

## Settlement Agreement

Tri-State Generation and Transmission Association, Inc. ("Tri-State") and Delta-Montrose Electric Association ("DMEA") make the following agreement to resolve all outstanding disputes, disagreements and litigation between them:

1. This Settlement Agreement is a binding and enforceable contract under which DMEA will: (a) withdraw as a member of Tri-State pursuant to Article I, Section 3(a) of Tri-State's bylaws; (b) receive from Tri-State title to certain transmission and related assets as described in paragraph 6 below; and (c) pay Tri-State a [REDACTED] cash withdrawal payment, with such amount to be paid upon the effective date of DMEA's withdrawal as a member. In order to effectuate the parties' agreements as expressed herein, DMEA and Tri-State intend to negotiate and execute a withdrawal agreement which will include additional terms and will be consistent with this Settlement Agreement, and various ancillary agreements, including but not limited to:

- (a) a purchase and sales agreement;
- (b) one or more bills of sale,
- (c) any applicable joint operations agreement;
- (d) any appropriate sharing agreements, including telecommunications sharing agreements, and
- (e) such other agreements as may be appropriate.

DMEA and Tri-State agree to work in good faith to complete and execute all such agreements within a reasonable period of time on commercially reasonable terms and consistent with sound utility practices. Further, DMEA and Tri-State agree to negotiate in good faith for the termination or modification of such existing agreements as may be appropriate to effect the parties' intention regarding DMEA's withdrawal, and to negotiate all joint-use documents in good faith with the goal of working together cost-effectively. DMEA and Tri-State agree that the [REDACTED] withdrawal payment identified above has been fixed and is not subject to further negotiation absent the parties' mutual agreement. DMEA and Tri-State intend all of the commitments in this Settlement Agreement to be enforceable contractually.

2. Tri-State and DMEA will cooperate to complete DMEA's withdrawal as a member of Tri-State effective May 1, 2020 (the "Withdrawal Date"). Such date may be changed by agreement of the parties.

3. DMEA will continue to purchase wholesale power from Tri-State under the Wholesale Electric Service Contract between the parties dated November 1, 2001 (the "WESC") until the Withdrawal Date. During this period, DMEA and Tri-State shall continue to honor their respective obligations under the WESC, and DMEA shall pay Tri-State for wholesale power at Tri-State's current Class A member rate. As of the Withdrawal Date, Tri-State and DMEA shall each be released from any further contractual obligations under the WESC, subject only to claims by either DMEA or Tri-State that exist under the WESC as of the Withdrawal Date.

4. As of the Withdrawal Date, DMEA and Tri-State shall be deemed to have satisfied all their other contractual obligations, subject only to claims that exist as of the Withdrawal Date.

5. Upon the Withdrawal Date, DMEA will waive its right to the return of or payment for any patronage capital arising from its membership in Tri-State or Tri-State's furnishing of electric energy, and

the balance of DMEA's patronage capital in the approximate amount of [REDACTED] will be forfeited. However, should Tri-State declare any patronage capital retirements prior to the Withdrawal Date, DMEA shall receive its proportionate share of such payment(s), and Tri-State shall not modify the date or manner of such payment(s) so as to exclude DMEA from such payment(s).

6. On commercially reasonable and customary industry terms, Tri-State shall transfer to DMEA for approximately [REDACTED] (such amount to be included in and not in addition to the [REDACTED] withdrawal payment identified in paragraph 1 above) such transmission and interconnection-related assets (except for the North Fork – Juanita 115kV line) as are reasonably necessary for DMEA to be served entirely by the bulk electric system (with step-down in voltage effected by DMEA-owned assets) and/or a Network Integration Transmission Service Agreement ("NITSA") with Tri-State and other transmission providers and to avoid other charges (e.g., facilities use charges). Transmission and interconnection-related assets to be transferred to DMEA shall include associated assets, real property and other rights (communications assets, easements, etc.) related to the ownership and use thereof. However, Tri-State will not be required to transfer to DMEA any assets reasonably required for the operation or maintenance of Tri-State's own transmission system. Assets to be transferred from Tri-State to DMEA shall include, without limitation:

