139 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc. and
Transmission Owners of the Midwest Independent Transmission System Operator, Inc.

Docket No. ER12-480-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS AND REQUIRING COMPLIANCE FILING

(Issued April 19, 2012)

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1. On November 28, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) and the transmission owners of MISO (MISO TOs)[1] (collectively, Filing Parties) submitted a filing (November 28 Filing) proposing revisions to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)[2] regarding the planning and cost allocation of network upgrades,[3] in order to establish a transition for the integration of Entergy Corporation and its operating companies[4] (collectively, Entergy) into MISO as transmission-owning members. In this order, we conditionally accept Filing Parties' proposal, subject to a further compliance filing, as discussed below.

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[1] For the purposes of this filing, MISO TOs include: Ameren Services Company, as agent for Union Electric Company (Ameren Missouri), Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative (Dairyland); Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and 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; MidAmerican Energy Company (MidAmerican); 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; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[2] MISO, FERC Electric Tariff.

[3] Network upgrades include Baseline Reliability Projects, Generator Interconnection Projects, Transmission Delivery Service Projects, Market Efficiency Projects, and Multi-Value Projects (MVPs). *See* Filing Parties November 28 Filing, Transmittal Letter at 14.

[4] Entergy Corporation's operating companies are Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, LLC; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc. (collectively, Entergy Operating Companies).

I. Background

2. Prior to the instant proposal, the most recent attempt to address transmission-related concerns on Entergy's system was Entergy's proposal to establish an Independent Coordinator of Transmission for the Entergy system. The Commission accepted Entergy's Independent Coordinator of Transmission proposal, for a four-year initial term, in April 2006,[5] conditionally approving Entergy's proposal to implement the Independent Coordinator of Transmission, the Weekly Procurement Process, and a new transmission pricing structure based on participant funding for the Entergy transmission system.[6] Entergy proposed its transmission pricing methodology to address concerns on both its own part and on the part of state regulators that, given the magnitude of merchant generation connecting to its system, the cost of the network upgrades necessary to accommodate this generation not be borne unfairly by native load and other transmission customers. The Independent Coordinator of Transmission proposal featured the implementation of the Weekly Procurement Process (which allows competition for firm transmission for short-term sales to Entergy and network customers on an economic basis) and promised to provide substantial benefits to Entergy transmission customers through greater transparency and increased competition to serve load. This Independent Coordinator of Transmission arrangement was approved as an experiment that would expire on its own terms in four years from its start, or in November 2010. In an effort to 1) ensure transparency and 2) assess whether the promised benefits were being delivered, the Commission established certain metrics and required the Independent Coordinator of

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[5] *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006) (Order Approving ICT), *order on reh'g*, 116 FERC ¶ 61,275, *order on compliance*, 117 FERC ¶ 61,055 (2006), *order on clarification*, 119 FERC ¶ 61,013 (2007).

[6] The Independent Coordinator of Transmission's responsibilities include granting or denying requests for transmission service, calculating available flowgate capability, administering Entergy's Open Access Same-Time Information System, overseeing the Weekly Procurement Process, and independently evaluating Entergy's transmission construction plan and the needs of the Entergy transmission system. The Independent Coordinator of Transmission's roles in evaluating requests for transmission and interconnection service, evaluating Entergy's construction plan, and overseeing the Weekly Procurement Process are critical elements of the arrangement to ensure that participant funding and access to transmission through the Weekly Procurement Process are implemented in a non-discriminatory manner. *See* Entergy Services, Inc., FERC Electric Tariff, Fourth Revised Vol. No. 3, Att. S, § 3.

Transmission to file publicly-available assessments with the Commission and state regulators on a quarterly and annual basis.[7]

3. In its annual reports, the Independent Coordinator of Transmission is responsible for summarizing and evaluating both the progress made, as well as the challenges that remain, across all areas of the Independent Coordinator of Transmission's responsibilities, including the Weekly Procurement Process.[8] In response to the reports, many stakeholders filed comments addressing the success of the Independent Coordinator of Transmission and the status of the Weekly Procurement Process.[9] However, in the years following the implementation of the Independent Coordinator of Transmission, performance reports and stakeholder comments revealed that the Independent Coordinator of Transmission was not fully addressing customers' complaints.[10] The complaints included allegations of continued undue preference for Entergy-owned generation, inadequate transmission infrastructure development due to conflicting interpretations of reliability standards, and a significant delay in implementing the Weekly Procurement Process. These complaints prompted state and federal regulators to assess Entergy's transmission system.

4. On March 29, 2009, the Commission initiated a process to assess the continuing benefits of the Independent Coordinator of Transmission arrangement.[11] As part of this process, the Commission stated that it would seek input from Entergy's retail

[7] Order Approving ICT, 115 FERC ¶ 61,095 at PP 297-305.

[8] In addition to the Weekly Procurement Process, the annual reports assess reliability coordination, tariff administration, planning and tariff studies, the stakeholder process, a stakeholder survey, and the state of Entergy's transmission system operations, including whether the transmission pricing ensures that merchant generators seeking to compete with Entergy are given "incentives to invest in transmission."

[9] In their comments on the Independent Coordinator of Transmission's report, stakeholders also address Transmission Loading Relief events, the Independent Coordinator of Transmission's independence and authority and available flowgate capability errors.

[10] For a comprehensive review of the comments received, refer to the comments filed to the Independent Coordinator of Transmission's quarterly and annual reports in Docket No. ER05-1065.

[11] *Entergy Services Inc.*, 126 FERC ¶ 61,227 (2009).

regulators.[12] Chairman Wellinghoff sent letters to the retail regulatory commissions (Arkansas, Mississippi, Texas, Louisiana, and City of New Orleans) in Entergy's service territory inviting them to participate in a joint federal and state conference to discuss transmission issues and next steps related to the Independent Coordinator of Transmission arrangement. Accordingly, a joint federal and state regulator conference was held on June 24, 2009 to discuss issues involving the current Independent Coordinator of Transmission arrangement, as well as transmission access and construction on the Entergy transmission system.

5. This conference resulted in two important developments. First, Entergy's retail regulators formed the Entergy Regional State Committee (E-RSC)[13] to provide collective retail regulatory agency input on the operation and planning of the Entergy transmission system and the operations and functions of the Independent Coordinator of Transmission. Second, the Commission and the E-RSC committed to sponsor cost-benefit analyses to evaluate the costs and benefits of possible alternatives to the current Independent Coordinator of Transmission arrangement.

6. As a result, the Commission initiated and sponsored a study to examine the costs and benefits of Entergy joining Southwest Power Pool, Inc. (SPP) as a transmission-owning member.[14] This open study process facilitated further analysis of the alternatives available to address issues on the Entergy transmission system. Upon completion of the Commission-sponsored study, Entergy separately contracted with the same consultant to measure the costs and benefits of the Entergy Operating Companies joining MISO. Following the completion of that study and various discussions amongst the parties, Entergy announced its intention, on April 25, 2011, to join MISO as a transmission owning member in 2013, subject to state regulatory approvals.

7. On June 3, 2011, MISO made a filing seeking waiver of its Tariff provisions regarding the cost allocation for network upgrades in order to establish a transition for

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[12] *Id.* P 82.

