BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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

STATEMENT OF POSITION OF LA PLATA ELECTRIC ASSOCIATION, INC.

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I. INTRODUCTION AND LPEA'S QUEST FOR AN EXIT CHARGE

This proceeding has a narrow focus—the determination of just, reasonable, and non-discriminatory exit charges for La Plata Electric Association, Inc. (LPEA) and United Power, Inc. (United Power) that are consistent with the Colorado Public Utilities Law.[1] LPEA requests that the Colorado Public Utilities Commission (Commission) approve an exit charge methodology for LPEA, and an exit charge figure that allows LPEA to evaluate and make its own decision about whether to withdraw from membership in Tri-State Generation and Transmission Association, Inc. (Tri-State).

Tri-State has never provided LPEA with an exit charge.[2] Tri-State thus misses the point of this proceeding, and apparently has never heard the saying "you can't beat something with nothing." Instead, "Tri-State made a tactical decision not to include in its Answer Testimony a methodology for calculating an exit fee …" and, "rather than provide testimony with a proposed exit methodology, chose to pursue a tactic of federal preemption."[3] This tactic is underscored by substantial evidence—including Tri-State's delays, refusal to engage, "indicative" exit charges (indicative of very little), "sticker prices," and one-off negotiated exit charges for Kit Carson Electric Cooperative (Kit Carson) and Delta-Montrose Electric Association (DMEA). It all amounts to a pattern of unjust, unreasonable, and discriminatory conduct by a public utility.

The analytical framework for this matter rests on first establishing principles to frame an exit charge methodology—a method that is fair, cost-based, and transparent.[4] These principles, in turn, allow for an evaluation of the specific exit charge methodologies provided in this proceeding.

[1] *See generally* Title 40, Articles 1-7, C.R.S.
[2] Hr. Tr. II, at 198:20–:22 (hearing testimony of Tri-State CEO Mr. Duane Highley).
[3] Proceeding No. 19F-0620E, Decision No. R20-0332-I, at 5 ¶ 21 (mailed May 4, 2020).
[4] Hr. Ex. 101 (Tierney Direct), at 14:22–15:23.

There are only two. Tri-State provided neither one. The decision before the Commission is which methodology, or what combination of the two, provides the just, reasonable, and non-discriminatory outcome for LPEA, United Power, and Tri-State's remaining members.[5]

Tri-State's history with regard to exit charges—replete with outsized exit charges designed to keep members captive and refusals to even provide exit charges—emphasizes the need for the Commission to start from a principled foundation in formulating an exit charge methodology. Tri-State touts a vision of the cooperative way where "there are seven principles that are generally accepted as the basis for the cooperative form of business model."[6] Perhaps one of the few areas of this proceeding where there is no dispute is that these principles form the foundation for the cooperative business model.[7]

But pull back the curtain, and it becomes clear that Tri-State's seven cooperative principles are more akin to seven cooperative platitudes. In Tri-State's "cooperative way,"[8] the principle of democratic member control results in competing fiduciary duties for dual directors and ultimately requires that a dual director's fiduciary duty to Tri-State trumps their fiduciary duty to the member cooperative.[9] In Tri-State's "cooperative way," "voluntary and open membership"

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[5] Tri-State variously insinuated through this proceeding that LPEA (and United Power) seek *discriminatory* exit charges that will lead to Tri-State's ruin. *See, e.g.*, Hr. Tr. III, at 90:8–16 (hearing testimony of Tri-State witness Mr. Joel Bladow); *id.* at 99:17–100:12; *see also* citations to Hr. Tr. II, immediately below in this footnote. That has never been pled by LPEA, nor did the evidence introduced at hearing indicate any such intent or outcome. Tri-State's intermittent claims of imminent financial catastrophe for Tri-State—*see, e.g.*, Hr. Tr. II, at 210:4–:11 (hearing testimony of Mr. Highley); *id.* at 210:17–:21; *id.* at 218:2–:6—were never supported by any evidence.

[6] Hr. Ex. 401 (Gordon Answer), at 9:9–:10.

[7] The seven cooperative principles are: (1) Voluntary and Open Membership; (2) Democratic Member Control; (3) Member's Economic Participation; (4) Autonomy and Independence; (5) Education, Training, and Information; (6) Cooperation Among Cooperatives; and (7) Concern For Community. *See* Hr. Ex. 401 (Gordon Answer), at Attachment RLG-6.

[8] Hr. Tr. II, at 211:14–:16 (hearing testimony of Tri-State witness Mr. Highley: "So, the members of Tri-State, they have joined together in an association, and that's the cooperative way[.]")

[9] Hr. Tr. III, at 29:14–:22 (hearing testimony of Mr. Gordon with questioning from LPEA counsel:

> Q: So from—from your perspective as the Mountain View dual director, your Tri-State fiduciary duty is more important than the Mountain View fiduciary duty; correct?
>
> A: In most all cases, yes, that's correct.

means that members are free to join, but are not free to leave.[10] In Tri-State's "cooperative way," the cooperative principle of "cooperation among cooperatives" apparently means that some member cooperatives get exit charges (like Kit Carson and DMEA), and some do not—like LPEA.[11] And in Tri-State's "cooperative way," for the members lucky enough to get an exit charge, Tri-State's "priorities" and litigation "discounts" come into play, leading to parallel universes where a $322 million exit charge and a $62.5 million exit charge can *both* be "fair" for DMEA, and a $137 million exit charge and a $37 million exit charge can *both* be "fair" for Kit Carson.[12] Tri-State does not feel obligated to provide a member a fair exit charge to begin with, but rather, by design, commences the process (if it is willing to talk to the member at all) with an exit charge that Tri-State knows to be excessive, apparently expecting the member to haggle its way to some hope of a fair exit charge. It is a construct where the Chairman of the Tri-State Board of Directors analogizes seeking an exit charge to buying a car, with a starting inflated sticker price and subsequent negotiations.[13] The only difference is that here, the price falls by hundreds of millions of dollars as opposed to thousands of dollars as with a car. LPEA apparently did not even warrant that initial inflated "sticker price" exit charge, instead being told to simply "wait" after formally requesting an exit charge on July 2, 2019. LPEA is still waiting.[14]

For a public utility subject to the Public Utilities Law, this cannot be an acceptable approach to these important issues. The Commission needs to step in and establish a just, reasonable, and non-discriminatory exit charge.

Q: Have there been any cases where it wasn't't?

A: I think I said just a little bit ago that, no, I've been fortunate that that's not happened.)

