UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket No.	ER05-6-000
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC., *et al.*	Docket No.	EL04-135-000
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC., *et al.*	Docket Nos.	EL02-111-010 EL02-111-011 EL02-111-014 EL02-111-015 EL02-111-016 EL02-111-019
Ameren Services Company, *et al.*	Docket Nos.	EL03-212-005 EL03-212-006 EL03-212-007 EL03-212-009 EL03-212-011 EL03-212-013 EL03-212-014 EL03-212-016

ORDER ON TRANSMISSION RATE PROPOSALS

(Issued November 18, 2004)

1. In this order we institute a previously-announced new long-term transmission pricing structure, effective December 1, 2004, across the Midwest Independent Transmission System Operator, Inc., (Midwest ISO), and PJM Interconnection, L.L.C. (PJM) regions that eliminates rate pancaking for transmission service under the tariffs of

the two regional transmission organizations (RTOs) to serve load in their combined regions. This order benefits customers by eliminating seams that impede efficient transmission system usage across two highly interconnected regional grids.

I. **Background**

2. In earlier orders in this proceeding, the Commission ordered the elimination of regional through and out rates between the PJM and Midwest ISO regions effective April 1, 2004,[1] and also found unjust and unreasonable the through and out rates of individual public utilities that had not yet become members of PJM or the Midwest ISO effective April 1, 2004.[2] The Commission directed compliance filings to eliminate the through and out rates for new transactions, but allowed two-year transitional lost revenue recovery mechanisms, so-called Seams Elimination Charge/Cost Adjustments/Assignments (SECAs), to be put in place effective Apri1 1, 2004.[3] On December 17, 2003, the Commission clarified that the through and out rates were eliminated for reservation requests made on or after November 17, 2003, for service commencing on or after April 1, 2004.[4]

3. Subsequently, the Commission provided time for the parties to participate in a stakeholder process to develop these transitional lost revenue recovery mechanisms. On February 6, 2004, noting that it had already allowed the parties additional time for a stakeholder process, the Commission established settlement judge procedures to further aid the parties in developing these transitional lost revenue recovery mechanisms.[5]

4. On February 4, 2004, the Chief Judge filed a report with the Commission on the parties' progress in the ongoing discussions, along with their agreement that the date for elimination of the through and out rates should be extended from April 1, 2004 to May 1,

[1] Midwest Independent Transmission System Operator, Inc., *et al*., 104 FERC ¶ 61,105, order on reh'g, 105 FERC ¶ 61,212 (2003), reh'g pending.

[2] *Ameren Services Company*, *et al.*, 105 FERC ¶ 61,216 (2003).

[3] *See supra* notes 1-2.

[4] *Midwest Independent Transmission System Operator, Inc*., *et al*., 105 FERC ¶ 61,288 (2003).

[5] *Midwest Independent Transmission System Operator, Inc*., *et al*., 106 FERC ¶ 61,105 (2004).

2004, (but with the two-year transition period continuing to run from April 1, 2004, *i.e.*, effectively shortening the transition period).[6] On February 6, 2004, the Commission accepted this agreement to extend the date for elimination of through and out rates to May 1, 2004, allowing the parties additional time to resolve matters consensually.[7]

5. On March 5, 2004, the Chief Judge filed a report and an agreement among the parties, noting that the parties had participated in fourteen full days of formal settlement negotiations (often involving over 100 participants), and that there had been numerous meetings involving individual participants or groups of participants. This resulted in an agreement, the "Going Forward Principles and Procedures" (Going Forward Principles), that was supported or joined in by 84 parties (some representing more than one utility) that was accepted by the Commission.[8]

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[6] *Midwest Independent Transmission System Operator, Inc*., *et al.*, 106 FERC ¶ 63,010 (2004).

[7] *Midwest Independent Transmission System Operator, Inc*., *et al*., 106 FERC ¶ 61,106 (2004), *reh'g pending*.

[8] *Midwest Independent Transmission System Operator, Inc*., *et al.*, 106 FERC ¶ 61,262 (2004), *reh'g pending*, (March 19 Order). In accordance with the March 19 Order and earlier orders in these proceedings, multiple compliance filings have been submitted in Docket Nos. EL02-111 and EL03-212 implementing the elimination of through and out rates. On January 2, 2004, the following entities submitted revisions to their respective tariffs to eliminate through and out rates effective April 1, 2004, in accordance with the November 17, 2003 Orders in these proceedings: Midwest ISO, PJM, Ameren Services Company, on behalf of Central Illinois Light Co., Central Illinois Public Service and Union Electric Co. (collectively Ameren); Illinois Power Company (Illinois Power); American Electric Power Service Corporation on behalf of Appalachian Power Service Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co., and Wheeling Power Co. (collectively AEP); Commonwealth Edison Company and Commonwealth Edison Company of Indiana (ComEd) and Dayton Power and Light (Dayton). On February 25, 2004, AEP, ComEd and Dayton filed amendments to their January 2, 2004 compliance filings to reflect the extension of the date for elimination of the through and out rates from April 1, 2004 to May 1, 2004 granted on February 6, 2004. On April 5, 2004, Midwest ISO, PJM, Illinois Power and Ameren submitted compliance filings as directed by the March 19 Order.

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6. This agreement established principles and procedures to guide the parties in the development of a long-term transmission pricing structure that could take effect December 1, 2004, subject to refund and further procedures if appropriate, without the need for a transitional lost revenue recovery mechanism. The agreement retained the through and out rates until December 1, 2004, at which time they would be eliminated entirely. The agreement also provided for continued negotiations to develop a long-term transmission pricing structure that eliminates seams in the PJM and Midwest ISO regions and required the PJM and Midwest ISO transmission owners to file a long-term transmission pricing proposal pursuant to section 205 of the Federal Power Act (FPA).[9] The agreement provided for the filing of one proposal or, if the parties were unable to agree to a single proposal, multiple proposals on October 1, 2004, with a proposed December 1, 2004 effective date. The agreement provided for "backstop" SECA compliance filings to be made on or before November 24, 2004, to take effect December 1, 2004, subject to nominal suspension and refund, in the event that the Commission was unable to implement a replacement pricing structure that eliminates seams as of December 1, 2004.

7. On September 3, 2004, the Chief Judge issued a report indicating that after further settlement and stakeholder conferences two major groups of parties had reached an impasse. The Chief Judge stated that it appeared there would be two competing proposals filed with the Commission on October 1, 2004. The Chief Judge added that additional meetings and conferences were planned in an attempt to come to further agreement.[10]

In this order, as we discuss below, we direct Midwest ISO and PJM and their transmission owners to submit new compliance filings to implement the elimination of through and out rates effective December 1, 2004, which will supercede these prior compliance filings, with the exception of portions of PJM's April 5, 2004 compliance filing addressing rates for the period prior to December 1, 2004, as discussed below. Accordingly, we dismiss as moot Midwest ISO and PJM's January 2, 2004 compliance filings and Midwest ISO's April 5, 2004 compliance filing. In addition, the compliance filings submitted by Ameren, Illinois Power, AEP, ComEd and Dayton are also dismissed as moot, because each of these companies has been integrated into either Midwest ISO or PJM and will not be providing transmission service under its individual tariff on December 1, 2004.

[9] 16 U.S.C. § 824d (2000).

[10] *Midwest Independent Transmission System Operator, Inc*., *et al*., 108 FERC ¶ 63,034 (2004).

8. In light of the potential for two alternative proposals, and the need to adopt a single long-term transmission pricing structure, the Commission initiated a FPA section 206[11] proceeding in Docket No. EL04-135-000 and established a refund effective date of December 1, 2004. This proceeding was implemented to ensure that the Commission had adequate authority to implement a new long-term transmission pricing structure for all parties across the PJM and Midwest ISO regions.[12]

9. On October 1, 2004, two competing proposals were submitted. The Unified Plan Proponents[13] filed their proposed Unified Plan pursuant to section 205 of the FPA. The

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[11] 16 U.S.C. § 824e (2000).

[12] *Midwest Independent Transmission System Operator, Inc., et al.*, 108 FERC 61,313 (2004).

[13] The Unified Plan Proponents include: (1) certain Midwest ISO transmission owners: Alliant Energy Corporate Services, Inc., on behalf of its operating company affiliate Interstate Power and Light Co.; American Transmission Co., LLC; Cinergy Services, Inc., on behalf of Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co. (collectively Cinergy); City of Columbia Water and Light Dept. (Columbia, MO); City Water Light & Power, Springfield, IL; FirstEnergy Service Co., on behalf of American Transmission Systems, Inc. (First Energy); Hoosier Energy Rural Electric Coop., Inc.; Indianapolis Power & Light Co.; International Transmission Co.; Michigan Electric Transmission Co., L.L.C. (Michigan Electric); Minnesota Power, and its subsidiary Superior Water, L&P; Michigan Public Power Agency; Montana–Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co., and Northern States Power Co. Wisconsin, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Co.; Otter Tail Corp.; Southern Illinois Power Cooperative; and Southern Indiana Gas & Electric Co.; (2) certain PJM transmission owners: Allegheny Electric Coop., Inc. (Allegheny); Jersey Central Power and Light Co.; Metropolitan Edison Co.; Pennsylvania Electric Co.; Old Dominion Electric Coop.; PPL Electric Utilities Coop.; Peco Holdings, Inc., on behalf of Potomac Electric Power Co., Delmarva Power & Light Co., and Atlantic City Electric Co.; Public Service Electric and Gas Co.; Rockland Electric Co.; and UGI Utilities, Inc.; and (3) additional stakeholders: Blue Ridge Power Agency; Borough of Chambersburg, Pennsylvania; Central Virginia Electric Coop. (VEPCO); the Michigan cities of Bay City, Croswell, Dowagiac, Eaton Rapids, Hart, Portland, Sebewaing, St. Louis, and Sturgis; Coalition of Midwest Transmission Customers; Consumers Energy Co. (Consumers Energy); Craig-Botetourt Electric Coop.; Dayton Power and Light Co.; Detroit Edison Co. (Detroit Edison); Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation

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Unified Plan Proponents include the majority of Midwest ISO and PJM transmission owners, including several independent transmission companies, and a cross section of other stakeholders, including several large transmission-dependent utilities, municipals and cooperatives, independent generators, power marketers, large retail customers, consumer advocates and state commissions. These entities represent 77 percent of the transmission owners, 59 percent of the net plant investment in transmission infrastructure, and 63 percent of the miles of transmission line in the combined Midwest ISO/PJM region, and they received 33 percent of the revenues for through and out service in the regions in 2002.

10. The Unified Plan is comprised of two parts: (1) the Regional Zonal Rate Design, which consists of the license plate rate structure currently in place in PJM and Midwest ISO,[14] and adjustments to the license plate zonal rates of certain Midwest ISO transmission owners to account for the reduction in revenues for through and out transmission service reflected in those rates; and (2) an Offer of Settlement, on behalf of all of the Unified Plan Proponents, that includes a moratorium on rate design changes through May 31, 2008, a requirement that protocols for allocating responsibility for certain new transmission facilities, i.e., those that benefit customers in both RTOs, be

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EME, LLC (collectively EME Companies); Electri-Cities of North Carolina, Eastern Agency; Great River Energy; Madison Gas and Electric Co.; Michigan Public Service Commission; Michigan South Central Power Agency; MidAmerican Energy Co.; Missouri Joint Municipal Electric Utility Commission; Nordic Marketing LLC.; Pennsylvania Office of Consumer Advocate' Pennsylvania Public Utility Commission; PJM Industrial Customer Coalition; PSEG Energy Resources & Trade, LLC; Southern Maryland Electric Cooperative (SMECO); Soyland Power Coop. Inc. (Soyland); Thumb Electric Coop.; Village of Chelsea; Virginia Municipal Electric Association No. 1; Wisconsin Electric Power (Wisconsin Electric) and Edison Sault Electric Co. (Edison Sault); Wisconsin Public Power Inc.; Wisconsin Public Service Corp. and Upper Peninsula Power Co. (WPSC/UPPCo); and Wolverine Power Supply Coop., Inc. (Wolverine); (collectively, Unified Plan Proponents).

