

FERC ACCEPTS TRI-STATE RATE FILING

February 2020



Background

On March 20, 2020, the Federal Energy Regulatory Commission (FERC) issued orders accepting Tri-State's tariff filings, ensuring consistent wholesale rate regulation for the cooperative's member distribution utilities across four states. The order also recognizes that Tri-State became jurisdictional to the FERC on Sept. 3, 2019, when it added its first non-utility member.

Public utilities subject to FERC regulation must charge rates that are "just and reasonable" and "not unduly discriminatory or preferential." FERC regulation of Tri-State would eliminate inconsistent rate treatment across the states. Historically, Colorado, Nebraska, New Mexico and Wyoming did not exercise rate-regulation over Tri-State. In recent years both Colorado and New Mexico have exercised rate jurisdiction, which resulted in increased costs, unrecovered revenue and inconsistent rates to its members.

Tri-State's market-based rates and open access transmission tariff were accepted by the FERC. The order was clear that Tri-State is rate-regulated by and is required to file proposed rates with the FERC, which will establish just and reasonable rates for Tri-State's utility members through its regular rate setting process.

Question and Answer

Q. Why did Tri-State seek FERC rate regulation?

A. Tri-State's board recognized that Members benefit from the lower costs and greater efficiencies of having a single, consistent rate regulator across all the states in which it operates. FERC regulation of Tri-State eliminates inconsistent rate treatment across the states. Historically, the states did not exercise rate-regulation over Tri-State. In recent years both Colorado and New Mexico have exercised rate jurisdiction, which resulted in increased costs, unrecovered revenue and inconsistent rates to its members.

Q. What did FERC do?

A. FERC issued five separate but related decisions on March 20, 2020, in response to Tri-State's tariff filings and its Petition for Declaratory Order (PDO). As a general matter, the FERC orders are very favorable to Tri-State. FERC accepted Tri-State's rate tariffs for filing (with some exceptions) and, as requested, ruled that Tri-State became FERC-jurisdictional on September 3, 2019, when it admitted a non-utility member. This means that Tri-State's rates will be regulated by FERC rather than individual state public utility commissions.

Q. What do the decisions mean?

A. Tri-State's wholesale electric and transmission rates are now subject to the exclusive jurisdiction of FERC. FERC is now the regulatory body that must determine if Tri-State's rates are just and reasonable, not four different commissions in four different states.

Q. What happens next?

A. While FERC accepted Tri-State's rate tariffs for filing, it did not determine that the rates were just and reasonable at this time. Instead, the tariffs are being referred to an administrative law judge to encourage settlement of material issues raised by parties with respect to Tri-State's tariffs, or to hold a hearing if settlement cannot be reached.

Q. Is the referral to an administrative law judge unusual?

A. No. Because there were many protests filed to the rate tariffs, Tri-State expected FERC would refer the rate tariffs to its regular settlement and hearing process.



Q. What happens if the rate tariffs are not found to be just and reasonable?

A. The FERC orders permit Tri-State to charge the filed rates, subject to refund if FERC ultimately decides the rates are not just and reasonable. Typically, any refund would be the difference between the filed rates and the rates FERC determines are just and reasonable.

Q. Is having filed rates subject to refund unusual?

A. No. This is a common practice with respect to public utilities that are subject to FERC rate regulation.

Q. How long will the settlement and hearing process take?

A. It depends on whether the parties are able to settle or need to have a hearing. FERC indicated it would make a final decision if a hearing was required no later than March 2022.

Q. Is that time frame for a hearing unusual?

A. No, contested hearings can take a long time. Most cases at FERC are settled.

Q. Do the FERC orders pre-empt state utility commissions from regulation of our wholesale generation and transmission rates?

A. Yes.

Q. Do the FERC orders pre-empt the Colorado Public Utilities Commission's consideration of the United and LPEA withdrawal cases?

A. No, not at this time. While FERC ruled that it has jurisdiction over the exit charges, which directly affect Tri-State's rates, it declined to rule that it had exclusive jurisdiction over such issues unless and until Tri-State files and FERC accepts a withdrawal methodology or tariff.

Q. Did FERC rule that its non-utility members were properly admitted as Tri-State Members?

A. FERC ruled that the non-utility members are co-owners of Tri-State under the Federal Power Act and that therefore Tri-State is FERC jurisdictional. However, it did not address matters of Colorado laws or regulations.

Q. Are the FERC orders appealable?

A. Parties have the opportunity within the next 30 days to request a rehearing at FERC for any of the issues addressed in the orders, and thereafter may be able to seek judicial review in federal court.

Q. What happens if any party requests a rehearing?

A. The FERC orders remain in effect pending the outcome of any rehearing orders or judicial review.

Q. What happens next?

A. Tri-State continues to review the orders in more depth. These orders address dozens of legal arguments made by those who protested the filings. FERC rejected most of those arguments. Tri-State is reviewing those few issues where FERC did not agree with Tri-State, and Tri-State is considering its options. However, the orders overwhelmingly support Tri-State's positions and make it clear that Tri-State is now FERC jurisdictional.