[13] The E-RSC is a collection of regulators from Entergy's retail regulatory jurisdictions.

[14] On September 30, 2010, the results of the FERC cost-benefit analysis were released. *See* Charles River Associates and Resero Consulting, *Cost-Benefit Analysis of Entergy and Cleco Power Joining the SPP RTO* (Sept. 30, 2010) *available at* http://www.ferc.gov/industries/electric/indus-act/rto/spp/spp-entergy-cba-report.pdf.

8. Entergy's integration into MISO.[15] The Commission denied MISO's request for the waiver, finding that the requested waiver was an inappropriate vehicle for implementing the proposed transition period and did not satisfy the Commission requirements for waiver of tariff provisions.[16] The Commission stated that the proposal "should be submitted via a properly-supported section 205 filing with Tariff sheets setting forth the cost allocation provisions that would apply . . . during the transition period."[17]

9. In the November 28 Filing, Filing Parties submitted proposed revisions to the MISO Tariff to provide a five-year transition period for the integration of Entergy into MISO's transmission planning and cost allocation process. Filing Parties propose that, during the five-year transition period, MISO will review and compare the current states of the transmission systems in two Planning Areas: 1) MISO as it existed before the entry of the first Entergy Operating Company, as modified by the entry or withdrawal of transmission-owning members in the Midwest (the First Planning Area); and 2) the area consisting of the states where Entergy owns and/or operates transmission facilities and any adjacent areas where transmission facilities are conveyed to MISO's functional control (the Second Planning Area).[18] MISO will apply its existing transmission planning processes to the Second Planning Area during the five-year transition period to identify the Baseline Reliability Projects,[19] Market Efficiency Projects,[20] and MVPs[21] needed in the Second Planning Area.[22]

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[15] MISO June 3, 2011 Filing, Docket No. ER11-3728-000 (June 3 Waiver Request).

[16] *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,212 (2011) (Tariff Waiver Order).

[17] *Id.* P 28.

[18] Filing Parties November 28 Filing, Transmittal Letter at 5-6.

[19] *See generally Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on reh'g*, 117 FERC ¶ 61,241 (2006) (RECB I Rehearing Order).

[20] *See generally Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, *order on reh'g*, 120 FERC ¶ 61,080 (2007) (RECB II Orders). The RECB II Orders, among other things, approved a class of projects originally referred to as Regionally Beneficial Projects. MISO has since renamed this class of projects Market Efficiency Projects.

10. Filing Parties maintain that a five-year transition period is necessary because the Planning Areas have not been comparably planned through a common process based on common criteria, nor has MISO been planning system upgrades in close coordination with Entergy. Without a transition period, Filing Parties believe that regional allocation of network upgrade costs across the Planning Areas could result in unfair subsidization of the costs of projects terminating exclusively in either Planning Area. Filing Parties add that it would not be appropriate to make the First Planning Area bear a share of the cost of projects aimed at raising the Second Planning Area's infrastructure to a level that is more comparable to that of the First Planning Area.[23]

11. Filing Parties' proposed transition consists of a fixed period of five years, commencing when at least one of the Entergy Operating Companies integrates into MISO. Filing Parties' understanding is that all of the Entergy Operating Companies would like to join MISO simultaneously, by June 1, 2013, if possible.[24] Filing Parties believe that five years will be adequate to comparably plan for the combined Planning Areas, and that the resulting plans will constitute a sufficient basis for the regional allocation of the associated costs, to the extent required by the Tariff. Filing Parties add that five years is typically sufficient to plan the various kinds of projects based on the Tariff's applicable criteria.[25]

12. With respect to cost allocation during the five-year transition period, Filing Parties propose that because network upgrades approved before the five-year transition period will terminate only within the First Planning Area, their cost will be allocated only within the First Planning Area, pursuant to the Tariff's cost allocation rules for the particular category of network upgrade. Filing Parties propose that during the five-year transition period, the costs of network upgrades approved during the five-year transition period that terminate exclusively in either Planning Area will be allocated solely within that Planning Area pursuant to the applicable cost allocation rules for the particular category of network upgrade under Attachment FF, as modified by Attachment FF-6. For network

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[21] *See generally Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order), *order on reh'g*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order).

[22] Filing Parties November 28 Filing, Transmittal Letter at 11.

[23] *Id.*, Transmittal Letter at 6-7.

[24] *Id.*, Transmittal Letter at 10-11.

[25] *Id.*, Transmittal Letter at 9-10.

upgrades that terminate in both Planning Areas and that are approved during the transition period, Filing Parties propose that during the five-year transition period the associated costs will be allocated to both Planning Areas, in accordance with the Tariff's cost allocation rules for the particular category of network upgrade under Attachment FF.[26]

13. Filing Parties assert that, during the five-year transition period, MISO will attempt to develop a portfolio of MVPs approved before or during the transition period for the combined Planning Areas (Combined MVP Portfolio)[27] that satisfies a net benefits test, such that: 1) each zone in the First Planning Area does not experience a degradation in the net benefits estimated for MVPs approved prior to the five-year transition period, and 2) each zone in the Second Planning Area will also receive a net benefit from the Combined MVP Portfolio. Filing Parties propose that if MISO has identified a Combined MVP Portfolio that satisfies the net benefits test by the end of the five-year transition period, then the cost of MVPs approved before or during the five-year transition period that terminate exclusively in either Planning Area will be shared across both Planning Areas. Filing Parties state that such regional cost allocation will be phased in over eight years at gradually increasing annual percentages of 12.5 percent.[28] Filing Parties state that the eight-year phase-in period broadly tracks the timing of MVP construction, so that regional cost allocation would be fully implemented closer to the actual realization of benefits at the in-service dates of MVPs. Filing Parties state that MISO's experience indicates that eight years is the approximate range of time it will take for each approved MVP portfolio to be constructed and reach its in-service date.[29]

14. If a Combined MVP Portfolio that satisfies the net benefits test is not identified, Filing Parties propose that 1) MISO allocate the cost of MVPs approved after the end of the Second Planning Area's Transition Period using the planning processes and cost

[26] This would also apply to network upgrades that terminate in both Planning Areas and that are determined during the five-year transition period to be solutions for identified needs with a forecast in-service date no more than five years after the end of the five-year transition period. *Id.*, Transmittal Letter at 14.

[27] Filing Parties propose that the Combined MVP Portfolio could also include MVPs approved at the conclusion of the first MISO Transmission Expansion Plan (MTEP) following the five-year transition period. *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § II.B.3.

[28] *Id.*, Transmittal Letter at 16.