[14] Under a license plate rate design, the RTO's footprint is segregated into a number of transmission pricing zones, typically based on the boundaries of individual transmission owners or groups of transmission owners, and customers taking transmission service for delivery to load within the RTO pay a rate based on the embedded cost of the transmission facilities in the transmission pricing zone where the load is located. Thus, under license plate rates, customers serving load within the RTO pay for the embedded cost of the transmission facilities in the local transmission pricing zone and receive reciprocal access to the entire regional grid.

developed and filed by April 1, 2005, to take effect June 1, 2005, and an offer of transitional payments to certain entities.

11. The Regional Pricing Plan Sponsors[15] filed a competing long-term regional transmission pricing proposal (Regional Pricing Plan) pursuant to section 206 of the FPA. The Regional Pricing Plan Sponsors represent 23 percent of the transmission owners in the Midwest ISO and PJM regions. These entities represent 41 percent of the net plant investment in transmission infrastructure, and 37 percent of the miles of transmission line, in the combined region, and they received 67 percent of the revenues for through and out service in the regions in 2002. Their proposal recovers two-thirds of each transmission owner's revenue requirement through license plate rates, but restructures inter-RTO and intra-RTO rates in the regions so that the remaining third is recovered through a regional pricing mechanism. This regional pricing mechanism reflects an allocation of a portion of the costs of certain high voltage facilities through a regional average "postage stamp" rate (the voltage-based element),[16] and a portion of the costs of transmission facilities to net importing zones based on a system flow analysis (the usage-based element).

II. <u>Notice and Filings</u>

12. Notice of both filings was published in the *Federal Register*, 69 Fed. Reg. 60,8563 (2004), with protests or interventions due on or before October 13, 2004. The entities that filed notices of intervention and timely or late motions to intervene are listed in Appendix A of this order. Several parties filed comments in support of the Unified Plan and in protest of the Regional Pricing Plan and others filed comments in support of the Regional Pricing Plan and in protest of the Unified Plan.

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[15] The Regional Pricing Plan Sponsors include: Allegheny Power, on behalf of Monongahela Power Co., Potomac Edison Co., and West Penn Power Co. ; Ameren AEP; Exelon Corp. on behalf of ComEd and PECO Energy Co. (collectively Exelon); Illinois Power Company; and LG&E Energy, LLC, on behalf of Louisville Gas & Electric Co. and Kentucky Utilities Co. (collectively, LG&E); (collectively, Regional Pricing Plan Sponsors).

[16] In contrast to license plate rates, under which customers serving load within the RTO pay rates based on the embedded cost of the transmission facilities in the local transmission pricing zone where the load is located, under a postage stamp rate design, all customers taking transmission service for delivery to load within the RTO pay the same rate, reflecting the average embedded costs of the transmission facilities throughout the RTO.

13. The order initiating the proceeding in Docket No. EL04-135-000 was published in the *Federal Register*, 69 Fed. Reg. 58,421 (2004). This order directed that notices of intervention and motions to intervene be filed with the Commission on or by October 15, 2004. The entities that filed notices of intervention and timely or late motions to intervene are noted in Appendix A of this order.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to their respective proceedings (*i.e.* the proceeding in which they seek to intervene). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.214(d) (2004), we will grant the untimely motions to intervene, in light of the parties' interest in their respective proceedings, the early stage of the respective proceedings, and the absence of any undue prejudice or delay.

B. Rate Design

1. Unified Plan Proposal

15. The Unified Plan, through the proposed Regional Zonal Rate Design and Offer of Settlement: (1) would continue the current license plate rate structure through May 31, 2008; (2) institute transitional surcharges to fund settlement payments to AEP, ComEd, and Dayton through a transition period ending May 31, 2008; (3) require a future filing to address pricing of new cross border transmission facilities; and (4) preserve certain allocations of financial transmission rights (FTRs).

16. Under the Regional Zonal Rate Design, the costs of existing transmission facilities would continue to be recovered through the zonal license plate rate structure currently in effect in each RTO upon the elimination of through and out rates on December 1, 2004. The Regional Zonal Rate Design proposal also would revise the transmission rate formula in Attachment O of the Midwest ISO tariff, and the license plate zonal rates under the Midwest ISO tariff, to adjust revenue credits to reflect the reduction in through and out transmission service revenues due to elimination of rate pancaking between the two RTOs. This adjustment would increase the license plate zonal rates to recover the amount of revenues lost from the elimination of the through and out rate under the Midwest ISO tariff for transactions sinking in PJM.

17. The Offer of Settlement would establish a moratorium through May 31, 2008, on the license plate rate design for existing transmission facilities. Regarding new facilities, the Offer of Settlement would price new transmission facilities in accordance with the regional expansion protocols being developed by each of the RTOs. These pricing protocols generally seek to assign costs of new facilities to the beneficiaries of those facilities. PJM has already developed, and the Commission has conditionally accepted, tariff provisions to implement such a pricing mechanism for regional transmission expansion, and the Midwest ISO is in the process of developing a similar mechanism for allocation of the cost of new facilities. In addition to these provisions for planning within each RTO, the Offer of Settlement would also require the RTOs to file, by April 1, 2005, protocols for the allocation of the cost of new transmission facilities that are built in one RTO but benefit customers in the other RTO, so-called "Cross Border Facilities."

18. The Unified Plan Proponents' Offer of Settlement also provides transitional payments to AEP, ComEd, and Dayton during the rate moratorium period.[17] The Unified Plan Proponents state that these payments are not meant to be compensation for lost through and out revenues. They state that the payments are meant to serve as a mitigation measure to ease the transition from the status quo, with through and out rates in place, to the Regional Zonal Rate Design, which relies entirely on license plate rates with no revenues for through and out service for transactions sinking in the combined region. The companies receiving payments under the Offer of Settlement, AEP, ComEd and Dayton, are distinguished by the Unified Plan Proponents as the only transmission owners that have, or will have, joined an RTO without having been subject to a transition mechanism through intra-RTO rate proceedings. In crafting their proposed transition payments, the Unified Plan Proponents have taken into consideration the transition mechanisms originally proposed by these companies in their December 11, 2002, PJM integration filing in Docket No. ER03-262, *et al.*, which is currently pending before the

[17] The transitional payments will equal: (1) $28 million for AEP, $12 million for ComEd, and $1.1 million for Dayton during each of the first two years of the transition period; (2) $14 million for AEP, $6 million for ComEd, and $0.6 million for Dayton during the third year of the transition period; and (3) $3.5 million for AEP, $1.5 million for ComEd, and $0.143 million for Dayton during the period from December 1, 2007 through May 31, 2008.

Commission.[18] In contrast, the Unified Plan Proponents do not provide payments for Ameren because Ameren has already received compensation for joining Midwest ISO.[19]

2. Details of the Regional Pricing Plan

19. The Regional Pricing Plan maintains the license plate zonal rate design currently in place in the two RTOs for two-thirds of each transmission owner's revenue requirement, but allocates the remaining one-third on a regional basis. The proposal applies a usage-based and a voltage-based method to identify the portion of each transmission owner's transmission revenue requirement that should be allocated on a regional basis and the portion that should be allocated on a local basis. Fifty percent of each transmission owner's transmission revenue requirement is allocated between regional and local rates under the usage-based approach and fifty percent of each transmission owner's revenue requirement is allocated between regional and local rates under the voltage-based approach. The portion of each transmission owner's revenue requirement not allocated to the regional rate under each method is collected through license plate zonal rates. Under the proposal, about 67 percent of the regional transmission costs would be recovered on a license plate approach, 13 percent would be recovered on a usage-based approach (based on net zonal imports) and 21 percent would be recovered on a postage stamp basis.

20. The usage-based element uses a proprietary market and transmission flow simulator, the GE MAPS model, to determine the amount of each transmission owner's cost of service that is allocated regionally. This method relies on modeling power flows across the combined PJM-Midwest ISO region for all hours of the year under two different scenarios, a base case and a change case. The base case represents a self-sufficiency state where each zone (based primarily on control area boundaries) satisfies its power needs internally with no need for imported power. The change case reflects efficient regional dispatch of the system based on generation prices, allowing for imports and exports between zones. A MW-mile analysis is performed for each case by calculating the length of each transmission line in miles multiplied by the power flow in MWs. The change in flow on each transmission line is compared between the base and

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[18] *See American Electric Power Service Corporation*, *et al*., 103 FERC ¶ 61,008 (2003) (order accepting filings, suspending rates, and establishing hearing procedures), *order on reh'g*, 108 FERC ¶ 61,140 (2004).

[19] *See* Unified Plan Proponents' October 1, 2004 Transmittal Letter at 99, *citing*, *Midwest Independent Transmission System Operator, Inc*., 106 FERC ¶ 61,200 (2004) (order approving uncontested settlement regarding rate adjustments for Ameren's membership in Midwest ISO (GridAmerica Settlement)).

change case to yield a differential in MW-miles for a particular pricing zone. The aggregate of the absolute values of the change in MW-miles for all lines in a pricing zone indicates each zone's contribution to the regional value of the system and is used to determine the portion of a transmission owner's revenue requirement that goes into the regional revenue requirement for a given hour. This amount is determined based on a ratio with the aggregate absolute values of the change in MW-miles for each line in the pricing zone as the numerator and the MW-miles from the base case plus the value in the numerator as the denominator. Once the regional allocation is determined, that amount is then collected from each zone in proportion to its relative net power imports during a given hour in the change case.

21. The voltage-based element divides transmission costs based on voltage levels, with the costs of high-voltage facilities allocated regionally and the costs of lower-voltage facilities allocated locally. For the voltage-based method of allocation, the Regional Pricing Plan Sponsors propose the following: (1) for a transmission owner with facilities operating at voltages of 200 kV or greater, it will allocate 100 percent of facilities operated at voltages above 700 kV, 100 percent of the largest investment class between 200 kV and 700 kV and 50 percent of its second largest investment class between 200 kV and 700 kV; and (2) for a transmission owner with no facilities operated at 200 kV or greater, but with facilities operated at voltages greater than 100 kV, it will allocate 50 percent of its largest investment class. For example, under this proposal, AEP will allocate 100 percent of its 765 kV facilities, 100 percent of its 345 kV facilities, and 50 percent of its 500 kV facilities. Regional Pricing Plan Sponsors' engineering witness testifies that 765 kV, 500 kV and 345 kV facilities provide reliability benefits over a broader region and are therefore appropriately classified as regional, whereas 230 kV and lower kV facilities are a closer call, as they perform both a regional and local function, but that not all systems are similarly designed and lower voltage facilities on some systems may contribute to regional reliability. The portion of each transmission owner's revenue requirement that is identified as providing benefits to the region under the voltage-based method is aggregated across the combined Midwest ISO-PJM region and charged to all load in the combined Midwest ISO-PJM region through a single average "postage stamp" rate – based on the theory that the reliability benefits of backbone transmission facilities benefit all load, not just load served by imported energy.

