

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued April 20, 2026

Decided October 2, 2026

No. 25-1060

BASIN ELECTRIC POWER COOPERATIVE,
PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION,
RESPONDENT

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION,
INC. AND NORTHWEST RURAL PUBLIC POWER DISTRICT,
INTERVENORS

Consolidated with 25-1130

On Petitions for Review of Orders of the
Federal Energy Regulatory Commission

Jesse Halpern argued the cause for petitioner. With her on the briefs were *Rebecca L. Shelton*, *Nicole S. Allen*, *Anthony F. Blum*, and *Jenna Cliatt*.

Misha Tseytlin argued the cause for intervenor-petitioner Tri-State Generation and Transmission Association, Inc.

With him on the briefs were *Frederick Wilson*, *Kenneth F. Rossman, IV*, and *Jeff P. Johnson*.

J. Houston Shaner, Attorney, Federal Energy Regulatory Commission, argued the cause for respondent. With him on the brief were *James T. Dawson*, General Counsel, and *Robert H. Solomon*, Solicitor. *Carol J. Banta*, Attorney, entered an appearance.

Nicole A. Travers argued the cause for intervenor-respondent Northwest Rural Public Power District. With her on the brief were *Richard M. Lorenzo* and *J.D. Taliaferro*.

Before: WILKINS, RAO and CHILDS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* CHILDS.

CHILDS, *Circuit Judge*: In the early 1930s, rural communities across America lacked reliable access to electricity. To remedy this deficiency, Congress enacted the Rural Electrification Act of 1936, Pub. L. No. 74-605, 49 Stat. 1363 (codified at 7 U.S.C. § 901 *et seq.*). The Act accomplishes its objective of “furnishing and improving of electric service to persons in rural areas,” in part, by authorizing lending by the federal government at special rates to not-for-profit electricity-distribution cooperatives. 7 U.S.C. § 904(a); *see also Sierra Club v. U.S. Dep’t of Agric.*, 716 F.3d 653, 655 (D.C. Cir. 2013).

Petitioner Basin Electric Power Cooperative (Basin) is one such not-for-profit cooperative. As a cooperative, Basin is owned by its members, who are also its wholesale customers. Tri-State Generation and Transmission Association (Tri-State) is one of Basin’s member-customers. Tri-State purchases wholesale energy from Basin that it resells and transmits to its

member-customers, including Northwest Rural Public Power District (Northwest Rural).

This case concerns the proper interpretation of the contractual agreement between Basin and Tri-State (the Basin/Tri-State Agreement). Specifically, we must decide whether Northwest Rural's withdrawal as a member of Tri-State constitutes a breach of the Basin/Tri-State Agreement.

The Federal Energy Regulatory Commission (the Commission) held that Northwest Rural's withdrawal from Tri-State would not breach the Basin/Tri-State Agreement because the contract expressly contemplates such a scenario and provides the mechanism for Tri-State and Basin to manage the implications of Northwest Rural's exit from Tri-State. Because we agree with the Commission's interpretation of the Basin/Tri-State Agreement, we deny Basin's petitions for review.

I.

A.

Basin is a not-for-profit, member-owned electric cooperative that owns and operates electric generation and transmission facilities. Basin sells this electric energy to its 139 rural electric member systems in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming. As a cooperative, Basin is governed by its members, which are also its wholesale customers. This "cooperative structure is designed to give the members the opportunity to satisfy their collective needs more effectively than if the members acted independently." Basin Standing Addendum Ex. A, Aff. of Rebecca A. Kern ¶ 3.

Tri-State is one of Basin's members. Tri-State is also a not-for-profit, member-owned cooperative that provides wholesale power and transmission services to 40 utility members in Colorado, Nebraska, New Mexico, and Wyoming. Tri-State buys electric energy wholesale from Basin and then transmits that energy to its members for distribution to retail customers. Tri-State members span the two major portions of the United States' electric grid—the Western Interconnection and the Eastern Interconnection.

Northwest Rural is one of Tri-State's Eastern Interconnection members. Northwest Rural distributes the energy it receives from Tri-State to households and businesses in northwestern Nebraska. Northwest Rural makes up approximately 11% of Tri-State's total energy demands from the Eastern Interconnection. *See Nw. Rural Pub. Power Dist. (Complaint Order)*, 189 FERC ¶ 61,164, at P 24 (2024).

B.

The sale and transfer of energy among Basin, Tri-State, and Northwest Rural is governed by two distinct long-term, all-requirements wholesale electric-service contracts.