[29] *Id.*, Transmittal Letter at 10.

allocation procedures set forth in Attachment FF as it exists at the time of the projects' approvals,[30] and 2) the cost of MVPs approved before or during the five-year transition period that terminate exclusively in the First Planning Area will not be shared across the Planning Areas.[31]

15. Filing Parties state that the cost of network upgrades other than MVPs (i.e., non-MVPs) that were approved before the five-year transition period and that terminate exclusively in either Planning Area will not be shared between the Planning Areas. Filing Parties propose that, after the five-year transition period, the cost of non-MVPs approved during the five-year transition period that terminate exclusively in either Planning Area will be allocated within that Planning Area, pursuant to the cost allocation rules for the particular category of network upgrade under Attachment FF.[32]

16. Filing Parties propose to allocate the costs of all network upgrades approved after the end of the Second Planning Area's Transition Period across the combined Planning Areas pursuant to Attachment FF.[33]

17. Filing Parties also propose Tariff revisions regarding the treatment of transmission owners that withdraw from MISO during or after the five-year transition period. Filing Parties state that such Transmission Owner will remain responsible for all financial obligations that it incurred while a member pursuant to Attachment FF and Attachment FF-6.[34]

18. Filing Parties request an effective date of June 1, 2013 (the planned integration date for Entergy), and thus also request waiver of the 120-day maximum notice requirement, 18 C.F.R. § 35.3 (2011). Moreover, Filing Parties request expedited action on this request on or before February 17, 2012. According to Filing Parties, an effective date of June 1, 2013 and expedited action on or before February 17, 2012 is necessary "to

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[30] *Id.*, Transmittal Letter at 16.

[31] *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § IV.B.3.

[32] *Id.*, Transmittal Letter at 15-16.

[33] The First Planning Area would not share the cost of non-MVPs identified during the five-year transition period as a solution to meet an identified need that terminate exclusively in the Second Planning Area and have a forecast in-service date no more than five years after the end of the Second Planning Area's transition period. *Id.*, Transmittal Letter at 17.

[34] *Id.*

enable the regulators and elected officials in Entergy's jurisdictions to take the proposed cost allocation transition rules into account in making state regulatory determinations, and to give approvals necessary for integrating Entergy into MISO by June 1, 2013."[35]

19. On January 25, 2012, Commission Staff issued a deficiency letter (January 25 Letter) requesting additional information in order to process the filing. On February 3, 2012, Filing Parties filed a response (February 3 Response).

II. Notice of Filing and Responsive Pleadings

20. Notice of the November 28 Filing was published in the *Federal Register*, 76 Fed. Reg. 76,397 (2011), with interventions and protests due on or before December 19, 2011. Notices of intervention were filed by: the Council of the City of New Orleans; Illinois Commerce Commission (Illinois Commission); Louisiana Public Service Commission (Louisiana Commission); Mississippi Public Service Commission; and Organization of MISO States. Motions to intervene were filed by: Alliant Energy Corporate Services, Inc.; American Municipal Power, Inc.; Coalition of Midwest Transmission Customers (Midwest Transmission Customers); DC Energy Midwest, LLC; E.ON Climate & Renewables North America, LLC; Empire District Electric Company; Exelon Corporation; FirstEnergy Service Company (FirstEnergy);[36] Iberdrola Renewables, Inc.; International Transmission Company, LLC, ITC Midwest LLC, and Michigan Electric Transmission Company, LLC; Lafayette Utilities System; Louisiana Energy and Power Authority; Midwest TDUs;[37] Mississippi Delta Energy Agency; Municipal Energy Agency of Mississippi; NRG Companies;[38] Southern Company Services, Inc.;[39] and Wisconsin Electric Power Company.

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[35] *Id.*, Transmittal Letter at 18.

[36] FirstEnergy submitted this filing on behalf of: American Transmission Systems, Inc.; Ohio Edison Company; The Cleveland Electric Illuminating Company; The Toledo Edison Company; Pennsylvania Power Company; and FirstEnergy Solutions Corp.

[37] For the purposes of this filing, Midwest TDUs include: Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, and WPPI Energy.

[38] For the purposes of this proceeding, NRG Companies include: NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Sterlington Power LLC, and Cottonwood Energy Company LP.

21. A notice of intervention and protest was filed by the Public Service Commission of the State of Missouri (Missouri Commission). Motions to intervene and comments and/or protests were filed by: Arkansas Cities;[40] Arkansas Electric Cooperative Corporation (Arkansas Cooperative); City of North Little Rock, Arkansas (North Little Rock); Cleco Power, LLC (Cleco); East Texas Cooperatives;[41] Entergy Services, Inc. (ESI);[42] NRG Companies; Upper Peninsula Power Company and Wisconsin Public Service Corporation (Upper Peninsula-Wisconsin PSC); and Westar Energy, Inc. (Westar). Comments were filed by Louisiana Commission. A protest was filed by Midwest Transmission Customers. A motion to file comments out-of-time and comments were filed by Illinois Commission.

22. Entergy and Filing Parties filed motions for leave to answer and answers to the comments and protests. Arkansas Cooperative filed a motion for leave to answer and answer to the answers of Entergy and Filing Parties.

23. Notice of the February 3 Response was published in the *Federal Register*, 77 Fed. Reg. 7,141 (2012), with interventions and protests due on or before February 24, 2012. Motions to intervene were filed by: Calpine Corporation; and Union Power Partners, L.P. Comments and/or protests were filed by Cleco and Upper Peninsula-Wisconsin PSC.

24. Filing Parties filed a motion for leave to answer and answer to the comments and/or protests of Cleco and Upper Peninsula-Wisconsin PSC.

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[39] Southern Company Services, Inc. submitted this filing on behalf of itself and Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

[40] For the purposes of this filing, Arkansas Cities include: City of Benton, Arkansas; City of Osceola, Arkansas; City of Prescott, Arkansas; Conway Corporation, Hope Water & Light Commission; and West Memphis Utilities Commission.

[41] For the purposes of this filing, East Texas Cooperatives include: East Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas.

[42] ESI submitted this filing on behalf of the Entergy Operating Companies.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers by Entergy, Filing Parties, and Arkansas Cooperative because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Reasonableness of a Transition Period

a. November 28 Filing

27. Filing Parties' proposed revisions to the MISO Tariff provide a five-year transition period for integrating Entergy and any adjacent utilities into MISO's transmission planning and cost allocation process. Filing Parties state that without a seams agreement, MISO and Entergy have not had any historical opportunity to study their respective transmission infrastructure levels and plans. To the extent that their systems have not been comparably planned in those respects, and such non-comparability is not addressed, Filing Parties state, the regional allocation of network upgrade costs across the Planning Areas could result in unfair subsidization of the costs of projects terminating exclusively in either Planning Area. Filing Parties state, for example, that while MVPs are planned to confer, on a portfolio basis, widespread benefits to the region over which project costs are shared, MVPs approved before the transition period will be planned only for the First Planning Area, without consideration of the needs of the Second Planning Area. Filing Parties point out that the Second Planning Area could unfairly subsidize a set of MVPs if, immediately upon Entergy's integration, the Second Planning Area were to be allocated a share of the costs of MVPs that were planned only for the First Planning Area. Conversely, Filing Parties note that Entergy's existing projects have not been planned to account for integration with the First Planning Area and express concern that the Second Planning Area's transmission infrastructure may be less able to address congestion than that of the First Planning Area. If so, Filing Parties assert, the First Planning Area should

not bear a share of the cost of projects aimed at raising the Second Planning Area's infrastructure to a level that is more comparable to that of the First Planning Area.[43]