22. The Regional Pricing Plan Sponsors propose certain transition mechanisms that are intended to moderate the impacts of their proposal. First, a preliminary study of the impacts of the proposal indicates that four pricing zones will experience more than a 50 percent increase in transmission costs as a result of their proposal. The Sponsors propose to limit the increase to 52 percent, and make up the difference from zones that are shown will experience a decrease in transmission costs. The Regional Pricing Plan Sponsors also indicate that they believe that it might be appropriate to use the revenues for service through and out of the Midwest ISO/PJM region to provide additional moderation. They state that it is uncertain what the exact revenues for such service will be, but that it is

expected to be in excess of $100 million. They indicate that if $120 million of through and out service revenues were available for additional moderation, the zonal obligations could be capped at 129 percent of current rates.

23. The Regional Pricing Plan Sponsors also recognize that the usage-based element, which is allocated on the basis of net imports, results in an allocation of $9.05/MWH of net imports. First, Regional Pricing Plan Sponsors submit that this figure is misleading because it measures per-unit costs on net imports, while gross imports are expected to be significantly larger due to simultaneous imports and exports by a zone. They submit that this figure will not affect actual dispatch activity because the allocation of costs is based on modeled imports, not actual imports. However, they recognize that future decisions about construction of generation or transmission plant might be influenced if market participants knew that the same net import-based allocation of costs will be implemented in the future. However, they argue that it is unclear whether such decisions would actually be biased because the impacts of an individual resource decision would be diffused among many zones rather than being captured by one zone. The Regional Pricing Plan Sponsors have tried to address this issue by incorporating a limit on the allocation of each zone's transmission cost of service to regional use – if a zone is a net importer of power during any hour, the amount of its allocation to regional use is limited to zero for that hour. Without this limit, the per-MWH of net import figure would be $13.29 rather than $9.05/MWH.

24. The Regional Pricing Plan Sponsors propose that the Regional Pricing Plan be used to establish rates that will remain in effect until June 1, 2008, in the absence of Commission action under section 205 or 206, and only be adjusted during that time period: (1) on June 1, 2005, to reflect expansion of either RTO to incorporate new transmission owners prior to that time and to improve the modeling based on new data made available in the course of this proceeding; and (2) between June 1, 2005 and June 1, 2008 to reflect only the addition or withdrawal of RTO members. In the absence of Commission action under section 205 or 206, the rate design will continue in effect beyond June 1, 2008, without the moderation mechanisms.

3. **Comments in Support of the Unified Plan**

25. In addition to the comments filed by the Unified Plan Proponents, several other entities filed individually in support, either in part or in full, for the Unified Plan.[20] Generally, supporters of the Unified Plan believe that license plate rates are a more appropriate rate design for pricing of existing facilities because license plate rates provide stable predictable rates which do not interfere with current market structures, and can be easily implemented to meet the December 1 effective date. Additionally, many supporters note that the Unified Plan is supported by a diverse group of stakeholders and represents considerable compromise towards an acceptable and implementable solution to the elimination of through and out rates.

26. Several Unified Plan supporters claim that throughout the combined Midwest ISO/PJM region, the existing transmission systems were built for service to native load customers and, before open access transmission was mandated in 1996 by Order No. 888,[21] these facilities were primarily used for that purpose. For example, the Indiana Commission states that at the time most existing facilities were constructed it was not anticipated that they would be heavily used for bulk power transfer to serve load outside of the immediate service area. Therefore, the Indiana Commission agrees with the Unified Plan Proponents' assertion that it is reasonable and appropriate for the costs of existing infrastructure to be born by the native load for which it was built.

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[20] *See* comments filed by Cinergy; Great Lakes Utilities; Southwestern Electric Cooperative, Inc.; Wolverine; Joint Comment of the Coalition of Midwest Transmission Customers and the PJM Industrial Customer Coalition; Joint Comments of Allegheny Electric and Soyland; SMECO, Consumers Energy, Wisconsin Electric, Michigan Electric, Indiana Utility Regulatory Commission (Indiana Commission), WPSC/UPPCo., Multiple TDUs, VEPCO, and Delaware Public Service Commission.

[21] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,760-61, *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1997), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom*. New York v. FERC, 535 U.S. 1 (2002).

27. The Unified Plan Proponents also argue that the rate design embodied in the Unified Plan properly recognizes regional use of the transmission grid. The Unified Plan Proponents argue that all transmission facilities in the combined Midwest ISO/PJM region are equally important and necessary for a functioning, integrated, and reliable regional transmission system and argue that zonal license plate pricing is most appropriate because it assigns equal value to each transmission owner's facilities by providing reciprocal open access throughout the combined Midwest ISO/PJM region. The Unified Plan Proponents also point out that Order No. 2000[22] supports the use of license plate rates during the initial stages of RTO formation, and that, in approving Midwest ISO as an RTO, the Commission authorized the use of license plate rates through January 2008.

28. In addition, the Unified Plan Proponents assert that license plate rates are most compatible with the current developing energy market in Midwest ISO and the overall combined market being developed for the Midwest ISO/PJM region, pointing out that license plate rates have been used for years in the PJM markets. Unified Plan supporters also note that a license plate rate design can be implemented based on existing, Commission-approved revenue requirements and neither requires nor precludes updated cost of service justification. Accordingly, they state that their license plate rate proposal is the only option that can be immediately implemented on December 1, 2004.

29. The Unified Plan Proponents argue that the Unified Plan is the most efficient approach for pricing new transmission because it only assigns cost responsibility of new facilities to those who benefit from the upgrade. They assert that this principle has been approved by the Commission with its approval of PJM's process for allocating the cost of new facilities. The Unified Plan Proponents claim that the Regional Pricing Plan would undermine the new transmission pricing initiatives in place in PJM and being developed in Midwest ISO, because the costs of new facilities will be rolled into the regional pricing component proposed in the Regional Pricing Plan and not priced according to the participant funding initiatives developed or being developed by the RTOs.

30. The Indiana Commission comments on the need to appropriately encourage new transmission investment. Although the Indiana Commission expresses concern over the unproven effectiveness of PJM's process for allocating the cost of new facilities and Midwest ISO's yet to be filed process, it remains supportive of the Unified Plan because

[22] *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom.* Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

it at least contains a clear procedure for pricing of new investment. In contrast, the Indiana Commission notes, it is unclear how the Regional Pricing Proposal seeks to price new facilities.

31. Unified Plan Proponents argue that the amounts of the proposed settlement payments to AEP, ComEd and Dayton are justified because they take into consideration revenues for through and out service that these companies have continued to receive long past the time that they were originally supposed to join an RTO. Unified Plan Proponents note that in its PJM integration filing in Docket No. ER03-262-000, AEP proposed total revenue neutrality compensation of approximately $366 million, based on the assumption that AEP was to enter PJM in February 2003. Unified Proponents point out that since that time AEP has collected approximately $317 million in continued through and out revenues, and that AEP is entitled to another $5 million from an interim transition rate mechanism agreed to as part of the Going Forward Principles, once it joins PJM. Considering these amounts and the $73 million settlement payment proposed by the Unified Plan, Unified Plan Proponents purport that AEP would receive $30 million more than the transitional arrangement it originally proposed in 2002. Additionally, the Unified Plan Proponents note that these considerations do not take into account the estimated $333 million in increased profits that the Commission has found that AEP will experience over the next five years due to additional off-system sale opportunities from integrating into PJM.[23] Although VEPCO favors retention of license plate rates, and the Unified Plan in general, it contests the need for transition settlement payments or any other lost revenue recovery mechanism.

4. Comments in Support of the Regional Pricing Plan

32. In addition to the Regional Pricing Plan Sponsors, other entities filed individual comments in support of the Regional Pricing Plan.[24] Generally, supporters of the Regional Pricing Plan rate design favor it because it assigns a portion of the cost of existing transmission facilities regionally to account for the fact that, due to regional open access, some transmission facilities are used by customers outside of the immediate pricing zone. For example, the Regional Pricing Plan Sponsors state that the costs and benefits of the expansion of regional energy markets are not evenly distributed today and

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[23] *See* Unified Plan Proponents' October 1, 2004 Transmittal Letter at 97-98, *citing*, *New PJM Companies*, *et al*., Opinion No. 472, 107 FERC ¶ 61,271 (2004).

[24] *See* comments filed by: Illinois Municipal Electric Agency, Public Utilities Commission of Ohio (Ohio Commission), Northern Illinois Municipal Power Agency, Illinois Commerce Commission (Illinois Commission), Ameren and LG&E, and the Town of Front Royal, Virginia (Front Royal).

that the Regional Pricing Plan better aligns the costs and benefits of today's transmission network. They assert that the usage-based element of the Regional Pricing Plan best satisfies the traditional ratemaking principle that costs should be allocated on the basis of cost causation because, by assigning some costs directly to net importers, it accurately allocates costs to those who benefit from regional access. The Regional Pricing Plan Sponsors claim that the voltage-based pricing element recognizes the ratemaking concept that those who benefit from transmission facilities should pay an appropriate share of the associated costs. They assert that high-voltage facilities provide integral system reliability, a benefit to all system users, and the voltage-based pricing properly captures this by assigning a portion of costs to everyone via a regional postage stamp rate.

33. Supporters of the Regional Pricing Plan claim that the proposal properly recognizes regional use of existing transmission infrastructure. The Illinois Commission states that it supports a transmission pricing mechanism that identifies transmission costs that provide regional benefits and allocates such costs in an appropriate regional manner. The Illinois Commission also points out that the Regional Pricing Plan uses license plate rates as its foundation, but properly modifies them to include a regional pricing component. The Ohio Commission notes that it is in a unique position to offer what it claims to be an objective view of these pricing proposals. It indicates that no single proposal will result in a consistent economic impact on Ohio customers. The Ohio Commission urges the Commission to review these proposals based on basic rate design principles and the Commission's transmission pricing policies. The Ohio Commission states that the Regional Pricing Plan fully adheres to these initiatives because the usage-based pricing element allocates costs to users while the voltage-based pricing element recognizes reliability contributions. The Ohio Commission further notes that the Commission encouraged development of innovative rate designs, including flow-based pricing, later in the same policy statement.

34. The Regional Pricing Plan Sponsors respond to the anticipated criticism that the usage-based pricing element could interfere with efficient decision making by market participants. The Regional Pricing Plan Sponsors argue that it would be improbable if not impossible, for an entity to capture the benefits of a lower future usage-based cost allocation by making investment decisions that reduce zonal net imports because any benefits would be significantly diffused across multiple entities.

35. The Regional Pricing Plan Sponsors clarify that their proposal does not seek to replace transmission expansion protocols already in place or being developed. To the contrary, they submit that their proposal can easily complement such mechanisms by providing a cost recovery vehicle for necessary transmission expansion where a determination as to who benefits from, and should bear cost responsibility for, particular expansions cannot be made.

5. Protests of the Unified Plan

36. Numerous entities joined the Regional Pricing Plan Sponsors in protesting the Unified Plan. Protesters argue that the Unified Plan does not properly recognize regional use of existing transmission infrastructure, it is contrary to the Going Forward Principles, and is in clear violation of Commission policy. For example, Front Royal argues that the Unified Plan does not compensate for region-wide benefits provided by certain transmission facilities. The Ohio Commission agrees, stating that the Unified Plan does not recognize regional use of existing transmission infrastructure.