- The East Montrose – Peach Valley 115kV line.
- The Cimmaron substation, including the 115kV line connecting to WAPA.
- The Garnet Mesa, Hotchkiss, Bullock, Happy Canyon, South Canal, Gunnison Valley, Doughspoon and North Mesa substations (Tri-State will transfer all non-bulk/looped transmission assets with the exception of metering required for transmission billing purposes).
- The East Montrose and Juanita stations (Tri-State transfer all assets to DMEA except metering required for transmission billing purposes). However, through December 31, 2022:
  - DMEA shall not charge Holy Cross Energy or Tri-State for use of the Juanita substation facilities to deliver the output of Vessels generation to the point at which change of ownership occurs for the North Fork – Juanita 115kV line.
  - DMEA shall not charge MEAN or Tri-State for use of the East Montrose substation facilities or the East Montrose-Peach Valley 115kV line to deliver the output of Drop 4 at the East Montrose substation to the Tri-State transmission system at Peach Valley substation.
- At substations, Tri-State metering will be replaced by DMEA metering and will remain on the low-voltage side, except, where Tri-State requires metering for transmission billing purposes, Tri-State will retain ownership of those meters and calculate losses to the transmission delivery point. Both Tri-State and DMEA will provide access to metering data as necessary for billing purposes.

- Tri-State will retain ownership of the North Fork –Juanita 115kV line, with service to DMEA subject to a NITS rate.
- Tri-State and DMEA agree that items listed in this paragraph 6 are not a comprehensive description of all transmission assets to be transferred, and agree to work in good faith to identify those assets.
- DMEA and Tri-State also agree to work in good faith to minimize costs associated with the necessary separation of any facilities, adjustments or elimination of facilities maintenance agreements and facilities use charges, and other similar agreements.

7. DMEA shall have the right, subject to the terms of Tri-State’s Open Access Transmission Tariff (“OATT”), to continue to purchase transmission from Tri-State and to pay for such transmission under transmission rates, terms and conditions that may be effective and generally applicable to transmission customers from time to time. Tri-State agrees to work with DMEA to enter into transmission agreements, including a NITSA and/or other transmission agreement(s), whereby DMEA will have the same rights as any other customer taking service under Tri-State’s OATT. Tri-State will treat DMEA requests for expansion of transmission systems and cost responsibilities on a non-discriminatory basis in accordance with Tri-State’s OATT, where applicable.

8. DMEA will not challenge Tri-State’s jurisdictional status at the Federal Energy Regulatory Commission (“FERC”), Tri-State’s admission of any new Member, or Tri-State’s status as a public utility under the Federal Power Act (“FPA”). DMEA shall not cooperate with or provide any assistance to any entity in challenging such actions by Tri-State.

9. DMEA shall not assist any other Tri-State Member in pursuing withdrawal from Tri-State.

10. DMEA shall independently, and in reasonable cooperation with Tri-State, support and defend this Agreement with all legislative and administrative agencies and officials.

11. DMEA and Tri-State agree to support this Agreement and to not disparage each other.

12. Tri-State agrees it will not dispute DMEA’s accounting treatment of the withdrawal transaction and transmission purchase.

13. To the extent consistent with other provisions of this document, Tri-State and DMEA shall exchange mutual releases of liability.

14. Prior to the Withdrawal Date, the terms of this Agreement shall remain confidential to DMEA and Tri-State, provided that the parties will disclose its terms to the Colorado Energy Office on a confidential basis. DMEA may disclose its terms on a confidential basis to a potential power supplier, and both parties may disclose the terms as required to independent accountants, lenders, regulators, or governmental authorities whose regulations or rules require disclosure in order for DMEA to withdraw from Tri-State.

15. Upon the execution of this Settlement Agreement, and its approval by the parties’ boards of directors, and (as applicable) stipulation of the Colorado Energy Office, DMEA and Tri-State will take immediate steps to cause DMEA’s complaints in Colorado PUC Proceeding No. 18F-0866E and Adams

County District Court Case No. 2019 CV 31054 to be dismissed without prejudice, each party to bear its own costs, attorneys' fees and expert witness fees. The parties' withdrawal agreement shall provide for a full and complete release of DMEA's claims against Tri-State in Proceeding No. 18F-0866E and Case No. 2019 CV 31054, with such release to be effective upon DMEA's withdrawal.