28. Thus, Filing Parties state that the transition period they propose will provide MISO the opportunity to study and implement the comparable planning of transmission infrastructure upgrades in both Planning Areas, using the same transmission planning process, and based on the same criteria. Filing Parties explain that such comparability of planning will help ensure that the estimated benefits from upgrades will be at least roughly commensurate with their costs.[44] Filing Parties state that their proposed transition period is consistent with Order No. 890,[45] and conforms to the cost allocation principles articulated by the United States Court of Appeals for the Seventh Circuit in finding that the cost of network upgrades in one part of PJM Interconnection, L.L.C. (PJM) should not be regionally allocated in a manner that would impose a share of such costs on customers in a different area of PJM that was not shown to derive sufficient benefit from the upgrades.[46]

29. Filing Parties note that the Commission previously approved MISO's proposal to exclude certain projects from the Regional Expansion Criteria and Benefits (RECB) cost allocation method, if such projects had already been planned before the new cost allocation rules became effective.[47] Filing Parties state that, similarly, MISO cost allocation rules need to be appropriately adjusted for Entergy's integration, further taking into account the substantial size and load of the proposed Second Planning Area, and its distance from the First Planning Area. Filing Parties explain further that although using a list of excluded projects was sufficient to limit the application of new regional cost

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[43] Filing Parties November 28 Filing, Transmittal Letter at 5-7 (citing Curran Test. at 5).

[44] *Id.*, Transmittal Letter at 7 (citing Curran Test. at 7).

[45] *Id.* (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890)).

[46] *Id.* (citing *Ill. Commerce Com'n v. FERC*, 576 F.3d 470, 476-477 (7th Cir. 2009) (*Illinois Commerce Commission*)).

[47] *Id.*, Transmittal Letter at 7-8 (citing RECB I Order, 114 FERC ¶ 61,106 at PP 108-113).

allocation methods to new individual transmission owners in areas proximate to MISO's historical footprint, the proposed transition period is more suitable for the far more sizeable and distant Second Planning Area.[48]

30. Filing Parties state that, given the transitional need to allocate network upgrade costs separately between MISO's existing footprint and Entergy's service territory, it is logical to define them as separate Planning Areas for both cost allocation and planning purposes. Filing Parties state that, in addition, constituting Entergy's service territory into a separate Planning Area will facilitate stakeholder meetings and discussions of the Entergy companies regarding transmission planning issues. Filing Parties further state that existing customers in the First Planning Area and future customers in the Second Planning Area will not be adversely affected by the transition. Instead, according to Filing Parties, they will avoid any unfair subsidization that could otherwise occur between the Planning Areas if the regional cost allocation rules were not temporarily adjusted. Filing Parties contend that the integration will not delay, but rather will facilitate, the planning of projects to meet the needs of both Planning Areas.[49]

b. Comments and Protests

31. Entergy supports Filing Parties' proposal, stating that it is consistent with Commission policy regarding transmission planning and cost allocation and will facilitate Entergy's participation in MISO.[50] Entergy states that Filing Parties' proposal is consistent with the policy that transmission costs should be allocated in accordance with the planning assumptions that resulted in them being incurred.[51] According to Entergy, the Commission established the link between transmission planning and cost allocation in Order No. 890, and reinforced this link in Order No. 1000.[52] Entergy states that because Entergy's and MISO's transmission systems have not been planned on a coordinated basis, transmission facilities constructed in one area were not designed to benefit loads in the other area. Entergy states that the initial MVPs in MISO were not planned to benefit

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[48] *Id.*, Transmittal Letter at 8 (citing Curran Test. at 5, 8, 20).

[49] *Id.*, Transmittal Letter at 8-9.

[50] Entergy Comments at 6.

[51] *Id.* at 6-7.

[52] *Id.* at 7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 560; *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 559 (2011)).

Entergy ratepayers (especially as the footprint served by Entergy does not, for the most part, have renewable portfolio standards) and that the two systems differ in the amount of congestion they experience.[53]

32. Moreover, Entergy contends that the link between transmission planning and cost allocation is consistent with cost causation principles.[54] With respect to Filing Parties' proposal, Entergy maintains that because MISO has not planned MVPs for loads in the Second Planning Area, these loads did not cause the MVPs to be built. Absent a showing that these MVPs benefit loads in the Second Planning Area, Entergy asserts that it would be unfair to allocate the associated costs to them. Entergy adds that if additional transmission facilities are necessary in the Second Planning Area to satisfy MISO planning protocols related to congestion, loads in the existing MISO footprint would not be causing the need for such facilities.[55]

33. Similarly, Entergy submits that Filing Parties' proposal is consistent with the "beneficiary pays" cost allocation principle.[56] Entergy claims that because the MVPs approved prior to Entergy becoming a MISO member were not planned to meet loads in the Second Planning Area, there is no reason to believe that they will benefit those loads. According to Entergy, these MVPs were instead planned primarily to integrate renewable resources within MISO.[57] While Entergy acknowledges that facilities constructed in either Planning Area can benefit the other Planning Area to some extent because they are part of an interconnected network, Entergy states that the Commission "cannot use the

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[53] *Id.* at 7-8.

[54] *Id.* at 8 (citing, *e.g.*, MVP Order, 133 FERC ¶ 61,221 at P 195 and n.253 ("it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them") (quoting *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (*K N Energy*)), MVP Rehearing Order, 137 FERC ¶ 61,074).

[55] *Id.*

[56] *Id.* at 8-9 (citing, *e.g.*, *Illinois Commerce Commission*, 576 F.3d at 476-477; Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 622; MVP Order, 133 FERC ¶ 61,221 at PP 54, 355, 382-389).

[57] *Id.* at 9.

presumption [of network benefits] to avoid the duty of 'comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.'"[58]

34. Entergy also states that Filing Parties' proposal is consistent with the Commission's policy disfavoring the reallocation of sunk costs.[59] As evidence of this policy, Entergy cites the Commission's rejection in Opinion No. 494 of a proposal to reallocate the costs of transmission facilities planned and constructed in PJM before it began planning on a region-wide basis.[60] While Entergy notes that the MVPs to which Filing Parties' proposal would apply have not yet been constructed and thus their costs are not "sunk" in that respect, Entergy contends that because they have already been planned, the same rationale applies. Specifically, Entergy states that the fact pattern here is similar to an order in which the Commission approved a regional cost allocation method that did not apply cost sharing to projects that were previously planned,[61] a decision later affirmed by the Court of Appeals.[62]

35. Last, Entergy maintains that accepting Filing Parties' proposal would be consistent with the Commission's policy of encouraging RTO participation. Entergy states that "some flexibility and a reasonable transition is necessary to address fairly the difficult issue of cost allocation" to enable Entergy's integration into MISO and thus to expand MISO's scope.[63] Entergy submits that if MISO were to fully allocate MVP costs to Entergy, the benefits to its customers of MISO membership would be reduced by

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[58] *Id.* (citing *Illinois Commerce Commission*, 576 F.3d at 477 (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (*MISO Transmission Owners)*)).

[59] *Id.* at 10 (citing *Inquiry Concerning the Comm'ns Pricing Policy for Transmission Serv. Provided by Pub. Utils. Under the Fed. Power Act*, FERC Stats. & Regs. ¶ 31,005, at 31,144 (1994) ("The major purpose of transmission pricing reform should be to provide more efficient price signals, particularly for new transmission uses, and not simply to reallocate sunk costs.")).

[60] *Id.* (citing *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063, at PP 50, 54 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008)).