37. Moreover, the Regional Pricing Plan Sponsors argue that license plate rates are contrary to the Going Forward Principles and, contrary to the Unified Plan Proponents' assertions, cannot be considered an appropriate long-term pricing structure for the combined Midwest ISO/PJM region. The Regional Pricing Plan Sponsors note that the Going Forward Principles were intended to focus parties on developing a long-term pricing structure and they claim the Commission approved delay of through and out rate elimination with that in mind.[25] Quest Energy LLC and WPS Energy Services (Quest/WPS) argue that the Unified Plan does not represent a long-term solution to effectuate a seamless market because it does not provide a known, understood mechanism to allocate the cost of new transmission facilities.

38. The Regional Pricing Plan Sponsors and others argue that Commission policy does not support allocating the entire embedded costs of the transmission system to a pricing zone's native load customers. They note that upon moving to an era of open access transmission service the Commission approved and continued a policy of allocating transmission costs to parties other than native customers, by approving the use of through and out rates for export and wheel-through service. The Regional Pricing Plan Proponents further point out that in many cases involving the elimination of through and out rates, the Commission has continued a policy of keeping transmission owners revenue neutral and compensating them for lost through and out rate revenues. They purport that under the open access regime, transmission owners are expected to plan and operate their systems with the expectation that they will continue to provide service to long-term firm transmission customers. The transmission provider is expected to accommodate these customers' rollover rights when planning for capacity. Therefore,

[25] *See* Regional Pricing Plan Protest at 2, stating "Nor could throwback rate designs have been what the Commission had in mind when it accepted the Going-Forward Principles…"

they claim, it is appropriate to assign a portion of the cost responsibility to customers outside of the zone, because those customers are benefiting from access to the facilities within that pricing zone.

39. Manitoba Hydro (Manitoba) states since the inception of open access, the use of existing facilities has changed and that the continuation of rates based on cost causation principles is not longer just and reasonable. Manitoba states that ratepayers outside the local zone that benefit from the use of facilities should pay for those facilities, whether the facilities are existing or new.

40. The Regional Pricing Plan supporters also argue that the Commission's approval of license plate rates for transition periods in ISOs and RTOs does not indicate a Commission's blessing for license plate rates in the long run, although the Unified Plan has proposed just that. On the contrary, Regional Pricing Plan supporters assert that the Commission has specifically conditioned approval of the use of license plate rates on their remaining in effect for defined transition periods only, thus recognizing their ineffectiveness as a long-term solution. They maintain that the Commission has clearly expressed its desire to reevaluate license plate rate designs even during the approved transition periods if use of license plate rates will cause abrupt cost shifts or create barriers to RTO participation.[26] The Regional Pricing Plan supporters also state that in many situations where the Commission has approved use of license plate rates, it has done so in conjunction with the implementation of mechanisms to mitigate cost shifts through lost revenue recovery adders or some other load based surcharge. Moreover, they maintain, in most cases where the Commission has adopted license plate rates there has generally been a consensus among affected parties favoring such an approach. The Regional Pricing Plan supporters claim that the Unified Plan neither has a mechanism to mitigate cost shifts, nor reflects a broad regional consensus favoring use of license plate rates within the combined Midwest ISO/PJM region.

41. Additionally, the Ohio Commission indicates its deep concern about the drastic cost shifts that could result from eliminating through and out rates and total reliance on native load ratepayers to make up the loss in revenues. The Ohio Commission notes that the Unified Plan is completely dependent on the RTOs' tariff protocols for new transmission pricing. Without these, the Ohio Commission states, the Unified Plan would completely lack any method for encouraging transmission investment. Furthermore, it points out that PJM's new investment pricing protocol is brand new,

[26] Regional Pricing Plan Proposal at 20, *citing*, *Alliance Companies*, *et al*., 99 FERC ¶ 61,105 at 61,444 (2002).

Midwest ISO does not even have one in place, and the Unified Plan offers no concrete way, other than a general promise to file a proposal, for addressing cost recovery of new transmission that mutually benefits both RTOs.

42. Ameren and LG&E oppose the transition payments in the Offer of Settlement. They claim that the proposal to allocate responsibility for funding the transition payments in Midwest ISO based on proximity to AEP, ComEd and Dayton has not been shown to be just and reasonable. They state that mere proximity has not been shown to be a just and reasonable proxy for actual usage of those systems. In addition, Ameren states that the Unified Plan Proponents incorrectly assert that Ameren has been compensated for revenues lost due to the elimination of rate pancaking between the RTOs. Ameren asserts that its settlement of its intra-RTO rate proceeding compensates it for through and out revenues no longer received from other Midwest ISO transmission owners, but not for revenues no longer received from PJM transmission owners, including AEP, ComEd and Dayton. However, that said, Ameren and LG&E state that they would prefer to leave all lost revenue arguments behind in this proceeding, which the Commission could achieve if it rejects the Unified Plan and implements the Regional Pricing Plan.

6. Protests of the Regional Pricing Plan

43. Protesters raise a host of legal, factual, and implementation arguments against the Regional Pricing Plan. On legal grounds, the Unified Plan Proponents state that the Regional Pricing Plan Sponsors have failed to carry their burden under section 206 because they have not given adequate support for (1) why the current zonal license plate structure is unjust and unreasonable, and (2) why the Regional Pricing Plan is a just and reasonable alternative to the current rate structure. The Unified Plan Proponents characterize the Regional Pricing Plan as a fundamental change in rate design that would require substantial justification and support to implement, which the Regional Pricing Plan Sponsors have not provided. The Unified Plan Proponents also claim that the Regional Pricing Plan would result in massive cost shifts and, accordingly, cannot be implemented without an evidentiary hearing. Thus, they assert that the Regional Pricing Plan is impossible to implement by December 1, the deadline for elimination of through and out rates.

44. Numerous protesters contest the Regional Pricing Plan because it severely disrupts existing rate structures which could interfere with developing markets and transmission planning initiatives. Multiple protesters attack the usage-based element of the Regional Pricing Plan. Several parties contest the use of the GE MAPS program, a proprietary computer based flow model, for rate making. For example, the Unified Plan Proponents note that the proprietary nature of this model prevents transparency and validation of the operation of the model, which will be used, in part, to set rates for the entire combined Midwest ISO/PJM region. Protesters claim that the usage-based element presents features that could potentially interfere with energy market decision

making, which they contend is a fatal flaw in a rate design. In addition, they note that because the usage-based element assigns regional costs in proportion to energy imports, this leads to rate uncertainty and unpredictability. Protesters argue that the dynamic nature of power flows will inevitably lead to significant fluctuations in responsibility for sunk costs when linking allocation of those costs to power flow scenarios.

45. The Unified Plan Proponents and others also criticize the voltage-based element of the Regional Pricing Plan. The proposed voltage criteria for regional facilities, according to the Unified Plan Proponents, are entirely arbitrary and unsupported by any sound engineering information. Great Lakes Utilities states that the Regional Pricing Plan Sponsors fail to demonstrate how such high-voltage facilities are any more valuable than their lower-voltage counterparts from a reliability perspective. The Unified Plan Proponents also state that, by relying on transmission line investment by voltage to determine regional allocation, the Regional Pricing Proposal fails to consider the importance of investment in transmission substations, which accounts for about half of the total transmission investment in the combined Midwest ISO/PJM region, but which is not required to be reported by voltage in the FERC Form No. 1.

46. Some protesters contest the Regional Pricing Plan due to the significant cost increases they will incur. For example, WPSC/UPPCo argue that the Regional Pricing Plan must be rejected since it will lead to large transmission rate increases in many pricing zones throughout the combined Midwest ISO/PJM region, while the Unified Plan Proponents claim that such cost increases are as much as 50 percent for three pricing zones, and as much as 30 percent for six other pricing zones. Quest/WPS argue that the Regional Pricing Plan will have devastating and irrational effects on Michigan customers. Michigan Electric also contests the Regional Pricing Plan's cost shift mitigation method which would use revenues from continued through and out service exiting the combined Midwest ISO/PJM region to offset the cost increases of some customers, stating that Michigan Electric would suffer significant revenue shortfalls as a result.

47. Certain Midwest ISO Unified Plan Proponents[27] argue that Ameren's participation in the Regional Pricing Plan violates the GridAmerica Settlement. They claim that the payments to Ameren under the settlement were meant to be full compensation for lost revenues related to Ameren's joining Midwest ISO. Certain Midwest ISO Unified Plan Proponents argue that it is clear that Ameren stands to receive much more revenue under the Regional Pricing Plan than was agreed to in the settlement and is, therefore,

[27] *See* joint comments filed on behalf of Consumers Energy, Detroit Edison, Madison Gas and Electric Company, Michigan Public Power Agency, Michigan South Central Power Agency, Wisconsin Electric, Edison Sault , WPSC/UPPCo, (collectively, Certain Midwest ISO Unified Proponents).

attempting unilateral renegotiation on the issue of intra-RTO lost revenue compensation resolved by the settlement. They also criticize LG&E's decision to support the Regional Pricing Plan, stating that, as a founding member of Midwest ISO, LG&E is not entitled to certain regional rate revenues under the Regional Pricing Plan because it has already agreed to terms of its Midwest ISO membership and completed its transition to membership in an RTO.

7. <u>Other Comments</u>

48. Baltimore Gas & Electric Company (BG&E), which does not endorse either proposal, does state that the Unified Plan is superior because it is less of a departure from existing practices. However, BG&E cannot fully support the Unified Plan because it makes broad and sweeping criticisms of any type of regional allocation method for embedded transmission cost recovery. BG&E contests the Unified Plan Proponents' attacks on other rate designs that were developed in the settlement discussions but were not formally filed on October 1. Specifically, BG&E contests the Unified Plan Proponents' criticisms of the voltage-based allocation sponsored by BG&E during the settlement negotiations. BG&E continues to support its voltage-based allocation methodology and requests that the Commission reopen the settlement procedures to allow for further reconciliation between the various proposals and further consideration of its voltage-based allocation methodology. BG&E points out significant differences in the voltage-based element of the Regional Pricing Plan and the proposal it sponsored during settlement.

49. In its reply comments, BG&E argues that the Regional Pricing Plan is salvageable and that further settlement proceedings could bridge the gap between the principles of the Regional Pricing Plan and Unified Plan. It notes that both sides are prone to compromise, but at this stage each is defending a polarized position: the Regional Pricing Plan supporters insisting on flow-based allocations, and the Unified Plan Proponents insisting on no regional allocation whatsoever. BG&E believes that more focused settlement proceedings could yield a compromise solution. BG&E notes that the majority of the opposition to the Regional Pricing Plan is focused on the usage-based element. Therefore, BG&E proposes combining elements of the two proposals: license plate rates for existing lower voltage facilities and a regional allocation of existing higher voltage facilities, in conjunction with assignment of the cost of new facilities under the respective protocols developed or being developed by PJM and Midwest ISO. It requests that the Commission provide directed policy principles for use in settling on a permanent rate solution. For example, it suggests that the Commission could clarify that it expects some departure from the status quo license plate rates, but could also reject the use of a usage-based element due to the legitimate arguments raised by protesters. BG&E indicates that there is no reason why a voltage-based allocation would have to impact the protocols otherwise developed or being developed for new facilities.