[10] Hr. Tr. II, at 187:2–:12 (hearing testimony of Mr. Highley); *id.* at 189:7–:9 (same).

[11] *See, e.g.*, Hr. Tr. III, at 26:10–:16 (hearing testimony of Tri-State witness Mr. Gordon); *id.* at 34:9–:36:3 (same).

[12] Hr. Tr. III, at 34:9–39:10 (hearing testimony of Mr. Gordon).

[13] Hr. Tr. III, at 39:3–:10 (hearing testimony of Mr. Gordon).

[14] *See, e.g.*, Hr. Tr. II, at 198:20–:22 (hearing testimony of Mr. Highley); Hr. Tr. III, at 26:10–:16 (hearing testimony of Mr. Gordon).

LPEA's principles for an exit charge methodology are not new or manufactured; rather, they are traditional ratemaking principles used by regulatory commissions in exercising jurisdiction over public utilities and evaluating the rates and charges of regulated public utilities: (1) fairness; (2) cost-incurrence (rates based on cost); and (3) transparency.[15] LPEA requests that the Commission apply these principles here, approve the exit charge methodology developed by Dr. Tierney, and establish an exit charge for LPEA. With an *actual* exit charge in hand, LPEA can *actually* evaluate how to best shape its own energy future and meet the needs of its customers. Without such an exit charge in hand, La Plata is fundamentally hobbled, deprived of the information it needs to make prudent and responsible decisions on behalf of its members.

II. THE PUBLIC UTILITIES LAW GOVERNS THIS PROCEEDING

Tri-State has consistently tried to frame this case as a contract case.[16] It is not. It is a proceeding grounded in the Public Utilities Law. This is nothing new; indeed, Tri-State made the same argument in the exit charge proceeding involving former member DMEA (Proceeding No. 18F-0866E). But no matter how many times Tri-State beats the "contract" drum, the Commission's jurisdiction under the Public Utilities Law to establish a just, reasonable, and non-discriminatory exit charge for LPEA cannot be swept aside by such semantic sleight-of-hand.

LPEA's complaint does not invoke a contract dispute—it is a complaint solely under the Public Utilities Law, which is made clear by the relief LPEA requested from the Commission.[17] LPEA seeks:

[15] Hr. Ex. 101 (Tierney Direct), at 14:22–15:23.
[16] *See, e.g.*, Hr. Tr. II, at 200:2–:4 (hearing testimony of Mr. Highley) ("The heart of our case is that we see this as a contract dispute. And, so, our preference would be to see it treated as a contract issue."); *see also id.* at 209:5–:8 (same); *see also, e.g.*, Hr. Tr. III, at 32:22–33:6 (hearing testimony of Mr. Gordon); Hr. Tr. I, at 145:2–:9 (Tri-State counsel emphasizing a contractual dispute theory of the case); *id.* at 81:15–:17 (same); *id.* at 134:25–135:2 (same); *id.* at 136:12–:21 (same).
[17] Even if this proceeding were incorrectly viewed as a "contract dispute," that would not be the trump card Tri-State pretends it to be. Because Tri-State is a public utility under Colorado law, its contracting practices are superintended

- An order pursuant to the Commission's authority under Sections 40-3-101, 40-3-102, 40-3-106(1)(a), 40-3-111(1), 40-3-111(2)(a), and 40-6-111(4)(a), C.R.S., finding that Tri-State's refusal to provide an exit charge to LPEA is unjust and unreasonable;

- An order pursuant to the Commission's authority under Sections 40-3-101, 40-3-102, 40-3-106(1)(a), 40-3-111(1), 40-3-111(2)(a), and 40-6-111(4)(a), C.R.S., finding that Tri-State's refusal to provide an exit charge to LPEA is discriminatory;

- An order pursuant to the Commission's authority under Sections 40-3-101, 40-3-102, 40-3-106(1)(a), 40-3-111(1), 40-3-111(2)(a), and 40-6-111(4)(a), C.R.S., establishing an exit charge for LPEA that is just, reasonable, and non-discriminatory; and

- Award of such additional or other relief as the Commission deems proper.

Nowhere has LPEA asked the Commission to engage in contractual interpretation. LPEA has sought relief only under the Commission's application of the Public Utilities Law. As the Commission previously itself explained, under the Public Utilities Law the Commission "shall determine a *just and reasonable charge* if, upon complaint, it finds a charge is unjust, unreasonable, or discriminatory."[18] LPEA requests adjudication of just such a charge—an exit charge, to be specific. And it "is the facts alleged and the relief requested that decide the substance of a claim, which in turn is determinative of the existence of subject matter jurisdiction"[19]—that is, a plaintiff is master of their own complaint.[20] Tri-State does not get to reshape LPEA's Complaint. Yet Tri-State's repeated "contract" assertions seek to do exactly that, in an attempt to reframe this entire

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by the Public Utilities Law, too. Indeed, Tri-State cannot contract away the requirements of the Public Utilities Law: "[p]arties may not privately contract to abrogate statutory requirements or contravene the public policy of [Colorado]." *Peterman v. State Farm Mutual Auto. Ins. Co.*, 961 P.2d 487, 492 (Colo. 1998). LPEA has a right to a just, reasonable, non-discriminatory exit charge under the Public Utilities Law, and that statutory right cannot be undone by contract. LPEA does not want to be understood as conceding that this distinction matters here, but to be clear, this proceeding involves a "charge" under the Public Utilities Law.

[18] Proceeding No. 18F-0866E, Decision No. C19-0297-I, at 4 ¶ 11 (mailed Apr. 1, 2019) (emphasis added) (describing in part the collective meaning of §§ 40-3-101, -102, and -111(1), C.R.S.).

[19] Proceeding No. 13F-0110EG, Decision No. R14-0369, at 9 ¶ 32 (mailed Apr. 9, 2014) (quoting *Brown v. Silvern*, 141 P.3d 871, 873 (Colo. App. 2005) (internal quotations and citations omitted)).

[20] *Grynberg v. Grynberg (In re Gadeco, LLC)*, 415 P.3d 323, 329 (Colo. 2018); *accord Envtl. Remediation Holding Corp. v. Talisman Capital Opportunity Fund, L.P.*, 106 F. Supp. 2d 1088, 1095 (D. Colo. 2000).

proceeding and provide implicit support for its practice of calculating massive, "sticker price" exit charges based on "contract valuation," in order to deter withdrawal and hold members captive.