One such contract governs the sale and transfer of energy between Northwest Rural and Tri-State (the Tri-State/Northwest Agreement). The Tri-State/Northwest Agreement obligates Northwest Rural to purchase nearly all its electric service requirements from Tri-State through 2050, subject to narrow exceptions not relevant here. *Complaint Order*, 189 FERC ¶ 61,164, at P 2.

Tri-State's Bylaws provide that a member like Northwest Rural "seeking early termination" of its agreement with Tri-State and withdrawal from Tri-State "may do so only upon satisfaction of all of its contractual obligations to Tri-State."

See id. (citing Tri-State Bylaws). The Bylaws further provide that “[t]he Board of Directors shall have authority to prescribe equitable terms and conditions to be applied when a member withdraws from membership.” *Id.* (quoting Tri-State Bylaws). Yet per Tri-State’s Rate Schedule No. 281, “Tri-State’s Board of Directors has no discretion to prevent a member from withdrawing from membership in Tri-State, so long as the member complies with” those terms and conditions.¹ *Id.* at P 14. A member seeking to withdraw must “provide non-conditional notice to Tri-State of its intent to satisfy its [contractual obligations] and withdraw from Tri-State.” *Id.*

A separate contract, the Basin/Tri-State Agreement, to which Northwest Rural is not a party, governs the sale and transfer of energy between Basin and Tri-State. This agreement requires, with limited exceptions not relevant here, that Tri-State “purchase and receive from [Basin] all electric power and energy which Tri-State shall require to supply its Member-Systems’ loads in the Eastern Interconnection” through 2050. J.A. 183, 192. A choice-of-law provision in the Basin/Tri-State Agreement provides that the “rights and obligations of the Parties . . . shall be governed by and construed according to” Nebraska law. J.A. 193. The Basin/Tri-State Agreement is the focus of this proceeding.

C.

In April 2022, Northwest Rural submitted to Tri-State a non-conditional two-year notice of intent to withdraw from Tri-

¹ In separate proceedings before the Commission, Docket Nos. EL21-75-000, ER21-2818-000, and EL22-4-000, the parties litigated the terms, procedures, and methodology for calculating contract termination payments for Tri-State’s members seeking to terminate their contracts with and memberships in Tri-State. J.A. 1351–52.

State membership and terminate the Tri-State/Northwest Agreement, effective May 1, 2024 [J.A. 933].

Basin responded by initiating litigation against Tri-State in the United States District Court for the District of North Dakota for breach of the Basin/Tri-State Agreement. Basin sought declaratory and injunctive relief pertaining to the exit fee that Northwest Rural would pay to Tri-State for withdrawing its membership as well as to “prohibit[] and restrain[] Tri-State from allowing or threatening to allow any Eastern Interconnection member from terminating their [agreements] with Tri-State.” *Basin Elec. Power Coop. v. Tri-State Generation & Transmission Ass’n*, No. 3:21-CV-220, 2022 WL 18622225, at *5 (D.N.D. Oct. 31, 2022).

The district court dismissed Basin’s complaint without prejudice, deferring primary jurisdiction to the Commission. *Id.* at *11. In that proceeding, the Commission issued an order directing Tri-State to adopt the Commission’s approved exit-fee methodology but declined to address whether Tri-State had breached the Basin/Tri-State Agreement by permitting its Eastern Interconnection members, like Northwest Rural, to withdraw. *Tri-State Generation & Transmission Ass’n*, 185 FERC ¶ 61,201, at P 554 n.900 (2023).² As the Commission explained on rehearing in that proceeding, the exit-fee methodology and Tri-State’s obligations under the Basin/Tri-State Agreement are distinct issues. *Tri-State Generation & Transmission Ass’n*, 187 FERC ¶ 61,101, at P 67 (2024). Thus, any potential breach of the Basin/Tri-State Agreement

² The Tenth Circuit ultimately denied Tri-State’s petitions challenging the exit-fee, which unsuccessfully asserted that the Commission’s decisions adopting the exit-fee methodology were arbitrary and capricious. *Tri-State Generation & Transmission Ass’n v. FERC*, 170 F.4th 1254, 1261 (10th Cir. 2026).

would not bear on a generally applicable exit-fee methodology. *See id.*

Basin subsequently filed another complaint in the District of North Dakota seeking a determination that Northwest Rural's withdrawal from Tri-State would constitute a breach by Tri-State of the Basin/Tri-State Agreement. *Basin Elec. Power Coop. v. Tri-State Generation & Transmission Ass'n*, No. 3:24-CV-8, 2024 WL 3202167, at *3 (D.N.D. Apr. 24, 2024). After the district court denied Basin's motion for a preliminary injunction to enjoin Tri-State from permitting Northwest Rural to withdraw from Tri-State, *see id.* at *1, Basin submitted a notice of voluntary dismissal of its complaint without prejudice, *see* Basin Electric Power Cooperative, Notice of Voluntary Dismissal Without Prejudice, *Basin Elec. Power Coop. v. Tri-State Generation & Transmission Ass'n*, No. 3:24-CV-8 (D.N.D. May 2, 2024), ECF No. 75.

