

122 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

American Electric Power Service Corporation

Docket Nos. EL07-101-000

v.

(Not
Consolidated)

Midwest Independent Transmission System Operator,
Inc. and PJM Interconnection, L.L.C.

and

Midwest Independent Transmission System Operator,
Inc.

ER05-6-100

Midwest Independent Transmission System Operator,
Inc., PJM Interconnection, L.L.C., *et al.*

EL04-135-103

Midwest Independent Transmission System Operator,
Inc., PJM Interconnection, L.L.C., *et al.*

EL02-111-120

Ameren Services Company, *et al.*

EL03-212-116

(Consolidated)

ORDER ON COMPLIANCE FILING AND DENYING COMPLAINT

(Issued January 31, 2008)

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1. On September 17, 2007, American Electric Power Service Corporation, on behalf of certain operating companies of the American Electric Power System¹ (collectively, AEP) filed a complaint (AEP Complaint), pursuant to sections 206 and 306 of the Federal Power Act (FPA)² and Rule 206 of the Commission's Rules of Practice and Procedure,³ against Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) challenging the justness and reasonableness of the rate designs underlying the Midwest ISO and PJM open access transmission tariffs (tariffs).

2. On August 1, 2007, PJM, certain of the PJM Transmission Owners (PJM TOs),⁴ Midwest ISO, and certain of the Midwest ISO Transmission Owners (Midwest ISO TOs)⁵ filed, in compliance with the Commission's directive in Docket No. ER05-6-000,

¹ Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company.

² 16 U.S.C. §§ 824e, 825e (2000 & Supp. V 2005).

³ 18 C.F.R. § 385.206 (2007).

⁴ For purposes of this filing, the PJM TOs consist of: Allegheny Electric Cooperative, Inc.; Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company; Baltimore Gas & Electric Company; The Dayton Power and Light Company; Virginia Electric and Power Company; Duquesne Light Company; Exelon Corporation, on behalf of its operating company affiliates Commonwealth Edison Company (and its wholly-owned subsidiary, Commonwealth Edison Company of Indiana, Inc.) and PECO Energy Company; Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company; Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

⁵ For purposes of this filing, the Midwest ISO TOs consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and

(continued...)

et al.,⁶ a reevaluation of fixed cost recovery policies for pricing transmission service between Midwest ISO and PJM (together, the RTOs) and submitted their Independent RTO Pricing Design (IRPD), a proposed methodology for pricing transmission service between the RTOs effective February 1, 2008. In its complaint, AEP asks the Commission to consolidate the AEP Complaint with the IRPD proceeding.

3. For the reasons set forth below, we will deny the AEP Complaint and will accept the IRPD proposal. Further, we will deny AEP's request to consolidate its complaint in Docket No. EL07-101-000 with the ongoing proceedings in Docket No. ER05-6-100, *et al.*

I. Background

4. On December 20, 1999, the Commission issued Order No. 2000, setting forth its policy on Regional Transmission Organizations (RTOs).⁷ Among other things, the Commission stated that a central goal of its RTO policy is the elimination of rate pancaking. Therefore, it prohibited RTOs from assessing customers multiple access charges for the same transaction to recover fixed costs (*i.e.*, pancaked rates).⁸ The Commission acknowledged that by eliminating rate pancaking within an RTO, it would

Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy, Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 62 (November 2004 Order), *clarified*, 109 FERC ¶ 61,243 (2004).

⁷ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁸ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,174.

face the difficult issue of whether to allow RTOs to use a license-plate rate design,⁹ and if so, whether that rate design should be used only for a transitional period or on a permanent basis.¹⁰

5. The Commission decided to allow an RTO to propose the use of license-plate rates to recover the costs of existing facilities for an initial fixed period of the RTO's choosing, and it also required the RTO to explain whether it will use license-plate rates or some other mechanism to recover the cost of new facilities.¹¹ Before the end of the initial fixed period, each RTO would have to evaluate its fixed cost recovery policies based on its individual factual situation and file with the Commission its recommendations on any changes that should be instituted. The Commission stated that it was "not requiring that the RTO continue or abandon the use of license plate rates at that time, but [the Commission would] require the RTO to justify its choice to continue or discontinue using license plate rates, or otherwise change the method for fixed cost recovery."¹²

A. Inter-RTO Rates

6. Also on December 20, 1999, the Commission issued the first in a series of orders addressing a proposal made by several public utilities (collectively, the Alliance Companies) to form the Alliance RTO.¹³ Ultimately, the Commission concluded that the Alliance RTO, as proposed, lacked sufficient scope to exist as a stand-alone RTO.¹⁴ As a

⁹ 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 (TOs) or groups of TOs. 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 RTO grid.

¹⁰ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,176.

¹¹ *Id.* at 31,177-78.

¹² *Id.*

¹³ *Alliance Cos.*, 89 FERC ¶ 61,298 (1999), *order on reh'g and compliance*, 91 FERC ¶ 61,152 (2000), *order on reh'g and compliance*, 94 FERC ¶ 61,070, *order on reh'g*, 95 FERC ¶ 61,182 (2001).

¹⁴ *Alliance Cos.*, 96 FERC ¶ 61,052, *order on reh'g*, 97 FERC ¶ 61,327 (2001).

consequence, the Commission required each of the Alliance Companies to inform the Commission which RTO (Midwest ISO or PJM) it proposed to join, consistent with Order No. 2000 and with certain of the Alliance Companies' merger-related commitments to join an RTO.¹⁵

7. The Alliance Companies submitted their choices to join either Midwest ISO or PJM, and the Commission conditionally accepted those choices on July 31, 2002.¹⁶ In response to concerns about seams issues related to the RTO configurations that would result from the Alliance Companies' choices, the Commission also instituted, under section 206 of the FPA, an investigation and hearing of the through-and-out rates that Midwest ISO and PJM charged for inter-RTO transmission service (*i.e.*, where the source is in one RTO and the sink is in the other RTO), which resulted in rate pancaking for transactions crossing the seam between the two RTOs.¹⁷ On July 23, 2003, after the hearing was held and an Initial Decision was issued, the Commission issued an order finding that the rate pancaking that resulted from Midwest ISO's and PJM's through-and-out rates, when applied to transactions sinking within the combined proposed Midwest ISO/PJM footprint, was unjust and unreasonable. Accordingly, the Commission directed the RTOs to eliminate the rate pancaking for such transactions.¹⁸

¹⁵ *Alliance Cos.*, 99 FERC ¶ 61,105 (2002).

¹⁶ *Alliance Cos.*, 100 FERC ¶ 61,137, at P 49 (2002), *order on clarification*, 102 FERC ¶ 61,214, *order on reh'g and clarification*, 103 FERC ¶ 61,274, *order on reh'g and clarification*, 105 FERC ¶ 61,215 (2003).

¹⁷ *Alliance Cos.*, 100 FERC ¶ 61,137 at P 50.

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (July 2003 Order), *order on reh'g*, 105 FERC ¶ 61,212 (2003) (November 2003 Order). The Commission stated:

In sum, the choices of the former Alliance Companies as to which RTOs they join: (1) exacerbate rate pancaking across the proposed seam for transactions sinking within the RTOs, thereby obstructing more efficient and competitive electricity markets in the region; (2) violate the fundamental requirement of Order No. 2000 that RTOs eliminate rate pancaking over a region of appropriate scope and configuration; and (3) result in unjust, unreasonable, unduly discriminatory or preferential RTO rates.

July 2003 Order, 104 FERC ¶ 61,105 at P 35 (internal citation omitted).

8. Among other things, the Commission determined that this rate pancaking violates the RTO policy it outlined in Order No. 2000. Although the rate pancaking and rate design principles in Order No. 2000 relate to *intra*-RTO transactions, the Commission explained that rate pancaking across the Midwest ISO/PJM seam was incorrectly characterized as *inter*-RTO rate pancaking. As a consequence of the RTO configurations caused by two of the Alliance Companies' decisions to join PJM instead of Midwest ISO (specifically, AEP and Commonwealth Edison Company), the Commission determined that rate pancaking across the Midwest ISO/PJM seam must be eliminated so that the RTO choices comply with Order No. 2000's requirement that RTOs eliminate rate pancaking over a region of appropriate scope and configuration. Thus, the Commission found that rate pancaking across this seam constitutes *intra*-RTO rate pancaking, which is unequivocally prohibited under Order No. 2000. The Commission found that the solution was to eliminate the through-and-out rates that cause this rate pancaking and that essentially create the seam between the RTOs.¹⁹

9. On November 18, 2004, after considering two competing proposals on what rate design should replace through-and-out rates, the Commission issued an order directing the RTOs to use license-plate rates for inter-RTO transmission service, effective December 1, 2004.²⁰ For inter-RTO service, Midwest ISO and PJM treat transactions that source in one RTO and sink in the other RTO the same as transactions that source and sink entirely in one RTO. These inter-RTO transactions are assessed only the applicable zonal charge of the sink zone; the RTO where these transactions originate would not assess a charge.

10. Consistent with the policy outlined in Order No. 2000, the Commission implemented license-plate rates for an initial fixed period, ending on January 31, 2008, and required the RTOs and their TOs to make a filing at least six months prior to the end of this fixed period (*i.e.*, August 1, 2007) reevaluating the license-plate rate design for inter-RTO service and proposing a rate design to take effect on February 1, 2008. The Commission stated that the required reevaluation "is not a mandate that license plate rates for service between the RTOs must be eliminated at the end of the term."²¹ The Commission also required the RTOs and their TOs to address how they would recover

¹⁹ *Id.*

²⁰ November 2004 Order, 109 FERC ¶ 61,168 at P 54-62. The Commission also adopted a 16-month transitional lost revenue recovery mechanism related to the elimination of rate pancaking (the transitional seams elimination charge/cost adjustment/assignment (SECA) charges), which expired on March 31, 2006.

²¹ *Id.* P 62.

the cost of new transmission facilities during the initial fixed period and directed them to develop a joint proposal for allocating to customers in each RTO the cost of new transmission facilities that are built in one RTO but benefit customers in the other (cross-border facilities).²²

11. The RTOs submitted the required proposal for allocating the cost of new cross-border facilities built for reliability purposes, and by order dated November 21, 2005, the Commission conditionally accepted the proposal.²³ The cost allocation uses a joint RTO load flow model that identifies project beneficiaries based on the loading contribution of each RTO. The Commission, however, found that Midwest ISO and PJM had not provided sufficient detail about the joint RTO planning model, including its inputs and assumptions. Thus, the Commission directed Midwest ISO and PJM to provide, in a compliance filing, more detail on the joint RTO planning model and to make the use of the model transparent to their stakeholders and the Commission.²⁴

B. Intra-RTO Rates

12. Consistent with Order No. 2000, the Commission allowed Midwest ISO and PJM to use license-plate rates for intra-RTO transmission service for an initial fixed period and required them to submit a reevaluation of the license-plate rate design before the end of the fixed period. The Commission also required the RTOs to submit proposals on how

²² *Id.* P 60.

²³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194 (2005) (November 2005 Order). The RTOs must make a separate proposal regarding cross-border cost allocation for economic transmission projects (*i.e.*, projects built for economic performance as opposed to reliability). On November 30, 2006, in Docket No. ER05-6-023, the Secretary issued a notice granting an extension of time for filing that proposal, subject to future action establishing the date for the RTOs to submit the required filing.

²⁴ November 2005 Order, 113 FERC ¶ 61,194 at P 19. The RTOs submitted the compliance filing on March 21, 2006; they agree on almost all aspects of the cost allocation methodology for new reliability cross-border facilities, including the use of transfer distribution factor (DFAX) analysis. The sole issue the RTOs disagree on is how counter-flow should be netted against positive flow. In April 2006, the RTOs submitted competing proposals on the netting issue and, in December 2006, the Commission held a technical conference on the issue. An order on that compliance filing is being issued concurrently in Docket No. ER05-6-044, *et al.* In the concurrent order, the Commission addresses the cross-border cost allocation compliance filings and conditionally accepts Midwest ISO's proposal.

they would recover the costs of new transmission facilities during their initial fixed period.

1. **Intra-PJM Rate Design**

13. The Commission allowed PJM to charge license-plate rates to recover the cost of all transmission facilities for service within PJM for an initial fixed period that expired on June 1, 2005, pursuant to the terms of a settlement agreement.²⁵ The Commission also allowed PJM to use a “beneficiary pays” approach to recover the cost of new facilities. Under this approach, PJM allocated the cost of new facilities based on its independent determination of which loads created the need for or benefited from the new facilities. The Commission required PJM and the PJM TOs to file, on or before January 31, 2005, a reevaluation of their intra-RTO rate design, for both new and existing facilities, and propose a rate design to take effect on June 1, 2005. PJM and the PJM TOs submitted the required reevaluation and rate design on January 31, 2005, and the Commission set the proposal for hearing.²⁶ The Commission ultimately addressed PJM’s rate design in Opinion No. 494.²⁷

a. **Pricing for Existing Facilities**

14. Pursuant to the Commission’s findings in Opinion No. 494, PJM will continue to use license-plate rates to recover the cost of existing transmission facilities.²⁸ Under its license-plate rate design, PJM’s footprint is segregated into transmission pricing zones, typically based on the boundaries of individual TOs or groups of TOs. A customer pays a rate that reflects the cost of existing facilities in the pricing zone where its transaction sinks.

15. The Commission found, in Opinion No. 494, that there was insufficient evidence to determine that the license-plate rate design for existing facilities had become unjust

²⁵ *Allegheny Power Sys. Operating Cos.*, 108 FERC ¶ 61,167 (2004).

²⁶ *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 (2005), *order on reh’g*, 115 FERC ¶ 61,156 (2006).

²⁷ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007). An order on rehearing of Opinion No. 494 is being issued concurrently in Docket Nos. EL05-121-003 and EL05-121-004.

²⁸ There is an exception for 500 kV facilities in the “classic” PJM area where TOs have historically shared costs of certain facilities under existing extra-high voltage agreements.

and unreasonable. The Commission considered a number of facts in reaching this conclusion, including that: (1) these facilities were constructed for the benefit of the customers of the individual transmission systems and did not result from a system-wide planning process; (2) each of the proposed alternative rate designs found to be just and reasonable in the underlying initial decision presented unacceptable cost shifts; and (3) substantial shifts in cost responsibility could destabilize an RTO. Accordingly, the Commission found that the evidentiary record did not establish that the existing rate design was unjust and unreasonable and that the record did not present just and reasonable alternatives.

16. With regard to the principles of cost causation for existing facilities, the Commission noted that these transmission facilities were developed by the individual TOs to benefit their own systems and their own customers, and that the license-plate rate design for these facilities was consistent with the principles of cost causation. Therefore, the Commission reasoned that it was appropriate to continue to allocate the cost of these facilities to the customers for whom the facilities were constructed and continue to serve. The Commission also recognized the effect of reallocating the costs of existing transmission facilities. The record showed that replacing the license-plate rate design for existing facilities with any of the approaches advanced at the hearings would result in large and unacceptable cost shifts among the TOs.

b. Pricing for New Facilities

17. With respect to new facilities, the Commission, in Opinion No. 494, found that because PJM's beneficiary pays methodology was not set forth in PJM's tariff and not sufficiently detailed, the existing method was not just and reasonable. Because the methodology did not provide sufficient detail, cost assignments were subject to litigation each time a new project or upgrade was proposed. The Commission found that this did not create incentives for new investment and was administratively inefficient. Accordingly, the Commission established two approaches based on a voltage threshold. For new facilities built pursuant to PJM's Regional Transmission Expansion Plan (RTEP) and operated below 500 kV, the Commission retained a beneficiary pays approach and directed the parties to develop the methodology as part of the already-established proceeding on the proposed allocation of individual reliability facilities that PJM had filed in Docket No. ER06-456, *et al.* The Commission also established a section 206 investigation of PJM's cost allocation methodology for economic projects below 500 kV

(in Docket No. EL07-57) and consolidated that investigation with the proceeding regarding reliability projects in Docket No. ER06-456, *et al.*²⁹

18. For new facilities operated at or above 500 kV, the Commission in Opinion No. 494 established a regional rate design based on a postage-stamp allocation methodology.³⁰ The Commission reasoned that a postage-stamp allocation methodology best supports new investment that will strengthen the electric system, improve reliability and support regional markets.

19. In the concurrent order in Docket Nos. EL05-121-003 and EL05-121-004 (Opinion No. 494-A), the Commission denies requests for rehearing and/or clarification of Opinion No. 494 and accepts PJM's related compliance filing.

2. Intra-Midwest ISO Rate Design

20. The Commission allowed Midwest ISO to use license-plate rates for the initial six-year transition period ending January 31, 2008. The Commission also allowed Midwest ISO to spread some of the cost of certain new facilities to customers outside a particular zone, as outlined in the Commission orders in the Regional Expansion Criteria and Benefits (RECB) I³¹ and RECB II³² proceedings. The Commission required Midwest ISO and the Midwest ISO TOs to file, on or before August 1, 2007, a reevaluation of their intra-RTO rate design and to propose a rate design to take effect on February 1, 2008.

²⁹ On November 26, 2007, the presiding judge certified the contested partial settlement to the Commission in this now-expanded proceeding. *PJM Interconnection, L.L.C.*, 121 FERC ¶ 63,012 (2007).

³⁰ Under a postage-stamp rate design, all transmission service customers in a region pay a uniform rate per unit-of-service, based on the aggregate cost of all transmission facilities in the region.

³¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh'g, technical conference and compliance*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007), *appeal pending sub nom. Pub. Serv. Comm'n of Wisconsin v. FERC*, Case No. 06-1408 (D.C. Cir., filed Dec. 13, 2006) (collectively, RECB I).

³² *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, *order on reh'g*, 120 FERC ¶ 61,080 (2007) (collectively, RECB II).

a. Pricing for Existing Facilities

21. Currently, Midwest ISO recovers the cost of existing facilities through zonal license-plate rates. Like PJM, Midwest ISO's footprint is segregated into transmission pricing zones, typically based on the boundaries of individual TOs or groups of TOs. A customer pays the rate in the pricing zone where its transaction sinks, and that zonal rate recovers the embedded costs of only the existing transmission facilities that are located in that zone.

b. Pricing for New Facilities

22. Currently, the cost of new reliability facilities planned under the Midwest ISO Regional Transmission Expansion Planning (MTEP) protocols are allocated as outlined in the RECB I proceeding. Under the RECB I process, 20 percent of the cost of qualifying MTEP reliability projects rated at or above 345 kV is allocated across the Midwest ISO footprint on a load ratio share basis (*i.e.*, a postage-stamp rate), and the remaining 80 percent of the cost is allocated sub-regionally to one or more zones based on a Line Outage Distribution Factor (LODF) analysis.³³ For new facilities between 100 kV and 344 kV, 100 percent of cost is allocated sub-regionally, to one or more zones, based on a LODF analysis.