[61] *Id.* at 11 (citing RECB I Order, 114 FERC ¶ 61,106).

[62] *Id.* (citing *Pub. Serv. Comm'n of Wis. v. FERC*, 545 F.3d 1058, 1065 (D.C. Cir. 2008)).

[63] *Id.*

$631 million, an issue that Entergy states is of particular importance to its retail regulators.[64]

36. In contrast, East Texas Cooperatives, Illinois Commission, Midwest Transmission Customers, Missouri Commission, Upper Peninsula-Wisconsin PSC, and Westar express concerns about the need for Filing Parties' proposed transition period.

37. Missouri Commission contends that it does not have enough information to assess the impact of Filing Parties' proposal on Missouri companies and customers. Missouri Commission states that, absent the proposal, companies and customers in the existing MISO footprint would have to pay for a portion of the costs of building the Entergy footprint into an adequate transmission system, and these costs are unknown.[65] Missouri Commission urges the Commission to reject the proposal and require MISO to "complete the MISO stakeholder process to construct a waiver that allows for a proper understanding of the impact of any waiver on the current MISO footprint, especially those located on the current MISO-Entergy seam."[66] In response to Filing Parties' argument that the proposed transition period is necessary because the Planning Areas have not been comparably planned, Missouri Commission maintains that, absent a full understanding of whether the two Planning Areas are comparable, the proposal is premature. Missouri Commission requests that the Commission reject the proposal until at least a preliminary comparability study is performed or accept it contingent upon a preliminary study showing that the transmission investment profiles of the two systems are not currently comparable.[67]

38. Upper Peninsula-Wisconsin PSC support the proposed transition period for allocating the costs of Baseline Reliability Projects and Market Efficiency Projects because the costs and benefits of those projects are generally tied to pricing zones that are geographically and electrically near the transmission upgrade. In addition, Upper Peninsula-Wisconsin PSC state that Baseline Reliability Projects and Market Efficiency Projects provide comparability in terms of transmission planning methods and criteria. However, Upper Peninsula-Wisconsin PSC contrast these projects with MVPs, which Upper Peninsula-Wisconsin PSC contend are not needed for transmission planning comparability since they benefit all participants in the MISO energy and operating

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[64] *Id.* at 12.

[65] Missouri Commission Protest at 9-10.

[66] *Id.* at 10.

[67] *Id.* at 5-6.

reserve markets. According to Upper Peninsula-Wisconsin PSC, the costs of MVPs should be allocated equally to all users of the transmission system, including Entergy once it joins MISO.[68]

39. East Texas Cooperatives claim that Filing Parties provide no useful definition of comparability, but instead present only broad generalities and statements about the lack of coordinated transmission planning between Entergy and MISO and of fairness.[69]

40. Some parties argue that Filing Parties' proposal provides preferential treatment for Entergy. For example, Upper Peninsula-Wisconsin PSC state that MISO attempts to justify the transition period as necessary to integrate Entergy into the MISO planning process. However, Upper Peninsula-Wisconsin PSC are not aware of the use of such a comprehensive study process for integrating a new transmission owner into MISO in the past. Upper Peninsula-Wisconsin PSC argue that this represents preferential treatment and that "it would be instructive to know the special features of Entergy integration that justify" it.[70]

41. While Illinois Commission generally supports MISO's efforts to attract and integrate new transmission-owning members, Illinois Commission opposes Filing Parties' proposal as unduly and inherently discriminatory because it would permit Entergy and its customers to avoid paying for transmission projects for which all other MISO members must pay. Illinois Commission contends that Filing Parties have not provided a persuasive argument for modifying the transmission cost allocation provisions of MISO's existing Tariff to provide this special treatment. As such, Illinois Commission recommends that the Commission reject Filing Parties' proposal. Rather, Illinois Commission states that, if Entergy chooses to join MISO, it should do so under the Tariff in effect at the time and applicable to all transmission-owning MISO members.[71]

42. East Texas Cooperatives state that Filing Parties' proposal would allow Entergy to enjoy the benefits of RTO membership without bearing a significant amount of the requisite costs. East Texas Cooperatives submit that the Commission has already found the existing transition provisions of the MISO Tariff to be just and reasonable, and Filing

[68] Upper Peninsula-Wisconsin PSC Comments at 12-14.

[69] East Texas Cooperatives Protest at 9.

[70] Upper Peninsula-Wisconsin PSC Comments at 14.

[71] Illinois Commission Comments at 4-5.

Parties do not explain why the proposed revisions are just and reasonable.[72] Moreover, East Texas Cooperatives argue that the costs of regionally-beneficial transmission should be shared across MISO, including Entergy once it becomes a member, consistent with the existing MISO Tariff because "[a]ny delay is contrary to MISO's own previously stated position and Commission precedent that the regional projects benefit everyone in the region, and to MISO's and Entergy's reports regarding the immediate benefit of Entergy joining a Day 2 market."[73]

43. Several parties argue that Filing Parties' proposal is inconsistent with Commission precedent.[74] For example, Midwest Transmission Customers argue that Filing Parties' proposal would make joining MISO less expensive for Entergy than it would otherwise be under the existing MISO Tariff.[75] Specifically, Midwest Transmission Customers note that the Commission has in the past applied the existing tariff when determining what costs are allocated to a transmission owner exiting an RTO and has declined to modify an existing tariff simply because its cost allocation rules make a transmission owner's business decision to join the RTO more expensive.[76] Midwest Transmission Customers contend that the Commission should reject Filing Parties' proposal as it would apply different rules to current and prospective MISO transmission owners.[77]

44. Similarly, Illinois Commission argues that the special treatment afforded to Entergy under Filing Parties' proposal is contrary to Commission precedent. Illinois Commission states that in the Commission's *ATSI Order*, the Commission held that transmission owners seeking to either join or exit an RTO should be prepared to assume the costs attributable to their decision.[78] Illinois Commission states that in that case, the Commission refused to allow American Transmission Systems, Inc. (ATSI) to avoid

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[72] East Texas Cooperatives Protest at 9.

[73] *Id.* at 16-17.

[74] *E.g.*, East Texas Cooperatives, Illinois Commission, and Midwest Transmission Customers.

[75] Midwest Transmission Customers Protest at 3-4.

[76] *Id.* (citing *Duquesne Light Co.*, 122 FERC ¶ 61,039 (2008); *American Transmission Sys., Inc.*, 129 FERC ¶ 61,249, at P 113 (2009) (*ATSI Order*)).

[77] *Id.* at 3.