16. The withdrawal agreement shall provide for a full and complete release of DMEA's claims against Tri-State in Proceeding No. 18F-0866E and Case No. 2019 CV 31054. In the event of any action or threatened action asserting Tri-State's status as a public utility under the FPA preempts DMEA's withdrawal from Tri-State or legal or regulatory proceedings relating to such withdrawal, Tri-State at DMEA's request will represent to FERC, as well as any other judicial, legislative, and administrative and any other governmental bodies, that DMEA's withdrawal from Tri-State is not and should not be preempted.

17. DMEA and Tri-State shall each support the terms of this Settlement Agreement and the final withdrawal agreement in all judicial, legislative and administrative and any other governmental bodies. Tri-State agrees not to challenge, in any forum, DMEA's right to exit Tri-State and terminate the WESC.

18. This Settlement Agreement and the withdrawal agreement shall be subject to the approval of both DMEA's and Tri-State's Board of Directors and the receipt of any necessary regulatory approvals and third party consents.

19. Tri-State shall be responsible for DMEA's 2019 RES obligations and DMEA shall be responsible for its own 2020 RES obligation. Within one week of the Withdrawal Date, Tri-State will transfer any remaining renewable energy credits to which DMEA retains title to a WREGIS account designated by DMEA.

20. Tri-State agrees that its status as a public utility under the FPA does not pre-empt Colorado PUC jurisdiction over Tri-State's resource planning process as described in SB19-236 and Tri-State shall not assert that FERC jurisdiction pre-empts such Colorado PUC jurisdiction.

21. This Settlement Agreement constitutes a compromise and resolution of various disagreements between DMEA and Tri-State, including disputes involving Tri-State board of directors policies, litigation before the Colorado Public Utilities Commission, the FERC and the Colorado state court system, and other disputes regarding the WESC and DMEA's right to purchase power from providers other than Tri-State.

22. This agreement may not be assigned by either party without the other's consent.

23. This agreement shall be governed by Colorado law without regard to conflict of laws principles.

24. The parties agree that, in addition to any other remedies, each party shall have the right to injunctive relief, including specific performance.

25. This Settlement Agreement may be executed in two counterparts, both of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by both DMEA and Tri-State.

26. (a) The parties agree that this Agreement was negotiated at arms' length. To the extent any aspect of DMEA's withdrawal is subject to FERC jurisdiction or the jurisdiction of any other regulatory

authority, Tri-State and DMEA agree to work together in good faith and take all appropriate actions to effectuate the parties' intent of an orderly and efficient withdrawal by the Withdrawal Date.

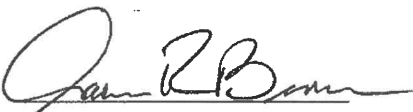
(b) In the event this Agreement or any of the other agreements contemplated by this Agreement, or aspects thereof, become FERC jurisdictional, the rates for service and other jurisdictional aspects specified herein and in such other agreements shall remain in effect for the term of such agreement until such agreement is terminated. To the extent any actions require FERC approval, including but not limited to asset transfers under Section 203 of the FPA, Tri-State will be responsible for obtaining all such approvals and shall bear all costs of obtaining such approvals.

(c) The standard of review for changes to the rates, charges, classifications, terms or conditions of this Agreement or such other agreements whether proposed by a party (to the extent that any waiver in subsection (d) below is unenforceable or ineffective as to such party), a non-Party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) ( the "Mobile-Sierra" doctrine).

(d) Notwithstanding the foregoing subsection (c), and unless the parties otherwise mutually agree, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the FPA or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement.

Agreed to and accepted this 19<sup>th</sup> day of July, 2019

DELTA-MONTROSE ELECTRIC ASSOCIATION

By:   
Jasen Bronec, CEO

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

By:   
Duane Highley, CEO