D.

In March 2024, Northwest Rural filed a complaint with the Commission against Basin and Tri-State pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. §§ 824e, 825e, 825h, and also pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206. Northwest Rural's complaint requested that: (1) the Commission assert primary jurisdiction over the interpretation of the Basin/Tri-State Agreement, (2) the Commission "hold that [Northwest Rural]'s withdrawal from Tri-State is permissible" under the Basin/Tri-State Agreement, and (3) to the extent the Basin/Tri-State Agreement precluded Northwest Rural's withdrawal, hold that it is not just and reasonable. J.A. 67; *see* 16 U.S.C. § 824d(a) (directing the Commission to assure that "[a]ll rates and charges" and "rules and regulations affecting or pertaining

to such rates or charges” by regulated entities for the transmission or sale of electric energy are “just and reasonable”).

The Commission first found it appropriate to exercise primary jurisdiction given its special expertise in interpreting similar agreements under the Federal Power Act and the need for uniform interpretation of the Basin/Tri-State Agreement for other Eastern Interconnection members. *Complaint Order*, 189 FERC ¶ 61,164, at PP 65–69.

Turning to the merits, the Commission found that Northwest Rural’s withdrawal from Tri-State would not constitute a breach of the Basin/Tri-State Agreement. *Id.* at P 73. In so concluding, the Commission rejected Basin’s asserted premise that Northwest Rural’s withdrawal from Tri-State was, in effect, the same as Tri-State’s withdrawal from Basin. *Id.* Although section 14 of the Basin/Tri-State Agreement did not provide any means for Tri-State’s termination prior to 2050, the Commission found that Tri-State was not attempting to terminate the Basin/Tri-State Agreement and so section 14 was inapplicable. *Id.* at P 74. Instead, the Commission ruled, section 9 governed Tri-State’s obligations with respect to Northwest Rural’s withdrawal from Tri-State. *Id.* at P 74, 76.

Considering the plain language of section 9, the Commission found Tri-State’s Agreement with Northwest Rural to be an “asset” for purposes of section 9.³ *Id.* at P 76. The Commission further determined that the second and third sentences of section 9 explicitly supply the mechanism by

³ The Commission assumed without deciding that Northwest Rural, which accounts for 11% of Tri-State’s assets, constitutes a “substantial portion” of Tri-State’s Eastern Interconnection assets. *Complaint Order*, 189 FERC ¶ 61,164, at P 76. We do the same.

which Tri-State can transfer such assets, in the absence of Basin's approval, without breaching the Basin/Tri-State Agreement. *Id.* at P 77. Accordingly, so long as Tri-State complied with the requirements of section 9, the Commission determined that "Tri-State would not be in breach of the [Basin/Tri-State Agreement] following Northwest Rural's withdrawal." *Id.* at P 78.

The Commission also rejected Basin's reliance on federal courts' interpretation of similar all-requirements power contracts determining that such contracts preclude early termination. *Id.* at PP 80–81. Each of Basin's cited authorities, the Commission explained, was distinguishable because they involved disputes between the parties to a contract where one of the contracting parties sought to terminate the long-term power contract. *Id.* at P 80. But Northwest Rural is not a party to the Basin/Tri-State Agreement and does not have an all-requirements contract with Basin. *Id.* Thus, Basin's authorities would only pertain to this proceeding if, in fact, Tri-State were attempting to terminate the Basin/Tri-State Agreement. What's more, the Commission noted, Tri-State is "not affirmatively trying to breach or otherwise get out of the contract, but is [instead] responding to Commission instructions to establish just and reasonable [contract termination payments] for its members," further distinguishing this proceeding from those in which a party in Tri-State's position "deliberately took steps to eliminate its obligations under the contract." *Id.* at P 81 (distinguishing *Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc.*, 874 F.2d 1346 (10th Cir. 1989)). Such cases prohibiting early termination by a contracting party accordingly had no bearing on whether Tri-State's transfer of assets breaches the Basin/Tri-State Agreement. *See id.* at PP 80–81.

Finally, given its determination that “Northwest Rural’s withdrawal from Tri-State does not cause a breach to the [Basin/Tri-State Agreement],” the Commission “den[ied] the complaint as the Commission [did] not find[] any provision to be unjust or unreasonable.” *Id.* at P 82; *see also id.* at P 73.