23. The cost of new facilities built for economic (rather than reliability) reasons is allocated as outlined in the RECB II proceeding. Under the RECB II process, 20 percent of the cost of qualifying economic projects³⁴ is allocated across the Midwest ISO

³³ Qualifying MTEP reliability projects must: (1) cost \$5 million or more; or (2) constitute five percent or more of the TO's net plant.

³⁴ Qualifying economic projects must satisfy two benefits tests. First, the weighted present value sum of a production cost benefit measure (weighted 70 percent) and a Locational Marginal Pricing (LMP)-based energy cost benefit measure (weighted 30 percent), determined in aggregate for all generation and load nodes under the tariff, must be greater than zero. Second, a proposed project must satisfy a variable cost/benefit ratio (the weighted sum of the production cost and LMP-based energy cost benefits divided by the project cost) threshold. If the project meets three additional criteria (the project costs more than \$5 million, involves facilities with voltages of 345 kV or higher, and is neither a qualifying reliability project nor a "New Transmission Access" project), then it is eligible for regional cost allocation.

footprint on a load ratio share basis, and the remaining 80 percent is allocated among three geographic subregions based on a beneficiary analysis.³⁵

24. In accepting Midwest ISO's internal cost allocation proposals for new facilities, the Commission recognized that it had approved different regional postage-stamp cost allocations for new facilities for different regions of the country,³⁶ but it explained that regional differences may warrant differing levels of regional transmission cost allocation.³⁷ Additionally, the Commission stated that it viewed the 20 percent postage-

³⁵ Subregions are assigned costs of eligible economic projects based on the weighted sum of 70 percent of the production cost benefit measure and 30 percent of the LMP-based energy cost benefit measure for each subregion. Once each subregion is assigned its portion of the project cost, the cost allocation to each individual entity within each geographic subregion will be on a load ratio share basis. The methodology provides for a deviation from the above cost allocation when the weighted sum of the production cost benefit and the LMP-based energy cost benefit to any one of the three subregions is negative. That is, a subregion for which the weighted sum of the production cost benefit and LMP-based energy cost benefit is less than zero is not allocated a share of the 80 percent subregional component.

³⁶ *See, e.g., Sw. Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 25, 31, *order on reh'g*, 112 FERC ¶ 61,319 (2005) (permitting 33 percent of new "Base Plan" upgrades to be allocated on a regional basis); *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,300, at P 3, 21-23 (2003), *order on reh'g*, 109 FERC ¶ 61,252 (2004) (allowing 100 percent of costs of upgrades rated at 115 kV and above that meet certain non-voltage criteria to be allocated on a regional basis).

³⁷ For example, in the RECB II proceeding, the Commission stated:

The Commission accepts regional differences in cost allocation and does not mandate a one-size-fits-all approach. . . . [T]here are important differences between the regions. For example, . . . Midwest ISO serves an extremely large footprint that has not, to date, had a history of regional transmission planning or cost allocation. It is therefore neither surprising nor necessarily inappropriate that . . . Midwest ISO's proposal for regional cost allocation would fail to allocate costs as broadly as regions with a smaller footprint and, in the case of New England, a long history of integrated and coordinated operations.

Midwest Indep. Transmission Sys. Operator, Inc., 118 FERC ¶ 61,209 at P 69; *see also* Opinion No. 494, 119 FERC ¶ 61,063 at P 39 ("[T]he Commission has permitted

(continued...)

stamp rate in Midwest ISO as a first step. The Commission directed Midwest ISO and the Midwest ISO TOs to revisit the 20 percent postage-stamp cost allocation for new facilities when they filed the required August 1, 2007 post-transition rate design for existing transmission facilities.

c. Pricing After the Expiration of the Initial Fixed Period

25. On August 1, 2007, two sets of parties submitted competing filings in response to the requirement that Midwest ISO file a reevaluation of its rate design.³⁸ For existing facilities, both filings propose to retain Midwest ISO's existing license-plate structure.

26. For new facilities, Midwest ISO and the Midwest ISO TOs Parties propose to keep Midwest ISO's existing cost allocation methodology for new reliability facilities and new economic facilities in place without change.

27. In their competing filing, the MSAT Parties propose to revise the degree of regional postage-stamp cost sharing and the application of qualifying criteria currently in effect for new facilities pursuant to the RECB I and RECB II orders. Specifically, the MSAT Parties propose to increase the 20 percent postage-stamp cost allocation to 100 percent for all qualifying projects rated at or above 345 kV. The MSAT Parties claim that their proposal will better align the cost allocation with the benefits associated with higher-voltage transmission infrastructure and will also spur investment. The MSAT Parties also contend that their proposal is consistent with the cost allocation methodology adopted in Opinion No. 494.

28. The MSAT Parties also propose to eliminate the RECB regional cost-sharing eligibility criteria, including project cost and cost-benefit ratio requirements, for all new facilities at 500 kV and above. They argue that all projects rated at 500 kV and above are regional transmission facilities that benefit the entire Midwest ISO footprint and,

different just and reasonable rate designs reflective of particular system characteristics and stakeholder input. In this regard, we have stated our deference to regional preferences a number of times . . .”).

³⁸ The first filing, submitted by Midwest ISO in Docket No. ER07-1233-000, is joined by a majority of the Midwest ISO TOs (collectively, Midwest ISO and the Midwest ISO TOs Parties). The second filing was submitted by American Transmission Company, LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC (collectively, the Midwest Stand-Alone Transmission Companies (MSATs)) and Wolverine Power Supply Cooperative, Inc. (together, the MSAT Parties) in Docket No. ER07-1261-000.

therefore, under their proposal, all such facilities would be eligible for the 100 percent postage-stamp allocation.

29. In the concurrent order in Docket Nos. ER07-1233-000 and ER07-1261-000, the Commission conditionally accepts Midwest ISO and the Midwest ISO TOs Parties' proposal to continue using Midwest ISO's current rate design to recover the costs of existing and new transmission facilities effective February 1, 2008 and denies the MSAT Parties' alternative proposal.

II. Summary of the AEP Complaint

30. On September 17, 2007, AEP filed a complaint alleging that the rate design and cost allocation methodology under the Midwest ISO and PJM tariffs is unjust, unreasonable, unduly discriminatory, and unduly preferential and, therefore, must be revised. In its place, AEP seeks a postage-stamp rate design for all new and existing high-voltage facilities across the combined Midwest ISO/PJM region.

31. AEP argues that it has built the most extensive transmission network in the Eastern Interconnection and emphasizes the value of the AEP high-voltage system to the combined Midwest ISO/PJM region.³⁹ AEP argues that: (1) it has the most highly interconnected system in the Eastern Interconnection and has 27 interconnections with Midwest ISO and 12 with PJM, with a combined capability of over 46,200 MW; (2) its high-voltage transmission system enhances regional reliability and protected most of Midwest ISO and the western portion of PJM from the 2003 blackout; and (3) its transmission system provides more benefits to others in the combined Midwest ISO/PJM region than customers in the AEP zone receive from the transmission systems of the Midwest ISO TOs and the other PJM TOs.⁴⁰ AEP asserts that, despite the value of its high-voltage transmission system to the combined Midwest ISO/PJM region and Commission precedent regarding cost allocation in accordance with cost causation, customers outside of the AEP zone do not pay to use the AEP high-voltage system under the existing rate design. AEP argues that the existing rate design has cost AEP's zonal customers "upwards of \$175 million for existing facilities and tens of millions more in new facilities, resulting in rate increases of some fifty percent."⁴¹

³⁹ AEP Complaint at 2.

⁴⁰ *Id.* at 24-31.

⁴¹ *Id.* at 47.

32. AEP argues that the Commission and courts recognize generalized benefits as the rationale for socializing costs among various classes of beneficiaries.⁴² AEP also argues that Commission precedent requires that customers who benefit pay a fair share of costs.⁴³ Accordingly, AEP asserts that the existing rate design unfairly allocates the cost of its high-voltage transmission system exclusively to transmission customers within the AEP footprint while allowing other customers located within Midwest ISO and PJM to avoid paying any of the costs, even though those customers are also beneficiaries of AEP's high-voltage system. AEP argues that whether or not its high-voltage facilities were planned and designed through the RTO planning model "has never been a factor in designing rates for coordination power sales or third-party transmission, as the Commission consistently has recognized that those services are provided over facilities that primarily were planned and designed to serve native load customers."⁴⁴

33. AEP believes that a common regional rate design is needed for the combined Midwest ISO/PJM region. AEP notes that

for allocation purposes, PJM and [Midwest ISO] slice and dice the costs of transmission facilities in a variety of ways: by region (PJM or [Midwest ISO]), geographic areas (zones), vintage of facilities (existing or new), size (345 kV and above or lower; 500 kV and above or lower), cost (\$5 million plus or lower), and purpose (reliability or economic).[⁴⁵]

34. AEP proposes a replacement "highway/byway" rate design that would allocate the costs of both existing and new high-voltage (or "highway") transmission facilities (those facilities operated at 345 kV and above, or alternatively at 765 kV and above) to customers across the entire combined Midwest ISO/PJM region on a postage-stamp basis. AEP argues that under its proposal, all customers that benefit from the use of Midwest ISO and PJM combined backbone transmission facilities will share the burden of the

⁴² *Id.* at 34-35 (citing, *inter alia*, *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 543 (D.C. Cir. 2003); *Transmission Owners of the Midwest Indep. Sys. Operator, Inc.*, 110 FERC ¶ 61,339, at P 33-34 (2005)).

⁴³ *Id.* at 32-33 (citing, *inter alia*, *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112, at P 22 (2004); *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,032, at P 10 (2004), *order on reh'g*, 113 FERC ¶ 61,135 (2005)).

⁴⁴ *Id.* at 23.

⁴⁵ *Id.* at 21.

costs. For existing and new lower voltage (or “byway”) transmission facilities within the combined Midwest ISO/PJM region, AEP proposes to maintain the current allocation methodology. AEP asks the Commission to initiate hearing procedures to consider its proposed rate design for transmission service in the combined Midwest ISO/PJM region.

35. In anticipation of claims that the Commission already rejected AEP’s arguments in Opinion No. 494, AEP states that Opinion No. 494 does not preclude an inquiry into the lawfulness of the rate design for the combined Midwest ISO/PJM region because that proceeding focuses on PJM alone, while the AEP Complaint concerns the combined Midwest ISO/PJM region. AEP also notes that the Commission previously declined to terminate or expand the scope of the PJM-only proceeding and stated that the PJM-only proceeding should remain separate and apart from an analysis of how costs are allocated among the Midwest ISO TOs and the PJM TOs.⁴⁶

36. AEP also states that its complaint is not barred by the doctrines of collateral estoppel or *res judicata*. First, AEP argues that it is unclear whether the preclusion doctrines even apply to Commission rate proceedings.⁴⁷ Second, AEP argues that, even if the doctrines do apply, the complaint is not precluded because it is based on new facts that demonstrate the role that the AEP high-voltage system plays in: (1) integrating Midwest ISO and PJM; (2) permitting customers to reap the benefits of that integration; and (3) facilitating the major new high-voltage projects that are planned for the combined Midwest ISO/PJM region.⁴⁸ AEP further argues that, even if the Commission affirms Opinion No. 494 on rehearing, the issues presented in the IRPD filing and the AEP Complaint are distinct from those presented with respect to Opinion No. 494 because that proceeding concerned only the PJM region and did not address cost allocation for Midwest ISO transmission customers.

37. AEP also maintains that its complaint is not a collateral attack on Opinion No. 494. AEP asserts that there is no finality interest in a Commission order when the Commission has not yet acted on requests for rehearing, as is the case with Opinion

⁴⁶ *Id.* at 40-41.

⁴⁷ *Id.* at 39-43 (*citing, inter alia, The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 91 (2007); *Ontelaunee Power Operating Co. LLC v. Metro. Edison Co.*, 119 FERC ¶ 61,181, at P 12 (2007); *Am. Elec. Power Serv. Corp.*, 103 FERC ¶ 61,369, at P 11 (2003); *Williston Basin Interstate Pipeline Co.*, 45 FERC ¶ 61,267, at 61,835-36 (1988)).

⁴⁸ *Id.* at 43-45 (*citing, inter alia, Williams Natural Gas Co.*, 83 FERC ¶ 63,015, at 65,116 (1998); *Williams Natural Gas Co.*, 72 FERC ¶ 63,006, at 65,135 (1995)).

No. 494.⁴⁹ AEP also notes that “the focus of a ‘collateral attacks’ argument generally is whether a party missed its opportunity to contest an order and then attacks that order at a later time. That is not the case here.”⁵⁰

38. AEP states that it is the Commission’s policy to establish the earliest possible refund effective date, which would be September 17, 2007, the date that it filed its complaint. AEP states, however, that in order to avoid changing rate designs in the middle of the month, it would be reasonable to establish an October 1, 2007 refund effective date. AEP also states that a refund effective date of February 1, 2008, consistent with the end of the initial fixed period discussed in the November 2004 Order, would be appropriate.

III. Summary of the IRPD Filing

39. As discussed above, the Commission in the November 2004 Order adopted the existing inter-RTO license-plate rate design for a fixed period (ending on January 31, 2008) and required that the RTOs and their TOs formally reevaluate the rate design for inter-RTO service by the end of that term.⁵¹ The Commission stated that it would not require the RTOs to abandon license-plate rates at the end of the initial fixed period, but required the RTOs and their TOs to “justify their choice to continue or discontinue using license plate rates, or otherwise change the method for fixed cost recovery.”⁵²

40. On August 1, 2007, Midwest ISO, the Midwest ISO TOs, PJM and the PJM TOs (collectively, the RTOs and Supporting TOs) jointly submitted the required reevaluation of the existing inter-RTO rate design and proposed the IRPD, a proposed methodology for pricing transmission service between the RTOs to be effective on February 1, 2008.

41. Under the IRPD, the RTOs and Supporting TOs propose to maintain the existing inter-RTO rate design with no changes. Midwest ISO and PJM would thus continue to treat transactions that source in one RTO and sink in the other RTO the same as transactions that source and sink entirely in one RTO. These inter-RTO transactions

⁴⁹ *Id.* at 45-47 (citing, *inter alia*, *Transcon. Gas Pipe Line Corp. v. FERC*, 54 F.3d 893, 898 (D.C. Cir. 1995); *Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099 (D.C. Cir. 1989)).

⁵⁰ *Id.* at 47 (citing, *inter alia*, *Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 365-66 (D.C. Cir. 2002)).

⁵¹ November 2004 Order, 109 FERC ¶ 61,168 at P 62.

⁵² *Id.* P 57.

would be assessed only the applicable zonal charge of the sink zone; the RTO where these transactions originate would not assess a charge.

42. Because the inter-RTO zonal rates charged under the IRPD are the same as the intra-RTO zonal rates in each RTO's tariff and are based on the same cost allocation methodologies established in each RTO for intra-RTO service, the Commission's findings in the related intra-RTO proceedings are relevant to the IRPD proceeding. In PJM, the cost allocation methodology for intra-RTO transmission facilities is determined by the outcome of the Opinion No. 494 proceeding (and the related cost allocation methodology proceedings pending in Docket No. ER06-456, *et al.*). In Midwest ISO, the cost allocation methodology for intra-RTO transmission facilities is determined by the RECB I and RECB II proceedings and Midwest ISO and the Midwest ISO TOs' August 1, 2007 post-transition period rate design reevaluation filings.⁵³

43. Under the IRPD, the cost of new *cross-border* transmission facilities would be allocated between Midwest ISO and PJM as ultimately determined in Docket No. ER05-6-044, *et al.*⁵⁴ Once the cost responsibility for new cross-border transmission facilities for reliability and/or economic needs is allocated to either Midwest ISO or PJM, the zonal cost responsibility within each RTO would be determined in accordance with the existing (or to-be-established) rules under each RTO's tariff.

44. The RTOs and Supporting TOs argue that the IRPD is consistent with the Commission's stated goals and objectives as stated in the November 2004 Order and Opinion No. 494. They note that the IRPD: (1) continues to eliminate rate pancaking and integrates the two RTOs by "level[ing] the playing field between remote and local suppliers;"⁵⁵ (2) avoids cost shifts; (3) has been previously approved by the applicable committees in both RTOs and does not require amendments to the existing RTO tariffs;⁵⁶

⁵³ An order on these filings is being issued concurrently in Docket Nos. ER07-1233-000 and ER07-1261-000.

⁵⁴ An order on this filing is being issued concurrently in Docket No. ER05-6-044, *et al.*

⁵⁵ IRPD Filing at 10 (*citing* Opinion No. 494, 119 FERC ¶ 61,063 at P 57).

⁵⁶ The RTOs and Supporting TOs state that the IRPD has been authorized pursuant to processes established within each RTO and "is thus consistent with the TOs['] rights under *Atlantic City*, with respect to rate design within their voluntary RTO organizations." IRPD Filing at 8 (*citing Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 14 (D.C. Cir. 2002)). The RTOs also state that "[n]o changes to any of the operative PJM or Midwest ISO documents are necessary to implement the IRPD. . . ." *Id.*

(4) avoids conflicts with pending intra-RTO rate design proceedings; (5) has achieved broad consensus among stakeholders;⁵⁷ and (6) would provide regulatory certainty and avoid further litigation on these issues.

IV. Notice of Filings and Responsive Pleadings

A. AEP Complaint

45. Notice of the AEP Complaint was published in the *Federal Register*, 72 Fed. Reg. 54,649-50 (2007), with answers, comments and interventions due on or before October 9, 2007. By notices issued on October 5, 2007 and October 16, 2007, the Commission extended the deadline for filing answers, comments and interventions to October 29, 2007. Interventions, comments, and answers were filed by the parties listed in Appendix A.

