alternative power supply options to consider withdrawing and further exacerbating the harm to the smaller, more rural Members. Adoption of United's request to set an exit charge that would permit it to leave Tri-State "on the cheap" would be profoundly dangerous to Tri-State's future and would set a dangerous precedent that jeopardizes the business and financial model on which the nation's other 62 wholesale G&T cooperatives and the over 42 million end-use customers they serve depend.

That United is looking out only for itself is apparent from how its preferred approach—the Balance Sheet Approach or BSA—has been cobbled together from unprincipled assertions and *ad hoc* "adjustments" to convince this Commission to let United leave on terms it can afford, regardless of whether those terms make sense under well-established Commission precedent and regardless of the harm caused to Tri-State's remaining Members.

United offers the BSA in the name of simplicity, but the BSA is not simple at all—rather, it is complex, opaque, and incomplete. United purports to follow cost causation principles, but then insists on a debt-based approach, even though (1) Tri-State's debt reflects only a fraction of the costs and obligations Tri-State has incurred or will incur to build and maintain a system sized for all its current Members, and (2) debt is not allocated and recorded between generation and transmission functions, much less between Members. It then identifies breakdowns in its methodology caused by the use of a debt-based approach and proposes "fixes" the result and apparent purpose of which is to further drive down the CTP in many ways, big and small (*e.g.*, the complications that arise from potential future transmission service payments, dividing a homogenous cost of service among interconnections, potential breach of Tri-State's power purchase agreements ("PPAs"), and so on). When the flaws and inconsistencies with these fixes are noted, United proposes new fixes to the fixes—band-aids on top of band-aids. This unending process continues even through post-hearing and post-Initial Decision briefing, including when United offered entirely new concepts and approaches in extra-record appendices to its Brief on Exceptions.

United also seeks to deflect attention from its true purposes by improperly conflating the issues for determination here with other aspects of Tri-State's business that are part of separate dockets before the Commission. United is the sole protestor of the buy-down payment ("BDP") settlement agreement pending Commission approval in Docket Nos. ER20-1559, *et al*., which provides for a partial requirements contract mechanism for Tri-State Members, but nonetheless argues that the BSA must be consistent with the BDP that was negotiated and approved by all Members of Tri-State except United. Moreover, United only now complains about the current, Commission-approved A-40 Rate because it proffered an unconditional notice of withdrawal before it knew the ultimate CTPs that would result from this docket, and before resolution of Tri-State's next Member rate filing. The Commission should not permit United to get away with its transparently self-serving attempt to leave Tri-State without appropriately compensating Tri-State for the costs that United's departure will inevitably leave behind—costs necessarily borne by the remaining Members.

Over the past decade, at the urging of its Members including United, their customers, and state regulators, Tri-State has begun the difficult but necessary transition from a coal-based generation and transmission cooperative, to one that is well on its way to meeting new standards for clean resources. At the same time, Tri-State has embraced organized markets in accordance with the Commission's policy pronouncements and has developed partial requirements contracts that its Members have asked for as part of their own, local clean energy transition. Tri-State believes it is on the path to set a new standard for what a G&T cooperative should look like in the current era. The Commission should not let United's selfish attempt to exit without paying an adequate amount to compensate Tri-State and its remaining Members prevent Tri-State from accomplishing these goals.

## III. REBUTTAL OF POLICY CONSIDERATIONS WARRANTING FULL COMMISSION REVIEW

Having given unconditional notice of its withdrawal from Tri-State on May 1, 2024, United's sole purpose in this proceeding is to convince the Commission to set the CTP as low as possible, regardless of the consequences to remaining Members.[1] Despite its long-term commitment to the cooperative—to share in the economies of scale, buying power, and risk hedging functions of the cooperative—on which Members relied in entering into their own contractual obligations,[2] United attempts to walk away from its commitments for a fraction of its fair share, shifting the costs and risks of the cooperative to smaller less affluent Members.

As a policy basis for its Exceptions, United attempts to cloak its effort to obtain the most beneficial result for it individually in a guise of promoting "competition."[3] Even if its arguments were not so patently self-serving, United, citing Commission statements made in very different

[1] United conceded it made no attempt to avoid shifting costs to remaining Members. Bridges Answering, Ex. TGT-0059 REV at 9:12-15; United Response to STAFF-UP-1.11, Ex. TGT-0060.

[2] Nebergall Rebuttal, Ex. TGT-0109 at 35:18–36:9; Nebergall Direct, Ex. TGT-0003 REV2 at 8:3–9:7, 41:3-15 ("economies of scale and reduce[d] average total costs . . . are the benefits Tri-State's Utility Members considered and relied upon when they chose to become Utility Members . . . . Unless a contract termination payment ensures that remaining Utility Members are not impacted from a rate perspective by another Utility Member's departure, remaining Utility Members will be deprived, at least in part, of the economic advantages that made participation in Tri-State attractive in the first place.").

[3] United Exceptions at 18–19.

contexts,[4] overlooks what the Commission has said about exit fees to overemphasize the generic benefits of "competition." The Commission has made clear that the priority in setting exit fees is not enhancing competition, but rather making remaining Members whole and avoiding harming them.[5]

United characterizes this as a dispute between Tri-State and its Members. United even asserts the CTP should be lower to "ensure Tri-State cannot hold its 42 member-owners captive and raise unreasonable impediments to competition."[6] But Tri-State is its Members, and this proceeding is not a dispute between Tri-State and its Members. It is a dispute between United, Tri-State's largest and most affluent suburban Member, and Tri-State's other, smaller, rural Members. United opposes the withdrawal methodology developed by the Members and supported by an overwhelming majority of the Members; instead, it wants to walk away from the cooperative on terms so beneficial to it that it harms the remaining Members and seriously jeopardizes their entire cooperative endeavor. United's purported goal of promoting competition does not justify this harm.

United wants the Commission to overlook entirely the core fact that United voluntarily entered into the long-term contract it now seeks to terminate on terms that ensure rate increases, violate lending terms, and threaten the collapse of the enterprise. Its rhetoric is inconsistent with

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[4] *Id*. at 18 n.66. In the footnote, United references several statements made by the Commission—none weighing considerations in the context of a long-term contract termination fee—to the effect that it supports breaking down regulatory and economic barriers that hinder competition, particularly where utilities are monopolies. United also cites Supreme Court decisions made in the antitrust context. *See Gulf States Utilities Company v. FPC*, 411 U.S. 747, 758-759 (1973) (holding in Section 204 case that must consider anticompetitive aspects of a security issuance); *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973) (holding in civil antitrust suit that utility is subject to antitrust law)

[5] *See* Section IV.A.

[6] United Exceptions at 18.

the reality of its previous business decision. Entering into a long-term contract does not make one "captive" and requiring someone to respect the terms of a contract it agreed to sign is not an "unreasonable impediment" to competition. Any contract limits competition, and we have long understood that allowing parties to bind themselves through enforceable contracts provides society offsetting benefits.[7] There is still effective competition, but it is before and at the time the contract is signed, not during its term.[8]

The Commission should be wary of endorsing a CTP approach that suggests it agrees with United that contracts need not be respected by regulators.[9] In support of its argument, United quotes from cases discussing "the bad old days," involving customers obligated to buy from vertically integrated monopolies, not member-owners who freely contracted with and run the utility.[10] Preserving the economic benefits of contracts is essential to maintaining reliance on them, which is necessary for wholesale power markets to function. Contracts enable investment and facilitate market efficiency. They help manage and allocate risks. They can also help parties reduce transaction costs.[11] In arguing for competition as a reason to renege on its contractual obligations, United actually seeks to upend the efficiencies created by the cooperative, breaking

[7] U.S. Const. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts, . . .").

[8] United suggests it somehow did not have a meaningful choice in 2007 when it decided to extend its WESC by ten years to 2050. United Exceptions at 2. In doing so, it characteristically misrepresents the facts, as two Members elected not to extend at the time but never paid higher rates as a consequence. Tr. (Highley) at 227:3–6, 228:11–24, 258:8–15.

[9] *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 230 (1995) ("Market efficiency requires effective means to enforce private agreements.").

[10] United Exceptions at 3 n.7 (quoting *Midwest Indep. Transmission Sys. Operator Transmission Owners v. FERC*, 373 F.3d 1361, 1363 (D.C. Cir 2004)).

[11] Celebi Answering, Ex. TGT-0073 REV at 9:1–12.

down the larger economies of scale and efficient[12] pooling and allocation of resources that contracts provide in favor of smaller localized benefits it hopes to achieve.

Long-term contracts are key to the efficient functioning of electricity markets. The electricity industry is characterized by the need for capital-intensive infrastructure investments and long-term planning. Contracts are useful to improve the predictability and the formation of expectations about the future, thus supporting efficient resource allocation. For example, long-term power purchase agreements—when respected and enforced—incentivize infrastructure investments such as new generation financing, support market stability and reliability, and can make electricity markets less vulnerable to manipulation.[13] That the Commission should require United to respect its contractual obligations through a properly designed, make-whole CTP is not anti-competitive, as United would have the Commission believe; rather, protecting contractual sanctity is to uphold and preserve the end products of competition.

United also wants the Commission to overlook the additional fact that the contracts at issue are the long-term wholesale electric service contracts ("WESC") that form the basis of Tri-State. Because G&Ts, unlike investor-owned utilities ("IOU"), do not have defined service territories to create long-term revenue certainty, the Member WESCs and the associated revenue are the principal security for Tri-State's loans. Through their WESCs, the Members joined together and committed to each other over an extended period to put the cooperative in a position

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[12] The Commission has long been concerned with obtaining efficient outcomes, like by sending appropriate price signals through rates. *See, e.g.*, *New York State Pub. Serv. Comm'n*, 173 FERC ¶ 61,060, at P 22 (2020) (discussing setting rates so that customers will react in a manner considered to be socially desirable); *New England Power Co.*, 49 FERC ¶ 63,007, at 65,028 (1989) (same); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 63,007, at P 20 (2006) (discussing sending more efficient price signals); *Pac. Gas & Elec. Co.*, 91 FERC ¶ 63,008, at 65,114 (2000) (seeing to promote ability to determine and evaluate economically efficient alternatives ).

[13] Celebi Answering, Ex. TGT-0073 REV at 9:13–21.

to finance and construct generation and transmission assets needed to meet their collective power supply requirements. Indeed, Tri-State's Members serve areas that historically and, in most instances presently, would not be served by for-profit IOUs.[14] By comparison, United—unlike many of Tri-State's other Members—is in a region that has largely transitioned from rural to suburban and industrial and now has access to power supply and transmission options most other Members do not enjoy. The Commission should not adopt a CTP approach that explicitly and seriously risks undermining the financial stability of Tri-State and its remaining Members, all of which play a critical role in the provision of electrical services to rural Americans in four states.

By filing the Modified CTP Methodology, Tri-State has endorsed the premise that Members should be allowed to evaluate the advantages and disadvantages of membership and can exit if they wish. But they should be assessed an exit fee measured by the impact their voluntary contractual abrogation will have on those remaining Members who have relied on the withdrawing Member's commitment. A crucial feature of an economically efficient CTP is that it cannot give members of a cooperative an added incentive to renege on their commitment at the expense of the remaining Members.[15]

The CTP assessed for a departing member should make the remaining Members no more motivated financially to leave the cooperative than before the departure.[16] Because Tri-State is a cooperative, the Commission must establish a CTP that avoids a "rush to the door" that strands those Members that do not have power supply and transmission alternatives. Otherwise, the other Members would have the distorted incentive to exit quickly, lest they risk being left "holding the

[14] Highley Direct, Ex. TGT-0001 REV2 at 14:17–15:12.

[15] Celebi Answering, Ex. TGT-0073 REV at 11:6–12:19.

[16] *Id*.

bag" as one of the few or even the last remaining Member in the cooperative. Absent an economically efficient CTP, two elements drive this spiral toward the eventual dissolution of the cooperative. First, the remaining Members would bear an unfair (proportionally larger) share of the total costs (including fixed costs) if another Member exits. Second, the remaining Members would shoulder higher G&T cooperative borrowing costs that stem from lenders' perception of an elevated risk profile for the G&T cooperative.

As a matter of policy, it would be unreasonable for the Commission to place Tri-State in a position where it will have great challenges in obtaining financing or functioning properly to continue to provide electric services to its Members. Therefore, an economically efficient CTP will reflect the benefits of the long-term WESCs and prevent cost shifting. An economically efficient CTP should preserve the benefit of the bargain between the departing Member, Tri-State, and the remaining Members—a bargain on which they have all relied and from which they have all benefited—and would allow the departing Member to benefit from alternative supply arrangements through early termination of its contractual obligations without shifting costs to the remaining members.[17]

## IV. ARGUMENT

### A. By allowing a departing Member to shift its costs and risk onto remaining Members, any balance sheet approach—and particularly United's BSA—results in unreasonable, unjust, and unduly discriminatory CTP amounts.

Consistent with its effort to drive its CTP down to the lowest possible amount, United argues the balance sheet approach adopted by the Initial Decision results in CTPs that are "too

[17] *Id.*

high."[18] United does not, however, discuss any principled basis against which to measure CTP amounts. In other words, "too high" just means more than United wants to pay.

Assuming "too high" is a relevant consideration at all, how can the Commission know whether a CTP is "too high"? It must first determine what a CTP is intended to accomplish. On this point, the Commission and courts have repeatedly stated that charges for early exits from long-term energy contracts should hold remaining customers harmless.[19] The Commission reaffirmed this approach in one of the related Tri-State proceedings, stating "whatever CTP methodology the Commission ultimately finds just and reasonable should be designed to not harm the remaining utility members."[20] A hold-harmless approach follows the "cost causation principle."[21] This means that when a Member terminates its contract early, it should pay a CTP that reasonably represents the loss to Tri-State and "make[s] Tri-State's remaining [Members] whole," as the Commission stated in its Hearing Order.[22]

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[18] United Exceptions at 89–90.

[19] *See New England Power Company*, 83 FERC ¶ 61,174, at 61,723, *reh'g denied*, 84 FERC ¶ 61,175, at 61,919 (1998), *upheld on review*, *Town of Norwood v. FERC*, 202 F.3d 392 (1st Cir. 2000);. *Town of Norwood v. FERC*, 476 F.3d 18 (1st Cir. 2007); *Am. Wind Energy Ass'n the Wind Coal.,* 167 FERC ¶ 61,033, at 61,158 (2019); *Wabash Valley Power Ass'n, Inc.*, 178 FERC ¶ 63,005 (2022); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order 888, FERC Stats. & Regs. ¶ 31,036, at 31,798 (1996).

[20] *Tri-State Generation & Transmission Ass'n, Inc.*, 179 FERC ¶ 61,052, at P 39 (2022) (emphasis added).

[21] Order 888 at 31,798; *see also Ill. Com. Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009); *Nat'l Ass'n of Reg. Util. Comm'rs v. FERC,* 475 F.3d 1277, 1285 (D.C. Cir. 2007); *Pac. Gas & Electric Co. v. FERC*, 373 F.3d 1315, 1320–21 (D.C. Cir. 2004); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

[22] *Tri-State Generation & Transmission Ass'n, Inc.*, 177 FERC ¶ 61,059, at P 123 (2021) ("Hearing Order").

This makes sense. It is not appropriate to encourage parties to seek alternatives in the wholesale marketplace if it is done in a manner that allows those parties to benefit themselves at the expense of others. A CTP that encourages opportunistic behavior through cost shifting does not provide an economically efficient or a just and reasonable result.

Next, the Commission must consider what a CTP should reflect or include to make remaining Members whole and avoid harming them. The cooperative's costs and obligations are the first essential element to consider, and many of the unavoidable costs and obligations do not appear on a balance sheet. Over the years, Tri-State has designed and built a system to serve all its current Members. As the Commission has noted, "as the all-requirements supplier to its utility members, Tri-State has an obligation to acquire sufficient capacity for all its utility members."[23] Any withdrawal payment must consider these costs and future obligations Tri-State incurred to finance, construct, and operate a generation and transmission system to fulfill its historical, present, and future obligations to its Members.[24] When a Member leaves, the remaining Members must still shoulder the burden of operating and maintaining the system built to serve all Members during the full term of all the WESCs, including the terminating Member's WESC. Therefore, if the terminating Member does not pay its share of costs and obligations incurred to serve it, those costs will be shifted to the remaining Members.[25]

The current and future costs obligations Tri-State incurred to build its system go well beyond debt. Tri-State also incurs substantial fixed operational costs to run its system. These costs are associated with labor, safety and training, management, systems operations, power

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[23] *Tri-State Generation & Transmission, Ass'n Inc.,* 179 FERC ¶ 61,052, at P 40.

[24] Highley Direct, Ex. TGT-0001 REV2 at 34:8–12.

[25] *Id*. at 34:13–35:4; Tr. (Golino) at 1887:17–1888:2 (Dr. Golino agreeing there is nobody other than remaining Members to bear costs not recovered through a CTP).

marketing and trading, system maintenance, insurance, security, regulatory compliance, procurement, human resources, information technology, accounting and financial compliance reporting, legal, system planning, construction, member relations, and more.[26] These fixed costs comprise almost two-thirds of Tri-State's annual expenses.[27] If a Member leaves, Tri-State will continue to incur the fixed operational and contractual costs it assumed over years of planning to serve all of its Members.

Even where Tri-State can attempt to mitigate costs by prematurely retiring generation assets, it cannot do so immediately and, as a result, will continue to incur substantial costs for some time. Mr. Nebergall explained—and no one with relevant experience testified to the contrary—that Tri-State cannot make significant resource changes in a matter of just two years (the time between notice and departure) in light of regulatory resource planning requirements, emissions and renewable energy standards, and maintaining reliable service over a geographically diffuse and transmission constrained territory.[28] In any event, these sorts of resources changes cannot be meaningfully incorporated into an upfront CTP calculation (despite United's hardest efforts to pretend otherwise).[29] Mr. Nebergall further explained, and Trial Staff's witness Dr. Golino agreed, that following a Member departure, even if Tri-State can reduce its generation capability, fixed costs will not decrease to the same degree as the reduced

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[26] Mancinelli Answering, Ex. TGT-0075 REV at 25:5–17.

