

**NOTICE OF CONFIDENTIALITY:**  
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Highly Confidential Material: Page 3

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

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<b>LA PLATA ELECTRIC</b>	)	
<b>ASSOCIATION, INC.,</b>	)	
	)	
<b>COMPLAINANT,</b>	)	
	)	
<b>V.</b>	)	<b>PROCEEDING NO. 19F-0620E</b>
	)	
<b>TRI-STATE GENERATION AND</b>	)	
<b>TRANSMISSION ASSOCIATION,</b>	)	
<b>INC.,</b>	)	
	)	
<b>RESPONDENT.</b>	)	
	)	
	)	
<b>UNITED POWER, INC.,</b>	)	
	)	
<b>COMPLAINANT,</b>	)	
	)	
<b>V.</b>	)	<b>PROCEEDING NO. 19F-0621E</b>
	)	
<b>TRI-STATE GENERATION AND</b>	)	
<b>TRANSMISSION ASSOCIATION,</b>	)	
<b>INC.,</b>	)	
	)	
<b>RESPONDENT.</b>	)	

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**LPEA AND UNITED POWER’S HIGHLY CONFIDENTIAL JOINT RULE 1101(f)  
NOTICE AND REQUEST TO DECLARE INITIAL DMEA EXIT CHARGE PUBLIC**

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**Colorado PUC E-Filings System**

Pursuant to Colorado Public Utilities Commission (Commission) Rules of Practice and Procedure 1101(f), La Plata Electric Association, Inc. (LPEA) and United Power, Inc. (United Power) file this notice and request that the Commission declare that Tri-State Generation and Transmission Association, Inc.'s (Tri-State's) initial Mark-to-Market exit charge offered to Delta-Montrose Electric Association (DMEA) may be included in the public record.

### **RULE 1101(f)(I) CONFERRAL**

1. Counsel for LPEA and United Power have conferred with counsel for Tri-State in keeping with Rules 1101(f)(I),<sup>1</sup> and are authorized to state that Tri-State opposes the requested relief.

### **BACKGROUND**

2. On April 13, 2020, Tri-State filed an exit charge methodology tariff with the Federal Energy Regulatory Commission (FERC), with a requested effective date of April 14, 2020 and a request for expedited consideration by FERC.<sup>2</sup> Tri-State refers to its exit charge methodology as a "Contract Termination Payment" formula (CTP). Tri-State's CTP tariff filing attempts to bind all future Tri-State exit charges to Tri-State's so-called "Mark-to-Market" methodology.<sup>3</sup>

3. Tri-State's historic exercise of its "Mark-to-Market" methodology, however, demonstrates just how unfair and unreasonable this approach is. For instance, when Kit Carson Electric Cooperative (Kit Carson) sought to withdraw from Tri-State, Tri-State's initial Mark-to-

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<sup>1</sup> Rule 1101(f)(I) ("A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person and attempt to resolve any differences by stipulation.").

<sup>2</sup> Tri-State Generation and Transmission Association, Inc. Initial Filing of Rate Schedule FERC No. 281 (Contract Termination Payment Methodology), FERC Docket No. ER20-1559-000 (filed Apr. 13, 2020), <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15508957>.

<sup>3</sup> The Attachment to the Tri-State Board Resolution that adopts the CTP Formula describes it as a "mark to market formula," and it follows the same methodological approach that Tri-State advocated the Commission adopt in calculating a withdrawal charge for DMEA in 2019, in Proceeding No. 18F-0866E.

Market exit charge figure to Kit Carson totaled \$137 million.<sup>4</sup> Kit Carson ultimately reached an agreement with Tri-State to withdraw for \$37.5 million—a figure Tri-State described as “fair and equitable” and “protect[ing] the interests of all [Tri-State’s remaining] members.”<sup>5</sup>

4. This \$100 million difference between what Tri-State initially calculated, and what Tri-State eventually declared to be fair to the remaining non-exiting members, is not unique. Tri-State similarly initially provided DMEA an extremely inflated Mark-to-Market exit charge of \$ [REDACTED] million (Initial DMEA Exit Charge)—which Tri-State currently wrongly claims must remain confidential<sup>6</sup>—before ultimately agreeing to a fair DMEA exit charge of \$62.5 million. The Initial DMEA Exit Charge is the focus of this notice.

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<sup>4</sup> See, e.g., J.R. Logan, *Taos Electric Co-Op Says Tri-State Offer ‘Insulting’*, TAOS NEWS (Jan. 14, 2015, 7:15 PM), <https://www.taosnews.com/stories/taos-electric-co-op-says-tri-state-offer-insulting.34357> (“Kit Carson Electric Cooperative is officially seeking another power supplier after being told it would cost \$137 million to get out of its existing contract.”).

<sup>5</sup> *Tri-State and Kit Carson Electric Cooperative Enter Into Membership Withdrawal Agreement*, TRI-STATE GENERATION AND TRANSMISSION ASS’N, INC. (June 27, 2016), <https://www.tristategt.org/tri-state-and-kit-carson-electric-cooperative-enter-membership-withdrawal-agreement>.