Shortly after the Commission’s Order finding that Northwest Rural’s withdrawal from Tri-State does not violate the Basin/Tri-State Agreement, Northwest Rural notified Tri-State of its intent to withdraw from Tri-State, effective January 1, 2027. *See* Basin Standing Addendum Exhibit C.

Basin petitioned for rehearing. Though the Commission expanded the discussion in the *Complaint Order* in response to Basin’s arguments in its rehearing petition, it arrived at the same result. *Nw. Rural Pub. Power Dist. (Rehearing Order)*, 191 FERC ¶ 61,087, at P 2 & n.4 (2025) (citing 16 U.S.C. § 825l(a)).

First, the Commission rejected Basin’s argument that it had incorrectly “focus[ed] only on the portion of section 9 requiring Tri-State to ‘pay such pro rata portion of the outstanding indebtedness’ and ignore[ed] the portions relating to ‘other obligations and commitments of Basin at the time existing, as shall be determined by Basin and shall otherwise comply with such reasonable terms and conditions as Basin shall require.’” *Id.* at P 26 (quoting Basin/Tri-State Agreement § 9) (citation modified). The Commission clarified that in ruling on Northwest Rural’s complaint, it had “needed only to determine whether a reduction in Tri-State’s requirements following Northwest Rural’s withdrawal would cause Tri-State to breach the [Basin/Tri-State Agreement].” *Id.* at P 27. By concluding that it would not “because section 9 of the contract permits Tri-State to dispose of some of its assets” prior to 2050, the Commission noted that it

intentionally “did not determine the amount that Tri-State would have to pay Basin to comply with section 9’s conditions” in the event of Northwest Rural’s withdrawal. *Id.* “As for the provision that Basin may require ‘reasonable terms and conditions’ with respect to a transfer of Tri-State’s” assets, the Commission explained only that, “reasonable terms and conditions” could not be construed in such a way as to “render the second sentence of section 9 inoperable and effectively prevent Tri-State from disposing of its assets as otherwise permitted by section 9.” *Id.*

The Commission also rejected Basin’s assertion that allowing Northwest Rural to terminate the Tri-State/Northwest Agreement is functionally the same as allowing Tri-State to terminate the Basin/Tri-State Agreement thus rendering section 14 superfluous. *Id.* at P 28. To the extent that Basin’s argument rested on a scenario in which all six of Tri-State’s Eastern Interconnection members withdraw from Tri-State, the Commission deemed that “hypothetical as outside the scope” of the proceeding. *Id.*

Finally, the Commission rejected Basin’s assertion that the alleged purpose of the Basin/Tri-State Agreement should inform its interpretation of the unambiguous contract, *id.* at P 30 (noting that under Nebraska law, unambiguous contractual terms are accorded their plain and ordinary meaning (citations omitted)), and again found Basin’s cited federal caselaw distinguishable for the “reasons given in the Complaint Order,” *id.* at P 31.

Basin filed timely petitions for review of the Commission's orders. For the reasons that follow, we deny the petitions.⁴

II.

We begin with the Commission's assertion that we lack jurisdiction over Basin's petition. Under section 313(b) of the Federal Power Act, we have jurisdiction to review petitions only from parties "aggrieved" by an order of the Commission. 16 U.S.C. § 825l(b). "A party is 'aggrieved' if it makes 'the same showing of injury that suffices to establish standing' under Article III of the Constitution of the United States." *Mich. Elec. Transmission Co. v. FERC*, 141 F.4th 1296, 1302 (D.C. Cir. 2025) (quoting *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 136 (D.C. Cir. 2019)). To do so, Basin must show it suffered an injury in fact that is fairly traceable to the challenged action and would be redressable by a favorable court decision. *Id.*; see also *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

The Commission asserts that Basin lacks standing because the Commission denied Northwest Rural's complaint against Basin, making "Basin the prevailing party below." Respondent's Br. 31. It follows, according to the Commission, that Basin was not aggrieved by the Commission's ruling.

⁴ In ruling on Basin's petitions, we confine our review to the issues "brought before the court by [Basin as] petitioner," and decline to address ancillary issues raised by Intervenor-Petitioner Tri-State. See *Am. Whitewater v. FERC*, 125 F.4th 1139, 1153 n.8 (D.C. Cir. 2025) (noting that intervenors are not "permit[ted]" to "raise an issue not brought before the court by the petitioner" absent "extraordinary circumstance[s]").