[27] *Id.*

[28] Tr. (Nebergall) at 1083:20–1084:5; Nebergall Rebuttal, Ex. TGT-0109 REV at 7:14–8:5.

[29] Nebergall Rebuttal, Ex. TGT-0109 REV at 8:6–9:6.

level of output.[30] This is because operating costs like depreciation, decommissioning, joint ownership obligations, and more vary based on considerations beyond load served.[31]

For a not-for-profit cooperative like Tri-State, its costs equal its revenues (or rates) because there is no return on investment earned for investors. Tri-State allocates to every Member through cost-based rates the total costs incurred to serve its Members' power supply requirements. In ratemaking parlance, not-for-profit cooperative rates are generally designed to recover expenses plus a return of, not a return on, investment. Therefore, one Member not paying its share of cost obligations under its long-term contract with Tri-State inherently results in cost shifts to Tri-State's other Members. Uncompensated or undercompensated abandonment of long-term contracts with Members threatens the existence of the cooperative itself.[32]

Accordingly, one measure of whether a CTP accomplishes the goal of keeping remaining Members whole and unharmed, considering the cooperative's costs and obligations, is whether the CTP maintains "rate neutrality." If a Member's departure will cause rates to go up or down, it is evidence of a potential mismatch in the CTP paid by the departing member. If, all things equal, the rates go down, then the CTP is too high unless the excess amount addresses a likely but unrealized future risk. If rates go up, on the other hand, the CTP is too low because there are undeniable cost shifts.

United rejects "rate neutrality" as an appropriate goal.[33] This is not surprising because the record evidence shows that if United leaves paying a CTP set by its BSA, the remaining Members will suffer an immediate rate increase of approximately 9% to cover the costs United

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[30] *Id*. at 1144:15–1146:7; Tr. (Golino) at 1919:25–1920:4.

[31] Tr. (Nebergall) at 1139:18–1141:4.

[32] Celebi Answering, Ex. TGT-0073 REV at 9:22–10:16.

[33] United Exceptions List at 17 (2.G).

has shifted onto them.[34] United purports to favor a cost-based approach.[35] But its BSA is not cost based, it is debt based. Although debt is related to past capital costs, it has nothing to do with most of the wide range of costs and obligations Tri-State has incurred or will incur to serve its Members. Therefore, the BSA does not meaningfully account for most costs and obligations.

Risk is another essential element to consider in designing a CTP that keeps remaining Members whole and avoids harming them. To avoid harm, a Member's departure must not create a situation where the remaining Members face the possibility of serious consequences they would not have faced absent the departure,[36] including the risk of Tri-State's financial collapse due to the inability of the remaining Members to pay rates high enough to cover costs following a departure,[37] the risk that lenders will demand payments or negotiate increased rates and terms if a departure triggers protections for the lenders in debt agreements,[38] and the risk that credit agencies will lower Tri-State's credit rating, increasing its borrowing costs, because they conclude the CTP amounts are too low.[39]

Tri-State and its Members agreed to an explicit allocation of fundamental financial risk. By signing its WESC, each Tri-State Member agreed to buy its power over a decades-long

[34] Mancinelli Answering, Ex. TGT-0075 REV at 11:19–21:14.

[35] United Exceptions List at 17 (2.G).

[36] *See, e.g.*, Nebergall Rebuttal, Ex. TGT-0109 at 36:12–37:3 ("Breaking the contract shifts the risk of low prevailing market prices from the Member to Tri-State and the remaining Members – precisely when market prices are low in comparison to Tri-State's cost of providing service – and shifts the risk and costs associated with the ongoing market shift towards renewable energy.").

[37] Tri-State Exceptions at 5, 40–42; Mancinelli Answering, Ex. TGT-0075 REV at 11:19–21:14.

[38] Bridges Direct, Ex. TGT-0016 REV2 at 28:9–21, 35:6–17.

[39] Tri-State Exceptions at 40, 67–69; Aschenbach Direct, Ex. TGT-0047 REV at 22:4–23:5; Bridges Direct, Ex. TGT-0016 REV2 at 35:1–5.

period from Tri-State at its average total cost—protecting itself against the risk of high spot market prices, but also assuming the risk that Tri-State's average total cost may, at times, exceed the prevailing market price for wholesale power. A just and reasonable CTP must recognize this fundamental principle underlying Tri-State's relationship with its Members, and its Members relationships to one another.

In choosing to be a member-owner in a G&T cooperative, each Member was aware of and relied on the commitments of its fellow Members and the economies of scale and buying power advantages created by the G&T.[40] These advantages reduce market exposure and offer the prospect of affordably priced wholesale power for rural electric cooperatives with inherently high costs of service.[41] Membership in a large G&T cooperative with a historically socialized rate structure has also meant that as load characteristics and Member-specific costs of service have shifted, the Members have protected one another from changes in local market conditions, transmission availability, load changes, and so on.[42]

By seeking to shed its future purchase obligations, a departing Member risks disrupting the risk allocation to which it agreed and upon which Tri-State and other Members have relied for many years. This risk reallocation will leave Tri-State with stranded costs that must be recovered through an appropriately designed CTP methodology; the question is whether and to what extent Tri-State can mitigate that loss, and who should bear that risk. Here, where a departing Member affirmatively creates that risk by seeking to withdraw, that Member, rather than Tri-State and the remaining Members, should do so, especially where the Member's choice

[40] Nebergall Rebuttal, Ex. TGT-0109 REV 34:19–36:9.

[41] *See, e.g.*, *Tri-State v. Shoshone River Power, Inc.,* 874 F.2d 1346, 1359–63 (10th Cir. 1989).

[42] Nebergall Rebuttal, Ex. TGT-0109 REV at 35:19–36:9.

to renege on its contractual commitment puts Tri-State's future and ability to provide affordable, reliable, rural power services into jeopardy.[43] But United's BSA does just that—at every step it put the risk on Tri-State's remaining Members.

Another critical risk that must be addressed in any CTP arises from Tri-State's debt covenants. Because the WESCs are the sole source of Tri-State's long-term revenue certainty, they are the principal security for Tri-State's loans. To protect themselves, lenders have insisted on including covenants in debt agreements regarding Member WESC terminations.[44] This covenant is titled a "Member Termination Event."[45] If a Member terminates its WESC under terms that trigger these debt covenants and any lender acts to enforce its rights, it would likely put Tri-State into financial distress, and possibly even into bankruptcy. Tri-State proposed protecting the remaining Members from this risk with its DCO floor.[46] The Initial Decision recognized the risks from a Member Termination Event "should not be considered lightly,"[47] and measured its approach against that risk.[48] United's BSA abandons any pretense of seeking to protect the remaining Members from a Member Termination Event. **No CTP approach can be**

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[43] *Id*. at 36:10–37:3.

[44] Bridges Direct, Ex. TGT-0016 REV2 at 17:8–18:3; 18:12–22; 19:13–20:17.

[45] Tr. (Bridges) at 312:26–313:13.

[46] *See* Tri-State Exceptions at 50–59.

[47] Initial Decision at P 297 ("the risk of Member Termination Events should not be considered lightly. Tri-State raises a valid point that CTP exit payments must provide an amount sufficient to avoid a triggering of a Member Termination Event.").

[48] *Id.* ("By requiring departing Members to pay their pro rata shares of debts and obligations to Tri-State, the CTP methodology adopted herein equitably avoids a triggering of a Member Termination Event, just in a different, more comprehensive manner.").

**just and reasonable if it subjects Tri-State and its remaining Members to a meaningful risk of this occurring**.[49]

For all these reasons, the Commission should not just look at the absolute CTP amount set under any approach at any given time and only consider, as United suggests, whether it is "too high" without context or principle. Nor should the Commission seek to simply ensure that an exit fee results in any Member being able to afford to leave at any time. Rather, consistent with the above considerations and the Commission's own guidance, it should set an exit fee that avoids harm to the remaining Members, regardless of whether United may argue that the amount seems "high" in the abstract.[50]

To support its claim that anything but the BSA is "too high" in the abstract, United offers a hypothetical involving having all Members leave Tri-State.[51] This is an absurd premise because if all Members leave Tri-State simultaneously Tri-State would liquidate. CTPs are needed only if Tri-State will continue as an on-going concern.[52] Because it assumes a dissolution, United's

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[49] *See, e.g., Fed. Power Comm'n v. Sierra Pac. Power Co*., 350 U.S. 348, 355 (1956) ("the Commission may not normally impose upon a public utility a rate which would produce less than a fair return."). Indeed, the Commission has recognized maintaining a good credit rating for the utility as an appropriate basis for setting a just and reasonable rate. *See, e.g., PJM Interconnection, L.L.C. AMP Transmission, LLC*, 166 FERC ¶ 61,216, at P 75 (2019) (approving rate based on finding that "AMP Transmission's goal of receiving an A credit rating [is] reasonable, as a strong credit rating will allow AMP Transmission to access capital on favorable terms").

[50] Tri-State's proposed CTP is not "high" in the proper context of the total value of the WESC over its term or in the context of any Member's share of fixed costs. Even conservatively assuming no load growth or cost increases through 2050, United committed to paying over $5 billion more to Tri-State. Tri-State has $3.2 billion in long-term debt and current fixed obligations of $5.8 billion. United accounts for approximately 20% of Tri-State's system, or $1.16 billion, of this incomplete total fixed obligation amount. *See* Tri-State Initial Post-Hearing Br. at 39–40; Tri-State Reply Post-Hearing Br. at 28–30.

[51] United Exceptions at 89–90.

[52] Mancinelli Rebuttal, Ex. TGT-0140 at 33:16–34:12.

analysis can simply ignore the impacts on the Tri-State's business of load loss, associated revenue loss, and its outstanding debt agreements. But all those impacts only go away if Tri-State shuts down all operations. Because Tri-State will remain a going concern serving its remaining Members, the measurement for a just and reasonable exit fee cannot be simply what it would take to eliminate all costs and obligations by liquidating the cooperative.

### B. United looks to inapplicable contract provisions because there is no reasoned basis for using a balance sheet approach to calculate a CTP.

Recognizing there is no basis in ratemaking, economic theory, contract, or otherwise for using a balance sheet approach to calculate contract termination payments, United relies on inapplicable language in the WESCs to justify its debt-based approach. This is United's only hook, yet the Initial Decision correctly ruled that the language United relies on is inapplicable to a voluntary Member departure. United's foundation is unfounded.

United argues the Initial Decision "errs in disregarding the relevance of the WESC's *Shoshone* provision" found in section 8 of the WESC.[53] That provision, entitled "Transfer by the Member," is expressly limited in application to circumstances where a Member is changing as an entity, by joining another business or by going out of business.[54] It does not apply to a unilateral, voluntary decision to terminate the WESC; to the contrary, the WESC has a Specific Performance section permitting Tri-State to obtain an order compelling a Member to fulfill its commitment.[55]

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[53] United Exceptions at 80–82.

[54] Bridges Answering, Ex. TGT-0059 REV at 19:12–20:11; United WESC, Ex. UP-0009 § 8.

[55] United WESC, Ex. UP-0009 § 9.

United's position defies common sense and the most basic principles of contract interpretation.[56] If Tri-State's Members had intended a provision expressly limited to cases of merger and bankruptcy to apply whenever a Member, not involved in a merger or bankruptcy, decides it would prefer not to complete the long-term commitment it made in the WESC, they could easily have said so. They did not. The Commission and courts have repeatedly rejected attempts, like United's, to convert a WESC provision providing for termination upon a merger or dissolution into a provision of general application.[57]

United argues that even if Section 8 does not apply, there is no economic basis for a CTP payment to be calculated any differently from what is required from Members transferring their assets.[58] But there is certainly a basis for distinguishing these scenarios. Tri-State's Members presumably provided extra flexibility for Members undergoing extraordinary and transformative events—specifically a merger or bankruptcy. The same flexibility is not needed or appropriate for a Member that chooses to voluntarily walk away from its long-term contractual obligations.

And even if the provision applied, United ignores other inconvenient, yet significant WESC language, including terms authorizing Tri-State to determine the meaning of "pro rata portion," and the requirement for a terminating Member to pay its share of "commitments" in addition to indebtedness and obligations.[59] United ignores similar language in a related Bylaw

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[56] *See, e.g., Pennsylvania Steel Co. v. New York City Ry. Co.*, 204 F. 513, 515 (2d Cir. 1913) ("different provisions of a contract should be given different meanings").

[57] *See Basin Electric Power Cooperative,* 172 FERC ¶ 61,221, at PP 86-87 (2020) (finding that Basin's wholesale power contracts, with nearly identical relevant provisions, do not provide for early termination); *Dakota Energy Coop., Inc. v. E. River Elec. Power Coop., Inc., et al.*, No. 4:20-cv-04192-LLP, at 6–7 (D.S.D. Apr. 11, 2022); *Marlboro Electric Cooperative, Inc. v. Central Electric Power Cooperative, Inc*., Case 4:20-cv-04386-SAL, at 11 (D.S.C. Mar. 28, 2022).

[58] United Exceptions at 82.

[59] United WESC, Ex. UP-0009 at P 8.

provision. Tri-State's Bylaws Article II, Section 4 (entitled "Transfers by a Member"), which applies only when a Member is merging with a non-member or going out of business,[60] prohibits terminations that will "make obtaining by this Corporation of debt capital unduly more difficult, expensive or burdensome," and permits the Board to establish conditions "to financially protect this Corporation and its other members or required by or on behalf of the holders of any long term debt obligations then outstanding are met."[61] United ignores these terms but the Commission cannot. It is well established that contracts and tariffs must be given their plain meaning and interpreted to give effect to all provisions.[62]

While the Initial Decision correctly rejected United's misplaced reliance on Section 8 of the WESC, it went too far in rejecting any application of the contracts. The Initial Decision repeatedly rejected reference to the governing contracts because the Commission stated that the "Bylaws do not provide for a specific exit charge or describe how an exit charge will be calculated"[63] and 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."[64] This interpretation is unnecessarily restrictive and fails to recognize

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[60] Bridges Answering, Ex. TGT-0059 REV at 15:1–7; Tri-State Bylaws, Ex. TGT-0019 at Art. II, Sec. 4; *see also Basin Electric Power Cooperative,* 172 FERC ¶ 61,221, at P 87 (finding that Basin's bylaws, which contain nearly identical "transfer" and "withdrawal" provisions, only provide for withdrawal should the withdrawing member meet "all its contractual obligations to the Cooperative.").

[61] Tri-State Bylaws, Ex. TGT-0019 at Art. II, Sec. 4

[62] *See Idaho Power Co. v. FERC*, 312 F.3d 454, 462 (D.C. Cir. 2002) ("A tariff should not be interpreted in a manner that renders one of its terms meaningless. The fact that FERC's orders directly conflict with the plain meaning of the tariff alone merits reversal.").

[63] *Tri-State Generation & Transmission Ass'n, Inc.*, 170 FERC ¶ 61,223, at P 55 (2020).

[64] Hearing Order at P 123.

that in filing the tariff, Tri-State created a termination option that does not exist under the WESC, is discretionary under the Bylaws, and is not a Commission requirement. Just because a withdrawing Member would not be breaching the contract by invoking the tariff, does not mean a contract termination payment amount should not be informed by the terms of the contract being terminated. The purpose of an exit charge is to provide consideration for being excused from a specific contractual commitment. The charge should depend, at least in significant part, on the terms of the commitment being excused.

United dismisses any connection between the economic terms of the contract being terminated and the contract termination payment by characterizing the payment as "damages."[65] But there is no basis in economic policy for rejecting any similarities between a CTP and the ways courts historically measure the economic impact from a party walking away from contractual commitments. A CTP, like breach of contract damages, should reimburse Tri-State and its remaining Members for the consequences of the withdrawing Member's decision not to meet its WESC obligations. Since they serve the same basic function, compensatory contract damages and exit charges are bound to be somewhat similar. Further, the sharp tariff/breach of contract distinction appear to assume that there are some punitive aspects to breach of contract damages that simply are not there.[66]

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[65] United Exceptions at 4 n.12, 14.

[66] *See, e.g.*, Restatement (Second) of Contracts § 355 ("The purposes of awarding contract damages is to compensate the injured party. . . . For this reason, courts in contract cases do not award damages to punish the party in breach or to serve as an example to others unless the conduct constituting the breach is also a tort for which punitive damages are recoverable.").

### C. United's Appendices A and B are misleading and improper and must be rejected.

Appendices A and B to United's Exceptions do not come from the official record in this case. Appendices A and B are among several items that should be stricken for the reasons set out in the Joint Motion to Strike and Request for Expedited Action filed November 14, 2022.

United says Appendix A is a modified version of the BSA it submitted at the hearing that relies on new data, changes allocations of Members to the Eastern and Western Interconnections, and provides an "input vector" for any further updates.[67] Because United offered this material so late, at a point where there was limited time to respond, no party has had adequate opportunity to test or examine any of this let alone cross-examine United's witnesses or sponsor rebuttal testimony on these new proposals. The Commission should reject Appendix A as new, extra-record material because it is not appropriate to use data that "has not been subject to review or challenge by other parties."[68] "[U]pdated information concerning events occurring after the close of the record . . . would violate the other parties' due process rights."[69]

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[67] United's Exceptions at n.25 ("Appendix A modifies Ex. UP-0021 in two respects: (1) Appendix A relies on 2021 data rather than 2020 data, and (2) Appendix A updates the assignment of members to the Eastern and Western Interconnections (and provides a "simple input vector for any further updates").

[68] *BP Pipelines (Alaska) Inc*., 125 FERC ¶ 61,215, at P 18 n.16 (2008) (rejecting Form 6 data "because this data has not been subject to review or challenge by other parties.").