[78] Illinois Commission Comments at 9 (citing *ATSI Order*, 129 FERC ¶ 61,249 at P 113).

paying for those transmission projects subject to regional cost allocation that were approved before its integration into PJM. Illinois Commission contends that, like ATSI, Entergy should be expected to balance the costs and benefits associated with joining an RTO and should not receive preferential treatment, but should be subject to the same tariff terms and conditions applicable to all other transmission-owning RTO members.[79]

45. In contrast, Entergy argues that Filing Parties' proposal is distinguishable from ATSI's circumstances in the following ways: 1) Filing Parties' proposal was made under section 205 of the Federal Power Act (FPA), while ATSI filed a complaint under section 206 of the FPA; 2) Filing Parties' proposal applies to Entergy as a new RTO member, while ATSI was changing its membership from one RTO to another RTO; and (3) Filing Parties' proposal provides for a transition period, while ATSI requested that it be permanently exempt from certain costs.[80]

46. Illinois Commission also argues that Filing Parties' proposal is inconsistent with Commission precedent in the *Duquesne Order*. According to Illinois Commission, the Commission found in that order that once Duquesne Light Company (Duquesne) withdrew from PJM, it would no longer be subject to PJM's future-period, annually-updated load ratio share charge for the regionally allocated costs of transmission projects.[81] In particular, Illinois Commission notes the Commission's finding that:

> a new transmission owner joining PJM would become subject to these charges, because it would be a zone in PJM with a zonal annual peak load, regardless of when the projects were approved and regardless of who these projects may have previously benefitted. And a departing transmission owner leaving PJM would, pursuant to this language, no longer be subject to these charges; it would not have a zonal annual peak load as it would no longer be a zone in PJM.[82]

Illinois Commission contends that, while the *Duquesne Order* applied specifically to Duquesne's request to exit an RTO, the Commission's findings in this case would apply equally to the converse – when a transmission-owning utility seeks to join an RTO.

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[79] *Id.* at 10.

[80] Entergy Comments at 12, n.7.

[81] Illinois Commission Comments at 10-11 (citing *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 124 FERC ¶ 61,219, at P 162 (2008) (*Duquesne Order*)).

[82] *Id*. at 11 (citing *Duquesne Order*, 124 FERC ¶ 61,219 at P 164).

Thus, Illinois Commission argues that once Entergy becomes a MISO member and begins to withdraw energy from the MISO system, it should be charged for regionally allocated transmission costs under the existing MISO Tariff.[83]

47. Illinois Commission and Midwest Transmission Customers cite the Commission's rejection of MISO's Market Service proposal as additional evidence that Filing Parties' instant proposal is inconsistent with Commission precedent. Illinois Commission points out that in rejecting the Market Service proposal, the Commission expressed particular concern about transmission owners avoiding a significant portion of the costs of network transmission upgrades while enjoying the market benefits that these upgrades enable.[84] Illinois Commission maintains that Filing Parties' instant proposal presents the same concerns in that Entergy would be permitted to escape certain costs of network transmission upgrades while realizing the market benefits that they facilitate.[85] Midwest Transmission Customers state that the Commission rejected this proposal because allowing non-members to avoid some costs while enjoying the full benefits of MISO's security constrained economic dispatch would threaten the continued viability of MISO as an RTO.[86] According to Midwest Transmission Customers, the Commission should reject Filing Parties' preferential proposal because it would allow Entergy to integrate into MISO without being allocated the same costs as other transmission owners, endangering the integrity of the RTO.[87]

48. Moreover, Illinois Commission states that in Opinion No. 472, the Commission found that the integration of American Electric Power Service Corporation (AEP) into PJM would result in quantifiable benefits for both AEP and its customers.[88] Illinois Commission argues that the Commission also found that it did not need to provide special treatment to AEP to accomplish AEP's integration into PJM. Illinois Commission

[83] *Id.* at 11.

[84] *Id.* at 11-12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,139, at PP 59, 67 (2009) (Market Service Order)).

[85] *Id.* at 12.

[86] Midwest Transmission Customers Protest at 5 (citing Market Service Order, 126 FERC ¶ 61,139 at PP 64-65).

[87] *Id.*

[88] Illinois Commission Comments at 12 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 472, 107 FERC ¶ 61,271, at PP 52-53 (2004)).

contends that the Commission should make this same finding with respect to Entergy's integration into MISO, and should adhere to its precedent and established policy by not providing Entergy with special treatment with regard to transmission cost allocation.[89]

49. East Texas Cooperatives also argue that Commission precedent does not support Filing Parties' proposal.[90] With respect to Filing Parties' reliance on *Illinois Commerce Commission* to support the instant proposal, East Texas Cooperatives submit that that decision supports rejection of the Filing Parties' proposal. Specifically, East Texas Cooperatives state that this decision explicitly acknowledges that transmission upgrades to an RTO's transmission system benefit members of that network.[91] East Texas Cooperatives maintain that because Entergy will necessarily receive benefits from such transmission upgrades as a MISO member, the transition period is unnecessary and the costs of those projects should be allocated to Entergy as they would be allocated to any other MISO member benefiting from the MISO markets.[92] Moreover, East Texas Cooperatives contend that Filing Parties cannot rely on Order No. 1000 to support their proposal because Order No. 1000 also holds that the costs of transmission facilities should be allocated commensurate with the benefits that they provide.[93]

50. In regard to Filing Parties' contention that the instant proposal is supported by prior Commission acceptance of the use of "Excluded Projects" lists to identify projects not subject to regional cost allocation, East Texas Cooperatives state that Filing Parties' proposal is distinguishable.[94] East Texas Cooperatives claim in that case the stakeholders potentially affected by the costs and benefits of the applicable projects had been involved in the transmission planning process "and the exclusion was the compromise that resulted from that prior involvement."[95] East Texas Cooperatives contend that the Commission determined that this exclusion would provide equal footing for all stakeholders with the new implementation of regional cost-sharing.[96] In contrast, East Texas Cooperatives

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[89] *Id.*

[90] East Texas Cooperatives Protest at 8.

[91] *Id.* at 6 (citing *Illinois Commerce Commission*, 576 F.3d at 477).

[92] *Id.*

[93] *Id.* at 7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323).

[94] *Id.* (citing RECB I Order, 114 FERC ¶ 61,106 at PP 108-113).

[95] *Id.* at 8 (citing RECB I Order, 114 FERC ¶ 61,106 at PP 90-92, 108-113).

[96] *Id.* (citing RECB I Order, 114 FERC ¶ 61,106 at P 111).

maintain that for the projects to which Filing Parties' proposal would apply, all affected stakeholders cannot yet have participated in the transmission planning process because 1) Entergy has not yet joined MISO, 2) no determination with respect to equal footing for all potentially affected stakeholders has been made, and 3) regional cost-sharing is not new in MISO.[97]

51. Illinois Commission argues that to accept Filing Parties' proposal would open the door to future bargaining between RTO management and prospective transmission-owning members, which would not be conducive to efficient RTO operations or stable RTO membership. Moreover, Illinois Commission maintains that it would provide significant leverage to large or strategically positioned potential new RTO entrants, threatening Order No. 2000's fundamental principle of RTO independence.[98] According to Illinois Commission, prospective transmission-owning RTO members are sophisticated enough to determine whether the benefits of membership outweigh the associated costs. Illinois Commission states that if Tariff modifications are necessary to induce a transmission owner to join MISO, then those Tariff modifications should be generally applicable to all transmission owners and not preferential.[99]

52. Illinois Commission also argues that the barrier to Entergy joining MISO under the terms and conditions of the existing Tariff is the transmission cost socialization provisions of Attachment FF (i.e., regional allocation of 20 percent of project costs for Baseline Reliability Projects and Market Efficiency Projects and 100 percent of the costs of MVPs), as evidenced by Filing Parties' proposal to change how these provisions would apply to Entergy.[100] Specifically, Illinois Commission maintains that Filing Parties concede this point in that Ms. Curran's testimony acknowledges that if the MISO and Entergy transmission systems are not comparable, then regionally allocating costs could result in unfair subsidization of the costs of those projects that terminate exclusively in either Planning Area.[101] Moreover, Illinois Commission asserts that Filing

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[97] *Id.*

[98] Illinois Commission Comments at 20 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at PP 193-194 (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)).