46. On October 12, 2007, BG&E filed an emergency motion to dismiss the AEP Complaint and to promptly toll the answer date pending action on its dismissal motion. On October 29, 2007, AEP filed an answer to BG&E's motion to dismiss. On November 6, 2007, BG&E filed an answer to AEP's October 29, 2007 answer.

47. On October 31, 2007, AEP filed an answer to the OMS' comments. On November 13, 2007, AEP filed an answer to the comments filed on October 29, 2007. On November 15, 2007, BG&E filed an answer to AEP's November 13, 2007 answer.

B. IRPD Filing

48. Notice of the IRPD filing was published in the *Federal Register*, 72 Fed. Reg. 45,802 (2007), with interventions and protests due on or before August 22, 2007. Interventions, comments and protests were filed by the parties listed in Appendix B.

49. Answers to the comments and protests were filed by: Exelon, Integrys, and the Supporting TOs.

⁵⁷ The RTOs and Supporting TOs state that the IRPD proposal is the product of an extensive and cooperative stakeholder process, where an array of potential inter-RTO pricing approaches were proposed and evaluated. IRPD Filing at 5-7. The RTOs and Supporting TOs also state that the IRPD is supported by the vast majority of TOs in both RTOs, noting that the filing was approved by 13 of the 14 voting PJM TOs, with only one negative vote, and by 22 of the Midwest ISO TOs, with only one negative vote and one abstention. *Id.* at 2. The RTOs and Supporting TOs provide the joint statement of Mary J. Meyers and John C. Procaro to explain the stakeholder process.

V. Discussion

A. Procedural Matters

1. Motions to Intervene and Leave to File Answers

50. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

51. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant the late-filed motions to intervene of the Pennsylvania Consumer Advocate and Rockland in Docket No. EL07-101-000 given their interests in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

52. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers of AEP and BG&E in Docket No. EL07-101-000 and those of Exelon, Integrys, and the Supporting TOs in Docket No. ER05-6-100, *et al.*, because they have provided information that assisted us in our decision-making process.

2. Motion to Consolidate

a. AEP Complaint

53. AEP seeks to consolidate its complaint proceeding with that of the IRPD filing. AEP argues that it would be inefficient to litigate its complaint in a separate docket given that the IRPD and the AEP Complaint both involve the rate design for the combined Midwest ISO/PJM region. AEP argues that consolidation will not delay or disrupt the Commission's action on the IRPD filing.

b. Comments

54. Integrys supports AEP's motion to consolidate, arguing that there are common issues of fact and law raised by the IRPD filing and the AEP Complaint. Midwest ISO opposes AEP's motion to consolidate, arguing that the request should be denied because the AEP Complaint is in a different procedural stage than the ongoing proceedings involving cost allocation methodologies for the Midwest ISO and PJM regions.

c. Commission Determination

55. We will deny AEP's request to consolidate the AEP Complaint proceeding with that of the IRPD filing. With no further hearing procedures, there is no need for consolidation.

B. Procedural Arguments

1. Whether the AEP Complaint is Procedurally Barred

a. Comments

56. Several entities, including Ameren, BG&E, Certain Midwest ISO TOs, Certain PJM TOs, Detroit Edison, Exelon/PPL, FirstEnergy, Integrys, IPL, Midwest ISO and PJM, argue that the AEP Complaint is a collateral attack on Opinion No. 494 and is procedurally barred by the principles of collateral estoppel and *res judicata*. These commenters assert that AEP is raising the same arguments it presented to the Commission in the Opinion No. 494 proceeding and that the Commission already rejected those arguments. They argue that the Commission's regulations and precedent bar AEP from using the complaint process to relitigate settled issues or to interfere with pending proceedings and that the Commission should therefore dismiss the AEP Complaint on procedural grounds. Midwest ISO also argues that AEP's assertion that the Commission's determinations in Opinion No. 494 are not sufficiently "final" to trigger the procedural requirements of the preclusion doctrines is misplaced.⁵⁸

57. Ameren and Midwest ISO further argue that the AEP Complaint is premature. They assert that the AEP Complaint would interfere with the Commission's review of the IRPD filing and Midwest ISO post-transition period filings.

58. Exelon/PPL and IPL argue that the doctrine of *stare decisis* bars the AEP Complaint.⁵⁹ Similarly, BG&E, Certain PJM TOs, Detroit Edison, FirstEnergy, IPL and Midwest ISO argue that AEP cites no unforeseen change in circumstances that would warrant a new proceeding beyond that already undertaken in the Opinion No. 494

⁵⁸ Midwest ISO Answer to AEP Complaint at 15 (*citing* 18 C.F.R. § 385.713(2)(i) (2007)).

⁵⁹ *See* IPL Comments to AEP Complaint at 12-14; Exelon/PPL Comments to AEP Complaint at 41-42. Exelon/PPL define *stare decisis* as "[t]he doctrine of precedent, under which it is necessary for a court to follow earlier decisions when the same points arise again in litigation." Exelon/PPL Comments to AEP Complaint at 5 (*citing* Black's Law Dictionary (8th ed.)).

proceeding. They contend that the material facts underlying the AEP Complaint are identical to those decided in the November 2004 Order or pending on rehearing in the Opinion No. 494 proceeding.

59. Certain PJM TOs, FirstEnergy and Midwest ISO disagree with AEP's assertion that the fact that AEP has named Midwest ISO in its complaint makes the proceeding here distinguishable from that of Opinion No. 494. They argue that, in Opinion No. 494, the Commission determined that AEP's sunk transmission costs should be recovered solely from customers with load in the AEP zone. Thus, they assert that AEP's obligations remain the same after Opinion No. 494, regardless of the entities AEP includes as respondents in its complaint.

60. Further, Certain PJM TOs and FirstEnergy disagree with AEP's argument that the fact that the AEP Complaint seeks a prospective rate makes it distinguishable from Opinion No. 494. They argue that Opinion No. 494 did not establish a locked-in rate period. Similarly, BG&E asserts that the Commission knew of the deadline to file an inter-RTO rate design for after the initial fixed period when it set the intra-PJM proceeding for hearing. BG&E further notes that it sought expansion of that proceeding to include Midwest ISO members but the Commission had already declined the request.⁶⁰

61. BG&E, Certain PJM TOs and FirstEnergy also assert that the testimony by several of AEP's witnesses is very similar to that presented by AEP in the Opinion No. 494 proceeding.

62. Several commenters raise concerns that granting the AEP Complaint would require reversal of recent policy decisions by the Commission, specifically policy decisions rendered in the Opinion No. 494 proceeding. Certain PJM TOs and IPL argue that revisions to Opinion No. 494's findings would create uncertainty in the region.

63. While PJM does not take a position regarding AEP's assertions or requested relief concerning existing high-voltage facilities, PJM opposes the AEP Complaint to the extent that it seeks to change the cost allocation methodology established in Opinion No. 494 for new transmission facilities approved under PJM's RTEP process. PJM asserts that upsetting Opinion No. 494's cost allocation methodologies for RTEP-approved transmission facilities would create uncertainty and inconsistency in the cost allocation process, which would in turn discourage investment in new transmission. PJM also states that AEP appears to advocate maintaining license-plate rates for all lower-voltage facilities, both existing and new, which would disrupt the uncontested settlement filed in Docket No. ER06-456, *et al.* (setting forth a cost allocation methodology for all new

⁶⁰ BG&E Motion to Dismiss AEP Complaint at 3-4.

lower-voltage facilities in the PJM RTEP).⁶¹ PJM asserts that the settlement, the result of months of negotiations and compromise among stakeholders, also sets a three-year moratorium during which the settling parties agree not to propose changing the agreed-upon cost methodologies. PJM argues that, as a signatory to the settlement, AEP must wait three years before proposing changes to the cost allocation structure set forth in the settlement.

b. Answers

64. In its answers, AEP does not dispute that its complaint raises many of the same legal and factual matters that were discussed in the Opinion No. 494 proceeding but argues that this similarity does not bar AEP from filing the complaint. AEP argues that section 206 requires that it file a complaint in order to establish a refund effective date and “does not allow an exception for complaints that were deferred to await rehearing and/or judicial review in another proceeding.”⁶² It reiterates the arguments made in the original complaint that the required elements of collateral estoppel, *res judicata*, and/or *stare decisis* are not present in this case.

65. In response to BG&E’s argument that AEP did not join in BG&E’s earlier motion to expand the scope of the Opinion No. 494 proceeding, AEP states that it chose not to join BG&E’s motion because, as events later confirmed, the motion was legally infirm.⁶³ AEP also argues that its complaint is not the same as BG&E’s prior motion in that “AEP has initiated a new proceeding supported by substantial evidence addressing the impacts of including [Midwest ISO] transmission facilities within a regional rate design; evidence that was not included in BG&E’s prior motion.”⁶⁴

66. AEP also argues that the recent filing of a PJM settlement agreement in Docket No. ER06-456 does not preclude consideration of the AEP Complaint. AEP argues that: (1) the settlement recognizes that Commission action on rehearing of Opinion No. 494 could affect the cost allocation methods to be used in PJM, and therefore could eliminate any inconsistency between the settlement and the cost allocation method proposed in AEP’s Complaint; (2) the three-year moratorium applies to the effective date of any change to the cost allocation method, not on when such a change could be requested; and (3) neither the settlement nor the moratorium is in effect at this time. In any event, AEP

⁶¹ *See supra* note 29.

⁶² AEP Answer to Comments at 9.

⁶³ AEP Answer to BG&E Motion to Dismiss at 7.

⁶⁴ *Id.* at 8.

commits to abiding by the terms of the settlement agreement if and when it is approved by the Commission.⁶⁵

67. In its response to AEP's answer, BG&E reiterates that the AEP complaint is a collateral attack on Opinion No. 494.⁶⁶ BG&E argues that if the AEP Complaint is rejected on the merits, rather than on procedural grounds, "AEP could file another complaint, thus making Docket No. EL07-101 a truncated locked-in rate period [and] [t]here is no end to how many times AEP can start over."⁶⁷ BG&E also reiterates the arguments that its motion to expand the scope of the Opinion No. 494 hearing (and AEP's decision not to join in that motion) is relevant to the dismissal of the AEP Complaint.

c. Commission Determination

68. Although we agree that the arguments and testimony presented in the AEP Complaint are very similar to those presented in the Opinion No. 494 proceeding, the similarities do not preclude the AEP Complaint. The Commission has held that the preclusion doctrines (*res judicata*⁶⁸ and collateral estoppel⁶⁹) may apply in appropriate circumstances in Commission proceedings,⁷⁰ and as a matter of policy, relitigation of issues already decided on the merits is not sound administrative practice. However, these policies apply only where the issues presented have already been fully litigated and

⁶⁵ AEP Answer to Comments at 17-18.

⁶⁶ BG&E Answer to AEP Answer to BG&E Motion to Dismiss at 5-6.

⁶⁷ *Id.* at 4.

⁶⁸ The doctrine of *res judicata* precludes the relitigation of a claim or issue that was the subject of a prior cause of action between the parties. "The doctrine of *res judicata* holds that a judgment on the merits in a prior suit bars a second suit involving identical parties . . . based on the same cause of action." *Nat'l Comm. for the New River, Inc. v. FERC*, 433 F.3d 830, 834 (D.C. Cir. 2005) (quoting *Apotex, Inc. v. FDA*, 393 F.3d 210, 217 (D.C. Cir. 2004)).

⁶⁹ Collateral estoppel is "the doctrine which prohibits relitigation of the same issue in a different claim." *Williams Natural Gas Co.*, 83 FERC ¶ 63,015, at 65,115-16, n.12 (1998) (citing 46 Am. Jur. 2d Judgments § 516 (1994)).

⁷⁰ *E.g.*, *Transcon. Gas Pipeline Corp.*, 85 FERC ¶ 61,357 (1999). However, the doctrines do not necessarily apply to all rate cases. *See, e.g.*, *Norfolk & W. Ry. Co. v. United States*, 768 F.2d 373, 378 (1985).

decided on the merits, and no new evidence or new circumstances would justify relitigation.⁷¹ This is not the case with the AEP Complaint.

69. We disagree with commenters' assertion that all the issues raised in the AEP Complaint were fully litigated and decided on the merits in the Opinion No. 494 proceeding. Whether the existing cost allocation methodology for inter-RTO service is just and reasonable was not litigated in the Opinion No. 494 proceeding; Opinion No. 494 focused on the intra-PJM rate design.⁷² Moreover, the Commission expressly rejected the request to consider the rate design for the combined Midwest ISO/PJM region in the Opinion No. 494 proceeding. The Commission noted that "[t]wo matters are at separate stages of development, involve different parties, and present distinct issues."⁷³

70. Moreover, we note that, despite similarities in the evidence provided by AEP in the Opinion No. 494 proceeding and in the AEP Complaint, we agree with AEP that it has provided additional evidence in support of the AEP Complaint.⁷⁴ *Res judicata* generally does not bar litigation of the justness and reasonableness of rates based on new

⁷¹ *E.g.*, *San Diego Gas and Elec. Co. v. Pub. Serv. Co. of N.M.*, 86 FERC ¶ 61,253 (1999); *see also Pac. Gas & Elec. Co.*, 121 FERC ¶ 61,065, at P 38 (2007); *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829 (1987), *order on reh'g*, 43 FERC ¶ 61,274 (1988) ("[I]n the absence of new or changed circumstances requiring a different result, 'it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.'" (*citing Cent. Kansas Power Co., Inc.*, 5 FERC ¶ 61,291, at 61,621 (1978))).

⁷² And, as BG&E notes, the Commission denied the request to expand the scope of the proceeding to include a review of the inter-RTO cost allocation methodology.

⁷³ Opinion No. 494, 119 FERC ¶ 61,063 at P 97, n.128 (finding that "[i]t is well established that the Commission has broad discretion in deciding how best to organize and manage its proceedings") (*citing Blumenthal v. ISO New England, Inc.*, 118 FERC ¶ 61,205, at P 17, n.31 (2007) (*citing Domtar Me. Corp. v. FERC*, 347 F.3d 304, 314 (D.C. Cir. 2003); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1579 (D.C. Cir. 1992))).

⁷⁴ For example, AEP states that its complaint includes information about the role AEP's high-voltage transmission system plays in integrating Midwest ISO and PJM. AEP also submits new testimony from Dr. Blank and Mr. Gegax.

facts.⁷⁵ Similarly, the preclusive effect of collateral estoppel ends when a party presents new evidence or a change in circumstances warrants reopening the issue.⁷⁶

71. Similarly, the principle of *stare decisis* is not a *procedural* bar to the AEP Complaint. While the Commission's findings in the Opinion No. 494 proceeding are certainly relevant to our decisions on the AEP Complaint, *stare decisis* would not preclude AEP's filing of the complaint, because the complaint addresses the combined Midwest ISO/PJM region.

72. However, we agree with several parties that we do not write on a clean slate in this proceeding. As even AEP concedes, its complaint makes many of the same arguments that were rejected in Opinion No. 494.⁷⁷ Although the Commission's findings in Opinion No. 494 do not technically bar the AEP Complaint (given the fact that this proceeding concerns inter-RTO rates), they are nonetheless relevant to our disposition of this proceeding. For example, in Opinion No. 494, the Commission rejected AEP's argument that the Commission should roll in the costs of all existing high-voltage transmission facilities because the PJM system is operated on an integrated basis. The Commission did so for a number of reasons, including the fact that the facilities were not planned on a centralized, regional basis and because of the adverse effects of the resulting cost shifts. These findings apply with equal force here. Moreover, unlike Opinion No. 494, AEP in this case proposes to roll in the transmission costs of *two* RTOs, not one, and therefore, unlike in Opinion No. 494, AEP cannot argue that its proposal is supported by the fact that the region is centrally dispatched and planned on a single-system basis. In that

⁷⁵ See *Am. Elec. Power Serv. Corp.*, 103 FERC ¶ 61,369, at P 11, n.12 (2003) (citing, *inter alia*, *Tex. E. Transmission Corp.*, 893 F.2d 767, 774 (5th Cir. 1990) (that a rate is reasonable in one proceeding does not foreclose a contrary finding in a subsequent proceeding); *San Diego Gas & Elec. Co. v. Pub. Serv. Co. of N.M.*, 86 FERC ¶ 61,253, at 61,912-13 (1999) (neither *res judicata* nor collateral estoppel barred litigation challenging a preexisting rate because of a significant change in circumstances since that rate was approved); *Utah Power & Light Co.*, 27 FERC ¶ 61,258, at 61,485, *reh'g denied*, 28 FERC ¶ 61,088 (1984), *aff'd sub nom. Sierra Pac. Power Co. v. FERC*, 793 F.2d 1086 (9th Cir. 1986) (*res judicata* does not bar a party from litigating whether to roll in costs in a second rate case in light of new evidence)).

⁷⁶ Moreover, a finding that a rate is just and reasonable in one proceeding does not foreclose a contrary finding in a subsequent proceeding. See *supra* note 75; see also *Tagg Bros. v. Moorhead*, 280 U.S. 420, 445 (1930) (a rate order is not *res judicata*; every rate order may be succeeded by another).

⁷⁷ See AEP Answer to Comments at 10.

respect, the AEP Complaint rests on even weaker arguments than those raised, and rejected, in Opinion No. 494. In sum, although the AEP Complaint is not procedurally barred, we deny the complaint, as explained below, for many of the same reasons the Commission denied the same arguments in Opinion No. 494.

2. Whether the AEP Complaint Is Procedurally Sufficient

a. Comments

73. Several commenters support the arguments in BG&E’s motion to dismiss that the AEP Complaint is procedurally insufficient and, therefore, should be dismissed on procedural grounds.⁷⁸ BG&E argues that AEP failed to include the RTOs’ TOs as respondents and that the TOs, not the RTOs, are the real-parties-in-interest in this proceeding. BG&E alleges that Midwest ISO and PJM “carry out purely ministerial tasks in implementing the collection and distribution of revenues on behalf of the [TOs]” and “cannot be expected to defend the methodology prescribed by the Commission and reflected in the tariff.”⁷⁹ BG&E asks that the Commission reject the AEP Complaint without prejudice to AEP’s right to refile with all indispensable parties named as respondents.