The Commission has previously and squarely rejected Tri-State's contention that exit charge proceedings under the Public Utilities Law must be considered contract cases. In Proceeding No. 18F-0866E regarding DMEA's exit charge, the Commission determined that the "complaint present[ed] a contract dispute concerning Tri-State's bylaws and [was] therefore outside the Commission's subject matter jurisdiction,"[21] explaining that DMEA's requested reliefs were both in form and substance squarely within the Commission's statutory jurisdiction.[22] The *en banc* Commission held that the:

> [S]ubstance of [DMEA's] complaint is not a breach of contract for two reasons. First, while the complaint describes, by way of background, the internal dispute process governed by Tri-State's bylaws, the two claims for relief do not place at issue the bylaws' interpretation or application. Second, the complaint relies on the Public Utilities Law, not obligations contained in Tri-State's bylaws, to assert its two claims. *While DMEA and Tri-State have a relationship governed in part by Tri-State's bylaws, the relationship is also governed in part by the Public Utilities Law.* Because the complaint seeks to test [DMEA's] exit fee against the requirements of the Public Utilities Law, we conclude that the substance of the complaint seeks to enforce obligations arising from statute, not contract.[23]

Nonetheless, in this proceeding the Tri-State "contract" drumbeat continued, unabated.[24] The Hearing Commissioner again rejected these arguments, finding that LPEA, just like DMEA before it, had stated a claim under the Public Utilities Law, which:

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[21] Proceeding No. 18F-0866E, Decision No. C19-0297-I, at 3 ¶ 9 (mailed Apr. 1, 2019).
[22] Proceeding No. 18F-0866E, Decision No. C19-0297-I, at 3-9 ¶¶ 9-27 (mailed Apr. 1, 2019).
[23] Proceeding No. 18F-0866E, Decision No. C19-0297-I, at 5 ¶ 11 (mailed Apr. 1, 2019) (emphasis added).
[24] *See, e.g.*, Hr. Tr. II, at 200:2–:4 (hearing testimony of Mr. Highley) ("The heart of our case is that we see this as a contract dispute. And, so, our preference would be to see it treated as a contract issue."); *see also id.* at 209:5–:8 (same); *see also, e.g.*, Hr. Tr. III, at 32:22–33:6 (hearing testimony of Mr. Gordon); Hr. Tr. I, at 145:2–:9 (Tri-State counsel emphasizing a contractual dispute theory of the case); *id.* at 81:15–:17 (same); *id.* at 134:25–135:2 (same); *id.* at 136:12–:21 (same).

> [A]llows the Commission to hear complaints concerning anything done *or omitted to be done*" by Tri-State that is " … in violation, or claimed to be in violation, of any provision of law or of any order or rule of the [C]ommission." And, the Commission can hear [LPEA's] particular claims because it is the Commission's "duty … to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; [and to] *prevent unjust discriminations and extortions* in the rates, charges and tariffs of such public utilities of this state[.]"[25]

Contrary to Tri-State's position, "[p]arties cannot by private contract abrogate statutory requirements or conditions affecting the public policy of [Colorado]." Put simply, Tri-State cannot contractually nullify the Public Utilities Law.[26]

Finally, with the recent passage of HB 20-1225, the General Assembly reaffirmed exactly what the Commission *en banc* previously found in Proceeding No. 18F-0866E.[27] A Tri-State

[25] Proceeding Nos. 19F-0620E & 19F-0621E, Decision No R20-0097-I, at 9 ¶ 24 (mailed Feb. 12, 2020) (citing § 40-6-108, C.R.S.; emphasis original to the Decision, but not to the statute).

[26] *See, e.g.*, *Peterman*, 961 P.2d at 492; *University of Denver v. Industrial Com. of Colo.*, 335 P.2d 292, 294 (Colo. 1959). Indeed, the Public Utilities Law pre-dates the creation of Tri-State. The Commission was created in 1913 by the passage of the 1913 Public Utilities Act, which also first created the regulatory regime that still exists today—including the core authority of the Commission to "regulate all rates, charges and tariffs of every public utility" and "the power to correct abuses, and prevent unjust discrimination and extortions in the rates, charges and tariffs of such public utilities" and "to generally supervise and regulate every public utility in this State and to do all things, whether herein specifically designated, or in addition thereto, which are necessary and convenient in the exercise of such power …." Public Utilities Act of 1913, ch. 127, § 14 (1913), http://lawcollections.colorado.edu/colorado-session-laws/islandora/object/session%3A11466; *compare id. with* § 40-3-102, C.R.S. (stating this same broad jurisdiction, in the same terms, for the Commission to regulate public utilities). While Tri-State may wish it differently, this Commission is not bound by the vagaries of Tri-State's Bylaws; in fact, the Commission need not even consider Tri-State's Bylaws in adjudicating this case. LPEA has a right to withdrawal under the Tri-State Bylaws, and LPEA could bring this claim even if the withdrawal provision of the Bylaws did not exist—as Colorado law makes clear.

[27] Concerning Clarification of the Requirement of Reasonableness in Charges Imposed by One Cooperative Electric Association Upon Another, House Bill 20-1225 (signed Mar. 27, 2020) (HB 20-1225) (finding and determining in part that:

> (a) Article XXV of the Colorado Constitution vests "all power to regulate the facilities, service and rates and charges" of public utilities in the public utilities commission; (b) Since at least 1913, the laws of Colorado have directed the public utilities commission to "prevent unjust ... rates, charges, and tariffs" of public utilities; (c) The Colorado Supreme Court has held that 'the Commission possesses not only the power and authority, but also the duty to prescribe the rates of all utilities subject to its jurisdiction"); (d) Since at least 1944, United States Supreme Court cases have emphasized that utility rates must be "just and reasonable", regardless of the specific methodology by which rates are established; and (e) *The public utilities commission has previously determined that it possesses jurisdiction to adjudicate a complaint concerning just and reasonable "exit" charges assessed by a wholesale electric cooperative against a retail electric cooperative*" (emphasis added)).

member's exit charge is indeed a charge over which the Commission has jurisdiction, and it is governed by the Public Utilities Law, and relief such as the relief requested by LPEA arises out of the Public Utilities Law, not contract law.

III. THE EXIT CHARGE METHODOLOGY

A just, reasonable, and non-discriminatory exit charge must rest on sound foundational principles, and those principles are largely undisputed in this proceeding.[28] As explained below, the Commission should select a methodology consistent with the foundational principles established by LPEA. Dr. Tierney's exit charge methodology meets the objectives of being fair, cost-based, and transparent. United Power also presented an exit charge methodology through its expert witness, Ms. Ringelstetter. To the extent that the Commission believes a hybrid of the Tierney and Ringelstetter methodologies would be appropriate, LPEA also offers here an approach that would utilize components of both these methodologies to meet the requirements of the Public Utilities Law and simultaneously satisfy these principles.