[99] *Id.* at 19-20.

[100] *Id.* at 5-6.

[101] *Id.* at 6-7 (citing Filing Parties November 28 Filing, Curran Test. at 5-6).

Parties' proposed Tariff revisions 1) are complex and convoluted, 2) are likely to necessitate Commission intervention to clarify and interpret their application, and 3) carry a high-risk of unintended consequences and administrative burdens.[102] For these reasons, Illinois Commission urges the Commission to reject Filing Parties' proposal and to instead direct MISO to remove "the arbitrary transmission cost socialization provisions of its [T]ariff and replace them with cost causation/beneficiaries pay mechanisms."[103] Illinois Commission states that it would welcome such modification, which would eliminate the need for the unduly discriminatory and preferential Tariff revisions proposed by Filing Parties that Illinois Commission opposes.[104]

53. If the Commission does not reject Filing Parties' proposal, Westar requests that the Commission find that it has not been demonstrated to be just and reasonable and set the matter for hearing.[105]

54. Cleco expresses a different concern about Filing Parties' proposal: Cleco maintains that there is no basis for finding that the Planning Areas will be sufficiently integrated to warrant cost socialization between the regions.[106] In Cleco's view, MISO should operate a single market, but with two separate planning regions that would share only the cost of facilities that actually connect the regions.[107] Cleco notes that, in Order No. 2000, the Commission stated that as regions get larger, reaching a consensus on an appropriate transmission rate design for the region may prove challenging.[108] Cleco argues that having two separate planning regions would "avoid the potential for a disruptive North v. South dynamic while still allowing for all of the other benefits of an RTO, such as regional dispatch, over the combined area."[109] Cleco believes that, according to Filing Parties, separate planning areas would not impact the level and type

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[102] *Id.* at 8.

[103] *Id.*

[104] *Id.* at 6, 8.

[105] Westar Protest at 7.

[106] Cleco December 19, 2011 Protest at 6.

[107] *Id.* at 3.

[108] *Id.* at 4 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 256).

[109] *Id.*

of planning that would be performed.[110] Cleco argues that having two large, thinly-interconnected regions under the same RTO umbrella bears no similarity to the facts under consideration when MISO's current cost allocation methodologies were approved. In particular, it asserts that the costs and benefits that supported the socialization of MVP and other costs did not contemplate future planning regions in a different part of the country,[111] and that in approving the MVP cost allocation, the Commission recognized the "integration and interdependence" of the utilities in MISO's grid and noted MISO's "strong regionally-integrated transmission network."[112]

55. Cleco asserts that steps taken to integrate Entergy into MISO should, to the extent possible, be neutral toward Cleco. Cleco states that it is in the process of evaluating whether to join an RTO and, if so, which one. Cleco maintains that, since it is highly interconnected to Entergy, Cleco's RTO choice may be affected by Entergy's choice to join MISO and the conditions of Entergy's entry.[113]

56. Finally, Louisiana Commission states that Entergy has filed an application with the Louisiana Commission seeking approval to join MISO, and that a prompt decision on Filing Parties' proposal would provide it with important information to evaluate Entergy's possible membership in MISO. Louisiana Commission requests that the Commission issue a decision on Filing Parties' proposal "as expeditiously as possible."[114] Entergy supports the request for expedited treatment of Filing Parties' proposal, as it will provide important and timely information for Entergy's retail regulators in their evaluation of Entergy's proposal to join MISO.[115] Entergy notes that the Entergy Operating Companies have made change of control filings in four retail jurisdictions seeking authorization to integrate into MISO, and each filing incorporated a cost-benefit analysis regarding MISO's transition approach to transmission cost allocation.[116]

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[110] *Id.* at 9 (citing Filing Parties November 28 Filing, Curran Test. at 9).

[111] *Id.* at 5 (citing, *e.g.*, MISO July 15, 2010 Filing, Docket No. ER10-1791-000, at 16).

[112] *Id.* (citing MVP Order, 133 FERC ¶ 61,221 at PP 196, 236).

[113] *Id.* at 1.

[114] Louisiana Commission Comments at 1.

[115] Entergy Comments at 2.

[116] *Id.* at 4.

c. **Answers**

57. In response to Westar's request that the Commission set the instant filing for hearing and Missouri Commission's request that the Commission direct MISO to continue its stakeholder process, Filing Parties contend that the proposed Tariff revisions are duly supported and should thus be accepted expeditiously as just and reasonable without any need for discovery, a hearing, or further stakeholder proceedings.[117] In response to Missouri Commission, Filing Parties state that, since the proposed transition period is a mechanism to provide MISO with an opportunity to study and plan for the two Planning Areas, it is nonsensical to condition the assessment of that mechanism on the availability of the very data that will be collected and analyzed by that process. Filing Parties argue that the Commission can properly assess and accept the proposed transition process in advance of its application to any particular projects or companies.[118]

58. Filing Parties disagree with those protestors who assert that the November 28 Filing did not show enough evidence of non-comparability and potential for subsidization between the two Planning Areas. Filing Parties explain that in *Illinois Commerce Commission*, the Seventh Circuit recognized that asymmetry between two sub-regions within the same RTO properly warrants refraining from allocating costs across both sub-regions until after the RTO appropriately studies relevant data to determine whether costs allocated to a sub-region are at least roughly commensurate to the estimated benefits it receives.[119] Filing Parties argue that this reasoning applies to the November 28 Filing: in the absence of a prior evidentiary showing of sufficient benefit across both Planning Areas, and until further study using coordinated planning with common criteria can be conducted to assess potential areas of benefit, the November 28 Filing proposes a transition period deferring any footprint-wide allocation of the cost of different types of transmission upgrades terminating exclusively in only one Planning Area.

59. Filing Parties further state that, given the duty to make a pre-allocation cost-benefit comparison, the proper rule of thumb is that, in case of doubt, an RTO should not allocate upgrade costs across an RTO's apparently asymmetrical sub-regions until after studying whether benefits are commensurate to costs. Filing Parties argue that refraining from regional cost allocation in this context is not a matter of giving special treatment to the asymmetrical sub-region, but rather providing suitable adaptation to the asymmetry

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[117] Filing Parties January 10, 2012 Answer at 4-5.

[118] *Id.* at 20-21.