74. BG&E also argues that AEP fails to state a claim upon which relief can be granted because AEP effectively seeks to revisit decisions made in the Opinion No. 494 proceeding.⁸⁰ Midwest ISO notes that Rule 206(b)(6) of the Commission’s Rules of Practice and Procedure requires a complainant to identify whether issues raised in its complaint are pending in other proceedings and, if so, explain why timely resolution cannot be achieved in those forums. Midwest ISO asserts that AEP has failed to explain why the forum provided by the Opinion No. 494 rehearing is inadequate. Midwest ISO also argues that AEP has not explained why its concerns cannot be addressed in the IRPD filing and Opinion No. 494 proceedings, and that the complaint should be rejected to protect the “orderly disposition” of those proceedings.⁸¹

⁷⁸ Certain Midwest ISO TOs and IPL support BG&E’s motion to dismiss, arguing that the AEP Complaint should be dismissed as inherently defective and inactionable. By contrast, ITC disagrees with BG&E’s arguments.

⁷⁹ BG&E Motion to Dismiss AEP Complaint at 6-7.

⁸⁰ *Id.* at 7-9 (*citing* 18 C.F.R. § 385.206(a)(6) (2007)).

⁸¹ Midwest ISO Answer to AEP Complaint at 17-18.

b. AEP Answer

75. In its answer to BG&E, AEP challenges BG&E's claim that the complaint failed to name indispensable parties, that is, the Midwest ISO TOs and the PJM TOs, as respondents. AEP argues that it does not seek a review of a TO's rate design because "PJM and [Midwest ISO] are the 'Transmission Providers' responsible for administering the transmission tariffs, and the rates at issue are set out in those tariffs."⁸² AEP also notes that Opinion No. 494, initiated by the Commission under section 206, includes PJM as the named respondent despite not alleging any "wrongdoing" by PJM.

76. AEP also argues that "there is nothing in any tariff, settlement agreement, or Commission order[] that limits or restricts AEP's rights to pursue relief under FPA [s]ection 206."⁸³ AEP maintains that the courts and Commission have made clear that AEP surrenders that right only if it contractually agrees to do so.⁸⁴ AEP maintains that a delay would hinder its statutory right to seek an earlier refund effective date and could force it to forfeit its right to seek refunds for the entire period that Opinion No. 494 is pending rehearing and appeal.

c. Commission Determination

77. Rule 206 of the Commission's Rules of Practice and Procedure establishes the requirements applicable to all complaints filed with the Commission. We find that the AEP Complaint meets the threshold requirements set forth in that rule.

78. We disagree with commenters that the AEP Complaint is procedurally deficient for failure to name the correct respondents. We agree with AEP that the RTOs are responsible for administering the transmission tariffs and that the rates at issue in this proceeding are set out in the RTOs' tariffs. While the TOs would be affected if the AEP Complaint were to succeed, the resulting changes would be to the RTO tariffs, and not to any individual TO's rate schedule. Accordingly, we will not dismiss the AEP Complaint for failure to include the TOs as respondents.

79. Moreover, for the reasons stated above, we find that the AEP Complaint raises a cause of action upon which relief could be granted. While it is true that if AEP prevails several aspects of the Opinion No. 494 proceeding would have to be revisited, AEP seeks

⁸² AEP Answer to BG&E Motion to Dismiss at 8.

⁸³ *Id.* at 3.

⁸⁴ *Id.* at 5 (citing *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956)).

to do more than revisit the decisions made in the Opinion No. 494 proceeding. Accordingly, we believe that AEP has met the requirements of Rule 206(b)(6) to explain why its complaint should not be procedurally barred in light of the ongoing Opinion No. 494 and IRPD filing proceedings.

C. Substantive Arguments

80. As the courts have found, rate design “is less a science than it is an art.”⁸⁵ In particular, “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”⁸⁶ Because RTOs are formed as a result of the voluntary agreement of individual TOs to pool their resources, rate designs for RTOs may need to differ from those accepted for individual TOs. The Commission examined the issue of rate design for RTOs in Order No. 2000 and found that, although an underlying purpose of RTOs is to create integrated systems with benefits to all participants, license-plate rate designs may still be necessary.

The Commission will permit RTO proposals to use license plate rates, . . . for several reasons. First, commenters overwhelmingly support the use of license plate rates, and demonstrated convincingly that problems associated with cost-shifting are not easily resolved by means other than the use of license plate rates. Second, the Commission is concerned that the potential for cost-shifting could act as an impediment to RTO formation, thereby denying all stakeholders the benefits that come from RTO membership.^[87]

81. While the Commission required RTOs to reexamine the continued use of license-plate rates for existing facilities after an initial fixed period, it did not require that the RTOs abandon license-plate rates upon such a filing; the Commission’s determination on whether to allow an RTO to continue using license-plate rates for existing facilities after the initial fixed period depends on individual factors, such as the geographic makeup of the RTO and the transmission cost differences in various subregions of the RTO.⁸⁸

⁸⁵ *Cities of Bethany v. FERC*, 727 F.2d 1131, 1138 (D.C. Cir. 1984); *Ala. Elec. Coop., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

⁸⁶ *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) (*Colo. Interstate*).

⁸⁷ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,177.

⁸⁸ *Id.*

82. The Commission has also found that regional flexibility is permissible and that when considering a dispute over cost allocation, the Commission exercises its judgment by weighing several factors:

First, we consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we consider whether the proposal is generally supported by state authorities and participants across the region.^[89]

83. In applying these principles, the Commission must balance a variety of factors in exercising its discretion to determine whether an existing rate design has been rendered unjust and unreasonable. In addressing transmission rate design within and between RTOs, the Commission sought to craft a reasonable balance among a number of interrelated factors including: the original basis for constructing facilities, the effect of the RTOs' planning process on the decision to construct, the nature of the agreements by TOs to form RTOs, the cost impacts of the various rate designs, the uses of the transmission system, and the need for new infrastructure within the RTO regions. Accordingly, the Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input.

84. In this case, the vast majority of TOs in both Midwest ISO and PJM support the continuation of the existing license-plate rate design. Moreover, there is virtually no state commission support for AEP's proposal. AEP contends, however, that continuation of the license-plate rate design should be found unjust and unreasonable under FPA section 206 as applied to the entirety of the Midwest ISO and PJM systems because it is unfair to AEP. However, as the courts have stated in examining rate design issues, "[t]here is no 'neutral' or inherently 'fair' allocation of fixed costs, as the history of rate design amply demonstrates."⁹⁰

85. The Commission considered similar issues in Opinion No. 494, where AEP also challenged the license-plate rate design for existing facilities in PJM as unjust and

⁸⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 559 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

⁹⁰ *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1171 (D.C. Cir. 1996) (*United Distribution*).

unreasonable. In that proceeding, the Commission balanced numerous factors in determining that it could not find that the continued use of the license-plate rate design for existing facilities is unjust and unreasonable. The Commission found that the existing facilities of the individual TOs were constructed for the benefit of their own systems and that they were constructed without central planning. Further, while the Commission recognized that all the facilities included in an RTO are integrated into the grid, it found that an RTO is a network in which the TOs voluntarily agree to share their transmission facilities, as well as the generation and load within their areas, in order to achieve a more efficient and economic dispatch of generation. Thus, the Commission found no economic basis for finding that the owner of certain transmission assets should receive more of the benefit created by the system (or bear less of the cost) just because the transmission element is a valuable asset.⁹¹

86. In addition, while not dispositive, the Commission accorded significant weight to the views and opinions of all the TOs in determining the appropriate rate design for PJM because RTO membership is voluntary and because cost allocation may have significant effects on TOs' decisions to remain in an RTO. Moreover, the Commission examined the uses of the transmission system and concluded that, despite central dispatch by the RTO, all customers did not have equal access to the transmission system, especially during peak periods. Finally, the Commission examined the extensive cost shifts that would result from a change in rate design and found that, on balance, the license-plate rate design, as applied to existing facilities, was not unjust and unreasonable.

87. The AEP Complaint and protests to the IRPD filing raise the same issues as those in Opinion No. 494, albeit across a larger footprint. Looking at the evidence presented, we cannot find that AEP has provided sufficient evidence to demonstrate that considering the combined Midwest ISO/PJM region renders the license-plate rate designs for existing facilities within each of the RTOs unjust and unreasonable. The existing facilities within each RTO were created principally to serve the customers of the TOs on whose system they are located and were not the product of central planning. Despite some coordinated dispatch by the RTOs, constraints may prevent some customers from using certain parts of the transmission system. While it is true that some customers in both RTOs may make use of facilities in the other RTO, given the breadth of both RTOs, we cannot find the rate design under the Midwest ISO and PJM tariffs is unjust, unreasonable, or unduly discriminatory and that imposition of a postage-stamp rate design across the combined

⁹¹ *PJM Interconnection, L.L.C.*, Opinion No. 494-A, 122 FERC ¶ 61,082, at P 29 (2008).

Midwest ISO/PJM region is required. Moreover, as discussed below, changing the license-plate rate design would produce significant cost shifts.⁹²

88. Under FPA section 206, AEP, as the proponent of the rate design change, has the burden to show that the existing rate design is unjust and unreasonable.⁹³ As the courts have found, on the same set of facts there can be “multiple just and reasonable rates” and the resolution may depend on whether the proceeding is initiated under section 206.⁹⁴ There is no identifiable threshold at which a particular rate design becomes unjust and unreasonable.⁹⁵ As discussed below, while AEP is not precluded from filing its complaint, we find that AEP has failed to meet its burden to establish a *prima facie* case that the current rate designs in Midwest ISO and PJM (and therefore, the inter-RTO rate design) are unjust and unreasonable.⁹⁶

⁹² See *Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1315 (D.C. Cir. 1991) (stating it is “not the theory of a rate order, but its impact that determines its legality”) (citing *North Carolina v. FERC*, 584 F.2d 1003, 1014 (D.C. Cir. 1978)) (*Algonquin*).

⁹³ See “Complex” *Consol. Edison Co. of N.Y., Inc. v. FERC*, 165 F.3d 992, 1000-02 (D.C. Cir. 1999) (citing *Tenn. Gas Pipeline Co.*, 80 FERC ¶ 61,070 (1997)) (analyzing the comparable provisions sections 4 and 5 of the Natural Gas Act (NGA)).

⁹⁴ *Id.* at 1003 (holding that the determination of rolled-in rates may be different depending on whether the proposal is by the utility or is a NGA section 5 (or, as here, a FPA section 206) inquiry).

⁹⁵ *Tenn. Gas Pipeline Co.*, 80 FERC at 61,224 (finding “there is not a single magic point on the continuum between incremental and rolled-in rates such that at that single point an incremental rate becomes unjust and unreasonable while a rolled-in rate simultaneously becomes just and reasonable.”).

⁹⁶ The issue before us in the AEP Complaint and the IRPD filing is the same: whether the existing rate design for service between the two RTOs, particularly the use of license-plate rates to recover the cost of existing facilities, continues to be just and reasonable. Since the issue is the same, and since the arguments raised in pleadings to both proceedings generally apply to this issue, our findings apply equally in both cases even when those findings may be made in the context of one or the other specific proceeding.

1. Whether AEP Meets Its Burden to Show the Existing Rate Is Unjust and Unreasonable

89. The basis of the AEP Complaint is its claim that the current rate designs are unjust and unreasonable because they allocate the cost of AEP's existing high-voltage transmission system exclusively to customers with load in the AEP footprint, even though customers with load outside of AEP's footprint could not achieve the same level of benefits of belonging to either RTO without using AEP's system.⁹⁷ AEP raises the same three basic issues related to existing facilities in its complaint that it did in the Opinion No. 494 proceeding namely: (a) the distinction between existing and new facilities; (b) the loss of through-and-out revenues; and (c) the benefits provided by existing facilities.

a. The Distinction Between Existing and New Facilities

i. AEP Complaint

90. AEP asserts that the existing inter-RTO rate design is unduly discriminatory and preferential because the costs of all transmission facilities built and in-service by a date certain (*i.e.*, existing facilities) are allocated to the traditional customers within the zone where the facilities are located, while the costs of new high-voltage facilities are allocated on a regional basis (through various methods) and proportionally added to each zone's rate. In Opinion No. 494, the Commission rejected AEP's request to spread the cost of its existing high-voltage facilities across PJM. AEP now claims that the Commission should require that the cost of its existing high-voltage facilities be spread across the entire combined PJM/Midwest ISO region because of the role that AEP's existing high-voltage facilities play in integrating the two RTOs, in permitting customers to reap the benefits of that integration, and in facilitating the major new high-voltage projects that are planned for the combined region.

ii. Comments

91. Buckeye and ITC agree with AEP that the current rate design that distinguishes between existing and new facilities is unjust and unreasonable. In contrast, the majority of commenters argue that AEP's assertion that existing and new facilities should be treated the same is not a reason to find the existing rate to be unjust and unreasonable.

92. Ameren, Certain Midwest ISO TOs, Certain PJM TOs, Detroit Edison, Exelon/PPL, IPL, Midwest ISO and PJM maintain that AEP ignores important differences between existing and new facilities. These entities also assert that AEP raised

⁹⁷ AEP Complaint at 3.

this same argument in the Opinion No. 494 proceeding, and the Commission rejected it. They note that the Commission could not find that the continued use of the zonal or license-plate rate design is unjust and unreasonable based on principles of regional consensus, cost causation, use and benefits, cost shifts, encouraging new transmission construction and the recognition of real differences between existing and new facilities.⁹⁸ These entities maintain that the rationale adopted in Opinion No. 494 is fully applicable to the AEP Complaint.

93. In addition, Midwest ISO and PJM argue that “there is nothing inherently inequitable or unreasonable in distinguishing between new and existing facilities for purposes of cost allocations.”⁹⁹ Midwest ISO and Certain Midwest ISO TOs assert that AEP’s existing facilities were not planned and constructed to maximize benefits on a region-wide basis, so continued use of a license-plate rate design with respect to these facilities is just and reasonable. IPL agrees, noting that “it remains undisputed that not all facilities (either existing or new) serve customers equally” and “the Commission has properly recognized the importance of the unintended consequences of re-allocating costs of existing transmission facilities.”¹⁰⁰ Likewise, Midwest ISO maintains that the Commission has already found that this distinction is needed to mitigate costs shifts.

iii. AEP Answer

94. In its answers, AEP argues that it has met its burden under section 206 of the FPA to establish a *prima facie* case that the different treatment of existing and new facilities in the existing rate design is not just and reasonable.

iv. Commission Determination

95. We find that, in the context of the rate design for service between the RTOs, license-plate rates continue to be a just and reasonable method to recover the cost of existing facilities. Under the existing inter-RTO rate design (which is based on the intra-RTO rate designs for Midwest ISO and PJM), the cost of existing facilities is recovered from customers with load within the zone where the facilities are located. For new intra-RTO facilities, each RTO spreads certain costs (20 percent in Midwest ISO and 100 percent in PJM) of certain qualifying high-voltage facilities (345 kV and above in

⁹⁸ See, e.g., Exelon/PPL Comments to AEP Complaint at 11-13 (*citing* Opinion No. 494, 119 FERC ¶ 61,063 at P 3, 41-44, 50-54, 56-60, 84); Certain PJM TOs Comments to AEP Complaint at 10-13.

⁹⁹ Midwest ISO Answer to AEP Complaint at 21.

¹⁰⁰ IPL Comments to AEP Complaint at 21.

Midwest ISO and 500 kV and above in PJM) to customers across the entire RTO footprint. It is reasonable for the RTOs to maintain this different treatment because there are fundamental differences between new and existing facilities.

96. Significantly, Midwest ISO and PJM plan the construction of new facilities based on each RTO's independent planning process, which helps to ensure that new projects are necessary to meet the reliability and economic needs of each RTO's system as a whole. Stakeholders in each RTO can participate in the RTO's regional planning process and, thus, can be part of the discussion that leads to the decision to build new facilities in which they will share the cost. Similarly, new cross-border facilities are planned pursuant to a joint RTO planning process under the Joint Operating Agreement (JOA).¹⁰¹ In contrast, decisions to build existing facilities were not made as part of any regional planning process.¹⁰²

97. Moreover, unlike existing facilities, the rate design for new facilities has efficiency implications.¹⁰³ As the Commission found in Order No. 890, rate design for new facilities is important because it provides incentives for construction and provides sufficient certainty, so that developers can obtain financing and the projects can be constructed.¹⁰⁴ As the Commission explained in Opinion No. 494, reallocating the cost of existing facilities would neither provide economic efficiencies nor promote the goal of increasing necessary transmission investment.¹⁰⁵

¹⁰¹ Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 5 and PJM FERC Electric Tariff, First Revised Rate Schedule No. 38.

¹⁰² *Cf.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 758 (finding that one reason a new test for determining transmission credits should not apply to existing facilities is because existing facilities were not subject to the increased planning and coordination requirements of Order No. 890).

¹⁰³ A primary goal of our transmission pricing policy for new facilities is to promote economic efficiency. *See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act: Policy Statement*, FERC Stats. & Regs. ¶ 31,005, at 31,143 (1994), *order on reconsideration*, 71 FERC ¶ 61,195 (1995).

¹⁰⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559-61.

¹⁰⁵ Opinion No. 494, 119 FERC ¶ 61,063 at P 53.

98. AEP essentially ignores the Commission’s finding in Opinion No. 494 that the differences between new and existing facilities warrant different treatment. AEP states, in direct conflict with the Commission’s finding in Opinion No. 494, “[i]t matters not whether AEP’s [high-voltage] facilities were planned and designed through the current RTO planning model.”¹⁰⁶ AEP goes on to state, “[i]n any event, AEP in fact did coordinate the development of its [high-voltage] system with other utilities in the region.”¹⁰⁷ However, AEP has not shown that the level and type of coordination it says occurred in the development of its existing high-voltage facilities is comparable to the RTO regional planning processes currently in place. While AEP’s facilities were likely not planned in isolation, there is no evidence in the record to show that they were planned to address regional needs of either the Midwest ISO or PJM wholesale market, and therefore they are not comparable to each RTO’s regional planning process.¹⁰⁸

99. For example, in Mr. Bethel’s testimony on behalf of AEP, he states that “[a]ny suggestion that AEP planned its system in a vacuum, without the consultation, cooperation and parallel construction by its neighbors, would be very misleading. The system was built before the advent of RTOs, but the RTOs did not invent coordinated planning – they only centralized it.”¹⁰⁹ However, as independent RTOs, Midwest ISO and PJM oversee a formal, Commission-approved, regional planning process where the needs of the region are addressed and where all stakeholders are given an opportunity to participate. As the Commission found in Opinion No. 494, an important factor in allowing certain new high-voltage facilities to be eligible for postage-stamp treatment is that those new facilities are planned on a regional basis by a central grid operator, who considers the reliability and economic interests of the RTO as a whole.¹¹⁰

¹⁰⁶ AEP Complaint at 23.