Based on the hearing in this matter, it appears that Tri-State will attack Dr. Tierney's exit charge methodology as the low-priced end product of a "window-shopping" exercise, where LPEA considered exit charge approaches offered by a variety of consultants until it found one to its liking in Dr. Tierney's approach.[29] But the evidence in this case reveals the fallacies that underlie this fish story. The reality is that these other analyses were conducted as due diligence exercises by

[28] Hr. Ex. 102 (Tierney Rebuttal), at 15:5–:9 ("I continue to hold the opinion that my proposed traditional ratemaking principles—fairness, cost-based rates and transparency—should be applied by the Commission in this proceeding and that my methodology, which adheres to those principles, is a sound basis for the Commission to rely upon in establishing a just, reasonable and non-discriminatory exit charge for La Plata.").

[29] *See, e.g.*, Hr. Tr. I, at 56:6–:11 (cross-examination of LPEA Chief Executive Officer Jessica Matlock by Tri-State counsel regarding the Enchantment Energy and Rio Energy analyses, with Ms. Matlock stating: "I believe they were looking at the different methodologies out there to understand generally what it would look like. Since Tri-State would not give them a buyout number, they needed to get some form of number whether to know if they should move forward or not."). This hearing testimony occurred during the confidential portion of the hearing; however, because the testimony does not implicate the actual confidential information, LPEA is not marking it as confidential to avoid the need to file a confidential version of this Statement of Position.

LPEA to evaluate potential costs and benefits of moving to alternative supply—an exercise any prudent utility would undertake, and an exercise particularly appropriate and necessary here, given Tri-State's refusal to provide or even discuss an exit charge with LPEA. Indeed, in the absence of an exit charge from Tri-State, LPEA had no choice but to perform its own analyses to guess at what exit charge figure Tri-State might develop. LPEA then sought an independent analysis for purposes of developing an exit charge methodology for this case and brought on Dr. Tierney—a leading expert in regulatory economics—to undertake this work.[30]

Dr. Tierney then developed her exit charge methodology without any input from LPEA or the LPEA Board of Directors.[31] Indeed, her methodology is grounded in Tri-State's own financial information as reported to the Securities and Exchange Commission. It is just, reasonable, and non-discriminatory—and consistent with traditional ratemaking principles as described below.

a. Principles for the Methodology

LPEA's principles for an exit charge methodology are traditional ratemaking principles used by regulatory commissions in exercising jurisdiction over public utilities and evaluating the rates and charges of regulated public utilities: (1) fairness; (2) cost-incurrence (rates based on cost); and (3) transparency.[32]

[30] Hr. Tr. I, at 61:24–62:2 (hearing testimony of Ms. Matlock about the prior analyses: "I've got to be honest, my board said don't spend time on these methodologies nor these reports, because I wanted to do an independent analysis, and that's why I hired Dr. Tierney."). Again, this hearing testimony occurred during the confidential portion of the hearing; however, because the testimony does not implicate the actual confidential information, LPEA is not marking it as confidential to avoid the need to file a confidential version of this Statement of Position.

[31] Hr. Tr. I, at 63:22–64:3 (hearing testimony of Ms. Matlock: "So what I'm just saying is that Ms. Tierney was hired. No one from my staff nor my board has ever talked to her. She's done an independent analysis. I haven't even talked to her. That's what I wanted. I'm a new CEO. I wanted to start clean and just get an unbiased [and] reasonable number. That's what I'm saying."). Again and finally, this hearing testimony occurred during the confidential portion of the hearing; however, because the testimony does not implicate the actual confidential information, LPEA is not marking it as confidential to avoid the need to file a confidential version of this Statement of Position.

[32] Hr. Ex. 101 (Tierney Direct), at 14:22–15:23.

First, a *fair* methodology must not discriminate between departing and remaining members, and must not create incentives to either stay with or exit Tri-State.[33] A fair, non-discriminatory exit charge harms neither remaining members nor the departing member, nor is it punitive in a manner which prevents members from being able to leave at all.[34]

Second, a *cost-based* methodology must be based, to the extent possible, on actual and unavoidable costs already incurred by Tri-State in anticipation of providing service to the departing member.[35] A methodology should rely as little as possible on uncertain, subjective, and potentially-avoidable long-term cost projections—and should instead focus on the departing member's share of the financial benefits and burdens associated with Tri-State ownership, including any stranded assets or liabilities which would fall to the remaining members.[36] This adheres to the Commission's traditional approach of relying on historical data with known and measurable adjustments when setting just, reasonable, and non-discriminatory rates.[37] To be sure, public utility commissions can and do set rates based on future test years, but these involve near-term forecasted information—*e.g.*, one- to three-year forecasts as opposed to thirty-year forecasts—and a robust adjudicatory process that allows for a full vetting of the methods, data, and assumptions underlying the cost of service.[38]

Finally, a *transparent* methodology must be straightforward, verifiable, and based on publicly-available information, to the extent possible. This serves to reduce the administrative

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[33] Hr. Ex. 101 (Tierney Direct), at 14:22–15:4, 21:20–:23.
[34] Hr. Ex. 101 (Tierney Direct), at 22:1–:11; *see also* Hr. Tr. I, at 127:15–128:2 (hearing testimony of Dr. Tierney).
[35] Hr. Ex. 101 (Tierney Direct), at 22:14–:18.
[36] Hr. Ex. 101 (Tierney Direct), at 15:5–:12, 22:14–25:2.
[37] Hr. Ex. 101 (Tierney Direct), at 12:4–:7, 22:19–23:3, 29:12–20.
[38] Hr. Ex. 101 (Tierney Direct), at 29:12–20; *see also* Hr. Tr. I, at 197:22–198:3 ("So, it's for different purposes that you could have reasonable forecasts, like in integrated resource planning, or transmission planning, but not for ratemaking. *You could have a one- or two-year test year in the future, based on a future revenue requirement, looking that close into the future, but not a 30-year test year*") (emphasis added).

inefficiency, transaction costs, and information asymmetry that have disadvantaged Tri-State members seeking to properly weigh the costs and benefits of their continued membership.[39] This principle boils down to simplicity—a concept completely absent from the recent exits of Kit Carson and DMEA, where the two members struggled through multi-year, opaque negotiation processes where Tri-State held all the information and progress was only made through the application of external pressure.[40] As Tri-State witness and Board Chairman Mr. Gordon admitted at hearing, Tri-State's past practice with members investigating an exit consisted of an initial "indicative" price—which Tri-State claimed was "fair"—followed by a drastically lower exit charge actually paid by an exiting member, which Tri-State also deemed "fair."[41] LPEA is not seeking the "sue Tri-State discount" here; rather, it is seeking its own just and reasonable exit charge based on the principles set forth by Dr. Tierney. Tri-State, by contrast, introduced no principles, much less a methodology or an exit charge for LPEA, in this proceeding.

b. Dr. Tierney's Exit Charge Methodology

The Commission should approve Dr. Tierney's exit charge methodology to develop an exit charge for LPEA, and set a specific exit charge based upon this methodology. It is fair, cost-based, and transparent. The methodology uses publicly available information and a foundation of total assets (A), liabilities (L), and equity (E).[42] Moreover, the broader foundation for this methodology

[39] Hr. Ex. 101 (Tierney Direct), at 15:13–:23, 25:6–26:11.