The Commission is incorrect. To be sure, the Commission's ultimate disposition was to deny Northwest Rural's complaint against Basin. *See Complaint Order*, 189 FERC ¶ 61,164, at P 82. But the Commission's narrow focus on whether Northwest Rural's complaint was ultimately granted or denied ignores the pertinent inquiry—"the substance of the [Commission's] decision itself." *Cf. New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 369 (D.C. Cir. 2013) (noting that "a FERC decision's legal reasoning . . . confers standing" only where "the substance of that decision itself gives rise to an injury in fact").

We rejected a similar form-over-substance argument in *Michigan Electric*, 141 F.4th at 1302–03. The parties in *Michigan Electric* disagreed over ownership of network upgrades connecting a new solar generation park to the parties' jointly owned transmission line. *Id.* at 1298. Requiring a resolution of this ownership dispute for planning purposes, the operator of the broader electricity transmission system submitted a proposal to the Commission for review. *Id.* at 1301. The proposal assigned ownership of the network upgrades equally between Michigan Electric, Michigan Public Power Agency, and Wolverine Power based on the operator's interpretation of the contractual agreements amongst the three entities. *Id.* Michigan Public Power Agency and Wolverine Power supported the proposal. *Id.* Michigan Electric, however, opposed the proposal, maintaining that the governing contracts granted it exclusive ownership of the network upgrades. *Id.* The Commission "held no provision instanced by the parties determined ownership of the network upgrades" and accordingly rejected the operator's proposal without prejudice, thereby permitting the operator to file another proposal. *Id.*

Michigan Electric petitioned this court for review of the Commission's decision. The Commission challenged Michigan Electric's standing on the basis that the Commission had rejected the proposal that Michigan Electric had objected to, "in effect ruling in [Michigan Electric's] favor." *Id.* at 1302. We disagreed, explaining that Michigan Electric was aggrieved by the Commission's order because, "on the way to declining to determine ownership rights," the Commission had "rejected [Michigan Electric's] claim that it had exclusive ownership of the network upgrades." *Id.* That determination, we explained, resulted in Michigan Electric's "continuing inability to ascertain its ownership share, . . . estimate the eventual amount of financial return from the project," or "plan for capital expenditures and financing." *Id.* at 1303 (citation omitted). Such harms, we concluded, caused a "present injurious effect" on Michigan Electric's "business decisions" that would be "redressed if [we] were to hold [Michigan Electric] alone owns the network upgrades." *Id.* As such, we ruled that Michigan Electric had standing to seek review of the Commission's decision.

The same logic applies here. The Commission, on its way to denying Northwest Rural's complaint, rejected Basin's argument that Northwest Rural's withdrawal from Tri-State breaches the terms of the Basin/Tri-State Agreement. *See Complaint Order*, 189 FERC ¶ 61,164, at P 73. Importantly, Northwest Rural's complaint specifically asked the Commission to "hold that Northwest Rural's withdrawal from Tri-State does not violate the [Basin/Tri-State Agreement]." *Id.* at PP 1, 72. And the Commission granted that request over Basin's objections. *Id.* at PP 51, 72–73.

As a result, Basin faces Northwest Rural's impending withdrawal from Tri-State and will have to bear the burden of costs it would not otherwise incur if the Commission had ruled

that Northwest Rural’s withdrawal is contractually prohibited. For example, loss of Northwest Rural’s energy demands will reduce the requirements Tri-State purchases from Basin. This reduction, in turn, will result in negative financial implications for Basin which constructs or acquires assets specifically to meet the demands of each of its members. *See* Kern Aff. ¶¶ 8–9. To be sure, as the Commission points out, Northwest Rural provided Tri-State two years’ notice of its intent to withdraw and the particulars of Northwest Rural’s exit are still being worked out in separate Commission proceedings. *See* Respondent’s Br. 39–41; *see also Complaint Order*, 189 FERC ¶ 61,164, at PP 2–10; *Tri-State Generation and Transmission Ass’n*, 192 FERC ¶ 61,109, at PP 53–64 (2025) (ruling on compliance filings involving contract termination payments that Tri-State members must pay when they withdraw). But still, Basin must “make current planning decisions that take into account that it will no longer provide electric power and energy to Tri-State to serve Northwest Rural.” Petitioner’s Br. 23 (citing Kern Aff. ¶¶ 9, 12–13). Specifically, Northwest Rural’s impending withdrawal in 2027 impacts Basin’s current development of its long-term “load forecast,” which informs its “power supply planning activities, transmission planning activities, financial forecast development, and the rate setting process.” Kern Aff. ¶ 12.

This harm is not, as the Commission asserts, attenuated or hypothetical. Rather, it has “a present injurious effect on [Basin’s] business decisions.” *Mich. Elec. Transmission Co.*, 141 F.4th at 1303 (quoting *Great Lakes Gas Transmission Ltd. v. FERC*, 984 F.2d 426, 430 (D.C. Cir. 1993)). Because its injury would be redressed if this court were to hold Northwest Rural’s withdrawal from Tri-State breaches the Basin/Tri-State

Agreement, Basin has standing to pursue its claim here.⁵ *See id.*

III.