¹⁰⁷ *Id.* at 23 n.44.

¹⁰⁸ As AEP’s own witness states, “[i]t is true that many of the PJM and [Midwest ISO] backbone transmission facilities built several decades ago were intended primarily to provide service to local loads. Of course, there were no RTOs or ISOs, so the facilities could not have been subject to the type of regional planning process that exists today in PJM and [Midwest ISO]” AEP Complaint, Ex. AEP-100 at 16.

¹⁰⁹ AEP Complaint, Ex. AEP-200 at 21.

¹¹⁰ Opinion No. 494, 119 FERC ¶ 61,063 at P 84.

100. Similarly, Mr. Pasternack, in his testimony on behalf of AEP,¹¹¹ includes statements about how any excess capacity that may be available on existing facilities is available for third parties.¹¹² While this may be true – unused capacity is generally available for use by third parties under the Commission’s open access transmission policies – Mr. Pasternak acknowledges, “AEP’s main driver as it developed its [high-voltage] transmission system was the need to reliably and economically serve its own customers using AEP generation and other acquired resources.”¹¹³

101. We also disagree with AEP that the cost of its existing facilities should be spread across the combined Midwest ISO/PJM region because AEP’s “long-term vision . . . inherently” provided incremental transmission capacity that could be used by third parties.¹¹⁴ As Mr. Pasternak states, “[t]he most significant conclusion emerging from

¹¹¹ Mr. Pasternack presents essentially the same testimony that he made in the Opinion No. 494 proceeding about the development of AEP’s 345 kV and 765 kV transmission systems. In Opinion No. 494, the Commission cited Mr. Pasternack’s testimony to show that AEP’s existing high-voltage transmission facilities were planned and built mainly to serve AEP’s own system needs. Opinion No. 494, 119 FERC ¶ 61,063 at P 50.

¹¹² For instance, Mr. Pasternak states that capacity associated with existing facilities provides “capacity for use by third parties,” and that AEP has a philosophy of “providing capacity for third party use, as available” AEP Complaint, Ex. AEP-300 at 10-11.

¹¹³ *Id.* at 13. In addition, Mr. Baker, in his testimony on behalf of AEP, states, “[i]t is true that many of the PJM and [Midwest ISO] backbone transmission facilities built several decades ago were intended primarily to provide service to local loads. Of course, there were no RTOs or ISOs, so the facilities could not have been subject to the type of regional planning process that exists today in PJM and [Midwest ISO]” AEP Complaint, Ex. AEP-100 at 16.

¹¹⁴ Mr. Pasternak states:

AEP chose to meet [the need to serve its own customers] with a long-term vision that inherently provided incremental transmission capacity that could be used by third parties. This approach resulted in a least-cost transmission system when considering the long term and taking into account third party transmission revenues. Were it not for AEP’s long-term transmission vision, the PJM and [Midwest ISO] markets could not function as effectively as they do today.

(continued...)

these [planning] studies was the finding that further development of the 345 kV and above transmission system would be required to meet the needs of the AEP region by 1990” and that “[b]ased on extensive analysis and evaluation, it was determined that the deployment of 765 kV transmission would provide the necessary transmission capability at lower cost and with less environmental impact.”¹¹⁵ There is no specific evidence that third-party transmission usage played a role in the planning of or in the decision to build any of AEP’s existing high-voltage facilities.

102. Accordingly, we continue to find that a just and reasonable rate design can treat existing and new facilities differently, and a license-plate rate design for existing facilities is just and reasonable.

b. Lost Through-and-Out Revenue

i. AEP Complaint

103. AEP argues that, to the extent that the reallocation of costs that will occur in transitioning from license-plate to postage-stamp rates can rightfully be called a cost shift, the Commission recognized in implementing the transitional Seams Elimination Cost Allocation (SECA) mechanism that such cost shifts are inevitable. AEP also argues that the Commission intended the existing license-plate rate design to be replaced with a different rate design when the initial fixed period expires on January 31, 2008. In addition, AEP argues that any cost shift analysis must start with through-and-out rates, and then compare the revenues entities earned under that regime to any subsequent rate design. Viewed in that context, AEP asserts that the existing rates (without the SECA) are unjust and unreasonable because they cause a substantial cost shift.

ii. Comments

104. Certain Midwest ISO TOs, Detroit Edison, Exelon/PPL, IPL, and Midwest ISO disagree with AEP that the existing inter-RTO rate design is unjust and unreasonable because AEP lost certain revenues when the Commission eliminated rate pancaking. These commenters note that AEP also derived benefits from the elimination of rate pancaking and that the Commission eliminated rate pancaking in consideration of the benefits of joining an RTO. They also assert that AEP has already been compensated for its claimed lost through-and-out revenues through the transitional SECA payments paid from December 1, 2004 through March 31, 2006.

AEP Complaint, Ex. AEP-300 at 13.

¹¹⁵ *Id.* at 10.

iii. Commission Determination

105. We disagree that AEP's lost through-and-out revenue is a sufficient basis to find that the existing inter-RTO rate design is unjust and unreasonable. Specifically, we disagree with AEP that: (a) the Commission required the existing inter-RTO license-plate rate design to be replaced on February 1, 2008; and (b) that any cost shift analysis must consider the revenues AEP lost when the Commission eliminated pancaked rates.

(a) Elimination of Rate Pancaking

106. The Commission did not find in Order No. 2000, for RTOs in general, or in any proceeding related to Midwest ISO and PJM specifically, that license-plate rates are unjust and unreasonable. The Commission also did not find that, with the elimination of pancaked rates, the RTOs had to change their license-plate rate design effective February 1, 2008.

107. In Order No. 2000, the Commission addressed the appropriateness of continued use of license-plate rates and stated that it would provide RTOs with flexibility with respect to allocation of fixed transmission cost recovery.¹¹⁶ In defense of continued use of license-plate rates, the Commission noted that the use of license-plate rates was broadly supported. In addition, the Commission found that cost shifts that would occur by eliminating license-plate rates could act as an impediment to RTO formation, thereby denying stakeholders the benefits that come from RTO membership. The Commission also concluded that problems associated with cost-shifting are not easily resolved by means other than the use of license-plate rates.¹¹⁷

108. The Commission did require that, in order to continue using license-plate rates, an RTO must reevaluate its fixed cost recovery policies after an initial period. While the Commission specifically stated that it was not requiring the RTO to continue or abandon the use of license-plate rates at that time, it required the RTO to justify its choice to continue or discontinue using license-plate rates, or otherwise change the method for fixed-cost recovery. As to the combined Midwest ISO/PJM region, the Commission specifically stated that the reevaluation was "not a mandate that license plate rates for service between the RTOs must be eliminated at the end of the term."¹¹⁸ Thus, AEP had

¹¹⁶ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,177-78.

¹¹⁷ *Id.* at 31,177.

¹¹⁸ November 2004 Order, 109 FERC ¶ 61,168 at P 62.

notice that the unpancaked license-plate rates for inter-RTO service might remain in place after January 1, 2008.¹¹⁹

109. AEP further argues that while changing rate design may encourage some TOs to leave, license-plate rates will discourage TOs with large through-and-out revenues or significant investment in existing transmission facilities from joining an RTO in the first place. However, as the Commission stated in Order No. 2000, “the elimination of rate pancaking for large regions is a central goal of the Commission’s RTO policy, and has been a feature of all five ISOs the Commission had approved.”¹²⁰

110. An RTO is a network of interrelated transmission, distribution, generation, and load, and in joining an RTO, each transmission owner must balance all these interests. As the Commission stated in Opinion No. 494:

In deciding whether to join an RTO (which by definition entails the elimination of through-and-out rates), a vertically integrated utility has to evaluate the benefits of joining the RTO against the possible loss of transmission revenue from the elimination of through and out rates. For example, joining an RTO will permit it to more efficiently sell its

¹¹⁹ Because the Commission specifically stated that license-plate rates may continue after the initial fixed period, AEP attempts to support its claim that it expected to be compensated for through-and-out service after the initial fixed period ended by focusing on what the Commission did *not* say in any prior orders. *See, e.g.*, AEP Complaint at 12 (“[T]he Commission never ruled that entities that join RTOs should permanently forego compensation for others’ use of their systems or that such users of other systems need no longer contribute to the cost of those systems. Mr. Baker explains that the Commission never suggested that its purpose in eliminating seams was to reverse longstanding cost causation precedent”); *id.* at 14 (“The Commission . . . did not silently reverse the decades-old bedrock principles upon which the earlier Commission orders were based.”); AEP Complaint, Ex. AEP-100 at 18-19 (“The Commission did not voice any concern as to whether AEP’s transmission system originally was planned and designed to integrate disparate non-interconnected systems that decided to form an RTO.”); *id.* at 25 (“Nowhere in the orders is there any suggestion that the Commission believed that the advent of RTO-administered regional markets invalidated the longstanding ratemaking principle that costs should be allocated among those who benefit from the use of the RTO grid facilities.”).

¹²⁰ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,173.

power across a much larger geographic area thereby generating greater revenues from power sales.^[121]

111. In joining PJM, AEP received both quantifiable and non-quantifiable benefits, such as annual production cost savings, increased system sales profits, improved system reliability, and construction incentives.¹²² The continued collection of through-and-out rates is antithetical to the efficient dispatch of the system because they raise barriers to regional scheduling.¹²³ Accordingly, all RTO members, including AEP, were on notice that all options were open.¹²⁴ The Commission did provide interim recovery of lost through-and-out revenue,¹²⁵ but the Commission did not state that those lost revenues would continue to be recovered on a permanent basis or that rate design would change to provide for such recovery.

112. In any event, as the Commission found in Opinion No. 494, the continued use of license-plate rates for existing facilities is not related to the recovery of lost through-and-out revenue.¹²⁶ Allocating the cost of high-voltage transmission lines has no relationship to the reimbursement for volumetric through-and-out revenue AEP may have lost when the Commission eliminated rate pancaking. Moreover, according to AEP's own analysis,

¹²¹ Opinion No. 494, 119 FERC ¶ 61,063 at P 60.

¹²² *New PJM Cos.*, 107 FERC ¶ 61,271, at P 45 (2004), *order on reh'g*, 110 FERC ¶ 61,009 (2005).

¹²³ *See* July 2003 Order, 104 FERC ¶ 61,105 at P 34-38; *see also* November 2004 Order, 109 FERC ¶ 61,168 at P 56.

¹²⁴ In *Algonquin*, the court found that in evaluating whether an existing just and reasonable rate design has become unjust and unreasonable, the Commission needs to examine the cost shifts to the customers who will pay the higher rates upon the change, not to those who will benefit if the existing rate is changed. 948 F.2d at 1315.

¹²⁵ *See* November 2004 Order, 109 FERC ¶ 61,168 at P 61; *see also* November 2003 Order, 105 FERC ¶ 61,212 (2003). The Commission adopted the SECA transitional rate mechanism to address cost shifts resulting from the elimination of rate pancaking in the combined Midwest ISO/PJM region.

¹²⁶ Opinion No. 494, 119 FERC ¶ 61,063 at P 60.

its proposal to spread the cost of existing facilities across the combined Midwest ISO/PJM region would not approximate the charges imposed by through-and-out rates.¹²⁷

113. Moreover, we do not dispute that there are alternative rate design proposals that would avoid rate pancaking and that are not transaction-based.¹²⁸ However, the fact that there may be other rate designs that fulfill the Commission's requirements to avoid pancaked and transaction-based rates is not a basis to find that the existing inter-RTO rate design is unjust and unreasonable. Similarly, the fact that there may be rates other than the existing ones that are also just and reasonable does not mean that we must reject the existing inter-RTO rate design.¹²⁹

(b) Cost Shifts

114. An important factor in our finding that the existing license-plate rate design for inter-RTO service continues to be just and reasonable is that it minimizes cost shifts. In defense of the IRPD filing, the RTOs and Supporting TOs confirm that RTO working

¹²⁷ See AEP Complaint, Ex. AEP-212, showing cost shifts that result when through-and-out and SECA revenues are compared to AEP's proposal.

¹²⁸ As AEP points out, none of the alternative rate design proposals evaluated as part of the stakeholder process would reinstate pancaked or transaction-based rates for inter-RTO transmission service. That is not surprising given that it would have been illogical for the RTOs to consider a proposal that would reinstate pancaked or transaction-based rates, since the Commission has already found that such rates for inter-RTO service are not just and reasonable.

¹²⁹ See *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282, at P 29, *order on reh'g sub nom. E.ON U.S. LLC*, 116 FERC ¶ 61,020 (2006) (“[T]he just and reasonable standard under the FPA is not so rigid as to limit rates to a ‘best rate’ or ‘most efficient rate’ standard. Rather, a range of alternative approaches often may be just and reasonable.”). This conclusion represents nothing more than a recognition of the general principle that the Commission has broad authority to select methods for determining just and reasonable rates or to choose a rate from a range of just and reasonable rates. *FPC v. Conway Corp.*, 426 U.S. 271, 278 (1976) (finding “there is no single cost-recovering rate, but a zone of reasonableness”); *Permian Basin Area Rate Cases*, 390 U.S. 747, 791-92 (1968); *Colo. Interstate*, 324 U.S. at 589 (“Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”) (internal citations omitted).

groups evaluated various inter-RTO pricing proposals.¹³⁰ The conclusions regarding cost shifts were, according to the RTOs and Supporting TOs, supported by an intensive effort to identify and compile data for all TOs. They state that a large quantity of data was exchanged among the TOs in Midwest ISO and PJM to enable working group members to develop and empirically evaluate alternative pricing design proposals and to determine the potential costs shifts associated with such proposals.¹³¹ All participants were afforded an opportunity to solicit and exchange the data necessary to explore the alternative proposals.¹³² The RTOs and Supporting TOs' conclusion that alternative proposals would potentially cause significant cost shifts is also supported by the Commission's previous finding that changing from a license-plate rate design to regional postage-stamp pricing for RTOs results in significant cost shifts from higher to lower cost regions.¹³³

¹³⁰ They state that one of the reasons that it was difficult to reach consensus on any change to the existing rate design is because of significant potential cost shifts associated with the proposed alternatives. IRPD Filing at 6.

¹³¹ The RTOs and Supporting TOs did not file the full results of the cost shift evaluation or the supporting information because much of the underlying data was supplied pursuant to confidentiality agreements. *See* IRPD Filing at 6; AEP Protest of IRPD Filing at 8. We find that AEP is incorrect to argue that the Commission cannot rely on the RTOs and Supporting TOs' conclusion that alternative rate design proposals result in significant cost shifts because the relevant data was not submitted as part of the IRPD filing.

¹³² There is no dispute that all stakeholders were given the opportunity to fully participate in the evaluation process and to have any alternative proposals heard and considered. AEP states that it actively participated in the process, had its proposal heard and considered, and ultimately was outvoted. AEP Protest of IRPD Filing at 3. In addition, no party disputes that changing the existing inter-RTO rate design to any of the alternative rate designs will potentially cause significant cost shifts when compared to the *existing* rate design. AEP argues that the Commission should look at a different cost shift analysis but does not dispute that there will be a significant cost shift even under its proposal, when compared to the *existing* rates.

¹³³ November 2004 Order, 109 FERC ¶ 61,168 at P 56.

115. Moreover, AEP's own analysis shows that its proposed replacement inter-RTO rate design would cause substantial cost shifts.¹³⁴ As discussed earlier, substantial cost shifts pose a potential risk to RTO membership and the important benefits that RTOs bring. If we ordered the RTOs to change their existing rate design to AEP's rate design, the substantial cost shifts that would result might cause affected TOs to second guess their continued or future participation in an RTO.¹³⁵

116. We also disagree with AEP that the cost shift analysis in this case should include the revenue AEP lost when the Commission eliminated intra-RTO and inter-RTO rate pancaking. The Commission already considered the cost shifts that would occur when it adopted the existing inter-RTO license-plate rate design in November 2004. The Commission acknowledged that the lost through-and-out revenue that resulted from the elimination of rate pancaking can result in abrupt cost shifts, since the portion of the transmission revenue requirement that was previously recovered from through-and-out service under pancaked rates would be borne by customers within the license-plate pricing zone.¹³⁶ The Commission reasoned, however, that the cost shifts that would occur from the Commission's elimination of rate pancaking would not be unreasonable, as these cost shifts would be balanced by the broader transmission access that would become available under a regional tariff.¹³⁷

¹³⁴ For example, according to AEP's own analysis, if the costs of all facilities rated at 345 kV and above were spread across the combined Midwest ISO/PJM region, changes to the TOs' existing zonal revenue requirement could range from an approximately 158 percent increase to a 29 percent decrease. AEP Complaint, Ex. AEP-212 at 1-2.

¹³⁵ Furthermore, in Opinion No. 494, the Commission found that any of the proposed alternatives to license-plate rates within PJM would cause significant cost shifts. Opinion No. 494, 119 FERC ¶ 61,063 at P 59. The Commission makes similar findings regarding postage-stamp proposals for intra-Midwest ISO rate design in the concurrent post-transition rate design order in Docket Nos. ER07-1233-000 and ER07-1261-000. Therefore, the RTOs and Supporting TOs' proposal to maintain the existing license-plate rate design is a reasonable way to prevent undue cost shifts that may occur under other inter-RTO rate designs.

¹³⁶ November 2004 Order, 109 FERC ¶ 61,168 at P 56.

¹³⁷ *Id.*

117. To mitigate the immediate cost shift that would occur with the elimination of rate pancaking, the Commission adopted the SECA transition mechanism.¹³⁸ While the parties to the SECA proceeding disagree as to the appropriate level of lost revenue associated with the elimination of rate pancaking, the SECA was designed to recover, during the initial fixed period, all of the revenues lost due to the elimination of pancaked rates.¹³⁹ After the transition period, which expired in March 2006, the Commission established that the license-plate rate design for inter-RTO rates would continue as a just and reasonable rate, subject to the reevaluation that is the focus of the IRPD filing.