50. The Ohio Commission, although generally in favor of the Regional Pricing Plan, states that it is fully aware of the implementation concerns raised by parties against the Regional Pricing Plan. Specifically, the Ohio Commission recommends an update and verification of the GE MAPS model, that the Regional Pricing Plan Sponsors fully demonstrate to the Commission that the Regional Pricing Plan will not adversely affect RTO markets, that the Regional Pricing Plan utilize verified and authorized revenue requirements, and that the proposal should further attempt to mitigate cost shifts whether or not such cost increases are reflective of use and system benefits. Accordingly, to allow time for the Regional Pricing Plan Sponsors to address these issues, the Ohio Commission recommends implementation of the simple and straight forward voltage-based component of the Regional Pricing Plan for one year until the usage-based elements can be further refined and supported. Similarly, the Illinois Commission recommends that the Commission implement an interim rate design and establish hearing procedures to (1) deal with the intricacies and problems of the flow-based pricing element, (2) address FTR allocation issues under a new pricing regime, (3) address cost allocation for new transmission investment.

51. Wabash Valley Power Association, Inc. (Wabash Valley) opines that the most profound cost change it will experience appears not to be related to which of the two plans is adopted, but rather to an underlying policy that cost responsibility is shifted to load serving entities without imposing any transmission costs on generators or marketers who are not load-serving entities. Therefore, Wabash Valley does not fully support either proposal, but, rather, it notes its concerns regarding both. Wabash Valley argues it will require years before a true regional component to transmission pricing is achieved under the Unified Plan's proposal for new facility pricing. Wabash Valley adds that if the Unified Plan is not narrowly interpreted to avoid reassigning lost through and out revenues to license plate zonal rates, then Wabash Valley will experience a large, unsupported cost increase. Regarding the Regional Pricing Plan, Wabash Valley agrees with many other protesters on the unsupported nature of the proposal and the many possible implementation flaws. However, Wabash Valley believes that regional allocation of transmission costs is a better solution for long-term pricing, and therefore, recommends that the Commission set the proposal, including the revenue requirements, for hearing.

52. Manitoba states that both proposals are unsuitable for long-term transmission pricing. Manitoba states that the Commission should adopt a rate design for the Midwest ISO/PJM footprint that: 1) uses a common methodology for new facilities and existing facilities; 2) allocates costs of facilities to the beneficiaries of those facilities; and 3) recognizes that some portion of the cost of facilities should be allocated to reliability and socialized through postage stamp rates to reflect wide-spread regional benefits.

53. Quest/WPS contend that load serving entities with existing bundled contracts will be disadvantaged by the move to load based charges. Quest/WPS states that under these contracts, suppliers deliver power to the border of the sink control area and it is the supplier who currently pays the through and out rates to move the power to the that border while the load serving entity pays for the transmission from the border to its load. Quest/WPS contends that both the Unified Plan and Regional Pricing Plan would implement load-based charges to allocate regional transmission costs between the two RTOs, and to account for the elimination of the regional through and out rate, that shift costs will shift from suppliers to load serving entities under existing bundled delivery contracts. Quest/WPS notes that the Commission recognized this potentiality when it approved the SECA and provided a mechanism to address these cost shift concerns.[28] Quest/WPS requests that the Commission provide a similar mechanism if it adopts the Unified Plan or the Regional Pricing Proposal. Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (collectively Duke Energy) responds that the Commission should reject Quest/WPS's proposal. Duke Energy argues that, as a general matter, the issue Quest/WPS raises is a contractual matter between the supplier and the customer. In any event, Duke Energy continues, the proposals before the Commission, unlike the SECA, do not provide a basis for the transfer of costs to specific suppliers and, therefore, are not amenable to the addressing this issue in the same manner that the Commission did with the SECA.

8. <u>Commission Determination</u>

54. In approving the Going Forward Principles, the Commission permitted the parties to delay elimination of the through and out rates under the premise that, with the additional time, the parties would produce a replacement pricing structure that would eliminate seams and could be implemented on December 1, 2004, without the need for any kind of transitional mechanism. However, it was agreed that SECA compliance filings would be made as a backstop to ensure that the through and out rates would not be eliminated without either a long-term pricing solution or a transitional mechanism. In addition, as described above, we instituted a new investigation pursuant to section 206 of the FPA in Docket No. EL04-135-000 with a December 1, 2004 refund effective date.[29]

55. As discussed below, we find that neither of the two proposals, including the Regional Zonal Rate Design, which was filed pursuant to section 205 of the FPA, fully

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[28] *Midwest Independent Transmission System Operator, Inc*., 105 FERC ¶ 61,212 at P 45 (2003).

[29] *See supra* note 12.

meets the requirements of the Going Forward Principles and neither has been shown to be just and reasonable, but rather they may be unjust and unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will: (1) conditionally accept the Regional Zonal Rate Design filed by the Unified Plan Proponents for filing, suspend it for a nominal period, to become effective on December 1, 2004, subject to refund (and consistent with the refund effective date established in Docket No. EL04-135-000) and subject to further orders in the relevant proceedings; (2) reject the Offer of Settlement contained in that proposal as unduly discriminatory; and (3) adopt the SECA transition methodology previously adopted in our November 17, 2003 Order in Docket No. EL02-111, *et al.*,[30] also to become effective December 1, 2004, the date that regional through and out rates are eliminated as directed in our prior orders in these proceedings. We also direct compliance filings to implement the SECA transition methodology, as we explain more fully below.

56. When eliminating through and out rates and pricing regional transmission service at non-pancaked rates, the Commission has been careful to prevent undue cost shifting among various transmission owners and customers that make up the ISO or RTO. For instance, the Commission has rejected proposals to adopt regional postage stamp pricing for RTOs or ISOs, as this rate design spreads the cost of transmission facilities throughout the region on a regional average basis, resulting in significant cost shifts from higher to lower cost regions. Conversely, pure license plate rates, by allocating the costs of all transmission facilities locally, can result in abrupt cost shifts as the portion of the transmission revenue requirement that previously was recovered from through and out service customers under pancaked rates would then be born by customers within the license plate pricing zone. The Commission reasoned, however, that this was not unreasonable, as it was balanced by the broader transmission access that became available under a regional tariff.

57. Nevertheless, in order to minimize the impact of such cost shifts, the Commission has generally limited the initial term of license plate rates and allowed use of a transition mechanism. With respect to the term, the Commission has accepted the use of license plate rates for an initial fixed period upon the elimination of rate pancaking, provided that the RTO makes clear how the cost of new facilities will be recovered and demonstrates that the recovery of the cost of new facilities will promote efficient expansion of the transmission grid. Before the end of that fixed term, the Commission has required the RTO and its transmission owners to reevaluate fixed cost recovery policies based on the factual situation of the particular RTO, and to file with the Commission its

[30] *Midwest Independent Transmission System Operator, Inc., et al.*, 105 FERC ¶ 61,212 at P 43 (2003).

recommendations for changes to, or continuation of, those policies beyond the initial fixed term. The Commission's policy does not require abandonment of license plate rates at the end of the initial fixed term, but does require the RTO and its transmission owners to justify their choice to continue or discontinue using license plate rates, or otherwise change the method for fixed cost recovery.[31] In addition, in order to mitigate abrupt shifts of the portion of the transmission revenue requirement that previously was recovered from through and out service customers under pancaked rates to customers within the license plate pricing zone, the Commission has approved the use of transitional rate mechanisms providing for recovery of revenues lost due to the elimination of rate pancaking for a short period upon the adoption of license plate rates.[32] Use of license plate rates, with transitional lost revenue recovery mechanisms, has been approved for Midwest ISO and PJM for initial fixed terms through January 31, 2008,[33] and May 31, 2005,[34] respectively.

58. It is in the context of these policies and prior decisions that the Commission evaluates the proposals currently before it. In this case, where the Commission is addressing inter-RTO rate pancaking, it is appropriate to apply the Commission's prior policies for addressing the elimination of rate pancaking within an RTO. Expanding its existing policy for intra-RTO, license plate zonal transmission pricing to address the elimination of rate pancaking between the two highly interconnected RTOs would be appropriate as a general matter. The circumstances here make such an inter-RTO rate design even more appropriate. As the Commission stated in finding the RTOs' regional through and out rates unjust and unreasonable, given Order No. 2000's requirement for RTOs to eliminate rate pancaking over a region of appropriate scope and configuration,

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[31] Order No. 2000 at 31,177-78.

[32] *See, e.g., Alliance Cos., et al.*, 94 FERC ¶ 61,070 (2001), *order on reh'g*, 95 FERC ¶ 61,182 (2001); *PJM Interconnection, LLC and Allegheny Power Co.*, *et al.*, 96 FERC ¶ 61,060 (2001); *Midwest Independent Transmission System Operator, Inc.*, 98 FERC ¶ 61,076 (2002).

[33] *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 at p. 62,167-68, *clarified*, 85 FERC ¶ 61,250, *order on reh'g*, 85 FERC ¶ 61,372 (1998) (requiring filing of superseding rate proposal at least six months prior to end of transition period so that continued use of license plate rates beyond the initial six-year transition period, ending January 31, 2008, can be revisited formally).

[34] *Allegheny Power System Operating Companies*, *et al.*, 108 FERC ¶ 61,167 (2004) (order approving settlement extending transition period through May 31, 2005).

rate pancaking across the Midwest ISO/PJM seam is more correctly viewed as intra-RTO rate pancaking.[35] The genesis of this proceeding is, after all, the choices of certain of the former Alliance Companies to join PJM, and the purpose of the proceeding is to mitigate the impacts of the RTO configuration that resulted from those choices.[36]

59. Thus, the Commission finds that the license plate rate design embodied in the Regional Zonal Rate Design, coupled with an appropriate transition mechanism and re-evaluation after a fixed period, represents a reasonable approach to pricing transmission service between the two RTOs upon the elimination of through and out rates, consistent with the Commission's regional transmission pricing policies and precedent. The license plate rates for pricing transmission service between the two RTOs adopted herein is consistent with the terms of the transition periods previously approved for the RTOs. License plate rates are currently being used in each RTO for initial fixed terms extending as far as 2008, at the end of which the rate design will be formally reevaluated. In contrast, the competing proposals in this proceeding would require that the Commission revisit and shorten these existing transition periods, which we find unnecessary to address the issue present under the current circumstances, *i.e.*, inter-RTO transmission service. While the Regional Pricing Plan Sponsors argue that their local load may need to pay for the cost of system upgrades to meet load growth that may have been met without expansion if the capacity were not made available to remote load, we find it speculative at this point. Moreover, to address such circumstances, the Commission provides for a formal reevaluation of license plate rates based on the particular facts of the RTO after an initial period of experience in planning for and providing transmission service on a regional basis. Such factors should be taken into consideration in that reevaluation based on concrete experience.

60. As noted above, the Commission does require that proposals to use license plate rates clearly address how the cost of new transmission facilities will be allocated and how that methodology will impact efficient transmission expansion. While existing facilities have been largely constructed to serve the transmission owner's local load prior to the advent of regional transmission service, RTO regional planning protocols are intended to provide a broader regional approach to transmission planning consistent with the regional approach to transmission access under RTO tariffs. Because license plate rates allocate the cost of facilities to local load, they can present an impediment to construction of new facilities that benefit remote load because local regulators with authority over siting of such facilities are reluctant to approve construction of such facilities if local load will

[35] *Midwest Independent Transmission System Operator, Inc*., *et al*., 104 FERC ¶ 61,105 at P 35 (2003).

