

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

**IN THE MATTER OF THE VERIFIED)
APPLICATION OF TRI-STATE GENERATION) PROCEEDING NO. 22A-0157E
AND TRANSMISSION ASSOCIATION, INC.)
FOR APPROVAL OF THE RETIREMENT OF)
THE RIFLE STATION**

STIPULATION AND SETTLEMENT AGREEMENT

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SECTION 1 INTRODUCTION AND IDENTIFICATION OF PARTIES

- 1.1. Settling Parties.** This Unanimous Comprehensive Stipulation and Settlement Agreement (“Settlement Agreement” or “Agreement”) is filed on behalf of Tri-State Generation and Transmission Association, Inc. (“Tri-State”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“Commission”), the Office of the Utility Consumer Advocate (“UCA”), and Western Resource Advocates (“WRA”) (each a “Settling Party” and collectively the “Settling Parties”).
- 1.2. Parties Not in Opposition.** As represented in the Motion accompanying this Settlement Agreement, there are no parties in this proceeding outside of the Settling Parties.
- 1.3. Resolution of Tri-State’s Application to Retire Rifle Station.** This Stipulation and Settlement Agreement resolves, among the Settling Parties, all of the issues that were actually raised or that could have been raised with respect to Tri-State’s Application for Approval of the Retirement of Rifle Station (“Application”). As more specifically described below, the Settling Parties agree that this Agreement including the additional facts stipulated herein, constitutes a just and reasonable resolution with respect to the Application, enabling the Commission to issue a decision under Commission Rules 3103 and 1408 adopting the Settlement Agreement in full.

SECTION 2 RECITALS

- 2.1.** On April 5, 2022, Tri-State submitted to the Commission its Application, including Direct Testimony and Attachments, requesting approval to retire and

decommission Rifle, without equivalent replacement, and sell the underlying real property.

- 2.2. Three parties intervened in the proceeding: UCA on April 11, 2022, WRA on May 5, 2022, and Staff on May 11, 2022.

SECTION 3 STIPULATION

- 3.1. **Supplemental Information.** Tri-State is providing and stipulates to the following additional facts in support of its Application and this Agreement:

3.1.1. Resource Adequacy. As described on pages 9-11 of Ms. Lisa Tiffin's Direct Testimony, Tri-State will be able to maintain system reliability following the retirement of Rifle Station. Tri-State is providing further support for its ability to maintain system reliability through Attachment B, an updated Load & Resources ("L&R") table. The updated L&R for the Tri-State system reflects:

- 3.1.1.1. The retirement of Rifle Station;
- 3.1.1.2. Tri-State's latest forecast for Federal Hydro contract capacity for the 2022-2027 period, reflecting drought conditions;
- 3.1.1.3. Tri-State's latest load forecast, including the impact of Member Partial Requirements contracts;
- 3.1.1.4. Updated Power Purchase Agreement (PPA) expected in-service dates, reflecting global supply chain and tariff uncertainties impacting construction schedules; and

3.1.1.5. Tri-State is not forecasting a capacity shortfall to occur until 2030, consistent with its most recent Annual Progress Report.¹

3.1.2. ERP Phase II Modeling of Rifle. On page 8 of Ms. Lisa Tiffin's Direct Testimony, she explained Tri-State's intent to continue to work with parties (the "ERP Parties") to Tri-State's 2020 Electric Resource Plan ("ERP") to determine the appropriate modeling treatment for Rifle in Phase II of the ERP. On May 24, 2022, ERP Parties—including the Settling Parties—were invited to participate in a stakeholder meeting to review updated modeling assumptions for Phase II of the ERP. Among other topics, Tri-State reviewed its intention to model Rifle as retired in its Phase II modeling. None of the ERP Parties expressed concern or opposition to this approach.

3.1.3. Community Notice. Attachment G to Tri-State's Application was a Form of Notice to affected communities pursuant to Commission Rule 3103(d). This notice was served, separately, to the City of Rifle and Garfield County on May 26, 2022. A copy of the final notices and delivery confirmations are provided as Attachment C.