118. AEP is also incorrect to imply that because the Commission referred to the principle of cost causation when discussing transitional rate mechanisms, the Commission must have meant that the Commission intended the RTOs to propose something other than the existing license-plate rates.¹⁴⁰ If this were so, as the Supporting TOs correctly point out, the temporary, transitional nature of the Commission-imposed SECA mechanism would be meaningless. If the purpose of the SECA were to act as a transition to a mandatory new rate design associated with the required reevaluation, the Commission would have extended the SECA until such time as the new rate design was in place and would not have allowed the SECA to expire in March 2006. In any event, the Commission specifically stated that the formal reevaluation of the license-plate rate design it imposed for pricing inter-RTO transmission service “is not a mandate that license plate rates for service between the RTOs must be eliminated [after January 31, 2008].”¹⁴¹

119. Certainly, the Commission did not rule out the possibility that the mandatory reevaluation might lead the RTOs and their TOs to propose a change to the existing license-plate rate design. However, the Commission never indicated that the revenue lost as a result of eliminating rate pancaking would be a basis to reject license-plate rates if,

¹³⁸ The Commission also found that through-and-out rates would continue for existing transactions in the transition period during which the SECA was in effect and directed the RTOs and TOs to reevaluate the inter-RTO license-plate rates after a fixed period (*i.e.*, the subject of the instant proceeding). *Id.* P 59-62.

¹³⁹ *Id.* P 61.

¹⁴⁰ AEP Protest of IRPD Filing at 13 (“The Commission’s reference to the cost causation principle confirmed that the Commission was committed to the post-transition implementation of a permanent rate mechanism ‘to ensure that the parties continue to pay the costs of facilities that they use and from which they benefit.’”) (internal citation omitted).

¹⁴¹ November 2004 Order, 109 FERC ¶ 61,168 at P 62.

as here, the required reevaluation led the RTOs and the vast majority of their TOs to propose and support the continuation of the existing rates. The fact that the existing rate design does not recover exactly the same revenue from exactly the same customers as the previous rate or as through the transitional SECA mechanism, is not sufficient reason for the Commission to find that the existing rate does not continue to be just and reasonable.

120. Moreover, the Commission in Opinion No. 494 specifically rejected AEP's argument that any cost shift analysis must include the cost shift that occurred when the Commission eliminated rate pancaking. The Commission stated:

We find this argument unconvincing – the lost revenues of one company do not dictate a reallocation of the sunk costs of *all* PJM [TOs], which would, in turn, result in massive cost shifts. . . . In deciding whether to join an RTO (which by definition entails the elimination of [through-and-out] rates), a vertically integrated utility has to evaluate the benefits of joining the RTO against the possible loss of transmission revenue from the elimination of [through-and-out] rates. For example, joining an RTO will permit it to more efficiently sell its power across a much larger geographic area[,] thereby generating greater revenues from power sales. The Commission also has established proceedings specifically to consider transitional cost recovery for lost [through-and-out] revenue. We, therefore, do not find that the potential loss of [through-and-out] revenue justifies a significant change in rate design for sunk facilities within PJM. We do, however, believe that substantial shifts in cost responsibility as a result of a move away from zonal prices have the potential to affect RTO membership.¹⁴²

This rationale applies even more so in this case, where the lost revenues of one TO (such as AEP) should not dictate a reallocation of the sunk costs of all Midwest ISO *and* PJM TOs, which would, in turn, result in massive cost shifts.

121. Furthermore, only one TO supports AEP's complaint, and that TO, ITC, only supports the AEP's proposal in part. Although AEP admonishes stakeholders for not leaving their financial self-interest behind and comprehensively evaluating the fairness of

¹⁴² Opinion No. 494, 119 FERC ¶ 61,063 at P 60 (internal citation omitted) (emphasis in original).

AEP's alternative rate design proposal,¹⁴³ AEP would realize the largest reduction in its zonal rate, in both dollar and percentage terms, of all the TOs under its alternative rate proposal.¹⁴⁴ Notably, several other TOs would also realize a significant decrease to their zonal rates if we were to grant the AEP Complaint, but the vast majority of these TOs still do not support AEP's proposal.¹⁴⁵

122. Accordingly, we disagree with AEP's reliance on the cost shifts that occurred when the Commission eliminated rate pancaking and established the existing unpancaked license-plate rates to support its claim that the existing rates are unjust and unreasonable. The cost shift that occurred when the prior rate changed to the existing rate (and that, in any event, the Commission already addressed) is not a sufficient basis to find that the existing rate is unjust and unreasonable.

c. Benefits of Existing Facilities

i. AEP Complaint

123. AEP argues that the Commission incorrectly applied cost-causation principles in Opinion No. 494 by focusing on whether the AEP system was developed under the RTOs' regional planning process. AEP asserts that the existing rate design for the combined Midwest ISO/PJM region is unjust and unreasonable because it allows customers outside of the AEP zone to use the valuable AEP high-voltage system without paying for it.

ii. Comments

124. In its partial support of the AEP Complaint, ITC argues that, contrary to principles articulated in Order No. 890, license-plate rates neither assign costs fairly among the participants who cause those costs to be incurred and who benefit from those costs, nor provide adequate incentives to construct new high-voltage transmission facilities across Midwest ISO and PJM.

¹⁴³ AEP Complaint, Ex. AEP-100 at 7.

¹⁴⁴ If the cost of all facilities at 345 kV and above were spread across the combined Midwest ISO/PJM region, AEP's zonal revenue requirement would decrease over \$140 million, or approximately 29 percent, when compared to its zonal revenue requirement under the existing rate design. AEP Complaint, Ex. AEP-212, at 1-2.

¹⁴⁵ For example, according to AEP's analysis, Commonwealth Edison Company, PECO Energy Company, Duquesne Light Company and Public Service Electric and Gas Company would realize rate reductions in the range of nine to 24 percent. *Id.*

125. In contrast, the majority of commenters, including Ameren, Detroit Edison, Exelon/PPL and Midwest ISO, argue that AEP has not demonstrated that it provides more benefits to the combined Midwest ISO/PJM region than it receives in return. Detroit Edison argues that AEP is wrong in asserting that because Midwest ISO entities cause power flows on AEP's system without paying AEP for that use, this illustrates the need for a change in inter-RTO rate design. Furthermore, Detroit Edison and Midwest ISO disagree with AEP's premise that AEP is a separate link between Midwest ISO and PJM, pointing out that there is not one single market entity that encompasses the combined Midwest ISO/PJM region. Similarly, Ameren asserts that AEP chose to join PJM and in making that choice, AEP decided that the benefits it would receive from the Midwest ISO and PJM markets would compensate AEP for the loss of through-and-out revenues. Midwest ISO argues that AEP receives significant benefits as a result of its membership in PJM noting, among other things, benefits from seamless RTO markets for AEP's generation and the availability of lower cost power from Midwest ISO.

126. Exelon/PPL also argue that the Commission's finding in Opinion No. 494 that license-plate rates promote RTO participation applies here as well. Exelon/PPL note that: (1) license-plate rates are favored by the overwhelming number of TOs in RTOs, (2) the Commission has already found that license-plate rates will not discourage high-cost TOs from participating in RTOs because of other benefits of joining RTOs; and (3) staying out of an RTO would not give a high-cost TO assurance that it could continue to impose through-and-out charges.¹⁴⁶

iii. AEP Answer

127. In its answers, AEP argues that it has met its burden under section 206 of the FPA to establish a *prima facie* case that the existing rate design is unjust and unreasonable for its failure to recognize the true benefits of existing facilities. AEP argues that, contrary to Midwest ISO's assertion, it is not required to show how the "public at large" is adversely affected.

iv. Commission Determination

128. Although Midwest ISO and PJM operate their individual transmission systems on an integrated basis, we do not find that the costs of all the facilities within both RTOs must be spread to all the customers within the combined Midwest ISO/PJM region. In establishing an RTO, the TOs engaged in a joint enterprise and each TO contributes its assets to that enterprise. Unlike holding companies and individually-owned utilities, RTOs are voluntary agreements of TOs, and cost allocation may have significant effects on a TO's decision to remain in the RTO. Because of the ongoing incentive effects of

¹⁴⁶ Exelon/PPL Comments to AEP Complaint at 34-37.

cost reallocation, we cannot find that the TOs' agreement for joint management of their facilities under an RTO automatically disqualifies a license-plate approach as unjust and unreasonable. This is especially true here given the position of the vast majority of the TOs.¹⁴⁷

129. Similarly, joint dispatch, while significantly improving the efficiency of each RTO's dispatch, does not mean that the facilities within each RTO provide equal benefits to all members of the RTO sufficient to warrant the cost shifts created by spreading the costs of existing facilities to all customers in the RTO (or across both RTOs). Indeed, in Opinion No. 494, the Commission held that, despite the fact that the PJM system is jointly dispatched and the bulk transmission grid is planned on a centralized basis, these facts were not sufficient, standing alone, to warrant a postage-stamp rate for all existing and future high-voltage transmission facilities. Here, however, AEP proposes to roll in the costs of transmission facilities across both the Midwest ISO and PJM regions, despite the fact that the two regions are not jointly dispatched nor are their transmission grids planned on a centralized basis. Thus, the support in this case for AEP's position is even weaker, in this respect, than it was in Opinion No. 494. We therefore cannot find unjust and unreasonable the existing rate design under which each TO's contribution of its existing facilities is deemed reasonable without reallocation of costs among the TOs. This is particularly true for existing facilities, which were not built as part of the RTO regional planning process.

130. Furthermore, although AEP claims that it derives less benefit from the facilities of all other TOs in both RTOs than those other TOs in both RTOs derive from AEP's existing facilities, AEP states that it "did not attempt to show the extent to which each specific customer within the region used and benefited from individual backbone facilities" because "[t]hat would have been a futile exercise."¹⁴⁸ Instead, AEP argues that it need only show that the benefits of its existing high-voltage facilities are "sufficiently broad" to support an allocation of costs among customers throughout the combined Midwest ISO/PJM region. To support this contention, AEP cites the Commission's finding in Opinion No. 494 that the cost of *new* facilities can be spread across PJM:

In adopting a postage stamp allocation for new facilities at 500 kV and above, we do not suggest that every 500 kV project will benefit every load in PJM in equal measure. Nor

¹⁴⁷ See *Fort Pierce Utils. Auth. v. FERC*, 730 F.2d 778 (D.C. Cir. 1984) (affirming determination not to require single-system transmission rates for two independent utilities).

¹⁴⁸ AEP Complaint, Ex. AEP-100 at 20.

are we required to find that every customer will benefit equally from every project. Rather, we need to find and we do find only that the benefits of such facilities are, as described above, sufficiently broad that they support a postage stamp allocation.¹⁴⁹

131. This language from Opinion No. 494, however, relates to *new* facilities. The basis of the AEP Complaint and its protest to the IRPD filing is that the current rate design is unfair because AEP does not recover the cost of its *existing* facilities from customers with load outside the AEP zone. In Opinion No. 494, the Commission found that the costs of existing facilities, which were not built under a regional planning process, should not be charged to supposed customers of utilities who played no role in the planning process, especially when the alleged use cannot be specifically proven.

132. Even though existing facilities may be part of an integrated transmission system, that finding alone has not been found sufficient to find an existing rate design unjust and unreasonable.¹⁵⁰ As the Commission found in Opinion No. 494, although the PJM system is operated on an integrated basis, it still is subject to significant transmission constraints during peak periods that limit the ability of non-local customers to access all portions of the system:

the record shows that, in fact, transmission facilities in individual zones do not serve all customers equally. The PJM system is subject to significant transmission constraints, and the record shows that these constraints result in congestion costs of \$2 billion annually. The existence of significant congestion costs indicates that transmission facilities in each zone do not have equal value to all PJM load. This does not mean that these facilities do not provide regional benefits. However, as [the Responsible Pricing Alliance] points out, “the mere existence of such general benefits does not warrant the conclusion that the license plate rate design misaligns

¹⁴⁹ *Id.* at 21 (*citing* Opinion No. 494, 119 FERC ¶ 61,063 at P 81).

¹⁵⁰ *See Algonquin*, 948 F.2d at 1315. With respect to gas pipeline expansions, the Commission also has found that rolled-in pricing is not justified simply because the existing customers receive “some benefit from the construction of the new facilities,” or because “shippers receive some positive benefit.” *Certification of New Interstate Natural Gas Pipeline Facilities*, 90 FERC ¶ 61,128, at 61,394, *order on clarification*, 92 FERC ¶ 61,094 (2000).

costs and benefits to such an extent that it is unjust and unreasonable.”^{151]}

133. We do not dispute that some of AEP’s existing facilities provide benefits outside of their local zone, including for Midwest ISO customers. However, consistent with the Commission’s findings in Opinion No. 494, this fact by itself does not establish that the current license-plate rate design for existing facilities is unjust or unreasonable, nor does it provide justification for reallocating the cost of existing facilities throughout the combined Midwest ISO/PJM region.

134. Moreover, the current license-plate rate design for existing facilities is more consistent with other aspects of the RTOs’ tariffs. For example, under the PJM tariff, load serving entities, such as AEP, that have load in a particular zone pay for the costs of existing facilities in that zone through the license-plate zonal rate. However, they also have first call on obtaining a valuable allocation of Auction Revenue Rights (ARRs) that provide them a financial hedge against congestion costs associated with serving their load in that zone from resources that the entities used during an historic reference year.¹⁵² Customers pay for existing facilities in the zone where their load is located, but they also, to a great extent, are protected from congestion costs to make use of those existing facilities.¹⁵³ Thus, under the current rate design, there is an inherent relationship between the existing facilities that customers pay for (and have a history of using) in a particular zone and the ARRs they receive to make use of those facilities.¹⁵⁴

¹⁵¹ Opinion No. 494, 119 FERC ¶ 61,063 at P 52 (internal citations omitted).

¹⁵² The historic reference year for all zones is 1998 or the year the zone was integrated into the PJM energy market. *See* PJM Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1, § 7.4.2(b).

¹⁵³ As Detroit Edison argues, even though a customer with load in one zone can use the facilities in another zone, it is not discriminatory for customers with load within a zone to pay for the existing facilities in that zone because the customers that pay for the cost of the existing facilities are allocated the Financial Transmission Rights (FTRs) for those facilities. Detroit Edison Comments to AEP Complaint at 12.

¹⁵⁴ Resources used during the historic reference year would have been built largely as a result of resource planning decisions made prior to the advent of transmission open access, the elimination of rate pancaking under RTOs, and the creation of wholesale energy markets. Therefore, customers that served load in a particular zone during the historic reference year likely relied in large part on resources also located within that zone.

2. **Whether AEP Meets Its Burden to Propose a Just and Reasonable Alternative**

a. **AEP Complaint**

135. AEP proposes a replacement highway/byway rate design that provides for allocation of the costs of both existing and new high-voltage transmission facilities (those facilities operated at 345 kV and above) across the combined Midwest ISO/PJM region. AEP argues that under its proposal, all customers that benefit from the use of Midwest ISO and PJM backbone transmission facilities will share the burden of the costs. At the same time, AEP proposes to maintain the current allocation methodology for existing and new lower-voltage transmission facilities within the combined Midwest ISO/PJM region. Second, as an alternative, AEP proposes a rate design under which the costs of all facilities at 765 kV and above are spread across the entire combined Midwest ISO/PJM region. Third, in the event the Commission finds AEP's alternative proposals not to be just and reasonable, AEP asks the Commission to initiate hearing procedures to determine what would be a just and reasonable rate design for transmission service in the combined Midwest ISO/PJM region.

b. **Comments**

136. ITC supports most aspects of AEP's alternative rate proposal. It agrees that the cost of new transmission facilities at and above 345 kV should be recovered on a postage stamp basis from customers across the entire combined Midwest ISO/PJM region. ITC disagrees, however, with AEP's proposal to recover the costs of all existing 345 kV transmission facilities on a postage-stamp basis. Instead, ITC argues that the cost of existing 345 kV facilities should continue to be recovered from consumers in the footprint of those facilities via license-plate rates, unless it can be shown that the 345 kV transmission facility was planned, operated and coordinated for regional service. For the costs of existing facilities *above* 345 kV, ITC supports AEP's broad postage-stamp approach.¹⁵⁵

137. The Joint Filers support the AEP Complaint in part, arguing that more of the costs associated with new high-voltage facilities should be allocated regionally than currently

¹⁵⁵ ITC also asserts that: (1) the Commission should continue to encourage the universal use of formula rates, for example the Midwest ISO's Attachment O, that enable annual transmission investment to be tracked and recovered on a current basis and, therefore, increase investment in transmission; and (2) the Commission should adopt a *pro forma* agreement for transmission interconnection between two transmission systems, in a similar form to the already existing interconnection standards for small and large generators, in order to promote enhancements of transmission infrastructure.

provided for in Midwest ISO's RECB I and RECB II processes because these facilities provide system-wide benefits. The Joint Filers maintain, however, that regional allocation of costs should be limited to loads within Midwest ISO. They assert that revenue requirements within Midwest ISO should not, as proposed by the AEP Complaint, be regionalized across the combined Midwest ISO/PJM region.¹⁵⁶

138. In contrast, the majority of commenters argue that AEP fails to meet its burden under section 206 to propose a just and reasonable alternative to the current rate design. Several commenters, including Detroit Edison, Exelon/PPL, Integrys, IPL, the Joint Filers, Certain Midwest ISO TOs and PJM, argue that AEP fails to demonstrate that socialization of costs of existing and new high-voltage facilities across the combined Midwest ISO/PJM region is just and reasonable.

139. Several commenters, including Exelon/PPL, Certain Midwest ISO TOs and the OMS, also argue that AEP's proposed alternative fails to identify the beneficiaries of its high-voltage facilities. In particular, Certain Midwest ISO TOs argue that AEP's proposal does not align costs with beneficiaries, as AEP claims, and disagree with AEP's argument that it is entitled to compensation for usage of its system by Midwest ISO entities based on "large power flows over AEP's portion of the PJM system."¹⁵⁷ Exelon/PPL argue that AEP's own evidence regarding third-party usage and benefits does not undermine the fact that license-plate rates for existing transmission facilities are consistent with principles of cost causation.