[36] *Alliance Companies, et al.*, 100 FERC ¶ 61,137 (2002).

bear the cost but not receive commensurate benefits. In order to address this potential problem, the Commission will require the RTOs and their transmission owners to develop a proposal for allocating to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO. We note that in their Joint Operating Agreement, the Midwest ISO and PJM have committed to develop just such a methodology for allocating the costs of certain facilities through their joint regional planning committee.[37] Accordingly, we will require that the RTOs and their transmission owners develop and file within 180days of the date of this order a proposal for allocating to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO.[38]

61. As noted above, we have recognized that license plate rates can produce cost shifts upon the elimination of rate pancaking, and we have found that it is reasonable to adopt transitional mechanisms to mitigate such costs shifts. We find that the Unified Plan Proponents have not adequately supported their proposed transition payments, however. For instance, they have not adequately explained why it is reasonable to provide payments to AEP, ComEd and Dayton, but not to other transmission owners that will lose revenues as a result of the elimination of the through and out rates. Nor have they adequately demonstrated that their proposed method for assigning responsibility for funding those transition payments based on proximity to the AEP, ComEd and Dayton

[37] Midwest Independent Transmission System Operator, Inc., et al., 106 FERC ¶ 61,251 at P 56-57 (2004).

[38] GridAmerica LLC (GridAmerica) argues that any long-term pricing structure for the combined Midwest ISO/PJM region must fairly assign costs of new transmission facilities to beneficiaries, regardless of whether they are located within the owner's footprint, and clearly define the allocation of costs to avoid litigation and other project delays. GridAmerica argues for a formulaic methodology that would eliminate case-by-case examination and debate over identifying the beneficiaries with the consideration that beneficiaries can change over time causing a shift in cost allocations. GridAmerica argues that any process that provides for a case-by-case review, either in advance of the project, or over time, provides the opportunity to obstruct construction of upgrades that would relieve constraints or otherwise facilitate competition. Thus, GridAmerica argues, the Commission should apply a beneficiary-pays principle on a pragmatic basis that uses an ex ante functional analysis to assign costs of classes of transmission facilities based on their real world uses. We find that GridAmerica's ideas are well taken but premature. They are more appropriately raised once the RTOs and their transmission owners file a proposal for allocating the cost of new transmission facilities to the customers in each RTO.

transmission systems reasonably reflects the benefits that customers will receive from the elimination of through and out rates. Moreover, as the Regional Pricing Proposal Sponsors point out, the Commission has already determined the appropriate transitional rate mechanism to address cost shifts resulting from the elimination of rate pancaking between the Midwest ISO and PJM, and that is the SECA and the continuation of through and out rates for existing transactions during the transition period that the SECA is in effect. The Going Forward Principles provide for "backstop" SECA filings in compliance with our November 17, 2003 order in Docket No. EL02-111, *et al.*,[39] to be made on or before November 24, 2004, to take effect December 1, 2004, subject to nominal suspension and refund, in the event that the Commission does not otherwise make effective a replacement pricing structure. Consistent with the Going Forward Principles, we will adopt the SECA methodology previously adopted in our November 17, 2003 Order in Docket No. EL02-111, *et al.*,[40] to take effect December 1, 2004, following a nominal suspension and subject to refund and to further orders in the relevant proceedings, as a transitional mechanism to accompany the license plate rate design adopted herein. Consistent with the Going Forward Principles and with our prior orders adopting the SECA, the SECA shall remain in effect for a transition period extending through March 31, 2006.[41] The Commission will direct Midwest ISO, PJM and their transmission owners to make compliance filings implementing the SECA methodology adopted herein on or before November 24, 2004. Because the SECA is designed to recover all of the revenues lost due to the elimination of through and out rates on December 1, 2004, the proposal by the Midwest ISO transmission owners to adjust the

[39] *Midwest Independent Transmission System Operator, Inc., et al.*, 105 FERC ¶ 61,212 at P 43, 97 (2003).

[40] *Id.*

[41] We note that the total scope of lost revenues subject to the SECA in the combined proceedings in Docket Nos. EL02-111 and EL03-212 would now be significantly less due to the fact that all individual transmission owners are within RTOs and the lost revenues at issue are only those associated with crossing the Midwest ISO/PJM border. The approximate amount of lost revenues at issue before was $325 million/year, according to the October 14, 2004 SECA filing of AEP, ComEd and Dayton. Adjusting to only include lost revenues associated with inter-RTO transactions reduces this amount by approximately $110 million/year to a new total of about $215 million/year. In addition, our decision to maintain through and out rates during the transition period that the SECA is in effect for reservations pursuant to requests made before November 17, 2003, and for reservations commencing before April 1, 2004, will further reduce the amount of lost revenues to be recovered through the SECA.

license plate zonal rates under the Midwest ISO tariff to reflect the reduction in through and out transmission service revenues is unnecessary, and therefore, we will reject it. Further, as Quest/WPS recognizes, the SECA adopted by the Commission includes a mechanism to address its cost-shifting concerns.

62. Finally, when accepting the use of license plate rates, the Commission requires that a fixed term be defined, at the end of which the RTO's fixed cost recovery policies will be formally reevaluated. PJM's initial fixed term for use of license plate rates currently extends through May 31, 2005, and Midwest ISO's initial fixed term extends through January 31, 2008. We will adopt a period commensurate with the remaining term of the Midwest ISO's initial term for the use of license plate rates to price transmission service between the two RTOs.[42] This will allow the RTOs and their stakeholders time to focus their efforts on efficiently planning and pricing new facilities to support regional transmission service and also on integrating their markets. The transparency in both the planning process and market operation that the RTOs will bring about should provide a strong factual basis to support the reassessment of regional rate design at the end of this term. Therefore, the RTOs and their transmission owners are directed to make a filing at least six months prior to the end of this period containing a reevaluation of fixed cost recovery policies for pricing transmission service between the two RTOs and proposing a rate design to take effect February 1, 2008. This is a minimum term before the end of which the fixed cost recovery policies for service between the RTOs must be formally reevaluated. It is not a mandate that license plate rates for service between the RTOs must be eliminated at the end of the term. Nor does it establish a moratorium on rate design changes as is proposed in the Offer of Settlement.

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[42] Our adoption of an initial fixed term extending through January 31, 2008 for the use of license plate rates for service between the two RTOs, commensurate with the transition period for use of license plate rates for service within Midwest ISO, does not alter the initial fixed term extending through May 31, 2005 for the use of license plate rates for service within PJM or the obligation of the PJM transmission owners to file on or before January 31, 2005, a reevaluation of the rate design for intra-RTO service and a proposed rate design to take effect on June 1, 2005 in accordance with the settlement approved in *Allegheny Power System Operating Companies, et al*., 108 FERC ¶ 61,167 (2004). Thus, while we are accepting the use of license plate rates for service between the two RTOs through January 31, 2008, we are not deciding here whether the use of license plate rates should continue for service within PJM or whether PJM should adopt postage stamp rates (*i.e.* consolidate license plate pricing zones), or some other rate design, for service within PJM after May 31, 2005.

63. We reject the Regional Pricing Plan. This plan requires not only a novel approach to inter-RTO transmission pricing, but also the restructuring of intra-RTO transmission service rates in both the Midwest ISO and PJM regions. Because it was filed under section 206 of the FPA, it would require a finding that the existing rate design for intra-RTO service in each Midwest ISO and PJM is no longer just and reasonable. However, our prior orders in these proceedings have not challenged the reasonableness of the existing rate design for intra-RTO service, and we are not persuaded at this time to expand the scope of these proceedings to do so.

64. Moreover, the Regional Pricing Plan Sponsors have not adequately supported their proposal and, therefore, it cannot be implemented on December 1, 2004. For example, the proposed voltage-based element is based upon generalizations about the function of transmission facilities operating at different voltage levels, but contains no analysis of the actual function of facilities in various areas of the combined region in supporting regional reliability or regional markets. The proposal also fails to adequately address the function of substations or demonstrate the reasonableness of allocating substation investment on the basis of transmission line investment. Nor has the proposal adequately supported weighting the allocation of facilities below 700 kV by the level of investment in the voltage class.

65. In addition, the usage-based element presents a host of even more serious questions about the reasonableness of its design, as well as implementation issues that prevent it from being a viable option as of December 1, 2004. For example, the proposal does not satisfactorily address how the usage-based allocation will be coordinated with the assignment of the cost of new facilities to those who benefit from the facilities. It does not address the implications of including or excluding such facilities from the flow model. Nor have the Regional Pricing Plan Sponsors adequately explained why it is reasonable to allocate none of the zonal transmission revenue requirement regionally when the zone is a net importer for the hour. It is unclear as to why it is reasonable to assume that the transmission facilities in a zone in a net import situation provide no role in facilitating regional service, despite the change in flows on those facilities indicated by the model. Furthermore, the market and flow model relies upon numerous assumptions and forecasts that have not been supported and are in dispute. Accordingly, we reject this proposal as unsupported. However, we remain hopeful that parties in the combined PJM/Midwest ISO region will continue to develop and refine options for consideration when the license plate rate design is subject to formal reevaluation, including further evaluation of the numerous factual and design concerns raised by protesters in this proceeding concerning the Regional Pricing Proposal.

66. We direct Midwest ISO and PJM to submit revised tariff sheets by November 24, 2004, to implement the elimination of through and out rates, and adoption of the replacement rate design, effective December 1, 2004. These filings should: (1) reflect December 1, 2004, as the effective date for elimination of through and out rates[43] for reservations pursuant to requests made on or after November 17, 2003, for service commencing on or after April 1, 2004, for transactions to serve load within the other RTO where transmission service is taken under the open access transmission tariff of the other RTO; (2) reflect April 1, 2006 as the effective date for elimination of through and out rates for all transactions to serve load within the other RTO where transmission service is taken under the open access transmission tariff of the other RTO; and (3) incorporate the SECA mechanism as the transitional replacement rate effective December 1, 2004 through March 31, 2006.

C. FTRs

1. Comments

67. The Unified Plan Proponents do not propose to alter the FTR allocation methodologies in effect for either RTO, but propose, in the Offer of Settlement, to ensure that the FTR or Auction Revenue Rights (ARR) entitlements are preserved for existing long-term firm point-to-point transmission service reservations associated with transactions crossing the Midwest ISO/PJM seam until such time as Midwest ISO and PJM have integrated their respective FTR allocation processes. The Unified Plan Proponents state that, if as a result of eliminating through and out rates, the affected customers were to lose the FTRs or ARRs associated with their service, they would forfeit some or all of the benefits of elimination of the through and out rates.

68. The Regional Pricing Plan Sponsors propose to maintain the methodologies currently in effect for allocating FTRs and ARRs in PJM and Midwest ISO, until PJM and Midwest ISO have integrated their respective FTR allocation processes, except that they propose certain principles as a basis for a just and reasonable allocation of FTRs and ARRs by PJM for customers holding long-term firm point-to-point reservations, as required by the Commission in its orders in Docket Nos. ER04-742-000, EL04-105-000 and ER04-1077-000 relating to the integration of AEP, ComEd, and Dayton into PJM.

[43] We define the Midwest ISO through and out rate as the single, system-wide transmission rate in Schedules 7 and 8, and the Schedule 14 Regional Through and Out Rate. For PJM, the through and out rate is the single system-wide transmission rate for non-zone network load in section 34.1 and for delivery to the PJM border in Schedules 7 and 8, and the Transitional Revenue Neutrality Charge (TRNC).

69. In arguing against license plate rates, several parties argue that it is inappropriate to continue to allocate FTRs and ARRs to customers that are no longer paying through and out rates. The Illinois Commission states that the correct FTR allocation principle is that those who pay for the embedded costs of the transmission system should receive FTRs.