We review Commission orders under the Administrative Procedure Act, which requires us to determine that agency decisions are not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *see also Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1016 (D.C. Cir. 2022).

In reviewing the Commission’s interpretation of a contract, we begin by considering “*de novo* whether the relevant language unambiguously addresses the matter at issue.” *E. Tex. Elec. Coop., Inc. v. FERC*, 90 F.4th 579, 587 (D.C. Cir. 2024) (quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 827 (D.C. Cir. 2021)). Where, as here, the parties have identified no ambiguity in the relevant contractual provisions, we give effect to “the clear intent of the parties to the agreement.”⁶ *See Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810, 814 (D.C. Cir. 1998); *see also, e.g., Okla. Gas*, 11 F.4th at 827.

⁵ After the case was submitted, the court received information that Basin Electric and Northwest Rural resolved their dispute regarding Northwest Rural’s exit from Tri-State. The court also learned that other Eastern Interconnection members had reportedly tendered withdrawal notices. This information does not change our standing analysis. The Commission’s interpretation of the Basin/Tri-State Agreement affects any Eastern Interconnection member’s attempt to depart from Tri-State.

⁶ The parties agree that the relevant provisions in the Basin/Tri-State Agreement are unambiguous. *See* Petitioner’s Br. 43; Oral Argument at 1:33–1:45; Respondent’s Br. 46–47.

IV.

The provisions in the Basin/Tri-State Agreement “must be understood according to [their] plain meaning, which we draw from [their] text and context.” *Okla. Gas*, 11 F.4th at 827. The crux of this case is the proper interpretation of section 9 of the Basin/Tri-State Agreement, which provides:

Tri-State shall not without the approval in writing of [Basin] . . . take or suffer to be taken any steps . . . to sell, lease or transfer (or make any agreement therefore) all or a substantial portion of its assets, located in the Eastern Interconnection Notwithstanding the foregoing, Tri-State may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefore) all or a substantial portion of its assets, located in the Eastern Interconnection . . . so long as Tri-State shall pay such pro rata portion of the outstanding indebtedness, as well as other obligations and commitments of [Basin] at the time existing, as shall be determined by [Basin] and shall otherwise comply with such reasonable terms and conditions as [Basin] shall require. Notwithstanding the foregoing, no such approval shall be required to take the actions contemplated herein so long as the purchaser or surviving organization is a member of [Basin] and has validly authorized, executed and delivered a contract for electric service substantially in the form of this Agreement.

Basin/Tri-State Agreement § 9 [J.A. 189].

Section 9 unambiguously supplies Tri-State a mechanism to transfer assets without Basin's approval. As the Commission found, Northwest Rural's withdrawal from and cancellation of its agreement with Tri-State constitutes the "transfer" of an "asset" for purposes of section 9. *Complaint Order*, 189 FERC ¶ 61,164, at PP 76, 81 ("Northwest Rural, as a member of Tri-State, has triggered a transfer for Tri-State's assets under the contract pursuant to section 9 by virtue of seeking withdrawal."); *see also* Oral Argument at 10:53–11:50. And "[n]otwithstanding," the first sentence of section 9 which affirmatively requires Basin's approval pre-asset transfer, the second and third sentences expressly permit Tri-State to "transfer" such "assets," without Basin's approval, under two scenarios: (1) "so long as Tri-State shall pay such pro rata portion of the outstanding indebtedness, as well as other obligations and commitments of [Basin] at the time existing, as shall be determined by [Basin] and shall otherwise comply with such reasonable terms and conditions as [Basin] shall require," or (2) if "the purchaser or surviving organization is a member of [Basin] and has validly authorized, executed and delivered a contract for electric service" with Basin. Basin/Tri-State Agreement § 9. Based on the plain language of this provision, we agree with the Commission that section 9 does not prevent Northwest Rural's withdrawal from Tri-State or constitute a breach of the Basin/Tri-State Agreement given that section 9 explicitly prescribes the procedures by which Basin and Tri-State would proceed in the event of Northwest Rural's exit.

Resisting this interpretation, Basin asserts several arguments. We address and reject each in turn.

A.