[69] *Portland Natural Gas Transmission System*, 150 FERC ¶ 61,107, at P 220 (2015) (the Commission "do[es] not consider updated information concerning events occurring after the close of the record, because that would violate the other parties' due process rights.") (citing *Enbridge Pipelines (KPC)*, 100 FERC ¶ 61,260, at PP 379-86 (2002), *reh'g denied*, 102 FERC ¶ 61,310 (2003) (denying the pipeline's motion to reopen the record after the hearing had concluded to consider the effects of Enron's bankruptcy on pipeline capital costs), *Office of Consumers' Counsel v. FERC*, 783 F.2d 206, 232 (D.C. Cir. 1986) ("In relying on *ex parte* submissions appearing in a post-hearing brief, the Commission violated fundamental canons of due process.")).

Appendix B is far worse because it is wholly new and unsupported. The Initial Decision rejected the Indicated Members' effort to offer options that were unsponsored by witness testimony and the Commission should do the same here.[70] Appendix B is a voluminous **170-page** Microsoft Excel spreadsheet that purportedly "calculate[es] the BSA incorporating the four alterations endorsed in the [Initial Decision]."[71] In this document United manufactures evidence to bolster and re-cast its case after the record has been set, presenting it in tabular form with purported back-up in a transparent effort to have the Commission ignore the actual evidence in the certified record. As with Appendix A, Tri-State did not have an adequate opportunity to examine Appendix B, conduct discovery on it or cross-examine United's experts who developed it.

Tri-State discusses some of the flaws and manipulations in Appendix B concerning transmission below.[72] Another is how United treated its calculation of debts and obligations in Appendix B. Tri-State's Exceptions pointed out that the various participants differed not only in the types of balance sheets they used (SEC balance sheet versus unconsolidated balance sheet or FERC balance sheet), but also in the categories, or line items, on those balance sheets that should be included in the calculation.[73] The Initial Decision failed to address this. Tri-State discussed this and explained why its approach was the most appropriate. By contrast, United simply buried its favored approach in Appendix B, mischaracterizing it as the approach adopted in the Initial Decision. What else is buried in Appendix B? Nobody but United knows.

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[70] Initial Decision at P 482 (describing the fact that no witness sponsors or opines on Indicated Member's proposed Options as "problematic" "not adequately supported" because they do not cite to "any witness who explains the rationale and underlying assumptions")

[71] United's Brief on Exceptions at 8.

[72] *See* Section IV.D.2.iii.

[73] Tri-State Exceptions at 73–78.

Similarly, the Initial Decision addressed the considerable debate on how to treat PPAs in the exit charge.[74] Despite this, Appendix B, which United characterizes as reflecting the Initial Decision's approach, simply ignores the required treatment of PPAs—perhaps in a telling display of the impossibility of making an upfront CTP calculation under the BSA. It is impossible to know what other issues Tri-State and others would identify with Appendix B if it had been properly offered and vetted in this proceeding. The Commission must conclude that Appendix B is unreliable because it has not been properly vetted or evaluated and is deceptive and incomplete.

### D. The Initial Decision correctly rejected the fundamental aspects of United's BSA, and if the Commission adopts a balance sheet-based approach, it should affirm the Initial Decision's modifications to United's approach.

Any balance-sheet based approach fails to capture substantial costs and obligations Tri-State incurred or will incur to serve its Members, including the departing Member, and sets CTPs so low as to be dangerous to remaining Members, both in terms of drastically increased rates and increased risk. But United's BSA results in extraordinarily low and risky CTP amounts.

Setting aside all that it does not capture,[75] United says its approach would allow Tri-State to retire a withdrawing Member's share of debt and thereby avoid future debt-related costs.[76] But this approach is flawed because United manipulates its calculation to a point where it results in setting a cash payment amount woefully insufficient to even offset the debt.

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[74] Initial Decision at PP 102, 450, 463, 506–07.

[75] Tri-State also incurs substantial fixed operational costs to run its system. These costs comprise almost two-thirds of Tri-State's annual expenses and cannot be easily or quickly eliminated. The NPV of non-capital fixed costs associated with just Tri-State's generation portfolio is $2.6 billion over the life of the WESCs. Mancinelli Direct, Ex. TGT-0033 REV3 at 75:3–11. *See* Tri-State Initial Post-Hearing Br. at 39–40; Tri-State Reply Post-Hearing Br. at 28–30.

[76] United Initial Post-Hearing Br. at 9.

United's BSA comes nowhere near providing sufficient cash for Tri-State to pre-pay the actual debt associated with a terminating Member.[77] This is easy to see. If United withdrew under its approach, it would pay Tri-State $152 million in cash. Even if Tri-State applied every dollar to its approximately $2.9 billion in debt—meaning it could use none of it to make the asset and operations adjustments everyone agrees will be required or address any other costs associated with Member departure—its annual debt service payments would be only $8.9 million lower.[78] That is, under United's approach, Tri-State loses over $200 million in guaranteed annual revenue in return for a $9 million decrease in annual debt expense. It could not be starker: no one could believe Tri-State incurs just $9 million in annual fixed costs to serve United, which accounts for one-fifth of Tri-State's $1 billion-plus annual budget.

Because of the flaws discussed below, if United withdraws and pays a CTP calculated under its approach, and Tri-State uses the cash United pays to retire debt, remaining Tri-State Members **would face an immediate rate increase between 8.74% and 9.54%**.[79] Further, there is no conceivable way Tri-State's lenders will consider a payment of $152 million sufficient to avoid a "Member Termination Event."[80] For these reasons, if the Commission adopts a balance sheet-based approach, it must also, at the very minimum, affirm the Initial Decision's modifications to United's approach to avoid (or at least limit the extent of) a catastrophically low CTP.

[77] Bridges Answering, Ex. TGT-0059 REV at 36:13–37:22.

[78] Mancinelli Answering, Ex. TGT-0075 REV at 15:12–18.

[79] *Id*. at 11:19–21:14; *see also* GCEA Initial Post-Hearing Br. at 2–3, 6.

[80] Bridges Rebuttal, Ex. TGT-0118 at 10:17-14:13; *see also* O'Flaherty Answering, Ex. TGT-0086 at 8:13-10:18, and O'Flaherty Rebuttal, Ex. TGT-0153 at 15:1-9.

### 1. The Initial Decision correctly determined that share of billings is the most appropriate and reasonable metric for allocating a departing Member's share of costs.

Contrary to United's proposed approach, the Initial Decision correctly relies on a departing Member's *pro rata* share of total Member billings, rather than a Member's share of patronage capital, to allocate costs to the departing Member. While the Initial Decision incorrectly applies this allocator to a balance sheet (missing critical categories of costs incurred and committed to in service of a Member) and proposes to calculate the allocator based on three-year average of Member billings rather than the most recent calendar year (which is particularly incorrect in the context of a contractually prescribed debt covenant obligation ("DCO") calculation[81]), the principal framework of allocating costs according to a Member's share of billings is objective and tracks the actual deployment of capital and incurrence of costs to serve a given Member. As explained below, United's alternative proposal, to allocate costs according to historical patronage capital, is divorced from these fundamental beneficiary-pays and cost-causation principles and its exceptions to the contrary fall flat.

The Initial Decision was correct to adopt a Member-billings allocator to assign costs to a departing Member. The Commission has explained that a CTP should "compensate Tri-State for the costs that it has incurred or has an obligation to incur in the future" to serve a departing Member under its WESC.[82] As Presiding Judge Terry found, "using Member billings to pro rate

[81] The relevant debt covenant obligation provisions of Tri-State indentures require that a Member's "percentage share of total member revenues" be calculated based on revenues from the previous fiscal year. Bridges Direct, Ex. TGT-0016 REV2 at 21:1–6; Series 2014B Note Purchase Agreement, Ex. TGT-0025 at 96, Schedule B "Member Termination Event"; Series 2017A Note Purchase Agreement, Ex. TGT-0026 REV at 72–73, Schedule B "Member Termination Event". The function and importance of the DCO component of Tri-State's Modified CTP Methodology is further explained in Tri-State's Exceptions at 50–59.

[82] *Tri-State Generation & Transmission Ass'n, Inc.*, 172 FERC ¶ 61,173, at P 32 (2020).

Members' shares of debts and obligations hews to cost causation principles because it more closely tracks Tri-State's revenues, which 'are designed to "cover the costs of providing service,"' not cover the costs of Members' relative ownership."[83]

This makes sense. Tri-State incurs costs, including deploying capital, issuing debt, and entering into long-term cost obligations, based on projections of transmission and generation requirements to serve Member load over a 10- to 40-year planning horizon.[84] These projections are based significantly on forecasts and other information **supplied by each Member** and are necessary so Tri-State can incorporate project development lead times to ensure it has transmission and generation resources available to serve Members as load changes.[85] A Member's share of current billings reflects the present and known proportional share of benefits that a particular Member derives from Tri-State's incurrence of these costs. Indeed, in this respect, current billings are a conservative metric for allocating costs to rapidly growing Members, such as United, on behalf of which Tri-State has made significant investments and commitments to serve forecasted growth not just present usage.[86]

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[83] Initial Decision at P 503 (quoting Trial Staff Initial Brief at 50 (citing Golino Direct, Ex. S-0011 REV 2 at 27:3–28:6)).

[84] Nebergall Answering, Ex. TGT-0067 REV at 31:19–21; Tiffin Rebuttal, Ex. TGT-0114 at 8:6–14:2 (explaining Tri-State's resource planning process which "is intended to generate an Electric Resource Plan . . . to meet forecasted energy and demand obligations"); Bridges Direct Ex. TGT-0016 REV2 at 13:12-14:2; Bladow Direct, Ex. TGT-0009 REV at 10:3-11:5 and 14:1-15:13; Initial Decision at P 387 ("Tri-State incurs debt and makes long-term, forward-looking commitments on behalf of Members based on load, not relative ownership in Tri-State.").

[85] Nebergall Answering, Ex. TGT-0067 REV at 32:15–19; Bladow Direct, Ex. TGT-0009 REV at 10:12–19 and 11:16–13:20.

[86] Nebergall Answering, Ex. TGT-0067 REV at 32:15–33:16 (citing United Load and Energy, Ex. TGT-0068A); Bladow Direct, Ex. TGT-0009 REV at 14:7–17; United Power System History PowerPoint, Ex. TGT-0014.

Despite the strong correlation between share of billings and share of costs incurred on behalf of the Member, United raises a host of exceptions to the Initial Decision's adoption of a Member billings allocation approach, arguing instead for an allocator based on historical patronage capital or a ten-year average of *pro rata* billings. As discussed below, United's proposals are again a thinly veiled attempt to shift to other Members costs incurred to serve United.

**a. Member billings, not patronage capital, accurately measure the system and underlying outstanding costs deployed to benefit particular Members.**

United's overarching argument is that "[t]he patronage capital allocator measures a member's share of Tri-State's outstanding balance sheet liabilities; the [Initial Decision's] member billings allocator does not."[87] United is mistaken. The critical flaw in this position turns on the false premise that patronage capital, which is derived from **historical use** of the system (less historical distributions as the Board of Directors elects), correlates to **currently outstanding** debt and other obligations. It does not.

As noted above, Tri-State incurs costs and has ongoing cost obligations to serve each Member based on present and projected use of the system. Patronage capital, however, is attributed to each Member based upon its *pro rata* contribution to excess revenues over time. In that sense, patronage capital represents a running tally of proportional annual commitment to margins (less historical distributions) dating back to the time the Member joined Tri-State. Put another way, patronage capital relates to costs already recovered from Members based on prior use of the system, not unrecovered costs that must be recovered from Members based on current and future service. Patronage capital, therefore, has little to do with either the **currently**

[87] United Exceptions at 24.

**outstanding** costs that Tri-State has incurred or committed to in service of a Member or the benefits that a Member receives from Tri-State's incurrence of those costs.

United's focus on historical usage is no accident. United is Tri-State's largest and fastest growing Member. Whereas between 2005 and 2013 United was responsible for 10% or less of Tri-State's total power sales, United constituted approximately 18.1% of power sales by 2021 and is expected (based on forecasts informed by United's own projections) to climb to over 25% by 2050.[88] The trend is similar for United's share of Tri-State's system peak demand, where United rose from 15.6% to 19.4% between 2017 and 2021, with expectations that United will constitute 27.5% of system peak demand by 2050.[89] These trends are underlain by approximately 9% annual growth between 2013 and 2021, which infinitely exceeds the -0.1% annual growth of all other Members over the same time.[90]

The problem is "[t]he disconnect between patronage capital and current and future obligations is greatest when a Member is growing or shrinking rapidly relative to the other Members."[91] For United, because its patronage capital is heavily weighted by its much lower proportional historical usage of the system, the patronage capital allocator grossly underestimates the long-term outstanding costs and obligations that Tri-State has incurred to serve United now and into the future. This is a cost shift. Whereas 19.4% of the system (and underlying outstanding costs) is currently being deployed to serve United—which does not even account for the even larger share of costs Tri-State already has and will incur for United's future growth—

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[88] Bridges Answering, Ex. TGT-0059 at 25:15–26:1 (Table 1, Annual MWH Sales); United Load and Energy, Ex. TGT-0068A.

[89] United Load and Energy, Ex. TGT-0068A.

[90] Bridges Answering, Ex. TGT-0059 at 25:15–26:1 (Table 1, Annual MWH Sales).

[91] *Id*. at 25:11–12.

United's patronage share is less than 13%. Though remaining Members do not benefit from 19.4% of Tri-State's cost structure (because that share is actually dedicated to serving United), United would shift hundreds of millions of dollars in costs above its historical patronage capital share which were incurred on its behalf to remaining Members to be recovered through increased rates.

The problem is even worse for Members whose load has recently declined. By attributing costs to these Members based on **historical system costs they have already paid** when their usage was higher, United would inflate their CTPs by as much as 44% over the share of the system they use and in which Tri-State is investing on their behalf.[92]

**b. Historic contribution to cost of service and the timing of original cost incurrence are irrelevant to the share of those outstanding unrecovered costs, which are presently used and reserved for a Member's current and future service.**

United's misguided attempts to link a Member's "historic share of load" and the outstanding costs incurred on its behalf (and benefits therefrom) are the reason several of its initial arguments fail. United's first specific argument is that the Initial Decision's conclusion is based on a "false distinction drawn between patronage capital share and historic share of load."[93] The Initial Decision makes no such distinction. Rather, it concludes that "Tri-State incurs debt and makes long-term, forward-looking commitments on behalf of Members based on load" not historical patronage capital.[94] The distinction made is the same as described above, that **historical** patronage capital is irrelevant to a Member's **current** share of **outstanding**

[92] *Id*. at 26:8–28:2; Member Revenue and Patronage Capital Balances, Ex. TGT-0063.

[93] United Exceptions at 24.

[94] Initial Decision at P 387.

obligations, not "historic share of load." Indeed, patronage capital is related to historic share of load, but this has nothing to do with outstanding costs incurred and current services received.

United's related contentions that patronage capital is "a calculation of each member's long-term economic participation . . . in the overall enterprise" and a "reflection of [a Member's] long-term 'share of service (load)'" similarly miss the point. While generally true statements, historical share of service and payments already made and applied against past cost of service have nothing to do with unrecovered costs that Tri-State has an obligation to pay and the share of these costs devoted to serving particular Members.

United next selectively misreads the relevant language in the Initial Decision and a prior Commission order to claim it applies to "forward-looking" costs that exceed the scope of "costs incurred."[95] In fact, the Initial Decision discussed the "long-term, forward-looking commitments"[96] that Tri-State has made "on behalf of Members" (e.g., long-term contractual commitments) that are squarely within the scope of recoverable "costs that [Tri-State] has incurred **or has an obligation to incur in the future**."[97]

In a last-ditch, strained effort to draw the connection, United argues that the timing of when Tri-State incurred debt and when its owned/leased generation assets came online generally relate to times during which United's share of Member billings was lower than it is today.[98] Putting aside the fact that United ignores transmission-related costs, United again makes the same mistake. Tri-State makes investments based on current and **future** load serving obligations,

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[95] United Exceptions at 26.

[96] Initial Decision at P 387.

[97] *Tri-State Generation & Transmission Ass'n, Inc.*, 172 FERC ¶ 61,173 at P 32 (emphasis added).

[98] United Exceptions at 27–30.

and, regardless of the expectations of how investments and cost obligations would be deployed when they were incurred, United now actually takes more service from these assets than it did in the past and is projected to continue to take more in the future. These are core facts and assumptions that have informed Tri-State's resource planning and investments strategy over the relevant timeframe, assuring that Tri-State would have resources available to serve United today and into the planning horizon without redundantly investing in added resources to serve United's rapid growth. Moreover, as the Initial Decision notes, "the date on which Tri-State incurred debt to serve Members is irrelevant because such debt is 'rolled over' to maintain all the generation facilities needed to meet growing load of Members such as United Power."[99]

Though United tries to distinguish between Tri-State's historical investment in owned/leased generation and more recent investment in PPAs,[100] this fails to recognize two points. First, Tri-State incurs more than just generation-related costs to serve Members, it also invests in transmission assets which United ignores and which are clearly relevant to the allocation of costs to Members. Second, if United believes it should be allocated a smaller share of historical generation-related costs, a CTP would need to reflect a correspondingly higher share of PPA costs, not just tied to Member billings/service, but tied to United's respective load growth, which United seems to pretend is being served entirely by PPAs (which is not true). These sorts of complexities are created only under United's BSA, are not supported in the record, and are a function of United's non-transparent effort to distinguish between costs incurred to serve it.

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[99] Initial Decision at P 503 (citing Trial Staff Reply Br. at 60–61).

[100] United Exceptions at 27.

### c. A patronage capital allocator is likely to produce volatility in CTPs based on the timing of Member withdrawal or buy-down.