70. WPSC/UPPCo,Wisconsin Electric and Edison Sault submit that the Regional Pricing Plan Sponsors' proposed principles violate the Commission's determination that both network and point-to-point transmission service should be treated comparably with respect to FTR/ARR allocations and would need to be modified accordingly.[44] They further assert that the only adequate way of ensuring that there are no seams between the RTOs as a result of AEP and ComEd joining PJM is the implementation of a single FTR/ARR allocation mechanism between the two RTOs. WPSC/UPPCo recommend that the Commission require the filing of a FTR/ARR allocation mechanism by February 1, 2005 that effectively integrates FTR allocation throughout the combined PJM/Midwest ISO region to eliminate effects of the seam.

71. American Municipal Power-Ohio, Inc. (AMP-Ohio) states that it provided transaction information to Unified Plan Proponents for inclusion among the reservations provided grandfathered FTR status in the Offer of Settlement but that certain AMP-Ohio transactions were inexplicably omitted from the list filed with the settlement, and requests their inclusion.

72. Cinergy notes its prior arguments in these proceedings about the need to address the potential for hoarding transmission capacity and believes that a procedure to address the problem should be established before through and out rates are eliminated. Cinergy requests that the issue of hoarding be addressed in compliance filings addressing the implementation of the Unified Plan or any other long-term pricing structure the Commission adopts, or, alternatively, that the Commission establish a technical conference to address the issue. It describes its concern as a "scheduling issue" or "a technical detail of rate implementation, not rate design." Cinergy draws analogies to section 30.7 of the Order No. 888 *pro forma* tariff, stating that it establishes requirements for the designation of network resources, and proposes that transmission customers should be required to meet similar requirements before being relieved of charges for through and out service.

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[44] Wisconsin Electric and Edison Sault protest at 13, *citing*, *PJM Interconnection, LLC*, 107 FERC ¶ 61,223 at P 47 (2004).

73. EME Companies reply that the issue of transmission capacity hoarding is outside the scope of either rate design proposal, is untimely, and is contrary to Commission precedent. In the latter regard, it cites Order No. 888, where the Commission found that that transmission hoarding concerns will be addressed on a case-by-case basis when substantial allegations of transmission hoarding have been raised. The EME Companies suggest that Cinergy's characterization of this issue as one of rate implementation, not rate design, is sufficient reason why it should not be addressed in this proceeding. The EME Companies point out that, in its earlier orders in this proceeding, the Commission directed the RTOs' market monitors to stay alert to hoarding activity and to promptly file proposed solutions when they detect any hoarding. The EME Companies state that, in the absence of any such evidence, Cinergy's request for a generic solution to hypothetical transmission hoarding concerns must be rejected from this proceeding. Moreover, the EME Companies state that Cinergy's proposal to adopt network resources-type requirements before reserving through and out service is discriminatory and could discourage efficiency in energy markets.

2. Commission Determination

74. We will allow the existing FTR and ARR allocation procedures in each RTO's tariff to continue in effect once through and out rates are eliminated on December 1, 2004, subject to the outcome of Docket Nos. ER04-691 and EL04-104 with respect to Midwest ISO's tariff and subject to the outcome of Docket Nos. ER04-742, EL04-105, and ER04-1077 with respect to PJM's tariff. We disagree with the opponents of license plate rates that it is unreasonable to allocate FTRs or ARRs to through and out service reservations for which no through and out rate is paid. Under the license plate rate design, after the transition period, load in each zone pays the license plate rate for that pricing zone and receives reciprocal access to service over the entire regional transmission system, including firm service, at non-pancaked rates. This is reasonable and consistent with FTR and ARR allocations in effect with the license plate rate design currently within each RTO. Moreover, during the transition period that the SECA adopted herein is in effect, transmission providers will still collect revenues for through and out service through the SECA.

75. Since we are not altering the FTR allocation methodology currently in effect in each RTO's tariff, existing FTR and ARR entitlements will not be affected. It is therefore unnecessary to grandfather such FTR and ARR allocations as proposed in the Offer of Settlement, and, accordingly, we will not adopt that proposal. Regarding the

Regional Pricing Plan Sponsors' proposed principles addressing comparability in FTR allocations between point-to-point and network service in PJM, these should be raised in the stakeholder process currently addressing this issue.[45]

76. Regarding Cinergy's concerns about hoarding, we find this to be essentially a transitional issue prior to the RTOs' implementation of integrated tariff provisions to reserve and schedule service seamlessly over the combined Midwest ISO/PJM region, including integrated FTR allocation procedures, to support their planned joint and common market. Midwest ISO and PJM are required to make a filing on or before December 31, 2004, indicating the steps that need to be taken to achieve a joint and common market and proposing a timeline for completing those steps,[46] and should specifically address their plans for resolving these issues in that filing. Subsequently, WPSC/UPPCo's concerns regarding the timeline for completing these measures should be raised in response to that filing. In the meantime, as we previously directed[47] the market monitors of Midwest ISO and PJM should assess the potential for, and look for signs of, hoarding transmission capacity. Should they detect any, they should notify us and their respective RTOs immediately, and the RTOs should promptly file a proposal to rectify the matter.

D. Pancaking Ancillary Service Rates

1. Comments

77. Wisconsin Electricpoints out that neither the Unified Plan nor the Regional Pricing Plan proposal address an issue critical to the complete elimination of seams throughout the super-region, the pancaking of rates for scheduling and other ancillary services under both of the RTOs' tariffs for transmission service to loads within the combined Midwest ISO/PJM region. Wisconsin Electric explains that, despite doubts expressed by others in stakeholder meetings, it believes the Commission's mandate to eliminate the Midwest ISO-PJM seam requires the elimination of duplicative scheduling and ancillary service charges for a single transaction fully within the combined region. Wisconsin Electric proposes that this issue be addressed by adopting the Unified Plan subject not only to refund but to the outcome of a stakeholder process designed to integrate the provisions for scheduling and other ancillary service under the RTOs' tariffs and suggests that the

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[45] *PJM Interconnection, LLC*, 107 FERC ¶ 61,223 at P 47 (2004).

[46] *PJM Interconnection, LLC, et al*., 109 FERC ¶ 61,094 at P 16 (2004).

[47] *Midwest Independent Transmission System Operator, Inc., et al*., 104 FERC ¶ 61,105 at P 38 (2003).

new investigation initiated in Docket No. EL04-135-000 is the perfect forum to once and for all eliminate the harmful effects of the seam. Wisconsin Electric asks the Commission to require Midwest ISO and PJM to submit tariff provisions to integrate scheduling and other ancillary services within the combined Midwest ISO/PJM region at non-pancaked rates.

2. Commission Determination

78. We agree with Wisconsin Electric that pancaking of rates for scheduling and other ancillary services must be addressed in order to fully eliminate the seams between Midwest ISO and PJM; however, that is not an issue for this proceeding. Nevertheless, Midwest ISO and PJM must develop integrated tariff provisions to reserve and schedule service seamlessly over the combined Midwest ISO/PJM region as a prerequisite to achieving the joint and common market, and should address the elimination of pancaking of rates for scheduling and other ancillary services in that process. As noted above, Midwest ISO and PJM are required to make a filing on or before December 31, 2004, indicating the steps that need to be taken to achieve a joint and common market and proposing a timeline for completing those steps. Midwest ISO and PJM should specifically address their plans for resolving these issues in that filing.

E. Through and Out Network Service

1. Comments

79. FirstEnergy requests that the Commission confirm that rates for network transmission service taken under PJM's tariff to serve load in the Midwest ISO, *i.e.*, through and out network service, are eliminated as of December 1, 2004. FirstEnergy argues that nothing in the Commission's various orders leading to this proceeding suggests that the Commission intended to treat through and out network service differently than through and out point point-to-point service. FirstEnergy argues that both situations result in pancaked rates and are therefore equally inconsistent with Commission goals of competitive markets.

2. Commission Determination

80. The Commission confirms that rates for both point-to-point service and network service under one RTO's tariff to serve load in the other RTO are eliminated as of December 1, 2004. While network service is generally not taken for through and out service, FirstEnergy does identify certain borderline customers that use through and out network service under the PJM tariff to serve load located within Midwest ISO. It is not the Commission's intention to perpetuate rate pancaking for inter-RTO service in such

situations. We therefore clarify now that rates for through and out network service are eliminated as of December 1, 2004, and direct PJM to include revisions in its tariff to reflect this in its compliance filing ordered above.[48]

F. PJM's April 5, 2004 Compliance Filing

1. Summary of Compliance Filing

81. In addition to tariff language eliminating through and out rates, in its April 24 filing PJM also submitted proposed revisions to implement portions of the Going Forward Principles effective May 1, 2004. These proposed revisions include: (1) tariff revisions to implement an effective rate of $1.00/kW/month, during the period that through and out rates remain in effect, for certain existing transactions that exit PJM through the ComEd transmission zone; (2) tariff revisions to establish an expansion integration charge (EIC) applicable to load and generation in PJM following the integration of ComEd to make up a portion of the revenue lost by expanding PJM; (3) tariff revisions to limit the applicability of Schedule 11, Transitional Market Expansion Charge (TMEC), to the existing PJM transmission zones; and (4) tariff revisions to allocate the revenues associated with the PJM regional through and out rate and the EIC revenue received following the expansion of PJM through November 30, 2004. On July 15, 2004, as supplemented on July 16, 2004, the Administrative Committees of the PJM Transmission Owners Agreement and the PJM West Transmission Owners Agreement (the PJM Transmission Owners) submitted a motion to include four transactions inadvertently omitted from mention in the Going Forward Principles. PJM Transmission Owners state that these four transactions qualify for an effective rate of $1.00/kW/month, effective as of May 1, 2004, the date that ComEd was integrated into PJM, and continuing through the period that through and out rates remain in effect and should have been mentioned in the Going Forward Principles. PJM Transmission Owners request that PJM be directed to apply a credit against future bills applicable to these transactions in order to implement the $1.00/kW/month rate effective May 1, 2004.

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[48] *See supra* P 62 & n 38. We note that section 31.3 of Midwest ISO's tariff does not allow network service to be used to serve load not physically interconnected with a transmission owner within the geographic area in which facilities subject to the tariff are located, *i.e.*, through and out network service is not available under Midwest ISO's tariff.

2. **Comments**

82. Wisconsin Electric argues that the proposed tariff language fails to fully implement the provision of the Going Forward Principles that provides an effective rate of $1.00/kW/month for certain transactions listed in the Going Forward Principles. Wisconsin Electric takes issue with the fact that PJM will implement this by providing a credit equal to the difference between the base through and out rate (Schedule 7) plus the TRNC, and $1.00/kW/month. Wisconsin Electric states that the crediting mechanism just based on the base rate and the TRNC does not reflect additional charges that may be assessed on through and out service, and may not result in a true effective rate of $1.00/kW/month.

83. Wisconsin Electric, Consumers Energy, and the Delaware Municipal Electric Corporation, Inc. (Delaware Municipal) either protested or submitted comments on PJM's proposed EIC. Wisconsin Electric takes issue with the PJM tariff language proposing to charge the EIC on exports from the PJM Region. Wisconsin Electric states that it does not receive any benefits from ComEd's integration into PJM and should not be required to fund that integration. Therefore, Wisconsin Electric states that PJM should be required to limit the EIC to transactions sinking in the expanded PJM footprint, and should not assess it on exports. Moreover, Wisconsin Electric states that the Going Forward Principles does not in any way provide for the EIC to be charged on exports. In fact, it points to language in the Going Forward Principles that it claims indicates that the EIC "will be charged in the existing PJM pricing zones and in the Commonwealth Edison Pricing zone."[49] Consumers states that PJM provides no justification for proposing the EIC as a stated rate, rather than a formula rate, and is concerned that a stated rate will result in over-collection. Consumers Energy requests that the Commission reject the proposed EIC and direct PJM to calculate the EIC using a formula rate. Delaware Municipal states that PJM has not justified the proposed EIC and that the Commission should direct PJM to support its derivation of the proposed EIC before it approves the charges to recover the proposed expansion costs.