[40] Hr. Ex. 101 (Tierney Direct), at 26:4–:11 ("In recent years, member cooperatives such as DMEA, La Plata, and United—not to mention Tri-State itself—have had to expend substantial time and monetary resources to attempt to evaluate the cost of an exit charge and exercise the right to withdraw in a way that is fair and equitable to the other member/owners of Tri-State. The method I have proposed would provide La Plata with an exit charge amount, and also provide other member/owners with information that could be relevant to their own decision-making about how they will provide low-cost and affordable service to their own cooperative member/customers in the future.").

[41] *See, e.g.*, Hr. Tr. III, at 34:9–39:10 (hearing testimony of Mr. Gordon).

[42] Hr. Ex. 101 (Tierney Direct), at 36 (Table SFT-1). Table SFT-1 explains as follows: "A = Total Economic Value of the Tri-State Assets that La Plata would leave behind if it departed as a member/owner of Tri-State …."; "L = Total Value of Liabilities and Economic Commitments that La Plata will pay to Tri-State in recognition that Tri-State has previously incurred these costs on behalf of La Plata …."; and "E = La Plata's relinquishment of its equity interest in Tri-State ….").

is the cooperative business model, where a member cooperative like LPEA (or United Power, Kit Carson, or DMEA for that matter) is both an owner and a customer of the generation and transmission provider (G&T).[43] The exit charge methodology is (A) – (L) – (E), a simple formula based on known and publicly available costs with minimal reliance on long-term forecasting.[44] The allocation approach used by Dr. Tierney—and Tri-State itself in allocating patronage capital—is similarly simple, using the member's share of revenues (*i.e.*, billings to members) from the most recently completed calendar year (in this instance, calendar year 2019).[45]

i. The Exit Charge Methodology Satisfies the Principles

The methodology proposed in Dr. Tierney's Direct Testimony[46] would result in a just, reasonable, and non-discriminatory exit charge for LPEA under the Public Utilities Law because it comports with all three foundational ratemaking principles outlined above.

First, it is fair. Under Dr. Tierney's approach, all members are accountable for their individual share of Tri-State, and all members are assigned risk and reward proportionately.[47] If, hypothetically, all Tri-State members were to exit at once, Dr. Tierney's proposed formula would

[43] Hr. Tr. I, at 231:8–232:3 (hearing testimony of Dr. Tierney distinguishing the cooperative business model, where members are both owners and customers, from the investor-owned utility model).
[44] Hr. Ex. 102 (Tierney Rebuttal), at 58:10–:14 ("The exit-charge methodology I have proposed centers the calculation as much as possible on known and measurable information and, in doing so, minimizes the impact of uncertainty and volatility in forecasting. In contrast, the various approaches discussed by Tri-State's witnesses would generate an exit charge that is highly contingent on such unstable inputs.").
[45] Hr. Ex. 101 (Tierney Direct), at 31:5–:14 ("I recommend that the Commission rely, for the purpose of allocating La Plata's share of assets and liabilities, on the same metric used by Tri-State when it determines the allocation of patronage capital among members. Tri-State allocates such capital in any year based on a member's share of revenues from electricity purchases from Tri-State. A member's share of revenues (that is, billings to members) reflects a combination of its electricity demand as a percentage of Tri-State's monthly peak loads (in megawatts) and its energy use (in megawatt-hours) as a percentage of Tri-State's energy sales. I recommend that the exit charge for La Plata reflect its pro-rata share of total billings in the most recent full-calendar-year billing data that has been made available to Tri-State's members by Tri-State.").
[46] Dr. Tierney's recommended exit charge methodology would subtract the departing member's patronage capital relinquished to Tri-State, as well as its pro-rata share of Tri-State's liabilities and off-balance sheet commitments, from the its pro-rata share of Tri-State's assets. Hr. Ex. 101 (Tierney Direct), at 16:1–:17, 32:17–34:9.
[47] Hr. Ex. 101 (Tierney Direct), at 42:17–43:3.

leave each member responsible for its pro-rata share of residual equity held by Tri-State after the member's relinquishment of patronage capital and fulfillment of financial obligations.[48] Dr. Tierney's methodology therefore fairly and proportionately assigns a departing member's share in the benefits and burdens of ownership, in turn creating neither an incentive to exit nor an incentive to stay.[49] In other words, it is mathematically neutral and fair to all Tri-State members.

Second, Dr. Tierney's methodology satisfies the principle of cost-incurrence. The risks of relying on long-term forecasted data and assumptions are well-established in this proceeding.[50] While utilities and public utility commissions may employ and rely upon *short-term* forecasting in the context of ratemaking, the use of *long-term* forecasts is rightly avoided by Dr. Tierney's exit charge methodology.[51] Indeed, it is the "30-year test period" approach that Tri-State has historically relied upon to produce the initial outsized "car lot" $322 million and $137 million exit charges for DMEA and Kit Carson, respectively—figures Tri-State subsequently reduced by hundreds of millions of dollars. Dr. Tierney's methodology takes the opposite tack, and is based on actual and current cost information rather than long-term forecasting.[52] Accordingly, the methodology relies to the fullest extent possible on recent, known and measurable historical data (*e.g.*, end-of-year member share of Tri-State billings and assets and liabilities reported on Tri-State's balance sheet).[53] In addition, Dr. Tierney's adjustments for long-term, above- or below-market off-balance sheet commitments are likewise derived from current, publicly available