United's second contention is that a "member billings allocator introduces year-to-year volatility . . . based on members' exit sequence."[101] This is not true and, in any event, United's underlying concern applies equally or more so to a patronage capital allocator. United makes three specific claims here. First, in a *non-sequitur*, United claims that the difference between three-year *pro rata* Member billings and patronage capital results in a penalty for growing Members and a windfall for load-declining Members because the return of their patronage capital is, on a percentage basis, lower or higher than their allocated share of costs. This is not a problem because historical accrual of patronage capital is unrelated to those outstanding costs that have been incurred on the departing Member's behalf and from which the departing Member benefits. United only creates this problem by inappropriately attempting to link the two.

United next wrongly claims that a Member billings allocator will inflate future CTPs whereas a patronage capital allocator will not. United specifically states that "under a member billings approach, one member's exit will cause an immediate downward shock in total Tri-State billings," thus "increas[ing] remaining members' billing shares and debt responsibility."[102] What United first forgets is that, under the unchallenged CTP procedures, CTP calculations for all Members are done annually and are valid for a full calendar year. There is thus no immediate impact on resulting CTPs. Further, although a Member's withdrawal should reduce total billings, thus increasing remaining Members' shares of total billings, this makes perfect sense. When a Member withdraws, Tri-State would be expected to use the payment over time to reduce costs

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[101] *Id*. at 30.
[102] *Id*. at 31.

and therefore remaining Members would be responsible for a higher percentage of an overall smaller set of obligations.

To the extent this poses any problems, the same problems would exist under United's patronage capital allocator. Should a Member elect to receive a discounted patronage capital balance upon exit, Tri-State would retire the relevant balance, thus increasing remaining Members' allocation share. United points to the fact that remaining Members' allocated shares do not cumulatively equal 100% under Tri-State's calculation of 2020 Member billing shares because 2020 revenues include those of Delta Montrose Electric Association ("DMEA"), a Member that has since departed. However, this is simply a truism reflecting the fact that current Members were not entirely responsible for total 2020 revenues; the same would be true under a patronage allocator if the prior years' total patronage were incorporated into the following year's calculation. As described above, whether this is appropriate or not turns on whether Tri-State was able to reduce its debt and other obligations considering DMEA's exit charge, or whether DMEA-related cost obligations remain outstanding. In either event, if this Commission believes this is somehow incorrect, it would be more appropriate to simply remove a departed Member's share of billings from the annual total than to adopt a patently incorrect patronage capital allocator which has no relationship to ongoing cost responsibility.

Last, United argues that a Member's election to buy down certain of its power procurement obligations from Tri-State under a separate BDP tariff could increase CTPs in the following three-year period under a Member billings allocation approach.[103] This contention is like the above, that BDP elections will decrease total billings, thus increasing remaining Member shares. But the same logic upends United's claims: Tri-State will use the BDP payment to offset

[103] *Id*. at 33.

at least a portion of the correlative costs and, if the Commission believes this does not resolve the matter, it would be most appropriate to remove the proportional share of revenues from the test period. This is not a reason to adopt an unrelated historical revenues contribution metric (patronage capital) to assigning current and future costs.

In fact, Member BDP elections are much more problematic in the patronage capital allocator context. As United recognizes, under the BDP tariff, if a Member buys down its power procurement obligations, its existing patronage capital balance is unaffected.[104] Accordingly, in the years following a buy-down, a patronage capital allocator in the CTP context would continue to attribute to a BDP Member its full *pro rata* historical share of patronage capital, despite the fact that it will have paid a BDP to offset a share of its generation-related debt and other obligations. United's approach, therefore, reflects double recovery of those costs from BDP Members, inappropriately shifting these same costs away from other Members.

It is also important to point out that in making this BDP argument, United misrepresents several key facts. United claims that certain "of Tri-State's largest members would reduce their member billings by **half**." As United well knows, the total BDP allocation is fixed at 300 MW, the BDP tariff would allow a Member to "supply **up to fifty percent** (50%) of their requirements" but no Member has actually been allocated 50% of their requirements under the relevant open season, and the BDP tariff pertains to power supply only—meaning that a BDP Member can only reduce up to 50% of its generation-related revenues, not total generation and transmission revenues.[105] Further, United is well aware that it is the sole protestor in the BDP

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[104] *Id.*

[105] BDP Settlement Agreement, Ex. UP-0156 at 8.

settlement agreement pending Commission approval in Docket No. ER20-1559. For that reason, it remains entirely unclear what terms and conditions will actually govern Member buy-down

**d. Commission-approved effective rates underlying Member billings are neither illegal nor inappropriate.**

Third, in a telling display of equivocation, United argues that an allocator based on Member billings "incorporat[es] costs shifts embedded in the ***illegal*** A-40 Rate, and in violation of a *Mobile-Sierra* protected settlement."[106] That United makes this argument is contemptible. United's argument rests on the flagrantly incorrect assertion that Commission-approved, currently effective rates resulting from an uncontested settlement to which United was a **settling party** are **illegal**. This is a blatant collateral attack on the Commission's order approving the relevant rates and a form of bad faith argument the Commission should not tolerate.

As noted above, the Commission "approved" the A-40 Rate.[107] The A-40 Rate was the subject of a settlement agreement ("Settlement") chiefly among Tri-State, its Members, and Trial Staff. As part of the Settlement, the settling parties agreed to specific generation demand, transmission demand, and energy rates to be charged by Tri-State to its Members for service provided under the WESCs.[108] These rates are to be effective from March 1, 2021 through at least May 31, 2023, subject to an agreed-upon moratorium period, **during which settling parties may not challenge the rates**, and a comeback filing by Tri-State, to be made no later than September 1, 2023.[109] As such, the A-40 Rate is the approved, effective, rate on file with the Commission. While the Settlement also included four reserved issues to be litigated for

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[106] United Exceptions at 35 (emphasis added).

[107] *Tri-State Generation & Transmission Ass'n, Inc.*, 176 FERC ¶ 61,086, at P 3 (2021).

[108] Stated Rate Settlement, Ex. TGT-0161 at 11–13 (Article III).

[109] *Id*. at 11 (Section 3.1), 13 (Section 5.1), 14–15 (Sections 5.3(a), 5.6).

Commission determination on the merits, three are to be resolved prospectively, merely informing Tri-State's comeback filing.[110] The fourth issue is a discrete issue applying to a single battery resource owned by United that United does not even raise as a concern in its Exceptions (despite its lengthy, issue-specific, collateral attack on the Settlement and the Commission's order).

Importantly, United was a **settling party** to the Settlement approved by the Commission.[111] For United to now argue that Commission-approved rates to which United explicitly agreed are **illegal** is disingenuous, if not bad faith. If United genuinely believed the rates to which it agreed were so egregious as to be illegal, it should have protested the Settlement, sought rehearing of the Commission's order approving the Settlement, or negotiated terms such that the purported issues were not subject to prospective resolution under the to-be-filed comeback filing. United did not; it explicitly supported the rates.

Moreover, even if none of the above were true—that the A-40 Rate had not been approved, was substantively subject to the outcome of hearing, and was not agreed to by United—United twists logic and law to pretend that the Settlement Rates have been determined invalid. United claims that use of the Member billings requires the Initial Decision to "resurrect the imminently expiring A-40 Rate" which has been "thoroughly and meticulously renounced."[112] But, as United undoubtedly knows, the reserved issues are awaiting a

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[110] *Id*. at 10 (Section 2.2, explaining that the Commission's determination with respect to three of the four reserved issues "will have prospective effect only and will have no effect on the level or rate design of the Settlement Rates set forth in Section 3.1 of this Settlement for the period of the Moratorium, but will apply to Tri-State's Come-Back Filing. The sole intent in reserving these issues is to establish a vehicle to terminate controversy and remove uncertainty as to the content of Tri-State's Come-Back Filing in 2023.").

[111] *Id*. at 27 (Appendix A, List of Settling Parties).

[112] United Exceptions at 35–37.

Commission order on initial decision. By operation of law, there is no final determination on the merits of its arguments.[113]

Last, United's arguments carefully avoid the fact that the use of billings to apportion costs under the Initial Decision is an input subject to change as the Commission approves new rates. In this way, the relevant rate underlying Member billings will always be subject to all the protections inherent under the Federal Power Act and vested in Commission review and approval of rates. United only now complains about the A-40 Rate because it proffered an **unconditional** notice of withdrawal **before** it knew the ultimate CTPs that would result, and **before** resolution of Tri-State's next Member rate filing. Unprincipled buyers' remorse is not a basis for rejecting approved, agreed-upon rates, as an input for calculating CTPs.

If, despite all the foregoing, the Commission is inclined to agree that currently effective Member rates should not be incorporated into a CTP calculation, again, the remedy is not to rely on entirely unrelated historical patronage capital balances to apportion current and future costs. Tri-State explains in its testimony that Member share of system peak demand is a reasonable substitute for *pro rata* share of Member billings,[114] which makes sense given that demand is generally considered a proxy for fixed cost incurrence, as it reflects the total size of the system that a utility must construct to meet maximum load.[115]

**e. United mischaracterizes Tri-State's indeterminate load policy which has no inappropriate impact on CTP results under a Member billings approach.**

United's fourth contention is an amalgamation of several forced arguments related to indeterminate load and a rehashing of its argument surrounding the timing of when Tri-State

[113] 18 C.F.R. § 385.712.

[114] Nebergall Answering, Ex. TGT-0067 REV at 31:15–19.

[115] *See, e.g., Nat. Gas Pipeline Co. of Am.*, 23 FERC ¶ 63,032, at 65,060 (1983) ("Fixed costs are generally considered those related to customer demand for capacity").

incurred generation related costs.[116] Again, United claims that its load growth occurred after Tri-State's owned generation resources became operational. But the facts remain that Tri-State plans and invests based on current and projected load, generation-related debt has since been rolled over, Tri-State's generation resources are actually being planned and deployed to serve United's present and future demand, and United is projected to continue to grow. To believe United's argument is to believe that because Tri-State (and United) did not project United's growth in 2013, United somehow does not benefit from and should not shoulder cost responsibility for Tri-State's historic and ongoing investment in resources to serve that load growth and projected future load growth. United's efforts to shift its fair share of costs to others is wrong and must be rejected.

Regarding indeterminate load, United argues that because Tri-State has determined certain portions of United's load are indeterminate under Board Policy 110, that "Tri-State has issued no long-term generation-related debt to serve one-third of United Power's current load."[117] This is wrong on several levels. First, Board Policy 110 applies to transmission investments only.[118] Any contention that Tri-State, as opposed to its Members, has not entirely financed and entered into long-term cost obligations regarding Tri-State's generation portfolio can be rejected out of hand. Second, United continues to overstate the portion of its load designated as indeterminate by as much as 50%.[119]

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[116] United Exceptions at 38–40.

[117] United Exceptions at 40.

[118] Board Policy 110, Ex. UP-0005 at 1 (explaining that the objective of the policy is to "establish reasonable and equitable rules and regulations to govern the extension of transmission facilities . . . .").

[119] *Compare* Bladow Rebuttal, Ex. TGT-0117 at 12:1–2 (Table 3, showing 22% indeterminate load) *with* United Exceptions at 40 (falsely claiming 33%).

Most important, United misrepresents the application of Board Policy 110. As Mr. Bladow explains, as far as it applies to indeterminate load, Board Policy 110 requires Members to provide the initial capital outlay for certain transmission upgrades where the Member invests in highly risky load. The riskiness of these facilities is evident in the fact that that, since 2016, United has overestimated the peak demand of facilities it requested to serve indeterminate load by 288%.[120] Absent Board Policy 110, United's greatly overstated requests would have cause other Members to pay for its entirely unnecessary investments.

Because of Board Policy 110, United, like all other Members with indeterminate load, pays for the initial capital investment in these transmission upgrades. Members then generally pass these costs directly on to the risky industrial load customers, who fund this investment.[121] Because the Member bears the initial capital costs, there is no impact on Tri-State's transmission demand rate for billing purposes (*i.e.*, these costs do not appear in the A-40 Rate).

Board Policy 110's indeterminate load treatment, however, does not apply to ownership, maintenance, repair, and replacement of those facilities, which create ongoing fixed cost obligations and investment that Tri-State continues to bear. Nor does it apply to generation costs, all other existing transmission costs, third-party procured transmission services, looped reliability projects, or the vast majority of costs incurred to serve the indeterminate load. All these costs—i.e., the costs to generate power, transmit it over the transmission system, and own, operate, maintain, repair, and replace indeterminate load facilities—are incurred by Tri-State and incorporated in Member billings. Only the limited delivery point-type transmission upgrades necessary to connect particular indeterminate loads to the transmission system are subject to

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[120] Bladow Rebuttal, Ex. TGT-0117 at 9:5–7 (Table 1) (371 MW of United forecasted peak demand divided by 129 MW of actual peak demand equals 288%).

[121] *Id*. at 10:3–10.

Member capital investment responsibility, and again, these costs are excluded from Tri-State's transmission demand charge. Accordingly, the correct costs appear in Member billings and there is therefore nothing about indeterminate load that suggests Member billings misconstrue the share of Tri-State's costs devoted to serving a particular Member.

Finally, Board Policy 110 applies to all Tri-State Members. United's Brief on Exceptions leads the reader to believe that United is particularly disadvantaged under Board Policy 110 or uniquely situated in terms of Board Policy 110's relationship to United's *pro rata* share of Member billings. United, however, leads the reader astray. Board Policy 110 protects all Members from unnecessary risk associated with load that may dissolve or never materialize, but certain Members benefit more than others. Unsurprisingly, "the **largest benefactor of this policy has been United Power**."[122] Where United has incurred/saved the membership approximately $0.10/MWh in transmission demand costs associated with its capital investment obligations under Board Policy 110, it has realized an approximately $0.38/MWh reduction in transmission demand for those costs assumed by others.[123] Even if there were some relevant correlation between Board Policy 110 and a Member's share of system costs, United is neither uniquely situated nor harmed in any way warranting rejection of a Member billings allocator.

**f. United's attempts to limit and modify a Member billings approach are unsupported and unavailing.**

United's final salvo in its battle to avoid its fair share of costs incurred to serve it is to argue, in the alternative, that the Commission adopt one or more modifications to the Initial Decision's Member billings approach.[124] Neither of its *post hoc* adjustments are supported or

[122] *Id.* at 14:15.

[123] *Id.* at 14:12–19.

[124] United Exceptions at 41–47.

availing, and, importantly, they showcase the unending fixes and complexity United has introduced with its non-transparent BSA.

United's first proposal is that the Commission apply the Member billings allocator only to PPA costs and use a patronage capital allocator for long-term debt. United provides almost no support for this idea, attempting to differentiate between the timing of when the relevant costs/obligations were entered into and the reasons for these costs. As usual, this has nothing to do with the costs that Tri-State has incurred on behalf of particular Members and the benefits that Members receive and will receive from those currently outstanding costs.

Specifically, United contends that it would be appropriate to apportion debt based on a "backward-looking basis throughout the long lives of the assets."[125] But to look backward at revenues is to look at **costs that have already been recovered**, not at the appropriate allocation of **outstanding costs** which **have yet to be recovered**. These concepts are divorced since Member demand changes over time. As Tri-State invests in its owned generation resources, it recovers capital investment through annualized depreciation (over the lives of the assets), generally allocated to Members each year based on their *pro rata* level of service. In that sense, United has already paid its fair share of those capital costs associated with its historical use of and benefit from Tri-State's incurrence of those costs. But to continue to assign costs to United based on its historic level of service is nonsensical. Going forward, absent Member withdrawal, the **outstanding** capital investment is logically attributed to and recovered from Members as they take service (i.e., billings) over the term of their WESC. This is the appropriate means of allocating outstanding costs to a withdrawing Member as well, as it assigns to them their share of

[125] *Id.* at 43.

the unrecovered costs presently dedicated to them and the share of the system dedicated to their current and future use.

United attempts to distinguish between PPAs and other resource costs because PPAs were entered into "more recently, typically with the intention of serving member' current load in the short run to comply with state-level emission requirements."[126] This is arbitrary and unrelated to the share of costs (benefits) reserved for a particular Member's use. First, whether the timing of when Tri-State historically entered into a particular obligation or incurred a particular cost is at all relevant to allocation of existing costs has been exhaustively addressed above. It is not. Second, while United oversimplifies Tri-State's resource planning and the reasons for its investment in renewable energy resources through PPAs, the point has nothing to do with the fact that both PPAs and owned generation have associated costs, and that those costs are presently providing benefits to Members through service of current and future demand. United would have the Commission create an illogical gap in recovery by deflating United's share of non-PPA generation costs below its proportion of use and benefit, while appropriately recovering PPA generation costs based on benefits received. This proposal is introduced for the very first time in briefs on exceptions, without record support, is unprincipled, highlights the unending complexities and fixes that must be addressed under a balance sheet approach, and must be rejected.

United's second proposal is that the Commission adopt a Member billings approach based on 10-year shares of *pro rata* Member billings. This is effectively no different than a patronage capital approach. Though a shorter period than that over which patronage capital has accrued, United continues to attempt to inappropriately tie a Member's contribution to historical

[126] *Id.*

cost of service to the shares of currently outstanding costs that Tri-State has incurred or has an obligation to incur in serving particular Members. For all the reasons already discussed related to system planning, changes in member demand, etc., there is no link between these concepts, as costs that have already been paid through rates do not inform either currently outstanding costs or benefits derived by Members.

United complains that it has been subject to “exactly three years of explosive growth” that creates a larger cost obligation under the CTP. But, aside from United having grown aggressively since 2013,[127] United’s explosive growth is simply a reality, and comes with real cost consequences. United takes over 19.4% of Tri-State’s total Member service. If it had not grown to this level, Tri-State would have less service obligations and could have made (or at least considered) resource planning and power sales decisions resulting in a smaller cost structure. But United has grown to that level, and Tri-State is contractually bound to provide a particular level of service for United’s exclusive use and benefit and bear the costs of the system needed to support that level of service. That United should pay a share of currently outstanding costs consistent with the current share of the system that supports its present size and future needs is not “prejudice,” it is the epitome of the beneficiary pays and cost causation principles underlying just and reasonable cost allocation.