140. The OMS agrees with AEP that it is "unfair" that AEP and its customers must be allocated a share of new upgrades that eliminate congestion in the eastern PJM region, particularly in light of the failure to demonstrate any benefits of those facilities for AEP's zonal load customers. However, the OMS points out that this problematic result of cost socialization cannot be resolved by expanding cost allocation even further. Instead, the OMS asserts that the solution is the development of metrics to determine particular beneficiaries and benefits, so that costs can be allocated pursuant to such metrics.

¹⁵⁶ Similarly, Integrys argues that there is no justification for spreading the high-voltage transmission system costs within PJM to Midwest ISO customers. IPL also notes that "sound policy also supports not increasing the amount of costs recovered across the footprint on socialized basis for new facilities." IPL Comments to AEP Complaint at 22.

¹⁵⁷ Certain Midwest ISO TOs Comments to AEP Complaint at 21 (*citing* AEP Complaint, Ex. AEP-200 at 26; Ex. AEP-201; Ex. AEP-300 at 26, 37). Certain Midwest ISO TOs maintain that the Commission has already rejected this argument in the November 2004 Order. *Id.* at 21-22 (*citing* November 2004 Order, 109 FERC ¶ 61,168 at P 44, 65).

141. Moreover, several commenters, including Certain Midwest ISO TOs, Dayton, Exelon/PPL, IPL, the Joint Filers and Midwest ISO, argue that AEP's proposed alternative would result in unjust and unreasonable cost shifts. Certain Midwest ISO TOs and the Joint Filers argue that the Commission already determined cost shifts to be a problem when it rejected AEP's proposal in the Opinion No. 494 proceeding. Certain Midwest ISO TOs and IPL argue that unwarranted cost shifts and cost incurrence without actual benefits may lead certain of the TOs, or the state commissioners in certain states, to reconsider participation in RTOs. Further, IPL argues that AEP's proposal fails to match cost responsibility with cost incurrence. Certain Midwest ISO TOs also argue that AEP fails to explain with specificity how its proposed alternative would be implemented. In addition, IPL argues that improper allocation of costs can impede transmission siting and construction.¹⁵⁸

142. In addition, several commenters, including Certain Midwest ISO TOs, Exelon/PPL, IPL, and Midwest ISO, argue that AEP's proposal lacks stakeholder consensus and state commission support, both of which the Commission has deemed important in evaluating pricing designs in Order No. 890 and Opinion No. 494.

143. Integrys, Certain Midwest ISO TOs, and the OMS also oppose AEP's alternative 765 kV proposal because it suffers from the same flaws as AEP's primary 345 kV proposal and, thus, should also be dismissed. Certain Midwest ISO TOs argue, for example, that "re-allocating AEP's existing 765 kV transmission facilities would produce substantial cost shifts to the Midwest ISO [TOs]: \$104.8 million shifted per year, as determined by AEP itself."¹⁵⁹ In addition, Integrys notes that "the Commission has already found in Opinion [No.] 494 that the AEP 765 kV costs should not be allocated even among all PJM members which, by any benchmark, make substantially greater 'use' of the AEP facilities than any Midwest ISO member."¹⁶⁰

144. Certain Midwest ISO TOs, Certain PJM TOs, Exelon/PPL, and Midwest ISO argue that because the AEP Complaint is unsupported, AEP's request for settlement and hearing procedures should be denied. Certain Midwest ISO TOs and Certain PJM TOs

¹⁵⁸ IPL asserts that one of the most significant impediments to new construction is concern on the part of project sponsors and the financial community about regulatory uncertainty with regard to cost recovery issues. IPL asks that if the Commission grants the AEP Complaint, the Commission should provide for a phase-in of any increase in costs over a period of years and other mitigation measures, such as cost shift caps, to mitigate the adverse effects to market participants.

¹⁵⁹ Certain Midwest ISO TOs Comments to AEP Complaint at 25-26.

¹⁶⁰ Integrys Comments to AEP Complaint at 6.

specifically disagree with AEP's request for settlement procedures, noting that the Midwest ISO TOs and PJM TOs have already spent significant time and effort discussing these issues. Moreover, although it supports the AEP Complaint in part, ITC also contends that referring this proceeding to a settlement judge is unlikely to produce a settlement.

c. Answers

145. AEP defends its alternative rate design. AEP argues that commenters mischaracterize the cost shifts at issue, arguing that “[t]he only meaningful way to assess the cost impacts of a regional rate design is to compare it with the rate design that formed the basis for third-party transmission service charges for decades prior to the advent of the current RTO structure.”¹⁶¹

146. In addition, AEP states that “[c]ommenters fail to cite any authority for the proposition that an appropriate *transmission* rate design should be informed by the level of *generation* revenues earned by the merchant arm of a transmission provider” or “ruling requiring a transmission provider to reduce its rates to reflect the transmission or distribution facilities owned by receiving customers.”¹⁶² AEP also argues that there is no evidence quantifying such benefits to AEP. AEP further asserts that its decision to join PJM did not relinquish its right to be compensated for transmission service.¹⁶³ Moreover, AEP argues that commenters unfairly criticize AEP for not providing metrics by which to measure each third-party's usage of AEP's transmission system. AEP asserts that if such accounting is required, then the “transaction-specific reservation structure needs to be reinstated.”¹⁶⁴

¹⁶¹ AEP Answer to Comments at 31.

¹⁶² *Id.* at 22 (emphasis in original).

¹⁶³ *Id.* at 25-26 (citing *Alliance Cos.*, 99 FERC ¶ 61,105, at 61,444 (2002); *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,212, at P 48 (2003); *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105, at P 54 (2003)). AEP notes that the Commission never stated that it was unjust and unreasonable for AEP to collect revenues of third-party transmission service but rather, the Commission's focus was on the “transactional nature” of the charges. *Id.* at 27 (citing *Ameren Servs. Co.*, 105 FERC ¶ 61,216, at P 41 (2003)).

¹⁶⁴ *Id.* at 24.

147. Finally, AEP asserts that if its proposed alternatives are not deemed to be just and reasonable, the Commission may establish further proceedings to investigate alternatives remedies or alternatives such as a phase-in, to ameliorate concerns about rate shocks.

148. In response to the AEP's answer to the comments, BG&E argues that AEP's depiction of the physical link between the Midwest ISO and PJM regions shows no changed circumstances since issuance of Opinion No. 494. BG&E also disagrees that AEP had to file its complaint to ensure the earliest possible effective date. Finally, BG&E argues AEP has introduced "a new prayer for relief in stating . . . that 'a resolution can be reached if the Commission expressly instructs the parties that they must craft a settlement.'"¹⁶⁵

d. Commission Determination

149. As discussed above, AEP has not met its burden to demonstrate that the existing rate design for inter-RTO service is unjust and unreasonable. Thus, we need not and do not decide whether AEP's proposed rate design is just and reasonable.

150. However, we reject AEP's attempt to dismiss claims that it receives benefits from being a member of an RTO.¹⁶⁶ As the Commission previously found, AEP receives both quantifiable and non-quantifiable benefits, such as annual production cost savings, and increased system sales profits, as well as improved system reliability, and construction incentives, through its membership in an RTO.¹⁶⁷ In addition, AEP states in its complaint that high-voltage transmission facilities in each RTO enable bulk transfers of lower-cost power to displace higher cost generating resources throughout the region and thus provide lower energy costs for customer throughout Midwest ISO and PJM. AEP does not provide persuasive evidence that it does not also enjoy these same benefits through its access as a member of PJM to the transmission facilities of all other Midwest ISO and PJM TOs at non-pancaked rates.

3. Whether the IRPD Filing Is Just and Reasonable

151. AEP filed its complaint in response the IRPD filing; the AEP complaint is essentially an expanded protest of and a proposed alternative to the IRPD. As explained above, the Commission approved the existing inter-RTO rate design for an initial fixed

¹⁶⁵ BG&E Answer to AEP Answer to Comments at 3 (*citing* AEP Answer to Comments at 35).

¹⁶⁶ AEP Answer to Comments at 22.

¹⁶⁷ *See supra* P 111.

period, subject to the RTOs and their TOs conducting a reevaluation of the existing rates before the end of that period and filing a proposal on what rate design they will use going forward. In response to the Commission's directive, the RTOs and Supporting TOs submitted the IRPD, which is a proposal to continue the existing rates and rate design for inter-RTO service. AEP also protests the IRPD and argues, as it does in its complaint, that it is unjust and unreasonable for the RTOs to continue using the existing inter-RTO rates. Consistent with our findings above regarding the AEP Complaint, we will accept the RTOs and Supporting TOs' proposal.

a. Comments and Protests to the IRPD Filing

152. Wisconsin Electric, Exelon and the OMS filed comments in support of the IRPD filing.¹⁶⁸ In contrast, AEP, Buckeye, ITC, Old Dominion, and the Ohio Commission oppose the IRPD and criticize various aspects of the existing rate design that would stay in place under the IRPD. They argue that the Commission should find that the IRPD is not just and reasonable and institute a proceeding under section 206 of the FPA to prospectively determine a just and reasonable rate design for the combined Midwest ISO/PJM region.

153. AEP, ITC and Old Dominion assert that the Commission must consider the IRPD in the context of prior proceedings. AEP states that although the Commission has been sensitive to cost shifts resulting from the immediate transition from one pricing regime to another, the Commission never suggested that entities that join RTOs should forgo revenue for others' use of their transmission system or that users outside each members' transmission system would no longer contribute to the cost of those systems. AEP argues that the Commission also never suggested that eliminating through-and-out charges to mitigate seams would reverse established ratemaking principles and enable third-party transmission customers to take a service without paying for it.¹⁶⁹

154. ITC argues that the filing neglects to consider the regional cost allocation principles adopted by the Commission in Order No. 890.¹⁷⁰ In addition, ITC argues that, consistent with the findings in Opinion No. 494, the Commission should apply a single

¹⁶⁸ In their comments to the AEP Complaint, several entities, including Certain Midwest ISO TOs, Exelon/PPL and the Joint Filers, argue that AEP has failed to meet its burden under section 206 because it has failed to show that the IRPD, which proposes to maintain the existing cost allocation methodology, is unjust and unreasonable.

¹⁶⁹ AEP Protest of IRPD Filing at 11.

¹⁷⁰ ITC Protest of IRPD Filing at 7 (*citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007)).

postage-stamp rate for all new high-voltage facilities built in the combined Midwest ISO/PJM region. This may cause cost shifts, but ITC argues that cost shifts may actually be required if the existing design is unjust and unreasonable. ITC states that this principle was demonstrated through the Commission's elimination of rate pancaking, which itself caused a clear and significant cost shift.¹⁷¹ Old Dominion states that a postage-stamp rate design across both RTOs for new reliability investments, at least those high-voltage facilities, would better promote transmission investment and would more appropriately allocate costs to customers that benefit from transmission infrastructure.

155. In addition, AEP argues that the Commission intended the SECA provisions to provide a limited transition to a superseding regional rate, not a continuation of the existing rate design.¹⁷² AEP states that it is not proposing that the superseding regional rate be a pancaked or transaction-based charge, but it believes the new regional rate design must allocate the costs of existing transmission facilities to those who benefit from them. In support, AEP states that although the Commission eliminated through-and-out rates, the Commission never ruled that it was improper for customers in one zone to bear a share of the costs of facilities in another zone as compensation.¹⁷³

156. AEP and ITC also argue that the factors the RTOs and Supporting TOs listed to support the IRPD are insufficient to demonstrate that the IRPD is just and reasonable. For example, AEP and ITC argue that the prevention of rate pancaking and elimination of transaction-based charges are not valid reasons to adopt the IRPD since the other rate design proposals that were considered during the stakeholder process (*e.g.*, highway/byway or postage-stamp) also did not reinstitute pancaked or transaction-based rates. AEP asserts that it is possible to eliminate rate pancaking and transaction-based charges while still preserving the principle of allocating costs on the basis of usage and benefits. AEP also believes that the argument that the IRPD will help promote a regional market is simply a restatement of the previous two arguments, and ITC argues that the IRPD does not help promote a regional market.¹⁷⁴ Similarly, AEP argues that the RTOs and Supporting TOs' arguments that the IRPD preserves the rate change rights and procedures and does not prejudice other pending Commission proceedings can also be achieved under rate designs other than the IRPD.¹⁷⁵

¹⁷¹ *Id.* at 5.

¹⁷² AEP Protest of IRPD Filing at 13-14, 16.

¹⁷³ *Id.* at 17.

¹⁷⁴ *Id.* at 17-18; ITC Protest of IRPD Filing at 5.

¹⁷⁵ AEP Protest of IRPD Filing at 21.

157. AEP, Buckeye and the Ohio Commission also disagree with the RTOs and Supporting TOs' claim that the IRPD avoids cost shifts. AEP states, as it does in its complaint, that the cost shift analysis performed during the stakeholder process is incomplete because it does not consider the cost shift that occurred when the Commission eliminated through-and-out rates.

158. AEP, Buckeye and the Ohio Commission complain that not allowing the cost of existing facilities to be spread across the entire region eliminates any third-party cost responsibility for transmission services provided by AEP. The Ohio Commission also argues that the AEP system is the most extensive transmission network in the country and has provided more third-party transmission service than any other company. It asserts that there are many that stand to benefit from the AEP system without paying for it if the Commission does not revisit the rate methodology that the IRPD seeks to maintain.

159. Further, the Ohio Commission believes that no pricing zone should have to pay for a project unless it is shown to receive a benefit from the project. It asserts that "existing facility costs should be allocated under the same methodology as new facility costs" and neither should use postage-stamp rates.¹⁷⁶ Instead, the Ohio Commission supports the "beneficiary pays" approach that was promoted in Opinion No. 494 for new transmission facilities below 500 kV and urges the Commission to accept this approach for all transmission facilities.

160. In addition, AEP argues that the IRPD is not a comprehensive or coherent rate design. AEP claims that the IRPD is simply a continuation of the existing patchwork of cost allocation methods that are inconsistent with the development of a uniform and efficient common market.¹⁷⁷ AEP believes that this mixture of rate designs does not serve the Commission's goals for (1) a fair allocation of costs based on usage and benefits and (2) a truly regional transmission rate design.¹⁷⁸

b. Answers to Comments and Protests to the IRPD Filing

161. In its answer, Integrys supports AEP's request that the Commission initiate hearing procedures to develop a record concerning the allocation of the costs of transmission facilities.

¹⁷⁶ Ohio Commission Protest of IRPD Filing at 7.

¹⁷⁷ AEP Protest of IRPD Filing at 22.

¹⁷⁸ *Id.* at 24-25.

162. In their answers, the Supporting TOs, Exelon and the OMS defend the IRPD and oppose the request for a section 206 proceeding. Generally, these parties argue that AEP has not demonstrated that the existing rate design is unjust and unreasonable and that there is no basis to initiate a section 206 proceeding. They also argue that AEP and ITC's arguments for changing the existing rate design have already been presented, and rejected, in the Opinion No. 494 proceeding.

c. Commission Determination

163. For the reasons discussed above, AEP has failed to demonstrate that the existing inter-RTO rate design is unjust and unreasonable. Moreover, we find that the existing inter-RTO rate design, and therefore the IRPD, is consistent with the Commission's policy regarding regional cost allocation as articulated in Order No. 890. In Order No. 890, the Commission explained:

Our decisions regarding transmission cost allocation reflect the premise that “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.” We therefore allow regional flexibility in cost allocation and, when considering a dispute over cost allocation, exercise our judgment by weighing several factors. First, we consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we consider whether the proposal is generally supported by state authorities and participants across the region.

These three factors are interrelated. For example, a cost allocation proposal that has broad support across a region is more likely to provide adequate incentives to construct new infrastructure than one that does not. The states, which have primary transmission siting authority, may be reluctant to site regional transmission projects if they believe the costs are not being allocated fairly. Similarly, a proposal that allocates costs fairly to participants who benefit from them is more likely to support new investment than one that does not. Adequate financial support for major new transmission

projects may not be obtained unless costs are assigned fairly to those who benefit from the project.^{179]}

164. As discussed below, the existing inter-RTO rate design is consistent with the factors described in Order No. 890.

i. Fair Assignment of Costs

165. We continue to find that the existing inter-RTO rate design fairly allocates transmission costs to those who benefit from the facilities in the combined Midwest ISO/PJM region. For existing transmission facilities, the Commission in Opinion No. 494 specifically found that it is “consistent with principles of cost causation to continue to allocate the costs of [existing] facilities to the customers for whom they were constructed and whom they continue to serve to date.”¹⁸⁰ The Commission further stated:

The costs associated with transmission facilities that were built before PJM began region-wide transmission planning comprise the vast majority of PJM’s costs of providing transmission service. As no party disputes, these facilities were traditionally constructed primarily by individual [TOs] to serve their own loads, and costs were received from the [TOs’] load. That is, the existing facilities represent sunk costs that were built primarily by individual utilities to serve their own internal needs and were financed by those utilities. This fact supports continued reliance on a zonal or [license plate] rate design to recover the costs of these existing transmission facilities.^{181]}

We make similar findings regarding the allocation of costs for existing facilities within Midwest ISO in the concurrent post-transition period rate design order.¹⁸²

¹⁷⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559-60 (internal citation omitted).

¹⁸⁰ Opinion No. 494, 119 FERC ¶ 61,063 at P 42.

¹⁸¹ *Id.* at P 50 (internal citation omitted).

¹⁸² *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084, at P 51-55(2008).

166. The existing inter-RTO rate design adopts the license-plate rate for the RTO sink zone for a particular cross-border transaction and, thus, is the same treatment as found to be appropriate for intra-RTO transmission service. Although the IRPD applies to inter-RTO service, the rationale the Commission outlined in finding the intra-RTO rates just and reasonable applies equally to the IRPD.