3.1.4. Community Support. On May 16, 2022, Tri-State provided the local economic development contribution from the Tri-State Board, described on page 17 of Mr. Barry Ingold's Direct Testimony, to the

¹ Tri-State submitted its most recent APR in Proceeding No. 20A-0528E on December 1, 2021. Tri-State is providing the updated L&R to the parties to Proceeding No. 20A-0528E as part of the updated modeling assumptions for Tri-State's Phase II ERP modeling.

Rifle Regional Economic Development Corporation (“RREDC”). A copy of Tri-State’s April 5, 2022 news release which includes a quote from RREDC is provided as Attachment D.

- 3.1.5. Facilities to be Decommissioned. In addition to the decommissioning information provided in Section IV of Mr. Barry Ingold’s Direct Testimony in the proceeding on April 5, 2022, Tri-State further provides Attachment E, a list of above-ground and underground facilities to be removed as part of site decommissioning.
- 3.1.6. Property Sale. Tri-State has entered into a Non-Disclosure Agreement with a potential buyer of the land associated with Rifle Station. To date, a definitive purchase and sale agreement has not been negotiated.
- 3.1.7. Environmental Liability. In connection with Tri-State’s potential future sale, assignment or lease of Rifle Station land, Tri-State will take steps to prudently manage any environmental issues associated with former utility operations. The Settling Parties acknowledge, however, that this limited scope proceeding does not provide an appropriate forum for such issues to be vetted and resolved. Nevertheless, Tri-State agrees that, to the extent it hereafter voluntarily sells decommissioned Rifle property, it will undertake to limit its future environmental liability in the purchase and sale agreement by, among other things, considering: (a) the use of deed restrictions, (b) environmental covenants, (c) enrollment of the subject property in

Colorado's Voluntary Cleanup and Redevelopment Program, and (d) contractual mechanisms, such as environmental indemnities and releases of liability. For purposes of this provision, any transfer of land by condemnation or sale in lieu of condemnation shall not be deemed to be Tri-State's voluntary agreement to sell the land.

3.1.8. Consistent with Section 3.1.7, Tri-State will make a good faith effort to negotiate and include terms similar to the following in any purchase and sale agreement for the decommissioned Rifle property:

3.1.8.1. Language stating that "all real property shall be transferred as-is, where-is, and with faults."

3.1.8.2. Language stating that the buyer "will agree to defend, indemnify, hold harmless, waive, release and forever discharge Seller, its parent, affiliates, subsidiaries, officers, directors, employees, shareholders, contractors, successors, agents, insurers, and representatives from environmental liabilities."

SECTION 4 SETTLEMENT TERMS

4.1. **Application Approvals.** In consideration of the information presented in Tri-State's Application as well as the additional information provided in Section 3 above, the Settling Parties agree that Tri-State's Application should be approved pursuant to Commission Rules 3002(IV) and 3103. Specifically, the

Settling Parties agree that the Commission should approve the following as being in the public interest:

4.1.1. The retirement of Rifle and the abandonment or discontinuation of such facilities without equivalent replacement, including Tri-State's plans for decommissioning of the facility and sale of the underlying real property.

4.2. Settlement Agreement Approval. The Settling Parties agree that the Commission should accept this Stipulation and approve the Settlement Agreement. Specifically, the Settling Parties agree that the Commission should:

4.2.1. Process as expeditiously as possible a decision approving the Settlement Agreement without further testimony or a hearing.

SECTION 5 GENERAL TERMS AND CONDITIONS

5.1. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

- 5.2.** The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.
- 5.3.** The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.
- 5.5.** The Settling Parties agree to support, or not oppose, all aspects of the Settlement Agreement embodied in this document, including in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

- 5.6.** The Settling Parties do not believe any waiver or variance of Commission Rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations, if necessary, to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.
- 5.7.** This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the Settling Parties which are not set forth in this Settlement Agreement. This Settlement Agreement may be modified by the Settling Parties, subject to Commission approval, only if the modification is agreed to by all Settling Parties in writing.
- 5.8.** This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.
- 5.9.** There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

5.10. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

IN WITNESS WHEREOF, the Settling Parties have executed this UNANIMOUS COMPREHENSIVE STIPULATION AND SETTLEMENT AGREEMENT as of this 22nd day of July, 2022.

[Signature pages follow]

Agreed on behalf of:

**TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.**

By: Barry W. Ingold

Name: Barry W. Ingold

Title: Chief Operating Officer

Approved as to form:

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