84. In its answer, the PJM Transmission Owners states that Wisconsin Electric's protest to the $1.00/kW/month rate provision is without merit. The PJM Transmission Owners indicates that the PJM compliance language fully implements the provision in the Going Forward Principles providing an effective rate of $1.00/kW/month for certain transactions.

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[49] *See* Wisconsin Electric Protest at 9, *citing* Going Forward Principles at P 9.

85. The PJM Transmission Owners also state that PJM's April 5 compliance filing correctly establishes the EIC for transmission service delivered in PJM as well as transmission service to export from the PJM footprint. The PJM Transmission Owners state that the tariff language defining the applicability of the EIC is appropriate since it is identical to the language defining the applicability of the TMEC, which has always applied to transactions that exit the PJM system. The PJM Transmission Owners also state that Consumers Energys' request for a true-up of the EIC would be inconsistent with the Going Forward Principles and that any true-up could only be accomplished by a cumbersome and costly retroactive refund of excessive charges or a rebilling of under-collections. The PJM Transmission Owners further argue that it would be difficult, if not impossible, to identify who should receive the refunds or additional billings since both volumes and customers will differ over the seven-month period but any over- or under-collection would apply to the whole period.

3. Commission Determination

86. In response to Wisconsin Electric's concerns over PJM's tariff language implementing the $1.00/kW/month effective rate, we find that PJM's proposal is consistent with the Going Forward Principles. Specifically, paragraph 10 of the Going Forward Principles, provides:

> While the through and out rates remain in effect, the existing transactions listed and defined in Attachment B shall receive a credit against the total applicable PJM through and out charges such that the effective rate under those transactions is $1.00/kW/month.

As we expressly stated in our November 17 Order,[50] the rates for through and out service at issue in this proceeding under PJM tariff consist of the PJM border rate and the TRNC, not charges for ancillary services or other administrative charges that also may be assessed on through and out on transactions. It is reasonable to interpret the above-quoted provision in the Going Forward Principles as applying only to the through and out rates that are at issue in this proceeding. Accordingly, these are the only rates that should figure into the calculation of the $1.00/kW/month effective rate.

87. With respect to the proposed EIC, we find that PJM's tariff language appropriately implements the Going Forward Principles' provisions for this charge. We are not convinced that the EIC should be calculated formulaically or that there should be a true-

[50] *Midwest Independent Transmission System Operator, Inc., et al.*, 105 FERC ¶ 61,212 at P 2 n.4 (2003).

up, as suggested by Consumers. The Going Forward Principles do not provide for a true-up or that it should be based on a formula. In addition, we find, based on the PJM Transmission Owners' answer, that the stated EIC rate in PJM's April 5, 2004 compliance filing has been adequately supported. We agree with Wisconsin Electric that the Going Forward Principles do not provide for the EIC to be charged on exports. The Going Forward Principles state that "a new charge will be added to the PJM Tariff based on administrative savings resulting from integration of Commonwealth Edison in to PJM will be charged in the existing PJM pricing zones and in the Commonwealth Edison pricing zone, effective upon the date of Commonwealth Edison's integration."[51] This language explicitly states that the new charge (*i.e.*, the EIC) will be charged to existing zones and the ComEd zone. It does not mention applicability to exports from the PJM footprint. Accordingly, we direct PJM to submit revised tariff sheets by November 24, 2004, reflecting that the EIC does not apply to exports. The portions of PJM's April 5, 2004 compliance filing for the period from May 1, 2004, through November 30, 2004, are conditionally accepted, as discussed above, effective May 1, 2004.

The Commission orders:

(A) The proposed Regional Zonal Rate Design is hereby conditionally accepted for filing and suspended for a nominal period, to become effective December 1, 2004, subject to refund and to further orders in the relevant proceedings, as well as to the filings directed in the body of this order, as discussed in the body of this order.

(B) Midwest ISO's April 5, 2004 compliance filing is hereby conditionally accepted for filing, to take effect May 1, 2004, subject to the filings directed in the body of this order, as discussed in the body of this order.

(C) Midwest ISO, PJM, and their transmission owners are hereby directed to submit the compliance and other filings discussed in the body of this order.

(D) The proposed Regional Pricing Plan is hereby rejected.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

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[51] Going Forward Principles at P 9.

Appendix A

Alcoa Power Generating Inc.[1, 2]
Allegheny Electric Cooperative, Inc. (Allegheny Electric) and Soyland Power Cooperative, Inc. (Soyland)[1, 2]
Allegheny Power and Allegheny Energy Supply Co.[1, 2]
Ameren Services Company on behalf of Central Illinois Light Co., Central Illinois Public Service Co., Illinois Power Co., and Union Electric Co. (collectively, Ameren)[1, 2]
American Electric Power Service Corp. on behalf of: Appalachian Power Service Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co., Wheeling Power Co. (collectively AEP). [1, 2]
American Forest & Paper Assoc.[1, 2]
American Municipal Power-Ohio, Inc. (AMP-Ohio)[1, 2]
Baltimore Gas & Electric Co. (BG&E)[1, 2]
Borough of Chambersburg, Pennsylvania[1, 2]
BP Energy Co. [2]
Buckeye Power, Inc.[1, 2]
Certain Midwest ISO Transmission Owners: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Cinergy ; City of Columbia Water and Light Department, Columbia; City Water, Light & Power, Springfield, IL; FirstEnergy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Minnesota Power and its subsidiary Superior Water, L&P; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company-Wisconsin, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation; Southern Illinois Power Cooperative; and Southern Indiana Gas & Electric Company [1]
Cinergy Services, Inc. for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co. (collectively, Cinergy)[1, 2]
City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland[1, 2]
City of Naperville, Illinois[1, 2]
Clay Electric Cooperative, Inc.[1, 2]
Coalition of Midwest Transmission Customers[1, 2]
Consolidated Edison Co. of New York, Inc.[1, 2]
Constellation Power Source, Inc.[1, 2]
Consumers Energy Co. (Consumers Energy)[1, 2]
Dairyland Power Cooperative[1, 2]
Dayton Power and Light Co. (Dayton)[1, 2]
Delaware Municipal Electric Corp. (Delaware Municipal)[1, 2]
Delaware Public Service Commission[1, 2]
District of Columbia Office of the People's Counsel[2]
Duke Energy North America, LLC, and Duke Energy Trading and Marketing, LLC (collectively, Duke Energy)[1, 2]

Duquesne Light Co.[2]
Dynegy Power Marketing and Dynergy Midwest Generation, Inc.[1, 2]
Edison Mission Energy, Edison Mission Marketing and Trading Inc., and Midwest Generation EME, LLC (collectively, EME Companies)[1, 2]
Exelon Corp., on behalf of: Exelon Corp., Commonwealth Edison Co., Commonwealth Edison Co. of Indiana, Inc., and PECO Energy Co. (together, Exelon)[1, 2]
FirstEnergy Service Co. on behalf of American Transmission Systems, Incorporated (FirstEnergy)[2]
Great Lakes Utilities[1, 2]
Great River Energy[1, 2]
GridAmerica LLC (GridAmerica)[1, 2]
Illinois Commerce Commission (Illinois Commission)[1, 2]
Illinois Industrial Energy Consumers[1, 2]
Illinois Municipal Electric Agency (Illinois Municipal Electric)[1, 2]
Indiana Municipal Power Agency (Indiana Municipal Power)[1, 2]
Indiana Utility Regulatory Commission (Indiana Commission)[2]
Iowa Utilities Board[1, 2]
Kentucky Public Service Commission[1, 2]
KNAPP Management Services[2]
LG&E Corporations for Louisville Gas and Electric Co. and Kentucky Utilities Co. (LG&E) [1]
Madison Gas and Electric Co.[1, 2]
Maryland Public Service Commission[1, 2]
Michigan Electric Transmission Co., LLC[2]
Michigan Public Power Agency and Michigan South Central Power Agency[1, 2]
Michigan Public Service Commission[1, 2]
Midamerican Energy Co. [1, 2]
Mid-Continent Area Power Pool[1, 2]
Midwest Independent Transmission Operator[1, 2]
Midwest Stand-Alone Transmission Co.: American Transmission Co. LLC, International Transmission Co. and Michigan Electric Transmission Co., LLC[1, 2]
Minnesota Department of Commerce [2]
Mirant Corp.[1, 2]
Missouri Public Service Commission[1, 2]
Morgan Stanley Capital Group, Inc. [1, 2]
Monitoba Hydro (Manitoba)[1, 2]
Mt. Carmel Public Utility Co.[1, 2]
Multiple TDUS: Bay City, Michigan, Blue Ridge Power Agency, Central Virginia Electric, Cooperative, Craig-Botetourt Electric Cooperative, Dowagiac, Michigan, ElectriCities of North Carolina, Inc., Michigan Public Power Rate Payers Association, Missouri Joint Municipal Electric Utility Commission, Nordic Marketing, L.L.C., Old Dominion Electric Cooperative, Sturgis, Michigan, Thumb Electric Cooperative, Virginia Municipal Electric Association No. 1, Wisconsin Public Power Inc.[1, 2]

North Carolina Electric Membership Corp.[1, 2]
North Dakota Public Service Commission[1, 2]
Northern Illinois Municipal Power Agency[1, 2]
Northern Indiana Public Service Co.[1, 2]
Nucor Steel[1, 2]
Ormet Primary Aluminum Corp.[1, 2]
Pennsylvania Public Utility Commission[1, 2]
Pepco Holdings, Inc. on behalf of Potomac Electric Power Co., Atlantic City Electric Co., and Delmarva Power & Light Co. [1, 2]
PJM Industrial Customer Coalition (PJM Industrial Customers)[1, 2]
PJM Interconnection LLC (PJM)[1, 2]
PPL Electric Utilities Corporation[1]
PPL Energy Plus, LLC and PPL Generating Cos. [1, 2]
Public Power Association of New Jersey[1, 2]
Public Service Commission of West Virginia[2]
Public Service Commission of Wisconsin[1, 2]
Public Service Electric and Gas Co., and PSEG Energy Resources & Trade LLC[1, 2]
Public Utilities Commission of Ohio (Ohio Commission)[1, 2]
Quest Energy LLC and WPS Energy Services (Quest/WPS)[1, 2]
Reliant Energy, Inc. [2]
Southern Maryland Electric Cooperative, Inc. (SMECO)[1, 2]
Southwestern Electric Cooperative, Inc.[1, 2]
Steel Dynamics[1]
The Detroit Edison Co. (Detroit Edison)[1, 2]
Town of Front Royal, Virginia (Front Royal)[1, 2]
Trans-Elect Inc.[1, 2]
Virginia Committee for Fair Utility Rates[2]
Virginia Electric & Power Co.[1, 2]
Virginia State Corporation Commission[1, 2]
Wabash Valley Power Association, Inc. (Wabash Valley)[1, 2]
Wisconsin Electric Power, Co. (Wisconsin Electric) and Edison Sault Electric Co. (Edison Sault); [1, 2]
Wisconsin Public Service Corp. and Upper Peninsula Power Co. (WPSC/UPPCo) [1, 2]
Wolverine Power Supply Cooperative, Inc. (Wolverine)[1, 2]

[1] ER05-6-000
[2] EL04-135-000