Finally, United attempts to draw various false connections between the appropriate allocator and the use of 10-year average cost of debt in the context of discount rates, and Tri-State’s use of 10-year forecasts. These have nothing to do with one another. Indeed, United does not try to explain how the principles underlying calculation of a discount rate affect the appropriate scope of costs committed to United’s use and benefit. In terms of forecasts, United

[127] Bridges Answering, Ex. TGT-0059 at 25:15–26:1 (Table 1, Annual MWH Sales).

argues that Tri-State's planning timeline (which is 10- to 40-years)[128] should coincide with the period over which Member billings are assessed to "reflect the reality that United Power's load outpaced Tri-State's anticipated *and* actual investment in generation assets to serve United Power's load."[129] As usual, United inexplicably ignores transmission costs. More important, whether Tri-State (or United, on whose information Tri-State's forecasts are, in part, based) correctly predicted the extent of United's growth is irrelevant to whether Tri-State has made investments that are serving United. It has. For United to suggest that United's load has outpaced Tri-State's "actual investment in generation" is objectively false because, in fact, Tri-State has generation resources to serve United! If United were correct, Tri-State would not have sufficient power to serve United. But it does. That these resources are deployed differently than might have been anticipated in 2012 does not mean that they are not deployed to serve United and reliably meet its obligations today and into the future.

**2. The Initial Decision correctly determined United's approach to transmission debt is unjust and unreasonable.**

United excepts to the Initial Decision's finding that it failed to satisfy its burden under Section 206 of proving that its proposed treatment of transmission-related assets, debt, and other obligations is just and reasonable.[130] Because United has no principled basis for its balance-sheet based approach, it also has no principled reference point for how to address transmission—United can point to nothing in the contractual language on which it relies, or elsewhere, to support its approach to transmission-related debt and other obligations.

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[128] Nebergall Answering, Ex. TGT-0067 REV at 31:19–21; Bladow Direct, Ex. TGT-0009 REV at 10:12–11:5 and 14:1–7. Initial Decision at P 387 ("Tri-State incurs debt and makes long-term, forward-looking commitments on behalf of Members based on load, not relative ownership in Tri-State.").

[129] United Exceptions at 47.

[130] Initial Decision at P 418–19.

Because its obvious goal is to arrive at the lowest possible CTP amount, it proposed an imprecise and complicated calculation to supposedly eliminate transmission-related amounts from the balance sheet calculation altogether. This *ad hoc* adjustment created several obvious problems that led United to offer a series of purported "fixes" that do no such thing. The Initial Decision correctly rejected this "Rube Goldberg" approach to transmission.

Tri-State and Trial Staff both address how to manage future transmission payments more simply and precisely by providing for offsets based on the exact transmission services a withdrawing Member contracts for going forward.

**a. United's approach to transmission debt is unjust and unreasonable.**

Tri-State has made significant investments in transmission and delivery facilities to serve an overall system sized to include United. These decades-long transmission investments were made based on the long-term nature of the WESC and Tri-State's related service obligations.[131] For example, eight years ago, based on United's own load forecasts, Tri-State embarked on a significant construction project to provide electric service to several large industrial loads in United's service territory, primarily to support oil and gas extraction, processing, and transportation. To do this, Tri-State constructed a transmission system capable of serving 1,230 MW, even though United's current load is only about 550 MW.[132]

Tri-State does not differentiate in its accounting records (or elsewhere) whether debt on its balance sheet was used for projects involving generation or transmission. Contrary to this reality, United seeks to retroactively allocate debt between generation and transmission and then

[131] Bladow Direct, Ex. TGT-0009 REV at 14:7–15; United Power System History, Ex. TGT-0014.

[132] Tr. (Bladow) at 1312:9–1315:12.

exclude all transmission debt from its BSA. To do this, United employs a rough, inaccurate[133] estimate to guess at the ratio, which excludes more than $1.2 billion[134] from the base amount for its CTP calculation. Because this is such a significant adjustment, precision is important. If United's estimated ratio is off by only 10%, its balance sheet calculation starts with a base that is off by $120 million.

If United does not pay the fixed costs associated with building, operating, and maintaining an overall system sized to include it, as in the example above, those costs will be shifted to the remaining Members and Tri-State's other OATT customers.[135] And unlike with generation-related costs, United will be shifting both debt and fixed operating costs.

Even though it excludes roughly 40% of the debt on the balance sheet—what it says is the portion of debt related to transmission—to purportedly avoid complications that could arise if the departing Member makes future transmission payments, United does not actually require a withdrawing Member to contract for any future transmission services. This is a major flaw.[136] There is no principled reason for the lack of a requirement to commit to future service before getting an offset based on that future service. United is simply seeking to create a discount on its exit fee now in return for future payments it may never make. United, and other Members, have options for alternative transmission services, and need not use Tri-State after they withdraw.[137]

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[133] Celebi Answering, Ex. TGT-0073 REV at 18:11–20:13 (showing flawed allocation approach).

[134] Generation Share of Plant, Ex. UP-0014 (showing exclusion of $1.194 billion); Balance Sheet Approach Model, Ex. UP-0021 Tab "UP-0012 Member BalSht Exit Fee" Row 18 (showing exclusion of an additional $72 million).

[135] Bladow Direct, Ex. TGT-0009 REV at 24:3–5.

[136] Trial Staff Initial Post-Hearing Br. at 53–54.

[137] Bladow Answering, Ex. TGT-0069 at 7:14–8:19.

Even if a withdrawing Member continues to use some transmission facilities, if it uses them less than before its withdrawal, Tri-State will recover less revenue but incur the same costs, the responsibility for which will be shifted to remaining Members.[138]

Faced with the obvious flaws in its own approach, United proposes an ambiguous and incomplete "fix." The fix, which United calls the "Stranded Cost Transmission Charge," is limited to ten years, and requires the departed Member to pay only if (1) the former Member had "been served by transmission assets for which Tri-State incurred cost;" (2) the former Member took transmission service from an alternative transmission provider; and (3) Tri-State was unable to remarket the released transmission capacity to other users of its transmission system.[139]

But the fix itself has many problems. It assumes nothing need be done if the departing Member takes OATT service. But, even if a withdrawing Member pays the OATT rate going forward, its payments would not actually cover the full costs Tri-State incurred to build the system to provide it service. Tri-State's OATT, which is paid by non-Members, recovers only the costs associated with network transmission system assets plus an allocation of general expenses or overhead costs.[140] By comparison, the Member Transmission Demand Rate paid by Members includes the OATT costs plus cost-recovery for non-OATT transmission assets owned by Tri-State and costs for third-party wheeling services.[141] As a result, Tri-State's OATT rate covers only a portion of its total long-term obligations related to transmission and delivery facilities. Of Tri-State's approximately $1.5 billion in transmission plant expenses in 2020,

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[138] Tr. (Bladow) at 1283:16–20.

[139] United Exceptions at 58–59.

[140] Bladow Direct, Ex. TGT-0009 REV at 22:12–23:8.

[141] *Id.*; *see also* Transmission Cost Allocation, Ex. TGT-0015; Tr. (Golino) at 1962:18–1963:2.

approximately $1 billion was for OATT-related facilities, and approximately $500 million was for non-OATT facilities.[142] So, even if a withdrawing Member committed to use Tri-State transmission at the OATT rate (instead of the Member Transmission Demand Rate) through the end of its WESC term, it still would pay only a fraction of its full share of transmission-related debt existing when it left.[143]

Further, United places a ten-year limit on collection of its proposed stranded cost transmission charge, which is arbitrary and is not long enough to address the problem it purports to fix.[144] And, none of this is simple and predictable because United's proposals are based on complex, opaque, and poorly defined criteria.[145] This is why the Initial Decision concluded this approach will result in litigation.[146]

Finally, United overstates its generation "adjustment" by deceptively applying it to balance sheet non-debt liabilities with no connection to transmission, like deferred tax liability and asset retirement obligations.[147] Remarkably, United represents that all the asset retirement obligations, which relate to costs associated with retiring generation assets, are included in the BSA.[148] While those charges may be reflected on Tri-State's balance sheet, they are not fully

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[142] Bladow Answering, Ex. TGT-0069 at 10:7–14:9.

[143] *Id*. at 25:14–27:16; *see also* Trial Staff Initial Post-Hearing Br. at 54.

[144] Golino Direct, Ex. S-0011 at 29:11–14.

[145] Mancinelli Answering, Ex. TGT-0075 REV at 38:3–41:13; Celebi Answering, Ex. TGT-0073 REV at 19:11–20:13; Bladow Rebuttal, Ex. TGT-0117 at 15:3–23:12. United's proposals will require Tri-State to perform complex studies to make stranded cost pre-termination calculations. Mancinelli Answering, Ex. TGT-0075 REV at 38:3–41:13.

[146] Initial Decision at P 421.

[147] Balance Sheet Approach Model, Ex. UP-0021 Tab "UP-0012 Member BalSht Exit Fee" Cell N18, Note 3; Generation Share of Plant, Ex. UP-0014; Other Liabilities, Ex. UP-0016.

[148] United Initial Post-Hearing Br. at 66.

captured in the BSA because of United's overly broad and imprecise exclusion of transmission-related debt.

The Initial Decision wisely rejected United's approach as being unjust and unreasonable. United takes exception to this arguing the Initial Decision's analysis was flawed.[149]

**i. The Initial Decision did not err in rejecting United's stranded cost transmission charge for being unreasonably limited in time.**

United's first argument is that the Initial Decision erred in rejecting its proposed stranded cost transmission charge because it is limited to ten years.[150] The Initial Decision notes that the stranded cost transmission charge is only needed because the BSA does not simply require the departing Member to continue to take transmission services for the remaining life of the WESC.[151] The Initial Decision finds the stranded transmission charge "flawed because its proposed ten year cap on departing Members' obligation 'is not tied to the remaining economic life of the assets or the present value (i.e. capitalized value) of the revenues these assets would generate.'"[152]

United asserts it was not appropriate for the Initial Decision to consider the remaining economic life or revenues of the transmission assets in question in rejecting United's ten-year charge.[153] Ultimately, the gist of United's argument here is that the Initial Decision should have assumed Tri-State will be able to resell any transmission services it does not take.[154] Indeed, United argues the Initial Decision was wrongly persuaded by Tri-State's evidence that it cannot

[149] United Exceptions at 58–64.

[150] *Id*. at 60–63.

[151] Initial Decision at P 420.

[152] *Id*.

[153] United Exceptions at 60–61.

[154] *Id*. at 61.

simply remarket released transmission capacity. But as Tri-State explained in testimony, there are several problems with United's resale approach. If another customer purchases transmission capacity, there is no practical way to track all such sales and attribute the sales as an offset to usage that previously was provided for departed Member's load. The departed Member, through a long-term contract with Tri-State, purchased a long-term transmission right, whereas other sales may be non-firm and short term. Further, it is unlikely that any new user will have the same point of receipt and point of delivery as the departed Member.[155]

Oddly, United suggests that the Initial Decision somehow assesses exit fees as if Members are responsible for service beyond the end of their WESC.[156] This is not what the Initial Decision does, and United does not explain what it means by this. There is no evidence in this record to suggest that the transmission credit approach adopted by the Initial Decision would require a Member to pay for transmission-related costs associated with periods beyond the end of the WESC. And, in any event, it is the Members, not third parties are responsible for the debt and the same complication arises in the generation context—have generation that have depreciable lives beyond 2050[157]—but United does not find it advantageous to identify it there. None of this would be an issue under a revenues approach because assets are depreciated over their lives via annualized depreciation expense allocated to all customers and thus revenues implicitly and appropriately allocate costs among customers and over the lives of the assets.

United also challenges the Initial Decision's findings on this point by asserting that the record supports adopting an approach using "Tri-State's own ten-year transmission planning

[155] Bladow Direct, Ex. TGT-0009 REV at 26:10–27:3.

[156] United Exceptions at 61.

[157] Tri-State Generation Resource List, Ex. TGT-0007.

timeline."[158] But the testimony United cites in support of this position highlights not only the ten-year planning horizon, but also that those assets last for 50 years.[159] United is wrong to focus only on planning and not on the lifespan of the assets built to serve Members.

**ii. The Initial Decision did not err in finding United's stranded cost transmission charge to be overly complicated in its approach.**

The second basis on which United challenges the Initial Decision's analysis of its stranded cost transmission charge is the Decision's finding that charge could not feasibly be implemented.[160] The Initial Decision properly found United's approach places an undue burden on Tri-State concerning efforts to remarket the released transmission capacity.[161] United contends the Initial Decision's concern is misplaced because there should be no burden. This is simply wrong. As the Initial Decision and Dr. Golino correctly recognized, it is contrary to the Commission's policy of establishing procedures that would allow Members to exit in an orderly Manner to set up a system whereby Tri-State and the departed Member will be in a recurring, ten-year, heavily fact dependent dispute involving millions of dollars.[162]

United defends this aspect of its approach by arguing it does not matter and the Commission can just toss it out.[163] In doing so, United basically argues that the Initial Decision had an obligation under Section 206 to fix United's proposal. But, of course, it was United that had the burden of showing its alternative to be just and reasonable.

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[158] United Exceptions at 61.

[159] Bladow Direct, Ex. TGT-0009 REV at 14:1–15.

[160] United Exceptions at 63–64.

[161] Initial Decision at P 421.

[162] *Id.*; Golino Direct and Answering, Ex. S-0011 REV 2 at 31:3-7.

[163] United Exceptions at 64.

**b. The Initial Decision did not err in adopting Trial Staff's proposal.**

United contends the Initial Decision erred in adopting Trial Staff's transmission credit approach to address future transmission usage.[164] United argues the Initial Decision erred in the approach to transmission it adopted because it contravenes cost causation policy, relies on Trial Staff's methodology, which United characterizes as flawed, and fails to "include express arithmetic."[165] These points are misguided and largely result from complications created in the first place by United's overly simplistic, debt-based approach.

**i. The Initial Decision's approach to transmission does not contravene cost causation policy.**

United asserts that the Initial Decision assumes "without expressly stating" that a Member departure will leave Tri-State with stranded costs. United then contends that this is wrong because a Member's departure will shift costs, not strand them.[166]

United's contention is incorrect because it assumes that upon leaving a terminating Member will acquire all radial transmission assets and non-OATT facilities used to serve it. But the Initial Decision does not require the terminating Member to acquire any assets upon departure. And the terminating Member likely cannot fully acquire these assets because many non-OATT facilities serve multiple members. So, even when a withdrawing Member agrees to purchase the facilities, the identification of the specific facilities that can be sold (and determining whether and how they can be physically separated from Tri-State's transmission

[164] *Id*. at 64–74. Guzman similarly argues that the Initial Decision errs in making decisions based on what "might" happen. Guzman Exceptions at 5–6.

[165] *Id*.

[166] United Exceptions at 55.

system) is complicated and time consuming.[167] If a withdrawing Member does not buy non-OATT delivery facilities that serve it, the costs related to those facilities will be stranded.[168]

United argues Tri-State has the burden of proof to show stranded costs.[169] But the burden under Section 206 is on United to show its proposal is just and reasonable.[170] And, in any event, the decision United cites in support of its burden argument, *Transmission Access Policy Study Grp. v. FERC*,[171] only requires the utility to show it had a reasonable expectation of continued service to the departing customer. That can hardly be contested here.

United then argues the Initial Decision's approach to transmission contravenes cost causation policy because it assumes the transmission cost shifts that would result from a Member's exit are unjust and unreasonable.[172] United's arguments here are made by reference to general cost causation principles, and it contends the Initial Decision should have required some future showing by Tri-State that other transmission users have not increased their usage of the Tri-State system. [173] Here again, everything United complains of could be equally true of generation-related debt, but it only finds it convenient to raise it in the context of transmission. The transmission system has been planned for future growth, so it would show nothing if other

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[167] Tr. (Bladow) at 1284:9–19, 1321:14–1322:6. This process "took six to eight months" when Kit Carson withdrew and "almost 18 months when" DMEA withdrew. *Id*. at 1323:5–13. To do this for all Tri-State's members would "take years and years." *Id*. at 1323:21–1324:3.

[168] Tr. (Bladow) at 1283:7–14.

[169] United Exceptions at 55.

[170] Section 206(a) authorizes the Commission to fix a just and reasonable rate only if, after a hearing, it finds that the jurisdictional rate charged by a public utility is "unjust, unreasonable, unduly discriminatory or preferential." 16 U.S.C. § 824e (a).

[171] *Transmission Access Policy Study Grp. v. FERC,* 225 F.3d 667, 701 (D.C. Cir. 2000).

[172] United Exceptions at 56–58.

[173] *Id*. at 57.

Members increased their usage—the new usage would be into capacity planned for them, not in replacement of United. In addition, the on-going proof of evidence of cost shifts they demand would create complexities contrary to the Commission call for a simpler and more transparent methodology.[174]

As to Trial Staff's methodology, United simply repeats its argument that Tri-State will not necessarily face stranded costs for transmission assets.[175] United contends that there is an implicit recognition in the Initial Decision that if a departing Member purchases its delivery facilities from Tri-State, it will not have to pay a *pro rata* share of Tri-State's debt related to delivery facilities.[176] But, as United well knows, Tri-State's debt is not allocated among generation and transmission, much less among categories of transmission. There is no implicit recognition along the lines United suggests because the Initial Decision presumably recognized what United wants to overlook—one simply cannot break down Tri-State's debt into amounts for delivery facilities and other facilities, as United suggests.

This is a problem entirely of United's making. Having pushed for an approach based entirely on debt, even though it knew that Tri-State historically did not track or account for the use of that debt, United now complains of the complications that arise from its chosen approach. This is yet another reason any balance sheet-based approach is flawed from the outset—a balance sheet is too basic to contain the full range of details and information necessary for an appropriate CTP calculation.