[48] Hr. Ex. 101 (Tierney Direct), at 57:10–58:10 (providing in part: "As illustrated by the information shown in Table SFT-2, if any other member left, then it would receive its pro-rata share of net assets less net liabilities and economic commitments. In essence, each member would get its share of actual residual equity held by Tri-State after the hypothetical disposition of its financial and economic commitments.").
[49] Hr. Ex. 101 (Tierney Direct), at 58:8–:10.
[50] *See, e.g.*, Hr. Ex. 101 (Tierney Direct), at 28:1–29:20; Hr. Ex. 305 (Ennis Rebuttal), at 9:10–10:11.
[51] *See* Hr. Tr. I, at 232:14–233:10 (hearing testimony of Dr. Tierney).
[52] Hr. Ex. 102 (Tierney Rebuttal), at 53:5–56:2.
[53] *See* Hr. Ex. 101 (Tierney Direct), at 31:5–:14, 32:21–33:5.

market outlooks.[54] And despite Tri-State's assertions that Dr. Tierney's methodology would not allow Tri-State to recover the costs of transmission infrastructure built exclusively to serve LPEA, Dr. Tierney has proposed several options for Tri-State to recover these costs through a separate transmission tariff—options for which LPEA does not seek approval here, but which certainly are not requests for "free transmission" as asserted by Tri-State—without having to resort to unnecessary long-term forecasting.[55] Unlike Tri-State's contract valuation proposals, Dr. Tierney's methodology is grounded in the familiar principles of traditional ratemaking, consistent with the fundamental nature of this case as a case involving whether a statutory "charge" is just, reasonable, and non-discriminatory under the Public Utilities Law.

Finally, Dr. Tierney's methodology brings transparency and attendant simplicity. Tri-State's balance sheets and financial reports, on which Dr. Tierney bases her calculations, are publicly available, allowing for independent verification of any calculation resulting from Dr. Tierney's proposed methodology. The methodology, as well as the approach to developing the allocator for purposes of determining a member's pro-rata share, is simple, straightforward, and formulaic, further enhancing its transferability and clarity.[56] This openness will be critical in placing Tri-State and its members on more even footing in the exit charge process.[57] Dr. Tierney's methodology does not rely on subjective, often arbitrary, forecasts, nor on "black box" information

[54] *See* Hr. Ex. 101 (Tierney Direct), at 12:8–:12, 33:10–34:3, 58:11–18, and 50:19–21 ("These forward prices represent actual trades that counterparties are making for delivery of a blend of firm on-peak and firm off-peak power supply in 2020, and thus reflect actual market conditions …").
[55] Hr. Ex. 102 (Tierney Rebuttal), at 48:2–51:6; Hr. Tr. I, at 192:15–193:4 (hearing testimony of Dr. Tierney). To be clear, LPEA is not asking for approval of any of these transmission approaches but Dr. Tierney brought these forward to rebut the notion—made clear at hearing by the testimony of Tri-State witness Mr. Joel Bladow—that LPEA was somehow seeking "free transmission." Hr. Tr. III, at 99:17–100:12 (hearing testimony of Mr. Bladow).
[56] Hr. Ex. 101 (Tierney Direct), at 58:19–59:2.
[57] Hr. Tr. I, at 233:22–235:5 (hearing testimony of Dr. Tierney).

which may be entirely controlled—or withheld—by Tri-State,[58] and thus adheres closely to the principle of transparency and replicability.

ii. The Exit Charge Value

Under Dr. Tierney's exit charge methodology, starting with (A) and then subtracting (L) and subtracting (E), LPEA's overall exit charge would be $96.990 million, consisting of the surrender of $74.446 million in undiscounted patronage capital and $22.544 million in cash.[59] In Dr. Tierney's Rebuttal Testimony, however, Dr. Tierney performed a calculation to account for the potential recognition on the balance sheet of the $282 million Escalante Generating Station impairment, for which LPEA's share based on the 2019 member sales allocator would be approximately $15.85 million.[60] The weekend before the hearing commenced in this proceeding, Tri-State filed its 10-Q with the Securities and Exchange Commission, which included the Escalante Generating Station impairment but directed the dollars associated with the impairment into a regulatory asset.[61] Technically, this $15.85 million amount does not affect Dr. Tierney's exit charge calculation because the methodology excludes regulatory assets and regulatory liabilities.[62]

Nevertheless, to the extent the Commission deems it appropriate to adjust the LPEA exit charge calculation to account for its share of the Escalante Generating Station, LPEA has included Attachment A to this Statement of Position adding the $15.85 million to Hearing Exhibit 501, which was the most recent update of Dr. Tierney's Table SFT-R2.[63] With this adjustment, LPEA's

[58] *See, e.g.,* Hr. Ex. 101 (Tierney Direct), at 12:1-–21, 27:14–28:7.
[59] Hr. Ex. 501 (Table SFT-R2 Revised).
[60] Hr. Ex. 102 (Tierney Rebuttal), at 61:7–62:9 (providing background on the announced but then un-filed Escalante Generating Station impairment and quantifying LPEA's pro-rata share).
[61] Hr. Tr. I, at 170:2–:10 (hearing testimony of Dr. Tierney).
[62] Hr. Tr. I, at 170:14–171:4 (hearing testimony of Dr. Tierney).
[63] Hr. Tr. I, at 240:1–:9 (hearing testimony of Dr. Tierney regarding this adjustment and modifications to Hearing Exhibit 501, stating: "I actually would not recommend that it go into the assets rows, because that's inconsistent with

overall exit charge would be $112.836 million, consisting of the surrender of $74.446 million in undiscounted patronage capital and $38.390 million in cash.

c. Alternative Exit Charge Methodologies

Unlike Tri-State, United Power chose to present an exit charge methodology and corresponding exit charge for United Power for Commission consideration. To the extent the Commission does not prefer Dr. Tierney's exit charge methodology, then the Commission should approve either Ms. Ringelstetter's approach, or a hybrid of the two approaches already in the record.[64]

i. The United Power Methodology

The United Power exit charge methodology represents a reasonable alternative to Dr. Tierney's approach.[65] LPEA submits, however, that Dr. Tierney's approach is preferable to the United Power exit charge methodology because it is simpler and more fully captures the ownership side of the cooperative business model in the calculation. As to the first point, Dr. Tierney's methodology is simple—a hypothetical member interested in what its exit charge might be can essentially pick up the most recent Tri-State billings report to determine its allocator based on member sales in the most recent year, then turn to the most recent Tri-State 10-K and get a

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the methodology and the notes and everything else. I would rather suggest that that might be an add-on at the very bottom, which says, in addition to 96.99 million as the overall effective exit charge, you would add to that 15.85 million, and the total would be 112.84 million, would be the effective exit charge.").