<sup>6</sup> The Initial DMEA Exit Charge was actually treated as highly confidential in the DMEA exit charge proceeding, but only because DMEA, out of an abundance of caution, filed a motion for extraordinary protection (*i.e.*, highly confidential treatment) of that figure when it filed its complaint. DMEA did so only to ensure that the Initial DMEA Exit Charge was protected at that time, as Tri-State claimed that figure to be confidential. In that motion, however, DMEA stated that it believed that the Initial DMEA Exit Charge should likely not be considered confidential, and reserved the right to challenge Tri-State’s assertion of confidentiality at a later time in the proceeding. Because that proceeding was settled, the question of whether the Initial DMEA Exit Charge was entitled to confidential treatment was not further considered, let alone resolved. Here, LPEA and United Power ask that the Commission resolve this issue. Put simply, there is no basis now, if ever there was one, for Tri-State to assert that an exit charge figure it provided to DMEA in 2017, now superseded by an agreed exit charge of \$62.5 million, must remain confidential. See generally Unopposed Motion of Delta-Montrose Electric Association for Extraordinary Protection of Highly Confidential Information, Proceeding No. 18F-0866E, ¶ 5 (filed Feb. 4, 2019) (“DMEA notes it is aware of inadvertent disclosures of this exit charge figure by Tri-State during a July 10, 2018 meeting attended by third parties, in an email to all Tri-State member system managers, and in an email to La Plata Electric Association. DMEA believes that as a result of these disclosures this exit charge figure may no longer be confidential, let alone highly confidential, and therefore reserves the right to assert that this exit charge figure should be deemed non-confidential information in this proceeding. Nevertheless, DMEA files this Motion to initially obtain a protective order for the exit charge so that DMEA may include this exit charge figure in the highly confidential version of the DMEA Response being filed today. DMEA will also file today on a standalone basis a highly confidential version of Attachment L to its Complaint, which includes the exit charge, and is referenced in DMEA’s Response.”).

**REQUEST FOR DECLARATION THAT INITIAL TRI-STATE EXIT CHARGE  
OFFERED TO DMEA IS NOT CONFIDENTIAL**

5. Tri-State claims the Initial DMEA Exit Charge is highly confidential. However, this figure can no longer be considered highly confidential (if it very truly was), or even confidential. Given the final, actual DMEA exit charge number is now public by Tri-State's own hand,<sup>7</sup> there is no reason (outside of hiding from FERC and the general public evidence of Tri-State's bullying tactics) that Tri-State's bloated initial Mark-to-Market exit charge to DMEA should remain under a protective order. This is especially true given that Tri-State now seeks to bind all member cooperatives to this unfair methodology through its CTP tariff filing with FERC, utilizing the same Mark-to-Market methodology that produced the Initial DMEA Exit Charge that Tri-State now seeks to hide.

6. Rule 1101(f) "establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential."<sup>8</sup> Rule 1101(f)(II) specifically requires, "[i]n the event the parties cannot agree as to the character of the information challenged"—as in the case of the Initial DMEA Exit Charge—that "any person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential."<sup>9</sup> LPEA and United Power accordingly challenge the confidentiality of the Initial DMEA Exit Charge in accordance with Rule 1101(f). Nothing about the Initial DMEA Exit Charge can be considered confidential. It was produced by the same Mark-to-Market methodology

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<sup>7</sup> *The Delta-Montrose Electric Association Will Terminate Its Membership in Tri-State on June 30, 2020*, TRI-STATE (Apr. 10, 2020), <https://www.tristategt.org/tri-state-dmea-enter-membership-withdrawal-agreement>.

<sup>8</sup> 4 CCR 723-1-1101(f).

<sup>9</sup> 4 CCR 723-1-1101(f)(II). Subsequently, "[t]he person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections." 4 CCR 723-1-1101(f)(III).

that Tri-State has now filed as a *public tariff* at FERC. And it is an *initial* exit charge that no longer has any meaning or currency in the relationship between DMEA and Tri-State, given the final, agreed DMEA exit charge figure of \$62.5 million is now public.

7. Manifestly, the only reason Tri-State seeks to prevent public disclosure of the Initial DMEA Exit Charge is because, just as was the case with Kit Carson, Tri-State's initial Mark-to-Market exit charge to DMEA ended up being many multiples greater than the ultimate exit charge of \$62.5 million that Tri-State agreed was fair to both DMEA and Tri-State's remaining members. Tri-State may seek to avoid the embarrassment associated with having its bullying tactics so plainly laid out for the public—including Tri-State's own members. But embarrassment is not a basis for confidential or highly confidential treatment—or, for that matter, any other treatment—under the Commission's rules.

#### **REQUEST FOR RELIEF**

WHEREFORE, LPEA and United Power respectfully request that the Commission issue an order declaring that the initial Mark-to-Market exit charge offered to DMEA is not confidential, and may be included in the public record.

DATED this 27th day of April, 2020.

Respectfully submitted,

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**ATTORNEYS FOR UNITED POWER, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of April, 2020, a copy of the foregoing **LPEA AND UNITED POWER'S HIGHLY CONFIDENTIAL JOINT RULE 1101(f) NOTICE AND REQUEST TO DECLARE INITIAL DMEA EXIT CHARGE PUBLIC** was filed with the Colorado Public Utilities Commission via e-filing and a copy was served via e-mail to the following:

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