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[174] *Tri-State Generation & Transmission Association, Inc.*, 175 FERC ¶ 61,229, at P 10 (2021)

[175] *Id*. at 65.

[176] *Id*.

United's flawed thinking is further illustrated by its assertion that if a departing Member elects not to purchase delivery facilities, it would be responsible for paying its ***pro rata*** share of Tri-State's debt related to those facilities.[177] But, in most cases, the departing Member's delivery facilities were built primarily to serve the Member only—the prototypical stranded asset. If the departing Member does not purchase the assets built to serve it alone, those assets will be both useless and their costs will likely not be includable in rolled-in transmission or distribution rates. So, it can never be the case that a departing Member would appropriately pay a ***pro rata*** share for assets that it used exclusively.

**ii. The Commission should reject United's inappropriate effort to recharacterize the Initial Decision in its Appendix B by reference to analysis and data outside the record.**

As to the arithmetic it claims the Initial Decision lacks, United conveniently purports to fill in the alleged gaps. United objects to the recommended Transmission Credit as "unsupported," lacking "the express arithmetic," and failing to "describe the arithmetic," but then proceeds to devise its own calculation for how to implement the Initial Decision and calculate the Transmission Credit.[178] The record evidence, however, contains no support for the arithmetic United chooses now for the first time.

United's Appendix B and the portion of its Exceptions devoted to the transmission credit imagine an approach found nowhere in the Initial Decision and rely on data found nowhere in the record. For example, United breaks the calculation down between networked and non-networked facilities even though that division is not supported or discussed anywhere in the Initial

[177] *Id*. at 66.

[178] *Id*. at 67 ("United Power calculates the ID OATT Transmission Credit to be as follows").

Decision.[179] And, United bases its calculations on its own breakdown of operating costs, with no reference to the record.[180] United's discussion of its transmission proposal is in essence new expert testimony of how the Initial Decision should be interpreted and applied that has not been examined, analyzed, and challenged by any other party to this proceeding.

Similarly, United builds into its Appendix B a new credit against transmission debt that the Initial Decision does not adopt or even discuss.[181] This credit is related to non-OATT transmission facilities United apparently intends to purchase (obviously with no real commitment to do so). It is flawed and overly generous to United (of course) because it is based on a mistaken assumption that all non-OATT transmission facilities are radial, and because the financing of Member radial facilities may be affected by contributed capital. Further, any adjustment should reflect Tri-State's equity to capitalization ratio of 25%. None of this was developed in the administrative record.

Allowing United to advance new data and novel, unexamined, and unchallenged BSA approaches for the first time in its Brief on Exceptions based on extra-record evidence is unduly prejudicial to the other parties in this case and disruptive to the final adjudication of this proceeding.[182] Accordingly, the Commission should decline to consider or adopt any aspect of United's Appendix B.

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[179] *Id*. at 66–67 ("United Power has implemented the Transmission Credit prescribed by the ID by focusing on two components to the credit.").

[180] Appendix B, Sheet B5.

[181] United Appendix B, Tab "B1 ID Exit Fee" at line 32.

[182] *See, e.g., Office of Consumers' Counsel v. FERC*, 783 F.2d at 233; *see also* 18 C.F.R. § 385.505 (participants to a Commission hearing have "the right to present such evidence, including rebuttal evidence, to make such objections and arguments, and to conduct such cross-examination, as may be necessary to assure true and full disclosure of the facts"); *Williams Pipe Line Co. Enron Liquids Pipeline Co*., 84 FERC ¶ 61,022, at 61,109 (1998) ("the method that Williams used to develop the material included in its brief on exceptions was never subject to

**iii. The Initial Decision's transmission credit approach should not be rejected on policy considerations.**

United argues the Commission should reject the transmission credit concept altogether because the transmission credit is based on the terms of any contract that the terminating Member enters into for future transmission services, and United contends any contract would limit competition.[183] In essence, United asks the Commission to conclude that take-or-pay contracts harm competition. United's position here follows its overall misguided view that the mere existence and enforcement of long-term contracts is somehow contrary to the Commission's policies. But, as the Commission knows, allowing parties to enter into long-term contracts is necessary to allow efficient resource allocation.

The Initial Decision does not require a terminating Member to enter into a contract for further transmission services at all. All it does is provide a benefit to reflect certain economic realities should the Member decide to do so. But to receive a credit today for services that may be taken tomorrow, the amount of service and revenues must be contractually committed to and known. Otherwise, there is no need or basis for the credit to be offered. United wants to walk away from its multi-decade WESC. Doing so will create some complications, like what to do about continuing transmission services, if any. The appropriate response to those complications

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cross examination at hearing, the parties have had no opportunity to examine it in detail, and specifics of its methodology are unclear to the Commission. For these reasons, the Commission cannot use Williams' tardy "cost-based" filing to determine whether Williams' jurisdictional rates are just and reasonable or not unduly discriminatory."); *Midwest Indep. Transmission Sys. Operator, Inc. Ameren Illinois Co*., 148 FERC ¶ 61,206, at P 300 (2014) ("Here, Ameren has proposed an amortization of its severance expenses for the first time in its brief opposing exceptions, which is a post-hearing brief and not on the record. Therefore, the evidence is impermissible."); *see also* Joint Motion to Strike and Request for Expedited Action (filed Nov. 22, 2022).

[183] United Exceptions at 70–71.

is not, as United suggests, to make it as easy as possible for the terminating Member to leave at the expense of others.

United also makes assumptions about the terms of the agreement Tri-State and the terminating Member would make for future transmission services and then argues terms would violate open-access principles.[184] The Initial Decision does not provide support for United's assumptions. The Commission should assume any agreement reached by the parties concerning future transmission services, which will be subject to Commission review, will not violate public policy and law prohibiting bilateral or unduly discriminatory transmission arrangements.

**iv. The Initial Decision's use of a Member billings allocator does not ensure double collections of debt.**

United argues the Initial Decision's use of a Member billings allocator will cause the exit fee to double collect transmission debt because non-Members also use OATT service.[185] The essence of this position is that in measuring the terminating Member's share of debt, the CTP should reflect Tri-State's one-off sales to third parties.

United does not explain why it is not making this same argument concerning generation-related debt. Presumably, this same argument would apply there, because Tri-State also sells power to non-Members. This is yet another example of the flaws in United's overall approach. Amounts reflected in the balance sheet are not allocated among Members or between Members and non-Members. Indeed, it is Tri-State and its Members that are ultimately responsible for repaying debt and making good on obligations, not third parties. It is hypocritical for United to make this criticism of the Initial Decision's approach while promoting an overall approach that is susceptible to the same criticisms.

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[184] *Id*. at 71.

[185] *Id*. at 72. Guzman makes the same argument. Guzman Exceptions at 7–8.

Further, in making this argument, United forgets that the purpose of the CTP is to capture costs and other obligations Tri-State has incurred or has an obligation to incur for service to the terminating Member to make remaining Members whole and avoid harming them. Tri-State built its generation and transmission infrastructure to serve all its Members into the future. Because Tri-State plans for Member growth, at any given time it will have excess power and capacity that its Members will grow into. When it is not needed to serve Members, Tri-State tries to sell this excess power and transmission capacity to non-Members, but those sales are not guaranteed and Tri-State does incur obligations to build its system for non-Members. Debt recovery is the obligation of Tri-State and ultimately the Member-owners, so to artificially allocate debt to non-Members as part of the CTP inappropriately shifts the risk of debt recovery from the departing Member to remaining Members. Under these circumstances, it would be wrong to allocate debt to non-Members.

#### v. The Initial Decision's approach will not result in impermissible subsidization.

United posits a far-fetched scenario where a Member contracts for capacity it does not actually need, and then complains that the scenario would result in subsidization.[186] The arguments United makes in this section would only apply when a departing Member contracts for future service that it does not use and Tri-State resells the Member's unused capacity.

First, there is no reason to believe a departing Member will contract for future capacity it will not need. The Member is free to contract for as much or as little service as it needs. Certainly, the Member is the one best situated to determine its needs, just as it would do with any other long-term supply contract. Second, as discussed above, there is no reason to assume Tri-State will somehow be able to re-sell the transmission capacity dedicated to the departed

[186] United Exceptions at 73–74.

Member.[187] Third, United does not explain how or why Tri-State would be able to freely resell capacity already under contract to the departed Member. Presumably if Tri-State is contractually committed to provide transmission capacity that the departed Member cannot use and there is a market for it, Tri-State and the Member would reach agreement for one or the other of them to resell it.

**3. The Initial Decision correctly found that it would be unjust, unreasonable, and unduly discriminatory to apply full credit for a departing Member's patronage capital.**

While Tri-State believes the Initial Decision incorrectly found that Tri-State's proposed treatment of patronage capital is not just, reasonable, and not unduly discriminatory,[188] the Initial Decision correctly found that patronage capital must be discounted as part of a just, reasonable, and not unduly discriminatory CTP methodology. Although United itself discounts the lump sum capital credits payments it makes to its own former members,[189] when it comes to a CTP payment for withdrawing from Tri-State, United contends that patronage capital should be treated essentially as cash and should be credited or paid to a withdrawing Member at its undiscounted, full book value.[190] Exceptions filed by United and the Indicated Members argue against the Initial Decision's treatment of patronage capital.[191] These arguments are without merit.

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[187] Bladow Answering, Ex. TGT-0069 at 26:10-27:3.

[188] Initial Decision at P 298.

[189] Bridges Answering, Ex. TGT-0059 REV at 32:10–18; United Consent and Authority for Discounting Payment of Capital Credits for an Inactive Account, Ex. TGT-0064; United Bylaws Excerpt, Art. 8, Ex. TGT-0065 §§ 8.03(f), 8.04; Bridges Rebuttal, Ex. TGT-0118 at 30:14–31:7.

[190] United Exceptions at 64.

[191] *See id*. at 74–80, Indicated Members' Exceptions at 57–58.

**a. The Initial Decision correctly rejected United's arguments for an undiscounted patronage capital credit.**

United first claims the Initial Decision erred by concluding that "applying the full patronage capital credit 'has no basis in the Tri-State Bylaws or WESC.'"[192] United, however, offers no substantive response to this conclusion nor does it identify a basis in Tri-State's Bylaws or the WESC to support its proposal. Instead, it criticizes the Initial Decision for alleged inconsistency regarding the relevance of the Bylaws and the WESC. United's criticism is particularly ironic since it repeatedly (albeit misleadingly) emphasizes the importance of the Bylaws and the WESC when supporting its proposed BSA.[193] Regardless, the Commission has held that "the recovery of early termination charges for [post-Order No. 888] contracts must be consistent with the explicit terms of the contract."[194] Here, the Commission has accepted Tri-State's Bylaws, which are a contract among Tri-State and its Members, as just and reasonable.[195] The Initial Decision's conclusion that "the BSA's crediting of the entire amount of patronage capital has no basis in the Tri-State Bylaws or WESC"[196] is grounded in Commission precedent and is correct.

[192] United Exceptions at 76.

[193] *See, e.g.*, Strunk Direct, Ex. UP-0010 REV2 at 4:1–4 (arguing the BSA implements the plain language of Tri-State's Bylaws and the WESC) and 9:1-6 (Table 1 – identifying Bylaws and WESC provisions that allegedly support the BSA); United Exceptions at 41, n.154 ("Allocation of debt and obligations via patronage capital is also the only proration method contemplated within Tri-State's Bylaws.").

[194] *Wabash Valley Power Ass'n, Inc.*, 171 FERC ¶ 61,053, at P 22 (2020), *accord* Strunk Direct, Ex. UP-0010 REV2 at 4:1–4.

[195] *See Tri-State Generation & Transmission Ass 'n, Inc.,* 170 FERC ¶ 61,223, *order on reh 'g,* 172 FERC ¶ 61,181 (2020) (accepting Tri-State's Bylaws as just and reasonable effective February 26, 2020), *Tri-State Generation & Transmission Ass 'n, Inc.,* 179 FERC ¶ 61,062 (2022) (accepting revisions to Tri-State's Bylaws as just and reasonable effective February 14, 2022).

[196] Initial Decision at P 442.

United next takes exception to the Initial Decision's finding that "crediting the entire amount of the patronage capital upon exit would likely impair the financial condition of Tri-State."[197] The Initial Decision correctly explains that patronage capital "is a non-cash item in Tri-State's accounting [which] likely could not be feasibly disbursed whenever a Member departs from Tri-State."[198] United, however, argues that "a full patronage capital credit merely would reduce the size of the cash payment the departing member would pay to Tri-State rather than extracting a cash payout as the ID presumes."[199] United appears to misunderstand the Initial Decision's reasoning. The Initial Decision does not presume a cash payout in connection with the withdrawing Member's patronage capital as United suggests; rather, the Initial Decision's logic recognizes that the CTP payment represents the costs Tri-State has incurred or has an obligation to incur to serve the withdrawing Member.[200] Therefore, since the Member's patronage capital is treated as a credit against its CTP payment, that same amount is not available as cash that could be feasibly disbursed by Tri-State to satisfy such obligations upon the Member's withdrawal.[201] The Initial Decision recognized this economic reality and correctly rejected United's proposal to credit the full amount of the withdrawing Member's patronage capital against the CTP payment.[202]

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[197] *Id.* at P 443; *see* United Exceptions at 76.

[198] Initial Decision at P 443; *see also* Bridges Direct, Ex. TGT-0016 REV2 at 11:3–8, Bridges Answering, Ex. TGT-0059 REV at 28:10–29:2

[199] United Exceptions at 76.

[200] *See* Initial Decision at P 221 ("[T]he purpose of Tri-State's exit charge . . . is to determine the appropriate CTP payment from Member to Tri-State to cover the obligations that Tri-State incurred or has an obligation to incur to satisfy service obligations under the WESCs for departing Members.").

[201] Bridges Answering, Ex. TGT-0059 REV at 29:3–4 and 15–19.

[202] Initial Decision at P 443.

United next argues that the Initial Decision's discounting of patronage capital is inconsistent with Tri-State's accounting treatment of patronage capital associated with previous Member withdrawals.[203] United's reliance on the Kit Carson and DMEA withdrawals as "benchmarks" was soundly rejected by the Initial Decision,[204] and its comparison of Tri-State's accounting treatment in those one-off, negotiated Member departures to what it claims should be the accounting treatment for patronage capital under a generally applicable CTP tariff should also be rejected.

As an initial matter, contrary to United's argument, the record clearly establishes that neither Kit Carson nor DMEA received a full "credit" for any amount of patronage capital.[205] As Mr. Nebergall explained, Tri-State specifically discounted Kit Carson's patronage capital.[206] Further, while those departing Members agreed as part of their settlements to forfeit any claim to their patronage capital, that did not mean Tri-State received the full face value of those Members' patronage capital.[207]

As for accounting treatment, the Initial Decision correctly recognized Tri-State's treatment of withdrawing Members' patronage capital as deferred revenue is consistent with the relationship between a CTP payment and the withdrawing Members' avoidance of future obligations under the WESC.[208] The Initial Decision concluded that "Tri-State's business judgment in this accounting practice appears to be sound" and its "accounting treatment of

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[203] United Exceptions at 76–77.

[204] *See* Section IV.E.

[205] Tr. (Bridges) at 374:18–20.

[206] Tr. (Nebergall) at 1000:13–1001:1, 1096:2–20.

[207] Tr. (Bridges) at 298:19–25 and 300:11–13; Bridges Answering, Ex. TGT-0059 REV at 30:5–10.

[208] Initial Decision at P 447.

patronage capital is reasonable."[209] Therefore, United's arguments regarding the amount of and accounting for patronage capital in prior Member withdrawals are without merit and should be rejected.

Finally, United takes exception to the Initial Decision's conclusion that "providing full patronage capital credits for departing members could create undue discrimination for remaining members."[210] The Initial Decision explains this discrimination arises from the fact that, under United's proposed approach, the withdrawing Member realizes immediately the full value of its patronage capital account while remaining Members "would have to wait 20 years or more to do the same."[211] United's response to this concern is, in essence, there is no discrimination because the other Members could get the same immediate benefit if they choose to withdraw too.[212] Because other Members can, under United's approach, withdraw and precipitate the same discriminatory results does not make that approach just and reasonable, nor does it explain why providing full credit for the withdrawing Member's patronage capital is just and reasonable.

The fact remains that under the controlling agreement, Tri-State's Bylaws, a withdrawing Member can continue to receive its patronage capital paid out in the normal course over time or it can receive a "discounted amount" upfront.[213] Providing full credit for a withdrawing Member's patronage capital is inconsistent with Tri-State's Bylaws and, therefore, discriminatory as to remaining Members. As discussed above, since any amount of the CTP

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[209] *Id.*

[210] United Exceptions at 77; *see* Initial Decision at P 444.

[211] Initial Decision at P 444.

[212] United Exceptions at 78 (There is no discrimination here where remaining members choose to continue financing the Tri-State system and elect not to liquidate their *pro rata* share of Tri-State's liabilities and equity through withdrawal.").

[213] Tri-State Bylaws, Ex. TGT-0019 at Art. I, § 4(c).

"paid" through a patronage capital credit cannot be used to pay-off debt, providing a full credit for patronage capital also has the practical discriminatory effect of requiring the remaining Members to pay for that portion of the withdrawing Member's debt and the associated debt service payments (which can add up to more than the principal itself). Given the benefits to a withdrawing Member and the adverse impacts on remaining Members, United's proposal to credit the full amount of the withdrawing Member's patronage capital would create a perverse incentive for Members to withdraw.

Trial Staff's witness Dr. Leonard, who agrees with Tri-State that patronage capital should be discounted if a lump sum payment is to be made,[214] put it succinctly when he stated he could find "no support" for United's position.[215] Despite United's various arguments for crediting a departing Member with an undiscounted patronage capital amount, the Initial Decision correctly concluded that a just, reasonable, and not unduly CTP methodology should discount the withdrawing Member's patronage capital when crediting it against the CTP payment.