[64] This section will quantify the exit charges under both Ms. Ringelstetter's approach as well as perhaps a hybrid to allow the Commission to grant LPEA's relief by setting not only an exit charge methodology but also an actual numeric exit charge. To the extent the ALJ believes a technical conference is necessary after setting the exit charge methodology, LPEA supports the use of a technical conference for such purpose. Given LPEA's experience with Tri-State to date, it is extremely important that the Commission set the actual value (all-in effective exit change and cash component) to allow LPEA to withdrawal from Tri-State. To the extent only a methodology is established, LPEA fears this is a recipe for more gamesmanship, opportunism, and delay by Tri-State to thwart LPEA charting its own course for the energy future of its members.

[65] Hr. Tr. I, at 162:9–:11 (hearing testimony of Dr. Tierney).

"rough justice" estimate of where they would be on a potential exit charge payment.[66] Ms. Ringelstetter's methodology utilizes a much more complicated allocation approach with her weighted vintage of debt calculation. As explained by Dr. Tierney at hearing, with the weighted vintage of debt approach:

> [I]t would take a while to go through and find the vintage effective debt issuance, and the size for each member at the time. So, it's one step removed from what I think is a framework that can more easily inform a member of the potential cost burden, if it decides to go forward.[67]

As to the ownership component of membership in a G&T like Tri-State, Ms. Ringelstetter does not generally incorporate the asset side of the balance sheet in her exit charge methodology. Unlike the exit charge methodology put forward by Dr. Tierney, and the exit charge methodology put forward by Mr. Kevin Higgins on behalf of DMEA in Proceeding No. 18F-0866E for that matter, it does not capture any benefit from the current Tri-State assets that a departing member will leave behind, and results in a higher exit charge due to this exclusion.[68]

LPEA's allocator will change to the extent the Commission approves the United Power exit charge methodology supported by Ms. Ringelstetter, rising from approximately 5.62 percent to 6.47 percent. This change results from using the weighted vintage of debt approach to setting the allocation value as opposed to a 2019 member share of billings approach, as utilized by Dr. Tierney.[69] Under this approach, LPEA's overall exit charge would be $202.445 million,

[66] *See* Hr. Ex. 101 (Tierney Direct), at 11:12–:17 ("I encourage the Commission to attend to and support the objectives of economic and administrative efficiency in this case and more generally by utilizing a straight-forward methodology and publicly available sources of data for calculating La Plata's exit charge, so that La Plata can decide whether to remain with Tri-State. (Using such a straight-forward methodology may also have the side benefit of providing useful information to other Tri-State members which they can use in their own decision-making.)")
[67] Hr. Tr. I, at 220:1–:16 (hearing testimony of Dr. Tierney in response to a question from the ALJ).
[68] Mr. Higgins adjusted the book value of assets in his exit charge methodology while Dr. Tierney does not. In her Direct Testimony, Dr. Tierney explains why she does not make the same adjustment: "I decided not to adjust the book value of Tri-State's generation assets for several reasons. First, Tri-State's financial disclosures (as reflected in its 2018 10-K and its Third Quarter 2019 10-Q filing) indicate that Tri-State does not believe that its long-lived assets are impaired, except as explicitly noted in the financial statements." Hr. Ex. 101 (Tierney Direct), at 39:3–:7.
[69] *See, e.g.*, Hr. Ex. 302 (Ringelstetter Direct), at Attachment SRE-9 (calculating the weighted average United Power share of debt).

consisting of the surrender of $74.446 million in undiscounted patronage capital and $127.999 million in cash.

Further and finally, to the extent the Commission believes Ms. Ringelstetter's exit charge methodology and the pro-rata share of debt approach are preferable to Dr. Tierney's approach, the Commission should strongly consider removing the power purchase agreement (PPA) component of Ms. Ringelstetter's methodology consistent with her recommendation in her Rebuttal Testimony.[70] Ms. Ringelstetter makes a compelling case to exclude the PPAs, noting that: "Tri-State itself has not valued the PPA[s]"; Tri-State witness and Chief Financial Officer (CFO) Mr. Patrick Bridges "does not include the PPAs in his assessment of Tri-State debt and other obligations"; and "[a]ttainable information indicates that the PPA portfolio, on net, may not reflect a substantial above-market off-balance sheet liability."[71] Exclusion of the PPAs would also be appropriate given Ms. Ringelstetter's general exclusion of the asset side of the balance sheet from her exit charge methodology. Given the benefits to members in an exit charge calculation that are foregone by excluding the substantial value of these assets, it is fair and symmetrical to exclude any off-balance sheet liabilities that benefit Tri-State—a benefit not even accounted for by Tri-State's own CFO in assessing Tri-State debt and obligations—in the exit charge calculation.

To the extent PPAs are excluded from Ms. Ringelstetter's exit charge methodology, and using a 6.47 percent allocator for LPEA, LPEA's overall exit charge would be $153.103 million, consisting of the surrender of $74.446 million in undiscounted patronage capital and $78.657 million in cash.

[70] Hr. Ex. 305 (Ringelstetter Rebuttal), at 32:1–34:6.
[71] Hr. Ex. 305 (Ringelstetter Rebuttal), at 33:9–34:3.

ii. A Hybrid of Methodologies in the Record

As is often the case in ratemaking proceedings for public utilities conducted under the auspices of the Public Utilities Law, like this one, the Commission may believe that a hybrid approach between the presented methodologies is an appropriate path forward to achieve a just, reasonable, and non-discriminatory outcome in this proceeding. The first decision point in any such analysis is whether to pursue an approach grounded firmly in the assets and liabilities of the balance sheet (*i.e.*, Dr. Tierney's approach) or an approach that also uses the balance sheet but focuses on only the liabilities side to determine the pro-rata share of debt (*i.e.*, Ms. Ringelstetter's approach).[72] The former most accurately captures both sides of the G&T business model, accurately valuing LPEA's ownership and its share of Tri-State's obligations to determine a cash component and, ultimately, an overall effective exit charge.[73] To the extent the Commission chooses a pro-rata share of debt approach, however, certain adjustments to Ms. Ringelstetter's approach may be necessary to capture an exit charge for LPEA that is fair, cost-based, and transparent.

Both Dr. Tierney and Ms. Ringelstetter use the same metric to characterize a member's pro-rata share: the ratio of a member's billings to Tri-State's billings to all members. Further, Dr. Tierney and Ms. Ringelstetter independently conclude that this metric is reasonable and appropriate (as has Tri-State in allocating patronage capital).[74] However, Dr. Tierney and Ms.

