March 2, 2016

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: **Petition for Declaratory Order of Tri-State Generation and Transmission Association, Inc., Docket No. EL16-39-000**

Dear Ms. Bose:

We, the undersigned, urge the Commission to find that Tri-State's proposed lost revenue penalty proposal contained in Tri-State's revised Board Policy 101 is inconsistent with the Public Utilities Regulatory Policies Act of 1978 ("PURPA") and the Commission's implementing regulations.

Delta-Montrose's contract with Tri-State should be considered a partial-requirements contract. In *Pub. Serv. Co. of N.H.* (1998), the Commission held a contract allowing a customer to procure less than all of its requirements from its supplier while limiting the customer's third party procurements to be a partial-requirements contract. On rehearing, the Commission also rejected the very same rate adjustment/penalty that Tri-State is now proposing. Delta-Montrose's contract with Tri-State allows Delta-Montrose to procure less than all of its requirements from Tri-State. We understand that Tri-State even has a separate policy that *requires* its members to purchase from smaller qualifying facilities, and to do so in unlimited amounts. This contract should also be considered a partial-requirements contract.

As a partial-requirements customer, Delta Montrose's transactions with qualifying facilities (QF's) need not follow Order No. 69's procedure whereby all-requirements customers "take into account the effect of reduced revenue to the supplying utility as a result of the substitute of the [QF's] output for energy previously supplied by the supplying utility."

Even if the Commission finds *Pub. Serv. Co. of N.H.* does not apply and holds the contract between Tri-State and Delta-Montrose to be a full-requirements contract, we ask the Commission to recognize that the relationship between Tri-State and Delta-Montrose is not entirely congruent with previous interpretations of Order No. 69. In particular, Tri-State has the ability to sell power displaced by qualifying facilities on the open market, a factor that invalidates previous rate-setting assumptions under Order No. 69.

Rate penalties placed on purchases of power from local qualifying facilities appear to run counter to the spirit and the letter of PURPA. PURPA Section 210 states an intention to "encourage cogeneration and small power production" through rate setting that is "just and reasonable to the electric consumers of the electric utility and in the public interest."

Rather than encouraging local generation and the economic development for rural cooperatives that comes with it, Tri-State's proposed penalties make purchases of local renewables infeasible. We ask that the Commission find the

proposed lost-revenue penalties to be inconsistent with PURPA and the Commission's implementing regulations of PURPA.

Sincerely,

Clean Energy Action