**b. Tri-State believes that the Modified CTP Methodology's treatment of patronage capital is just and reasonable, but it does not believe that the Initial Decision's adoption of the Trial Staff's treatment of patronage capital is necessarily unjust, unreasonable, and unduly discriminatory.**

Consistent with its Bylaws, under the CTP tariff, Tri-State credits a "discounted amount" of patronage capital against a withdrawing Member's RSE CTP. This "Patronage Capital Credit" is the NPV of the withdrawing Member's accrued, unpaid patronage capital balance, amortized over either the remaining WESC term or 20 years, whichever is greater.[216] Tri-State uses "i" as

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[214] Leonard Direct, Ex. S-0001 REV at 25:9–14.

[215] *Id*. at 33:19–21.

[216] Rate Schedule 281, Ex. TGT-0018 at 4 & n.5; Mancinelli Direct, Ex. TGT-0033 REV3 at 59:3–62:9.

the discount rate to calculate the NPV.[217] Tri-State's approach to patronage capital is just, reasonable, and not unduly discriminatory for several reasons. First, it follows the approach set out in Tri-State's Bylaws.[218] Second, patronage capital is not a liquid asset, and it properly reflects economic reality to discount the potential future payment stream.[219] Third, amortizing over at least 20 years provides a credit commensurate with, or better than, the value remaining Members will receive by staying and obtaining patronage capital payments over time.[220] Notwithstanding these reasons, the Initial Decision found that Tri-State had not met its burden of proving that its treatment of patronage capital is just, reasonable, and not unduly discriminatory.[221] Instead, the Initial Decision adopted Trial Staff's proposed treatment of patronage capital.[222]

Tri-State[223] and Trial Staff[224] both propose that a withdrawing Member's allocated but unpaid patronage capital be discounted to reflect its present value before being credited or paid. Tri-State and Trial Staff have relatively minor disagreements on the most appropriate discount rate and period to use in the present-value calculation.[225] Trial Staff proposes alterations to how the discount rate is determined.[226] It also proposes the calculation should be made over a

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[217] *See* Mancinelli Direct, Ex. TGT-0033 REV3 at 62:10–64:17.

[218] Bridges Answering, Ex. TGT-0059 REV at 29:8–12.

[219] *Id*. at 28:6–29:7.

[220] Mancinelli Direct, Ex. TGT-0033 REV3 at 59:13–22.

[221] Initial Decision at P 298.

[222] *Id.* at PP 516–18.

[223] Rate Schedule 281, Ex. TGT-0018 at 4 & n.5; Mancinelli Direct, Ex. TGT-0033 REV3 at 59:3–62:9.

[224] Trial Staff Initial Post-Hearing Br. at 42; Leonard Direct, Ex. S-0001 REV at 5:12–14.

[225] Trial Staff Initial Post-Hearing Br. at 43; Leonard Direct, Ex. S-0001 REV at 27:6–7.

[226] Trial Staff Initial Post-Hearing Br. at 28–29.

different period.[227] In the aggregate, these changes operate to increase the present value of the credit.[228] In contrast, Tri-State believes its inputs are appropriate and need not be altered because they are "just and reasonable," which does not require that they be perfect or optimal.[229] To be "just and reasonable," Tri-State's methodology "need not be the only reasonable methodology, or even the most accurate."[230] As long as Tri-State's methodology is "just and reasonable," as it is here, the Commission need not and should not address whether alternative methodologies may be preferable.[231] But, Tri-State does not contend Trial Staff's proposed changes would not also result in a just and reasonable determination of patronage capital account value.

#### 4. The Initial Decision correctly rejected United's effort to lower the CTP through *ad hoc* adjustments.

United takes exception to the Initial Decision's rejection of its *ad hoc* adjustments to its generation-related debt calculation.[232] United proposed several, unprincipled *ad hoc* adjustments to items on the balance sheet to further lower its base exit fee. Trial Staff and the Initial Decision recognized this effort for what it was and correctly rejected it. If a primary feature of a balance sheet approach is its purported simplicity and transparency, permitting *ad hoc* adjustments like

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[227] *Id*. at 43.

[228] Golino Direct, Ex. S-0011 REV2 at 30 Table 3 (showing Trial Staff changes increased credit for United by $7 million over Tri-State's approach).

[229] *See, e.g.*, *Cal. Indep. Sys. Operator Corp*., 120 FERC ¶ 61,023, at P 45 n.34 (2007); *cf. Fed. Power Comm'n v. Hope Nat. Gas. Co*., 320 U.S. 591, 602 (1944) (ratemaking involves "pragmatic adjustments"); *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am*., 315 U.S. 575, 585 (1942) (ratemaking involves setting a rate within a "zone of reasonableness").

[230] *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

[231] *See, e.g., City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *Cal. Indep. Sys. Operator Corp*., 128 FERC ¶ 61,265, at P 21 (2009); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009).

[232] United Exceptions at 47–53.

what United proposes undermines this and encourages the parties to engage in self-benefiting gamesmanship.

United argues the Initial Decision erred in adopting Trial Staff's "superficial" critiques of United's *ad hoc* approach.[233] United argues the Initial Decision does not dispute the validity of these adjustments, yet incorrectly characterized them as subjective and unverifiable.[234] United further argues that the Initial Decision incorrectly claims these adjustments would increase the risk of further litigation.[235] Each of these arguments is without merit.

First, United contends the Initial Decision erred in rejecting United's *ad hoc* adjustment concerning the Nucla and Escalante plants.[236] Tri-State retired these plants in the last few years. United says that with this adjustment, it proposes to treat the regulatory asset Tri-State booked related to these plants as debt.[237] This highlights the flaw in using a balance sheet to capture costs in the first place. A balance sheet does not accurately show costs, even for capital intensive assets like generation plants. United harps on this adjustment as one favoring Tri-State, but if adopted it creates a precedent for the parties to then pick through everything on and off the balance sheet and argue for changes. If the CTP is based on actual revenues derived from Commission-approved rates, as the MCTP Methodology proposes, it eliminates the complex guesswork and gamesmanship that arise from having to link reality to debt. This is because the Commission already has well-developed processes to address cost allocation. An approach based on Commission-approved rates, as opposed to a *pro rata* share of a lump sum like debt, will have

[233] *Id*. at 51–53.

[234] United Exceptions List at 15 (1.A.ii.1).

[235] *Id*. at 16 (1.A.ii.2).

[236] United Exceptions at 48.

[237] *Id*. at 48.

already accounted for those cost items, offsets, and so on (*e.g.*, including leases, regulatory assets, regulatory liabilities, etc.) that should be appropriately included in rates and allocated to customers. This is transparent and avoids the need for *ad hoc* changes and unending future dispute as changes to the system and cost drivers arise.

Second, United contends the Initial Decision erred in rejecting United's *ad hoc* adjustment concerning Springerville.[238] United proposes to reduce the debt associated with Tri-State's Springerville plant by a quarter, purportedly because of a sales agreement with a third party.[239] United calculates this adjustment using the MW associated with the non-Member sale.[240] But, this adjustment ignores that the Members, not any third parties, repay the Springerville debt.[241] The Springerville-related, non-Member sale does not differ from other non-Member sales of power from generation assets.[242] United apparently only addresses this specific sale because it sees another *ad hoc* opportunity to modify the CTP in its favor.

Third, United contends the Initial Decision erred in rejecting United's *ad hoc* adjustment concerning a credit for deferred revenue balances.[243] United proposes subtracting $157.9 million from its base CTP amount[244] as a credit for what remains in Tri-State's accounting (as of 2020)

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[238] *Id*. at 48–49.

[239] Springerville Adjustment, Ex. UP-0015.

[240] *Id*.

[241] Mancinelli Answering, Ex. TGT-0075 REV at 33:8–34:2.

[242] *Id*.

[243] United Exceptions at 49–51.

[244] Balance Sheet Approach Model, Ex. UP-0021 at Tab "UP-0012 Member BalSht Exit Fee," Cell N20; Tri-State 10-K, Ex. UP-0120 at 60 (showing regulatory liabilities separate from long-term debt); Other Liabilities, Ex. UP-0016 (showing regulatory liabilities not included among included "other liabilities").

from the Kit Carson and DMEA exit payments.[245] Setting aside whether it is appropriate for an individual, withdrawing Member to receive a credit for this accounting item designed to benefit the entire membership (it is an asset and should not be treated differently than any other asset), it likely would result in double counting for the withdrawing Member.

Tri-State recognizes portions of the deferred revenue in the Regulatory Liabilities line item (of which this is a part) each year to help balance its books, to the benefit of all Members.[246] If a withdrawing Member receives a share of deferred revenue calculated as a credit against its CTP, which is calculated in the year it gives its withdrawal notice, some or all of that same deferred revenue will be used by Tri-State over the two years before the withdrawing Member has left. For example, in 2021, Tri-State recognized $14.7 million of the $157.9 million from 2020.[247] This means the withdrawing Member would receive the benefit of its "share" of the deferred revenue twice—once when included in the CTP calculation and again when used to benefit all Members while the withdrawing Member is still with Tri-State.

United argues this double counting should be acceptable because it also applies to debt—that is the departing Member will pay its share of debt in the exit fee and also in its rates over the two years before it leaves.[248] But this just highlights another fundamental and important flaw in both the BSA and the Initial Decision's approach—United and the Initial Decision simply adopted the procedures Tri-State developed for the MCTP Methodology instead of developing procedures that made sense for their own approaches.[249] An CTP based on debt does not need to

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[245] Strunk Direct, Ex. UP-0010 REV 2 at 40, 44:10–19.

[246] *E.g.*, Tr. (Bridges) 353:6–16, 374:21–375:18.

[247] Tri-State 10-K, Ex. UP-0120 at 52.

[248] United Exceptions at 50.

[249] *See* Tri-State Exceptions at 98–99.

be set two years in advance, but the participants promoting debt-based approaches did not offer any procedures to fix their methods. United also argues that Tri-State need not apply any deferred revenue during the two-year period between when a Member gives notice and leaves.[250] But the Commission should not adopt an approach that interferes with Tri-State's on-going business decisions. It would be unfair to the remaining Members to require Tri-State to decline to engage in appropriate and beneficial accounting decisions just because a Member has decided to leave.

#### 5. The Initial Decision correctly rejected United's proposed limitations on Tri-State's use of and/or accounting for an exit payment.

United excepts to the Initial Decision's rejection of its proposal to require Tri-State to account for exit payment cash as either for immediate debt repayment, debt defeasance, and/or creation of an escrow account dedicated to debt service.[251] United, however, does not brief its position on this point. These restrictions are not just and reasonable because they will unnecessarily limit Tri-State's flexibility in addressing the financial impacts of a departure. If these restrictions were adopted, Tri-State would have no available CTP funds to cover the operating costs gap created when it lost revenue from the terminating Member without a commensurate drop in ongoing non-debt fixed obligations.[252]

### E. The Initial Decision correctly rejected United's proposed "benchmarks."

To justify its BSA as originally proposed, United argues that the Initial Decision incorrectly disregarded certain alleged "benchmarks" which United believes support adoption of the BSA without the Initial Decision's modifications. United argues these "benchmarks" align

[250] *Id*. at 51.

[251] United Exceptions List at 16 (1.A.iii).

[252] Bridges Answering, Ex. TGT-0059 REV at 35:5–36:22.

with the exit fees produced by its originally proposed BSA.[253] Whether viewed in the context of the BSA or the modified version of the BSA adopted in the Initial Decision, the Initial Decision correctly concluded that United's proposed "benchmarks" are not appropriate for this proceeding.[254]

**1. The Kit Carson and DMEA negotiated withdrawals are not appropriate or useful benchmarks.**

United points to withdrawals by Tri-State Members Kit Carson in 2016 and DMEA in 2020 and argues these "benchmarks" align with the exit fees produced by its BSA as originally proposed.[255] While acknowledging these prior Member withdrawals do not constitute legal precedents, United suggests that they "provide helpful insight into the magnitude of exit fees Tri-State actually needs to receive in order to satisfy its obligations stemming from the costs it incurred to serve each member."[256] United is mistaken in many respects and the Initial Decision correctly disregarded these prior Member withdrawals.

Kit Carson's and DMEA's withdrawals occurred under circumstances different than exist now and involved different considerations than a CTP tariff of general applicability. Factually, Kit Carson's and DMEA's WESCs that were being terminated expired in 2040, ten years earlier than the contracts for the remaining Members.[257] The Kit Carson exit charge used as its starting point a mark-to-market methodology similar to Tri-State's original CTP methodology.[258] The

[253] United Exceptions at 82.

[254] Initial Decision at PP 235–37 (re the Kit Carson and DMEA withdrawals and the Colorado PUC ALJ's Recommended Decision).

[255] United Exceptions at 82.

[256] *Id.*

[257] Bridges Answering, Ex. TGT-0059 REV at 20:13–21:17.

[258] Nebergall Direct, Ex. TGT-0003 REV2 at 15:9–16:15; Nebergall Rebuttal, Ex. TGT-0109 REV at 32:9–33:8.

same methodology was the starting point for the DMEA withdrawal negotiations.[259] The parties then discussed and ultimately agreed on the appropriate inputs to that methodology and other relevant considerations.[260] In both instances, Tri-State and the Member ultimately agreed to withdrawal terms including a cash payment, patronage capital forfeiture, and transfer of assets.[261] In contrast, the WESCs of Tri-State's current Members all expire in 2050. Further, while Tri-State approached the Kit Carson and DMEA withdrawals as "one-off" negotiations specific to the circumstances of those two Members,[262] the CTP methodology to be established in this proceeding must apply to all of Tri-State's Members in all situations[263] and "should be based purely on objective, verifiable input values and have rules or mechanisms which are always appropriate, without making subjective, contentious, or idiosyncratic adjustments."[264]

Besides these factual differences, the Kit Carson and DMEA withdrawals also involved unique considerations that informed the negotiations and motivations underlying the eventual settlements. Kit Carson had several times successfully exercised its ability to protest Tri-State's rates to the New Mexico Public Regulation Commission. It did this in 2013, causing Tri-State to lose over $42.7 million in revenue from 2013 to 2015. Tri-State expected, absent Kit Carson's withdrawal, that it would continue to make costly protests that could lead to additional losses.[265]

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[259] Nebergall Direct, Ex. TGT-0003 REV2 at 16:17–19.

[260] *Id.* at 15:9–16:15.

[261] *Id.* at 16:5–15.

[262] *See, e.g.*, Bridges Answering, Ex. TGT-0059 REV at 22:11–20 (specifically discussing the DMEA negotiated withdrawal).

[263] *Id.*

[264] Initial Decision at P 389.

[265] Bridges Answering, Ex. TGT-0059 REV at 20:13–21:17; New Mexico Members A-36 Rate vs A-37 and A-38 Rate Variance, 2013 – 2015, Ex. TGT-0061.

In the DMEA exit, Tri-State settled issues DMEA had raised with the Colorado Public Utilities Commission and other existing and anticipated disputes. Tri-State also believed then that, with DMEA's withdrawal, no other Member would challenge Tri-State's transition to FERC jurisdiction.[266] Finally, because Kit Carson and DMEA were small Members, their departures triggered no adverse consequences under Tri-State's loan covenants.[267]

United incorrectly asserts these prior Member withdrawals relate to the "exit fees Tri-State actually needs to receive in order to satisfy its obligations stemming from the costs it incurred to serve each member."[268] United's overly narrow characterization is inconsistent with the record evidence related to these prior Member withdrawals. As established by the above facts, these two negotiated withdrawals were informed by much more than solely the costs Tri-State incurred to serve these Members. All things considered—including costs incurred based on the withdrawal methodology, used at the time of those withdrawals, uncertainties related to the inputs to that methodology and the business considerations discussed above—Tri-State agreed with the two Members on buyout payments and other Member-specific withdrawal terms that the Tri-State Board considered to be in the best interest of the remaining Members.[269]

United also argues that Tri-State "had no obligation to agree to exit fees that were insufficiently compensatory," and that Tri-State represented to the Commission that "the DMEA exit fee was just and reasonable."[270] However, as discussed above, in negotiating payments and

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[266] Bridges Answering, Ex. TGT-0059 REV at 20:13–21:17.

[267] Bridges Direct, Ex. TGT-0016 REV2 at 21:12–22:14; Bridges Answering, Ex. TGT-0059 REV at 23:1–11; Bridges Rebuttal, Ex. TGT-0118 at 29:2–18.

[268] United Exceptions at 82.

[269] Bridges Answering, Ex. TGT-0059 REV at 21:1–2.

[270] United Exceptions at 84.

withdrawal terms for Kit Carson and DMEA Tri-State considered the sufficiency of the Members' respective withdrawal payments and many other factors. Tri-State approached these withdrawals as one-off situations, and based its decisions on considerations not applicable to all other Members.[271] Tri-State concluded that the negotiated resolutions were reasonable when compared to the probable future outcome that might otherwise have occurred in each unique circumstance.[272] It is also important to note that these withdrawals occurred before Tri-State was regulated by FERC and before it had a CTP tariff.[273] As such, the settlements Tri-State reached reflected its business judgment about how to manage unique risks and situations, rather than Tri-State's view or a precedent for what might be appropriate as a generally applicable CTP.[274]

Given this record evidence, the Initial Decision correctly recognized that the Kit Carson and DMEA withdrawals were "merely negotiated transactions . . . which by their nature reflect compromise and . . . the negotiated terms were based on various considerations."[275] Based on these facts, the Initial Decision concluded these prior withdrawals "do not constitute a useful benchmark for comparison purposes."[276] The Initial Decision's conclusion is well-supported by the evidentiary record and follows FERC precedent.

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[271] Nebergall Direct, Ex. TGT-0002 REV2 at 15:9–17:9; Bladow Rebuttal, Ex. TGT-0117 at 15:9–16:14; Bridges Answering, Ex. TGT-0059 REV at 22:9–20.

[272] *Id.* at 20:13–21:17; Bridges Rebuttal, Ex. TGT-0118 at 29:2–18.