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[72] Hr. Tr. I, at 164:6–165:3 (hearing testimony of Dr. Tierney about the differences in the two approaches).
[73] Hr. Tr. I, at 231:17–:20 (hearing testimony of Dr. Tierney that the type of utility business model needs to be factored into the exit charge methodology).
[74] Hr. Ex. 101 (Tierney Direct), at 31:5–:14 ("I recommend that the Commission rely, for the purpose of allocating La Plata's share of assets and liabilities, on the same metric used by Tri-State when it determines the allocation of patronage capital among members. Tri-State allocates such capital in any year based on a member's share of revenues from electricity purchases from Tri-State. A member's share of revenues (that is, billings to members) reflects a combination of its electricity demand as a percentage of Tri-State's monthly peak loads (in megawatts) and its energy use (in megawatt-hours) as a percentage of Tri-State's energy sales. I recommend that the exit charge for La Plata reflect its pro-rata share of total billings in the most recent full-calendar-year billing data that has been made available

Ringelstetter apply that same metric in different ways to determine a member's pro-rata share. While both approaches are reasonable and grounded in known and measurable information rather than long-term forecasts, there are trade-offs in determining the allocation approach that best represents a member's pro-rata share. Dr. Tierney uses 2019 member billing data to represent a member's pro-rata share, then applies this percentage to assets and liabilities and other economic commitments.[75] On the other hand, Ms. Ringelstetter uses billing data for each year in which Tri-State issued long-term debt, and then multiplies those year-specific percentage shares times the amount of debt issued in the corresponding year to develop a weighted average pro-rata share for a member across the debt-issuance period.[76] She applies this same percentage to long-term debt and PPAs.[77]

Dr. Tierney's approach to developing an allocator has the advantage of reflecting the most recent information about a member's relative size (*i.e.*, as a customer and owner of Tri-State), while Ms. Ringelstetter's approach more directly reflects a member's size at the time that Tri-State issued long-term debt. However, if Tri-State were issuing debt in the past in part to accommodate investments and operations in anticipation of changes in members' level of demand and relative size in the future, then Ms. Ringelstetter's allocator approach would not account for such changes. Rather, it would understate the pro-rata shares of members that were anticipated to grow and

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to Tri-State's members by Tri-State"); Hr. Ex. 302 (Ringelstetter Direct) at 16:6–:8 ("Use of member billings appropriately accounts for both differences in peak demands and in load factors across distribution companies.").

[75] Hr. Ex. 101 (Tierney Direct), at 45 (Table SFT-2); Hr. Ex. 102 (Tierney Rebuttal), at 59 (Table SFT-R2); Hr. Ex. 501 (Table SFT-R2 Revised).

[76] Hr. Ex. 305 (Ringelstetter Rebuttal), at 25:7–:10 ("I apply the pro rata share that reflects United Power's share of Tri-State when Tri-State issued its various debt securities."). In addition, Hr. Ex. 302 (Ringelstetter Direct), Attachment SRE-9, shows how Ms. Ringelstetter reports United Power's "Applicable Share of Tri-State" by calculating a weighted average share of Tri-State debt (11.33%), based on United Power's percentage billings in the year in which debt was issued and for the amount of debt entered into in that year.

[77] *See* Hr. Ex. 302 (Ringelstetter Direct), Attachment SRE-16 (indicating her use of 11.33% for United Power's pro-rata share of Tri-State's "Net Debt, Net Other Long-Term Obligations, and Off-Balance Sheet PPA.").

overstate the pro-rata shares of members that were anticipated to experience declines in consumption relative to other members.

For these reasons, the Commission should consider the trajectory of LPEA's size within Tri-State as a factor in applying Ms. Ringelstetter's approach to it and selecting the allocator to apply to LPEA's share for exit charge calculation purposes. In the early 2000s, LPEA represented approximately 8 percent of Tri-State member sales while today, as of the end of 2019, it represents only 5.6 percent.[78] Therefore, the most accurate picture of LPEA's current size within Tri-State today is its pro-rata share of 2019 member billings. To the extent the Commission ordered the use of the United Power exit charge methodology but with Dr. Tierney's 2019 share of member sales approach to setting the allocator replacing the vintage share of debt approach used by Ms. Ringelstetter, then LPEA's overall exit charge would be $175.915 million, consisting of the surrender of $74.446 million in undiscounted patronage capital and $101.469 million in cash.

IV. CONCLUSION

This is a case arising under the Public Utilities Law to determine an exit charge for LPEA, as well as for United Power. This narrow issue should not be lost amidst misdirection about witnesses' qualifications, "indicative" exit charges, unfounded "breach of contract" assertions from lay witnesses, and other tactics. The fact of the matter is this—the case is about an exit charge, and both LPEA and United Power have brought an exit charge to the table. Tri-State did not, and cannot be allowed to beat something with nothing.

Substantial evidence supports a finding that one of the two exit charge methodologies presented here, or a hybrid approach as described above, meets the requirements of the Public Utilities Law as just, reasonable, and non-discriminatory. Tri-State is a public utility subject to

[78] Hr. Ex. 501 (showing the LPEA 2019 share of member bills as 5.61931 percent).

regulation under the Public Utilities Law. Its days of using opaque and self-serving "contract valuation" methodologies to produce bloated exit charges, "indicative" or otherwise, and solely designed to keep its members captive, must come to an end right here in this proceeding.

LPEA has established that the exit charge methodology developed by Dr. Tierney is just, reasonable, and non-discriminatory, and that it satisfies traditional ratemaking principles by being fair, cost-based, and transparent. It should be approved by the Commission, along with an actual dollar amount for the exit charge,[79] so that LPEA can avoid the gamesmanship and delay that are hallmarks of every Tri-State strategy and make an informed decision about its energy future for its own members.

DATED this 28th day of May, 2020.

Respectfully submitted,

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ATTORNEYS FOR LA PLATA ELECTRIC ASSOCIATION, INC.

[79] This Statement of Position provides values for exit charges under Dr. Tierney's methodology, Dr. Tierney's methodology with the Escalante Generating Station impairment adjustment, Ms. Ringelstetter's exit charge methodology, and a hybrid of the two methodologies already in the record. LPEA reiterates that, to the extent the ALJ believes a technical conference is necessary after setting the exit charge methodology, it supports the use of a technical conference for such purpose.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2020, a copy of the foregoing **STATEMENT OF POSITION OF LA PLATA ELECTRIC ASSOCIATION, INC.** was filed with the Colorado Public Utilities Commission via e-file and a copy was served via e-mail to the following:

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