Basin asserts that the Commission's interpretation of

section 9 “[p]ermit[s] Northwest Rural to terminate” the Tri-State/Northwest Agreement which “has the functional effect” of Tri-State terminating the Basin/Tri-State Agreement prior to December 31, 2050. Petitioner’s Br. 37. This is so, Basin posits, because under the Commission’s interpretation, Tri-State could open the door for all six of Tri-State’s Eastern Interconnection members to terminate their agreements with Tri-State, effectively resulting in complete early termination of the Basin/Tri-State Agreement. For this reason, according to Basin, the Commission’s interpretation of section 9 is “inconsistent” with section 14, *id.* at 41, and renders section 14 “superfluous,” *id.* at 36.

We disagree. The Commission’s interpretation gave independent effect to section 14 of the Basin/Tri-State Agreement, which governs the “Term” of the contract and provides that the contract “shall remain in effect until December 31, 2050.” Basin/Tri-State Agreement § 14. As the Commission found, “Tri-State would continue to be bound” by the Basin/Tri-State Agreement, per section 14, “notwithstanding Northwest Rural’s departure,” which is permissible under section 9. *Rehearing Order*, 191 FERC ¶ 61,087, at P 28.

Further, Tri-State’s transfer of a single asset (Northwest Rural) is not equivalent to its termination of the entire contract. And, as the Commission explained, the “hypothetical” scenario “in which all six of Tri-State’s Eastern Interconnection members withdraw from Tri-State” is “outside the scope of this proceeding.” *Rehearing Order*, 191 FERC ¶ 61,087, at P 28. Thus, contrary to Basin’s assertions, neither the Commission’s Order nor its interpretation of section 9 permits Tri-State to “elect to terminate” its agreements with all six of its Eastern Interconnection members as an end run around the section 14 prohibition on early termination. *See* Petitioner’s Br. 38–39.

Should such a scenario unfold, the Commission can address Basin's arguments pertaining to such a situation in a future proceeding. *See Tenn. Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) ("Surely [the Commission] has as much or more discretion to decide whether to take up a merely potential problem, one that may or may not materialize soon enough.").

B.

Basin also faults the Commission for not fully engaging with section 9's "reasonable terms and conditions" language or with that language's effect on "Tri-State's disposition of assets." Petitioner's Br. 32–33. For one, contrary to Basin's argument, the Commission explicitly addressed the "reasonable terms and conditions" language and concluded that this language could not be read in such a way that it would "effectively prevent" Tri-State from disposing of assets (like Northwest Rural) which is otherwise permitted by section 9. *Rehearing Order*, 191 FERC ¶ 61,087, at P 27. Additionally, the Commission's holding was intentionally narrow; it ruled only that Northwest Rural's withdrawal would not necessarily be a breach because section 9 of the contract permits Tri-State to dispose of some of its assets in the Eastern Interconnection prior to 2050. *Id.*; *see also Complaint Order*, 189 FERC ¶ 61,164, at P 78 (explaining that "under the terms of the Basin [Agreement], as long as the parties meet the requirements of section 9, then Tri-State would not be in breach of the Basin [Agreement] following Northwest Rural's withdrawal [from Tri-State]"). As the Commission explained, in ruling on Northwest Rural's complaint it need not "determine the amount Tri-State must pay Basin to comply with section 9's conditions should Northwest Rural withdraw from Tri-State, nor did the Complaint request such a determination." *Rehearing Order*, 191 FERC ¶ 61,087, at P 27. Because the Commission is

entitled to proceed “one step at a time,” *Interstate Nat. Gas Ass’n of Am. v. FERC*, 285 F.3d 18, 35 (D.C. Cir. 2002), the Commission’s reluctance to make determinations beyond the scope of the Complaint does not render its decision arbitrary or capricious, *see id.* (“[T]he Commission is free to undertake reform one step at a time. We can overturn its gradualism only if it truly yields unreasonable discrimination or some other kind of arbitrariness.” (citation modified)). The questions left unanswered by the Commission’s Order can be addressed in future Commission proceedings and do not render the Commission’s decision arbitrary or capricious.

C.

Additionally, Basin contends that the Commission’s interpretation of section 9 is contrary to its interpretation of a similar provision in the Tri-State/Northwest Agreement. But the Commission, in interpreting the Tri-State/Northwest Agreement provision, determined only that it did “not directly address the fee that a withdrawing member should pay” and did “not apply to member withdrawals.” *Rehearing Order*, 191 FERC ¶ 61,087, at P 29 (citing *Tri-State Generation & Transmission Ass’n*, 185 FERC ¶ 61,201, at P 228 (2023)). Importantly, unlike here, the Tri-State/Northwest Agreement proceedings did not involve a Tri-State member’s asset transfer, only a Tri-State member’s termination of the entire agreement. The analogous situation under the Basin/Tri-State Agreement would be Tri-State’s withdrawal from Basin. But that is not the situation. Rather, Northwest Rural, which is not a member of Basin, seeks to withdraw from Tri-State. And Northwest Rural’s withdrawal, in turn, constitutes a transfer of assets by Tri-State. The Commission’s interpretations of these provisions, accordingly, are not incongruent.