[273] Bridges Answering, Ex. TGT-0059 REV at 20:16–17.

[274] It is well established that "[s]ettlements do not constitute precedents for any purpose, and are inappropriate to use as benchmarks, standards, or points of reference or departure." *Flambeau Paper Corp.*, 53 FERC ¶ 61,063 (1990). Accordingly, if the Commission does not assign precedential value to settlements it accepts, it would strain reason and logic to conclude that the Commission should treat as a precedent or benchmark a settlement reached between parties outside of the Commission's jurisdiction and not subject to any investigation under the Commission's just and reasonable standards.

[275] Initial Decision at P 236.

[276] *Id.*

**2. The Colorado PUC ALJ's unreviewed, and not final Recommended Decision also is not an appropriate benchmark.**

In support of its original BSA, United argues that the Recommended Decision by the Colorado Public Utilities Commission ALJ "serves as persuasive authority that the BSA is just, reasonable, and not unduly discriminatory in its original form" and, therefore, the Initial Decision's modifications to United's proposed BSA are not needed.[277] Try as United may to breathe life into the Colorado PUC ALJ's Recommended Decision, the Initial Decision correctly concluded that "the Colorado PUC Proceeding does not constitute an appropriate benchmark for this proceeding."[278]

United argues against the Initial Decision's findings related to how the Colorado proceeding was conducted and developed evidence.[279] Tri-State strongly disagrees with United's characterizations of that proceeding and Tri-State's participation. United also disparages the extent of the State of Wyoming's participation in the Colorado proceeding and in this proceeding.[280] While the State of Wyoming was not permitted to fully participate in the Colorado proceeding to make its interests and positions clear, it has done so now as evidenced by its Exceptions filed in this proceeding and it disagrees with both the CTP methodology adopted in the Initial Decision and United's BSA on which it is based.[281]

United also makes two statements that are unsupported by the record in this proceeding. First, United attempts to bolster the significance of the Colorado ALJ's Recommended Decision by stating that "Tri-State elected to unilaterally invoke FERC jurisdiction before Judge Garvey's

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[277] United Exceptions at 87.

[278] Initial Decision at P 237.

[279] United Exceptions at 87–88.

[280] *Id.* at 88.

[281] *See generally* Wyoming Public Service Commission's Exceptions.

findings **were affirmed in Colorado**."[282] There is no record evidence that the Colorado ALJ's Recommended Decision would have been affirmed by the full Colorado Commission. Under Colorado law, and as was done here, parties may file exceptions to a recommended decision, which means the decision is stayed pending a final determination by the Colorado Commission.[283] Upon consideration of the matter, the Colorado Commission may adopt, reject, or modify the findings of fact and conclusions of law made by the ALJ.[284] Further, the Colorado Commissioners' own initial decision is subject to applications for reconsideration, reargument, and rehearing under which the Commission may reverse, change, or modify its initial decision.[285] Ultimately, the Commission's final decision may be subject to judicial review.[286] These procedural realities demonstrate why an ALJ's recommended decision to which exceptions have been timely filed cannot be given precedential value. There is simply no basis to conclude that the Colorado ALJ's Recommended Decision would have been affirmed throughout these remaining procedures. As such, the Initial Decision correctly concluded that the "ALJ's recommended decision was vacated without review and a final decision by the Colorado Commission" and "does not constitute an appropriate benchmark for this proceeding."[287]

Second, United suggests that the Initial Decision's alterations to the BSA undesirably incentivize G&Ts to "avail themselves of higher exit fees simply by invoking FERC's

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[282] United Exceptions at 87 (emphasis added).

[283] Colorado Revised Statutes § 40-6-109(2).

[284] *Id.*

[285] Colorado Revised Statutes § 40-6-114.

[286] Colorado Revised Statutes § 40-6-115.

[287] Initial Decision at P 237.

jurisdiction via the addition of one or more non-cooperative members."[288] United's suggestion is completely unsupported. There is no record evidence as to what a final, Colorado Commission-approved exit fee would have been. Likewise, it is not yet known what exit fee United, or any other Tri-State Member, may pay under a final CTP methodology approved by this Commission. Therefore, United's suggestion that higher exit fees can be obtained from this Commission as compared to a state utility commission is completely unsupported. There is also no record evidence that any other G&T is considering or would consider adding non-cooperative members to invoke FERC jurisdiction to avoid litigating exit fee proceedings in a state forum. Finally, United does not explain why the "[Initial Decision's] alterations to the BSA create an undesirable incentive" for G&Ts to seek FERC jurisdiction over exit fees rather than state jurisdiction. In this instance, the utility in question—Tri-State—disagrees with both United's BSA and the Initial Decision's modifications. Accordingly, as presently postured, from Tri-State's perspective the undesirable incentive United suggests has not been realized.

Regardless of United's attempts to address the procedural infirmities noted in the Initial Decision, its accusations of forum shopping by Tri-State, and its suggestions of undesirable incentives, the record evidence establishes that the Colorado ALJ's Recommended Decision was not a final decision of the Colorado Commission and Tri-State's MCTP methodology—which is the subject of this proceeding—was not fully litigated by the Colorado Commission as it has been in this proceeding. Finally, United does not even attempt to address a key point on which the Initial Decision rejects reliance upon the ALJ's Recommended Decision—the state forum's "ratemaking principles and policy may not directly align with the Commission's."[289] This is the

[288] United Exceptions at 87.

[289] Initial Decision at P 237.

very reason Tri-State sought FERC review of an appropriate CTP methodology and tariff: while a state commission such as the Colorado PUC is appropriately charged with protecting the public interest in the state in which it is located, only this Commission can fully consider the public interests in the states in which Tri-State operates. For all these reasons, the Initial Decision correctly rejected the Colorado PUC ALJ's Recommended Decision as a "benchmark" in this proceeding.

**3. Tri-State's BDP Methodology is not an appropriate benchmark for the RSE.**

Finally, United suggests that "Tri-State's filed BDP settlement also provides a meaningful benchmark for the magnitude of a just and reasonable exit fee."[290] United takes exception to the Initial Decision which it claims, "did not address the BDP settlement at all."[291]

Contrary to United's claim, the Initial Decision was aware of United's arguments about the BDP and its alleged relevance as a "benchmark." The Initial Decision specifically noted United's argument about a potential "two-step buyout" under the BDP,[292] as well as United's claim that "the BSA 'assesses relatively comparable exit fees to what would have been assessed for an extrapolated full Member departure under Tri-State's BDP settlement.'"[293] Similarly, the Initial Decision specifically discussed Tri-State's arguments against relying on the BDP settlement as a benchmark,[294] and the Indicated Members' arguments against comparing the BDP settlement to exit fees in this proceeding because of the differing "underlying economics

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[290] United Exceptions at 85.

[291] *Id.* at 86, n.305.

[292] Initial Decision at P 158.

[293] *Id.* at P 365.

[294] *Id.* at P 130.

and drivers."[295] Being informed on this issue, the Initial Decision nevertheless rejected United's argument without detailed discussion.[296]

Notwithstanding this rejection, United's Exceptions continue to advance its simplistic—but incorrect—view that its BSA as originally proposed "would assess cash payments for full member exits that are closely proportionate on a per-MW basis to the settled buy-down payments that Tri-State acknowledged were just and reasonable."[297] United further argues that the Initial Decision failed to consider an alleged "misalignment" between the BDP settlement and the modified BSA adopted in the Initial Decision.[298] All of these arguments, however, were advanced by United in its briefing and testimony,[299] which arguments by their exclusion from the Initial Decision were evaluated but found to either lack merit or significance.[300]

Regardless of the Initial Decision's discussion or non-discussion of the BDP settlement as a "benchmark," Tri-State provided clear record evidence as to why the BDP settlement is an inappropriate comparison for multiple reasons. First, the Commission formally recognized that the BDP settlement and the CTP methodology cases are distinct when in October 2021 it

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[295] *Id.* at P 359.

[296] *Id.* at P 104 ("The omission from this Initial Decision of any argument or portion of the record that may have been raised by the Participants in their briefs does not mean that it has not been considered. All such arguments have been evaluated and found to either lack merit or significance to the extent that their inclusion would only tend to lengthen this Initial Decision without altering its substance or effect.").

[297] United Exceptions at 85.

[298] *Id.* at 86.

[299] *See* Initial Decision at PP 158 and 365 (citing to United's Initial and Reply Briefs which, in turn, cite to United's testimony).

[300] Initial Decision at P 104.

declined to consolidate them.[301] Second, the BDP proposed settlement is precisely that—a settlement. The parties agreed expressly that, as a black box settlement, it should **not** be considered a precedent or benchmark.[302] That agreement, which United seeks to ignore, follows Commission precedent holding that black box settlements should not be used as precedents or benchmarks.[303] Third, the settled BDP Rate and the CTP methodology reflect different underlying facts and circumstances, system impacts and planning horizons, and other assumptions. The ongoing cost responsibility and risk of ongoing stranded costs of a partial-requirements Member versus a departing full-requirements Member are significantly different. A further discussion of these differences highlights why the BDP settlement is not a relevant "benchmark" for this proceeding.

The BDP methodology is based on a fixed reduction in the Member's full requirements load and certain other reasonable assumptions. In contrast, the RSE calculates a payment for a member that seeks to withdraw entirely from Tri-State. The BDP is based on a defined "Open Season" with a 300 MW load loss planned to occur within a specific period and in smaller amounts scattered across the system. The timing of losing a full-requirements Member's load, however, is unknown and the amount of the load loss is potentially much more substantial,

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[301] *See Tri-State Generation & Transmission Ass'n, Inc*., 177 FERC ¶ 61,059, at PP 119, 127 (2021) (setting Modified CTP Methodology Proceeding for and declining to consolidate with the pending BDP Methodology and BP 124 dockets).

[302] *See, e.g.,* Settlement, Ex. UP-0156 at § 7.3 (stating that the Settlement does not establish any "Settled Practice"), § 3.4 (stating the BDP Rate "reflects a one-time, black box settled payment and no Settling Party is deemed to have agreed that this Settlement and the BDP Rate are based on or support a particular methodology").

[303] *See, e.g., El Paso Nat. Gas Co*., 132 FERC ¶ 61,139, at P 82, n.98 (2010) ("Commission approval or acceptance of black box settlement rates does not generally constitute the approval of, or precedent regarding, any principle or issue in the proceeding."); *Idaho Power Co.,* 126 FERC ¶ 61,044, at P 18 (2009) (same).

especially considering future load growth.[304] The BDP Settlement defines and limits stranded investment and enables Tri-State to effectively manage financial risk on behalf of its remaining full-requirements Members. The CTP for a full-requirements Member, however, represents a significantly higher financial risk exposure to remaining Members.[305] The partial requirements Members' load loss is dispersed across the system and represents a mix of self-supply arrangements, whereas the results of the withdrawal by a full-requirements Member are concentrated to a geographic region and involve a complete load loss. [306] Finally, under the BDP Settlement, partial-requirements Members continue to make substantial future contributions to Tri-State's fixed operating costs. Partial-requirements Members pay the Class A transmission charge based on gross load, and the Class A generation rate on remaining load, including future load growth. In contrast, the CTP for a full-requirements Member offers no future cost responsibility unless agreed to by the parties by separate contracts.[307]

There is ample record evidence as to why the BDP settlement is not an appropriate or useful "benchmark" for this proceeding and the Initial Decision correctly rejected it as such.

**4. United's Exceptions fail to address benchmarks that are relevant.**

Finally, while United criticizes the Initial Decision for failing to adopt what United considers to be relevant "benchmarks," United's Exceptions fail to address **proper** benchmarks, such as the ALJ-approved CTP in the *Wabash* proceeding. Dr. Golino's approach in the *Wabash* proceeding adjusted for United's greater size would result in a CTP amount over $800 million.[308]

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[304] Tr. (Mancinelli) at 710:7–711:10, 914:21–916:2.

[305] *Id*. at 914:21–916:2.

[306] *Id*. at 914:21–916:2.

[307] *Id*. at 710:7–711:10, 914:21–916:2.

[308] Mancinelli Rebuttal, Ex. TGT-0140 at 20:16–21:6.

While the Initial Decision rejected reliance on the *Wabash* Initial Decision, it did so primarily based on perceived procedural distinctions and a belief that "the Commission has already determined that a lost revenues approach is not appropriate in this proceeding."[309] Tri-State has previously explained why the Initial Decision's attempts to distinguish the reasoning and conclusion in the *Wabash* Initial Decision are without merit.[310]

In addition, to evaluate the relative size of the CTP, Mr. Mancinelli calculated the RSE using the market price estimates of United's expert, Mr. Strunk, Guzman's expert, Mr. Malinak, and Tri-State's own May 2021 proprietary market price forecast. The resulting CTPs for United were all well over $1.0 billion.[311]

**United 2022 CTPs**
**CTP Comparisons Under Various Market Price Assumptions**

| CTP Method | CTP ($000) |
|---|---|
| MCTP with $36.17 per MWh IMPE (as filed) | $1,597,402 |
| MCTP with Strunk $41.00 per MWh IMPE | $1,417,392 |
| MCTP with Malinak $42.75 per MWh IMPE | $1,352,192 |
| MCTP with Tri-State's Proprietary Market Price Forecast | $1,182,927 |

Because of United's size and its role within Tri-State, its CTP will need to be significant. To the extent the Commission considers any "benchmarks," these additional CTP comparisons must be included.

[309] Initial Decision at PP 209–11.

[310] *See* Tri-State's Exceptions at 26–28.

[311] Mancinelli Rebuttal, Ex. TGT-0140 at 53:19–54:3, Table 9.

### F. The modifications to the MCTP Methodology proposed by the Indicated Members are unnecessary.

The Indicated Members argue the Initial Decision erred in its treatment of their proposed modifications to Tri-State's lost revenue approach.[312] Although the Indicated Members recognize that a just, reasonable, and not unduly discriminatory CTP must be based on lost revenue, they propose several modifications, which the Initial Decision rejected. As a whole, the Indicated Members' modifications seek to simply reduce the exit payment. But, as discussed above, the standard is not whether a CTP is "too high" to allow easy exit by any Member at any time; rather, the standard is whether the CTP is sufficient to avoid harm to remaining Members, no matter how high it seems in the abstract.

The Indicated Members' contend the Initial Decision should have addressed their proposal to reduce the end of the obligation period from 2050 to 2042.[313] They support this argument by citing to testimony from Dr. Golino that a shorter obligation period is "[c]ertainly something to consider."[314] Just because something could be considered, however, is not persuasive evidence that Tri-State's approach requires modification.

The Indicated Members next contend the Initial Decision should have adopted their proposal that the revenue Tri-State expects to receive by reselling a departed Member's power (CMVE) and a similar transmission credit should escalate nominally.[315] Nominal escalation of these streams may not be inappropriate, but Tri-State explained why its approach is more appropriate.[316]

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[312] Indicated Members' Exceptions at 47–62.

[313] *Id*. at 55–56.

[314] *Id*. at 56.

[315] *Id*. at 56–57.

[316] Mancinelli Direct, Ex. TGT-0033 REV3 at 45:14–46:6, 64:3–9.

The Indicated Members take exception to the Initial Decision's rejection of a full credit for patronage capital and argue that such a credit is not inconsistent with the Bylaws and does not create "a perverse economic incentive because all Members have an equal opportunity to withdraw or remain."[317] These arguments should be rejected for the same reasons discussed above. The Indicated Members creatively note that Tri-State's Bylaws allow its Board "to prescribe equitable terms and conditions to be applied when a member withdraws from membership [and] a full patronage capital credit could be such an equitable term and condition."[318] Even if the Tri-State Board could have done so, it did not; it proposed a CTP tariff that incorporates a discounted value of the withdrawing Member's patronage capital consistent with Tri-State's Bylaws and the economic realities associated with patronage capital and its use.

Arguing the Initial Decision's criticism is unfounded, the Indicated Members also take exception to its rejection of their proposal to direct a portion of the deferred revenues on Tri-State's balance sheet to withdrawing Members.[319] They contend the Initial Decision's concern about "double benefit" rationale is speculative.[320] It is true that a double benefit is not assured, but it is likely. Tri-State decides at the end of each calendar year whether it is prudent to take some of the deferred revenue on its balance sheet from prior years and apply it to the current year's operations.[321] If a withdrawing Member receives its share of deferred revenue as a credit against a withdrawal payment, and Tri-State uses the deferred revenue during the two year

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[317] Indicated Members' Exceptions at 57–58.

[318] *Id.* at 58 (internal quotations and citation omitted).

[319] *Id*. at 58–59.

[320] Id. at 59.

[321] Bridges Answering, Ex. TGT-0059 REV at 42:13–18, Ex. TGT-0076, Tri-State Board Policy 503, at 3.

during which the Member remains, that Member would receive the benefit of its share of the deferred revenue twice. Indicated Members' proposals to address this issue would reduce Tri-State's flexibility to adapt to changing circumstances to benefit its Members.

The Indicated Members note the Initial Decision did not address their proposal to extend the period over which to calculate the discount rate.[322] Tri-State does not necessarily disagree with this change but does not agree its own approach requires modification to be just and reasonable.

Finally, the Indicated Members object to the Initial Decision's treatment of their proposed elimination of the DCO floor.[323] Eliminating that protection cannot be just and reasonable because it would subject Tri-State and remaining Members to inordinate and unacceptable financial risks when a withdrawing Member triggers a "Member Termination Event."

## V. CONCLUSION

For the foregoing reasons, the Commission should reject the exceptions raised by the Indicated Members, Guzman, and United.

Respectfully submitted,

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[322] *Id*. at 60.

[323] *Id*. at 60–61.

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**CERTIFICATE OF SERVICE**

I certify that today I served the foregoing on everyone designated on the official service list compiled by the Secretary in this proceeding under the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Westminster, CO this 21st day of November, 2022.

/s/ Lisa M. Romani

Document Content(s)