167. We also disagree that the cost allocation methodology for new high-voltage facilities should be restructured so that the cost of new facilities eligible for regional cost sharing are spread across *both* RTOs, instead of within each RTO. The Commission has already found in the RECB and Opinion No. 494 proceedings that certain costs for new intra-RTO facilities planned under Midwest ISO and PJM's individual expansion plans should be spread on a regional basis within each RTO. These new facilities are planned by the RTOs pursuant to the specific Commission-approved expansion planning process for the individual RTO. As such, we find no basis to overturn the existing intra-RTO rate design to spread the cost of these facilities across the combined Midwest ISO/PJM region. Specific concerns related to the appropriate cost-sharing for new intra-RTO facilities were raised and are addressed in the respective intra-RTO proceedings.¹⁸³

168. We also disagree with AEP that the existing inter-RTO rate design is not a comprehensive or coherent rate design. While the existing inter-RTO rate design incorporates Midwest ISO's and PJM's different intra-RTO zonal license-plate rates and regional cost sharing methodologies, AEP does not explain how relying on Commission-approved, though different, intra-RTO rates results in an unjust and unreasonable rate. A single rate design across both RTOs would bring uniformity, but the potential existence of such uniformity under alternative rate proposals is not a basis to find that the existing inter-RTO rate design is unjust and unreasonable.¹⁸⁴

ii. Adequate Incentives for Investment

169. We find that the existing inter-RTO rate design provides the appropriate incentives to construct new high-voltage facilities that perform inter-RTO functions (*i.e.*, those built in one RTO that provide benefits to the other RTO). The Commission mandated that regional expansion planning and cost sharing for these cross-border facilities be included

¹⁸³ When it imposed the existing license-plate rate design for inter-RTO service, the Commission rejected requests to expand the scope of the inter-RTO rate proceeding to include intra-RTO rates. The Commission noted that it had not challenged the reasonableness of the existing rate design for intra-RTO service in any prior orders in the inter-RTO rate proceedings. November 2004 Order, 109 FERC ¶ 61,168 at P 63.

¹⁸⁴ *See supra* note 36.

as part of the RTOs' JOA, and there is no basis for us to conclude that the existing process is not just and reasonable.

170. Cost allocation for new cross-border facilities under the JOA is based on a joint RTO load flow model that identifies project beneficiaries following cost causation principles. The Commission found that the proposed protocol for identifying cross-border projects and allocating associated costs will, among other things, "ease the burden on local loads, [which] were traditionally responsible for network upgrades, by identifying regional beneficiaries of such upgrades."¹⁸⁵ Midwest ISO and PJM each will assign the costs associated with cross-border facilities that are allocated to them in accordance with their respective tariffs. We find that identifying and allocating costs of cross-border facilities pursuant to the JOA will continue to provide the necessary incentives to build cross-border facilities.¹⁸⁶ However, because cost allocation for cross-border facilities will be determined in pending and future proceedings, the existing inter-RTO rate design is subject to the outcome of Docket No. ER05-6-044, *et al.* and the future order related to economic-based cross-border facilities.

171. In addition, we disagree that the cost of new high voltage intra-RTO facilities, which are already subject to some regional cost sharing under each RTO's tariff, should be allocated across the entire combined Midwest ISO/PJM region. These intra-RTO facilities are built pursuant to the regional planning processes under each RTO's tariff. Accordingly, it is appropriate for the RTOs (and the Commission) to address the cost allocation of these facilities separately under each RTO's tariff. Furthermore, there is no evidence in this proceeding that the regional cost sharing under each RTO's tariff does

¹⁸⁵ November 2005 Order, 113 FERC ¶ 61,194 at P 10. The Commission required the RTOs to file additional information about the joint RTO load flow model used to allocate cross-border facility costs (*e.g.*, types of inputs, assumptions, update frequency, access, etc.) in a compliance filing. *Id.* P 19. The required compliance filing related to cross-border facilities built for reliability purposes is addressed in the concurrent order in Docket No. ER05-6-044, *et al.* The compliance filing related to cross-border facilities built for economic purposes will be the subject of a future order.

¹⁸⁶ We note that both AEP and ITC joined in the RTOs' filing of the JOA, which included the rate design for existing cross-border facilities. Although AEP and ITC differ on how counter-flow should be treated in the cross border cost allocation process, neither AEP nor ITC claimed that the cost sharing approach under the JOA (where the costs of new cross-border facilities are first allocated to each RTO and then allocated within each RTO under each RTO's individual tariff) was unjust and unreasonable. *See* Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. March 21, 2006 Filing, Docket No. ER05-6-044, *et al.*

not provide adequate incentives for the building of new transmission facilities within each RTO.¹⁸⁷

iii. Support From Stakeholder and State Authorities

172. The broad regional support for the existing inter-RTO rate design, as evidenced by the IRPD filing, is also an important factor in our finding that the existing inter-RTO rate design is just and reasonable. As discussed above, the Commission in Order No. 890 emphasized the importance of regional support in its evaluation of regional cost allocation proposals. The Commission reiterated this in Opinion No. 494, stating that while a proposal may not “represent complete stakeholder consensus, we nonetheless do not find the position of the majority of the transmission owning members of PJM to be of so little value that it can be ignored.”¹⁸⁸ The Commission continued that “regional or stakeholder consensus is an important factor to be considered in reviewing the just and reasonableness of a rate design.”¹⁸⁹ Of note, the strong regional support for the IRPD is even greater than the regional agreement the Commission found important in the Opinion No. 494 proceedings.¹⁹⁰ Nearly every TO in Midwest ISO and PJM supports the IRPD and such extensive agreement cannot be ignored. Moreover, of the 23 state commissions impacted by the IRPD, only the Ohio Commission protested the IRPD filing. Although stakeholder support alone cannot ultimately prove that a rate design is just and reasonable, the overwhelming support for the IRPD in this proceeding is a strong factor we consider in finding that the IRPD is just and reasonable.

¹⁸⁷ We note that the Commission stated that the 20 percent postage-stamp proposal in Midwest ISO is “an initial step toward regional cost sharing” *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 at P 65. In addition, the Commission required Midwest ISO to file reports in August 2008 and August 2009 that analyze the effectiveness of all of the transmission expansion cost allocation methodologies under the Midwest ISO tariff. *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 at P 35.

¹⁸⁸ Opinion No. 494, 119 FERC ¶ 61,063 at P 56.

¹⁸⁹ *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301, at P 73 (2004), *reh’g denied*, 111 FERC ¶ 61,337 (2005)); *Ne. Utils. Serv. Co.*, 117 FERC ¶ 61,337, at P 20 (2006)).

¹⁹⁰ The RTOs and Supporting TOs note in the IRPD Filing that no TOs’ support for the filing should be construed as a waiver of its litigation or settlement positions in any pending Commission or court proceeding; in particular, certain TOs that support the IRPD Filing have requested rehearing of portions of Opinion No. 494.

4. Whether the IRPD Meets the Requirement of the November 2004 Order

a. Comments and Protests

173. AEP, Buckeye and ITC challenge the sufficiency of the IRPD filing, arguing that the proposal does not include a meaningful, substantive analysis. These parties argue that the RTOs and Supporting TOs emphasize the stakeholder process while ignoring the substance of the underlying proposal. They maintain that the Commission has no basis to independently evaluate the assumptions underlying the cost-shift analyses or the magnitude of the purported cost shifts. For instance, AEP argues that the IRPD filing is superficial and places emphasis on process rather than on substance or rate design principles. AEP states that the filing is essentially a recap of the Midwest ISO and PJM stakeholder processes and lacks a qualitative evaluation of the current or any alternative fixed cost recovery policies. AEP points out that although the RTOs concluded that other design proposals would result in significant cost shifts, much of the supporting data leading to this conclusion was supplied pursuant to confidentiality agreements and was thus not included with the IRPD filing.¹⁹¹

174. ITC argues that the IRPD filing does not comply with the Commission's directives in this proceeding because the filing merely provides a list of reasons that support the existing cost recovery methodology instead of a reevaluation of the fixed cost recovery policies for pricing transmission service between Midwest ISO and PJM. Also, ITC disagrees with the RTOs and Supporting TOs that any competing proposal must be justified under section 206 of the FPA; it maintains that the question is whether the IRPD complies with the Commission-required reevaluation of the inter-RTO rate design for the after the initial fixed period.¹⁹²

175. Protesters also argue that the Commission cannot rely on the strong regional support for the IRPD as a basis to find it just and reasonable. AEP states that "there are no aspects of the [FPA] that permit ratemaking by head count" and, therefore, the IRPD cannot be deemed just and reasonable simply because a majority of stakeholders support it.¹⁹³ AEP argues that this is especially true in this case, where a smaller number of entities own a disproportionately large share of the existing high voltage facilities. ITC states that the Commission cannot abdicate its responsibilities under the FPA based on

¹⁹¹ AEP Protest of IRPD Filing at 17 (noting, for example, that "highway/byway" and "postage stamp" methodologies were also considered).

¹⁹² ITC Protest of IRPD Filing at 5-6.

¹⁹³ AEP Protest of IRPD Filing at 28.

claims of consensus or near-consensus.¹⁹⁴ The Ohio Commission states that deferring rate design matters to a popularity contest will not result in a fair outcome when, as here, one party or state has made transmission investments and transmission service contributions that are substantially greater than those made by the majority of the other TOs and their ratepayers.¹⁹⁵

176. The OMS, although it supports the proposal, recommends that the Commission: (1) adopt a new transmission period of three or four years before the end of which the Commission would require a reevaluation of the inter-RTO rate design; and (2) require that the RTOs and stakeholders work together during the new transition period to develop and fine-tune benefits metrics for both existing and new facilities.

b. Answers

177. In their answers to protests of the IRPD filing, the Supporting TOs, Exelon and the OMS defend the IRPD and oppose the request for a section 206 proceeding. They disagree with the contention that the IRPD filing is procedurally deficient, arguing that the IRPD was the product of thorough consideration of all relevant factors.

178. AEP disagrees with the OMS' proposal that the Commission adopt a three or four year transition period. AEP argues that such reexamination is not needed, given that the current rates have been under review since they were proposed and the reexamination simply resulted in the TOs advocating the permanent continuation of the existing rate. AEP also states that the FPA does not permit the Commission to defer a remedy where a rate has been shown to be unjust and unreasonable.¹⁹⁶ AEP also states its general agreement with the OMS' argument that stakeholder consensus is important, but disagrees "that its customers should forfeit their rights to seek just and reasonable rates for yet another four years, especially under circumstances where the majority of the [TOs] have the financial incentive to resist anything but the continuation of license plate rates."¹⁹⁷

¹⁹⁴ ITC Protest of IRPD Filing at 6.

¹⁹⁵ Ohio Commission Protest of IRPD Filing at 24.

¹⁹⁶ See AEP Answer to OMS Comments at 5-6 (citing *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999); *La. Pub. Serv. Comm'n v. FERC*, 482 F.3d 510, 518 (D.C. Cir. 2007)).

¹⁹⁷ *Id.* at 6.

c. **Commission Determination**

179. As discussed above, we find that the existing inter-RTO rate design, and therefore, the IRPD, is just and reasonable. In addition, we disagree with those entities that argue that the IRPD filing itself is insufficient. We find that the RTOs and Supporting TOs have complied with the requirement to reevaluate the existing inter-RTO rate design and have supplied sufficient support for us to find that the IRPD, which proposes the continuation of the existing license-plate rate design for inter-RTO transmission service, is just and reasonable.

180. We disagree with ITC that the reevaluation described in the IRPD filing is inconsistent with the Commission's directives in the November 2004 Order. The RTOs and Supporting TOs state that the decision to adopt the IRPD was the result of extensive discussion and evaluation. Although a variety of alternative pricing designs were examined, the IRPD was the only methodology for pricing transmission service between Midwest ISO and PJM that received widespread support within both RTOs. The RTOs and Supporting TOs explain that each RTO initially established technical and legal working groups, which regularly reported to each RTO's TOs as a whole, in order to help formulate and examine various potential inter-RTO rate designs. Meetings were held in the Midwest ISO and PJM regions during the second half of 2006 and the first half of 2007 in order to promote the broadest possible participation by the TOs in both regions. Additionally, a total of six joint meetings of the TOs were held, either by conference call or in person.

181. The RTOs and Supporting TOs state that, in addition to the IRPD, the TOs considered other pricing approaches, such as (1) various "highway/byway" approaches and (2) peak flow pricing. AEP acknowledges that it participated actively in the process, had its proposal heard and considered, and ultimately was outvoted.¹⁹⁸ Although the alternatives were seriously considered, the IRPD received overwhelming support; in PJM, the IRPD filing was approved by 13 of the 14 voting-eligible TOs, with only AEP voting against it.¹⁹⁹ In Midwest ISO, 22 of the voting-eligible TOs voted in support of the filing, with only ITC voting against it.²⁰⁰ Based on the extensive nature of each RTO's stakeholder process and the overwhelming votes in favor of the IRPD, it is apparent that the IRPD methodology has garnered strong support within Midwest ISO and PJM, with only a very small number of dissenting TOs. In addition, of the twenty-

¹⁹⁸ AEP Protest of IRPD Filing at 3.

¹⁹⁹ IRPD Filing, Att. A at P 10.

²⁰⁰ *Id.* P 14. Manitoba Hydro and Wolverine Power Supply Cooperative, Inc. abstained.

three state commissions impacted by the IRPD, only the Ohio Commission protested the IRPD filing. As a result, we find that the reevaluation that occurred as part of this process and that resulted in the IRPD proposal meets the requirements outlined in the November 2004 Order.

182. We will not impose a further transition period as requested by the OMS. We find that license-plate rates for existing facilities continue to be just and reasonable and that existing facilities provide benefits to customers that funded their construction in accordance with cost-causation principles. We find that a further reevaluation of the license-plate rates is neither necessary nor required by the November 2004 Order.

The Commission orders:

(A) AEP's request to consolidate Docket No. EL07-101-000 with the ongoing proceeding in Docket No. ER05-6-100, *et al.* is hereby rejected, as discussed in the body of this order.

(B) The AEP Complaint is hereby denied, as discussed in the body of this order.

(C) The IRPD proposal is hereby accepted, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A
Pleadings Related to the AEP Complaint

Timely Notices of Intervention and Motions to Intervene

Allegheny Power²⁰¹
American Municipal Power-Ohio, Inc.
Baltimore Gas and Electric Company (BG&E)
The Blue Ridge Power Agency
The Borough of Chambersburg, Pennsylvania
BP Energy Company
The City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland
The Coalition of Midwest Transmission Customer and PJM Industrial Customer
Coalition
Consumers Energy Company
Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.
Dominion Resources Services, Inc.
Duquesne Light Company
Exelon Corporation (Exelon)
The Illinois Commerce Commission (Illinois Commission)
Illinois Municipal Electric Agency
Integrays Energy Group, Inc., on behalf of its subsidiaries, Wisconsin Public Service
Corporation, Upper Peninsula Power Company, and Integrays Energy Services,
Inc. (collectively, Integrays)
Indiana and Michigan Municipal Distributors Association and its members
Long Island Power Authority and LIPA
Michigan Public Power Agency
The Michigan Public Service Commission
The Midwest Transmission Dependent Utilities²⁰²
The New Jersey Board of Public Utilities
The New Jersey Division of Rate Counsel
North Carolina Electric Membership Corporation
The Office of the Ohio Consumers' Counsel
The Office of the People's Counsel of the District of Columbia

²⁰¹ Allegheny Power is the trade name for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

²⁰² The Midwest Transmission Dependent Utilities include: Madison Gas and Electric Co., the Midwest Municipal Transmission Group, and Wisconsin Public Power Inc.

The Public Utilities Commission of Ohio (Ohio Commission)
Old Dominion Electric Cooperative (Old Dominion)
Pepco Holdings, Inc., and its affiliates Potomac Electric Power Company, Atlantic City
Electric Company and Delmarva Power & Light Company
PPL Electric Utilities Corporation (PPL)
Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy
Resources & Trade LLC (collectively, the PSEG Companies)
The Public Service Commission of Maryland
The Public Service Commission of West Virginia
The Public Service Commission of Wisconsin
Reliant Energy, Inc.
Southern Maryland Electric Cooperative, Inc.
Strategic Energy, LLC
Wabash Valley Power Association, Inc.
Wisconsin Electric Power Company (Wisconsin Electric)

Timely Answers

Midwest ISO
PJM

Timely Motions to Intervene and Comments

Ameren Services Company on behalf of its affiliates, Ameren Energy Marketing
Company, Central Illinois Light Company, Central Illinois Public Service
Company, Illinois Power Company and Union Electric Company (Ameren)
Buckeye Power, Inc. (Buckeye)
Certain of the Midwest ISO TOs (Certain Midwest ISO TOs)²⁰³
Certain of the PJM TOs (Certain PJM TOs)²⁰⁴

²⁰³ For purposes of this filing, Certain Midwest ISO TOs consist of the entities listed in note 5, *supra*, with the exclusion of American Transmission Company LLC, American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp., and Indiana Municipal Power Agency; and including Manitoba Hydro.

²⁰⁴ For purposes of this filing, Certain PJM TOs include: the Pepco Holdings, Inc. transmission-owning affiliates Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; The Dayton Power and Light Company; Virginia Electric and Power Company; and Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company, all subsidiaries of FirstEnergy Corp.

The Dayton Power and Light Company (Dayton)

The Detroit Edison Company (Detroit Edison)

Exelon and PPL (Exelon/PPL)

FirstEnergy Service Company, on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company, Pennsylvania Power Company and American Transmission Systems, Incorporated (collectively, FirstEnergy)

Indianapolis Power & Light Company (IPL)

Integrus

International Transmission Company and Michigan Electric Transmission Company, LLC (collectively, ITC)

The Organization of MISO States (OMS)

Xcel Energy Services, Inc., on behalf of its operating companies, Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, Great River Energy, American Transmission Company LLC and Southern Minnesota Municipal Power Agency (collectively, Joint Filers).

Untimely Motions to Intervene

Rockland Electric Company (Rockland)

The Pennsylvania Office of Consumer Advocate (Pennsylvania Consumer Advocate).

Appendix B
Pleadings Related to the IRPD Filing

Timely Motions to Intervene²⁰⁵ and Comments

AEP
Exelon
Old Dominion

Timely Comments

Buckeye
ITC
The Ohio Commission
Wisconsin Electric

Untimely Comments

The Illinois Commission²⁰⁶
The OMS

²⁰⁵ AEP, Exelon and Old Dominion previously intervened in Docket No. ER05-6. A subsequent motion to intervene is unnecessary where the movant has intervened in the original docket or a previous subdocket.

²⁰⁶ The Illinois Commission included a motion to intervene out-of-time with its comments to the IRPD filing. The Illinois Commission has previously intervened in Docket No. ER05-6. A subsequent motion to intervene is unnecessary where the movant has intervened in the original docket or a previous subdocket.