D.

Basin further claims that the Commission’s interpretation is inconsistent with the purpose of the Basin/Tri-State Agreement “and rural electric cooperative wholesale power contracts in general.” Petitioner’s Br. 42. This argument is a non-starter. The Basin/Tri-State Agreement’s choice-of-law provision declares that Nebraska law governs. And as the Commission observed, “[u]nder Nebraska law, where the relevant contractual term is unambiguous, it is accorded its plain and ordinary meaning [and] Section 9 unambiguously permits Northwest Rural to withdraw from Tri-State without breach of the [Basin/Tri-State Agreement].” *Rehearing Order*, 191 FERC ¶ 61,087, at P 30 (citing *Main St. Props. LLC v. City of Bellevue*, 13 N.W.3d 911, 925–26 (Neb. 2024); *Eagle Partners, LLC v. Rook*, 921 N.W.2d 98, 107 (Neb. 2018)). Basin concedes that the Basin/Tri-State Agreement is unambiguous. See Petitioner’s Br. 43; Oral Argument at 1:33–1:45. Consequently, the Commission properly declined to consider the purpose of the Basin/Tri-State Agreement in interpreting its provisions.

E.

Finally, Basin argues that the Commission’s decision is inconsistent with three federal court decisions. But each is factually distinguishable. And separately, none of the cases Basin points to were binding on the Commission nor are they binding on this court.

In *Shoshone River Power, Inc.*, Tri-State asserted that its long-term wholesale power contract with its member, Shoshone, prevented Shoshone from voluntarily disposing of substantially all of its assets so that it would eliminate its purchase needs from Tri-State and effectively cease to remain in business. 874 F.2d at 1350. The Tenth Circuit found “that

Shoshone ha[d] an implied obligation to remain in business and not to eliminate its requirements” because “the fulfillment of Shoshone’s contractual undertakings necessarily implies the continuance of Shoshone’s system.” *Id.* at 1360. But the court also explained that Shoshone would not have violated the contract if the elimination of its requirements were due to “an unavoidable circumstance.” *Id.* For example, if Shoshone’s customers chose to reduce their power consumption by producing their own electricity or if industrial customers chose to close their facilities. *Id.*

Shoshone does not support Basin’s view. For one, Tri-State is not disposing of substantially all of its assets and effectively ceasing to remain in business; rather one of Tri-State’s members is withdrawing from Tri-State. For another, as the Commission observed, this case is more akin to the “unavoidable circumstance” mentioned in *Shoshone*. *Id.* Tri-State is facing the unavoidable circumstance of one of its members, Northwest Rural, attempting to withdraw. *See Rehearing Order*, 191 FERC ¶61,087, at P 31. It is Northwest Rural’s withdrawal that would reduce Tri-State’s energy requirements, not anything Tri-State has voluntarily done to eliminate its own purchasing needs. Thus, nothing in *Shoshone* undermines the Commission’s reasoning.

And neither *Dakota Energy Cooperative, Inc. v. East River Electric Power Cooperative, Inc.*, 75 F.4th 870, 875–77 (8th Cir. 2023), nor *Marlboro Electric Cooperative, Inc. v. Central Electric Power Cooperative, Inc.*, No. 4:20-CV-4386 (D.S.C. Mar. 28, 2022), ECF No. 95, offers support to Basin. Both cases involved a cooperative member, like Tri-State, who sought to terminate its all-requirements contract with a cooperative supplier, like Basin. *Dakota Energy*, 75 F.4th at 872; *Marlboro Elec.*, slip op. at 3. Basin’s reliance on these cases depends entirely on its asserted hypothetical situation that

the Commission's ruling paved the way for all of Tri-State's members to withdraw and thus for Tri-State to "effectively" seek early termination of the Basin/Tri-State Agreement by eliminating all of its energy requirements. Petitioner's Br. 49–50. But, as the Commission found, this case arises out of Tri-State's transfer of a single asset—Northwest Rural—not of any attempt by Tri-State to terminate the Basin/Tri-State Agreement. *Dakota Energy* and *Marlboro Electric* are accordingly inapposite.

V.

The Commission correctly determined that the plain and unambiguous language of section 9 provides a mechanism for Northwest Rural to withdraw from Tri-State and thus Northwest Rural's withdrawal does not constitute a breach of the Basin/Tri-State Agreement. The Commission's determination was therefore neither arbitrary nor capricious. We accordingly deny Basin's petitions.

So ordered.