[119] *Id.* at 6-7 (citing *Illinois Commerce Commission*, 576 F.3d at 476-477).

until costs can be determined to be commensurate to benefits.[120] Filing Parties further argue that asymmetry between the sub-regions can be established based on the general characteristics of sub-regions, noting that the Entergy Operating Companies and most transmission owners in MISO's existing footprint acknowledge that the two Planning Areas differ in significant ways that justify the proposed cost-allocation deferment. Thus, Filing Parties request that the Commission reject arguments seeking to immediately impose regional cost allocation across the two Planning Areas, and instead accept the November 28 Filing.[121]

60. Filing Parties argue that the significant differences in the characteristics of the two Planning Areas constitute legitimate factors warranting at least a transitional distinction in their cost allocation treatment, which treatment is therefore not unduly preferential or discriminatory. Filing Parties state that because the differences between the two Planning Areas appear to arise mainly from the different application of criteria to plan transmission other than that required for reliability, those differences can be addressed during the proposed transition period through integrated planning of the two Planning Areas under MISO's common process and criteria. Using this approach, Filing Parties state, both Planning Areas will attain regional benefits that would provide an appropriate basis for regional cost allocation across the Planning Areas. Filing Parties claim that this approach is broadly consistent with principles reflected in Order No. 1000, which recognizes and requires regional planning as the underlying basis for regional cost allocation.[122]

61. Filing Parties disagree with protestors' arguments that the proposal is inconsistent with Commission precedent. Filing Parties claim that there are no other similarly-situated entities among recent MISO new entrants and requirements that may apply to existing members or other new members, such as paying the full MVP usage rate upon joining, are not necessarily just and reasonable if applied to Entergy.[123] Filing Parties argue that the case law cited by Illinois Commission on the need for new RTO members to accept the existing tariff of the RTO they are joining is not dispositive of the issue of whether that tariff can or should be narrowly amended to address the legitimate concerns of new and existing members. Filing Parties point out that the Commission has

[120] *Id.* at 6-7.

[121] *Id*. at 8.

[122] *Id.* at 12-13.

[123] *Id*. at 9-11.

previously accepted tariff revisions to accommodate the reasonable needs of new Transmission Owners.[124]

62. Filing Parties explain that the Market Service proposal cited by Illinois Commission differs significantly from the present proposal. According to Filing Parties, that proposal involved situations where entities that would not become transmission-owning members or that withdraw from their current status as transmission-owning members, could obtain or retain from MISO significant benefits typically enjoyed by transmission-owning members while insulating them from associated obligations, such as bearing a share of network upgrade costs.[125] In contrast, Filing Parties state, the proposed transition period contemplates that the Entergy Operating Companies will become transmission-owning members subject to regional cost allocation as to post-transition MVPs, and potentially also as to pre-transition and transition period MVPs after the asymmetrical features of the Second Planning Area are studied and addressed by a Combined MVP Portfolio with net regional benefits justifying regional cost allocation. Filing Parties claim that, in contrast to the Market Service proposal, the proposed transition would help prevent the exit and promote the entry of transmission-owning members by meeting the concerns of both groups of transmission owners.[126]

63. Filing Parties also dispute East Texas Cooperatives' claim that Filing Parties cannot rely on the Commission's prior allowance of an "Excluded Projects" list in connection with MISO's RECB cost allocation proposal. Filing Parties explain that the original RECB proposal's list of excluded projects was proposed by MISO, and accepted by the Commission, based on the fact that the listed projects had already been planned and would have been pursued by their proponents regardless of the results of MISO's stakeholder consultations on potential regional allocation of project costs.[127] Filing Parties state that, contrary to East Texas Cooperatives' argument, the exclusion was primarily based on the mere status of the projects themselves as having been planned

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[124] *Id.* at 17 (citing *MISO Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,046, at PP 34-36 (2009) (MidAmerican Order) (accepting Tariff revisions providing "procedure for a partial-year allocation of Financial Transmission Rights in connection with MidAmerican's integration" in the middle of MISO's annual cycle for allocating Auction Revenue Rights)).

[125] *Id.* at 15 (citing Market Service Order, 126 FERC ¶ 61,139 at P 67).

[126] *Id.* at 15-16.

[127] *Id.* at 16 (citing RECB I Order, 114 FERC ¶ 61,106 at PP 108-115, RECB I Rehearing Order, 117 FERC ¶ 61,241 at PP 94-101).

before the effective date of regional cost allocation rules, under circumstances where their proponents would not have legitimately expected project costs to be regionally allocated.[128] Filing Parties argue that considering that the planned status of projects has been accepted by the Commission as a compromise basis for the permanent exclusion of previously-planned projects from regional cost allocation, the planned status of pre-transition MVPs can be a reasonable basis for their temporary exclusion from regional cost allocation across asymmetrical sub-regions.

64. Filing Parties rebut Illinois Commission's argument that the root problem is the Tariff's regional cost allocation features, and that the appropriate solution is elimination of such allocation, along with rejection of the November 28 Filing. Filing Parties state that Illinois Commission's comments are in the nature of collateral attacks against the MVP Order and the MVP Rehearing Order; and as such, they are beyond the scope of this proceeding.[129]

65. In its answer, Entergy supports Filing Parties' proposal, stating that it is consistent with the Commission's policies regarding cost allocation and supporting voluntary participation in RTOs. Entergy also supports Filing Parties' request for expedited treatment, stating that expedited treatment will provide important, timely information to assist Entergy's retail regulators in evaluating Entergy Operating Companies' proposal to join MISO. Entergy adds that Filing Parties' proposal will have a significant impact on the costs that will be borne by Entergy customers if those transmission assets become part of MISO.[130]

66. In response to Entergy's statement that the November 28 Filing will have a significant impact on the costs borne by its customers, Arkansas Cooperative states in its answer that neither Entergy nor Filing Parties have provided any information from which retail regulators, or Entergy's customers themselves, could determine the magnitude, or even the direction, of the effect on their rates of the proposal. Arkansas Cooperative argues that there is no basis upon which the Commission could find that accepting Filing Parties' proposal will help wholesale or retail customers or retail regulators understand the proposal's impact on transmission rates.[131]

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[128] *Id.*

[129] *Id.* at 5.

[130] Entergy Answer at 2-3.

[131] Arkansas Cooperative Answer at 2-3.

d. Commission Determination

67. For the reasons discussed below, we conditionally accept Filing Parties' proposal, as just and reasonable and consistent with the Commission's precedent.

68. Filing Parties' proposal represents a solution negotiated among potential MISO entrants and existing MISO transmission owners, consistent with previous Commission orders addressing RTO entry. Specifically, in the *ATSI Order*, the Commission stated that:

> ATSI and the PJM transmission owners are free to negotiate the terms of ATSI's entrance into PJM. These negotiations should reflect the benefits that ATSI may bring to the PJM system . . . If sufficient cost savings will result, we expect that the PJM transmission owners will have both a will and an incentive to facilitate ATSI's realignment on a mutually beneficial basis and to submit a tariff amendment to reflect the value of those savings as a reduction in ATSI's RTEP obligation. We find that given the voluntary nature of RTOs, such a collaborative effort is the most appropriate manner of resolving such cost issues.[132]

In this instance, MISO and its transmission owners have negotiated the five-year transition period with Entergy as part of its terms of integration, and as Filing Parties state, "[e]ach group has its own cost-benefit rationale" for seeking the proposed transition period. The existing transmission owners jointly filed the proposal, and according to Filing Parties, a majority of the transmission owners support the proposal.[133]

69. As Filing Parties explain, Entergy and MISO do not have a seams agreement and have not had any historical opportunity to study their respective transmission infrastructure levels and plans. The transmission systems of MISO and Entergy have not been planned using consistent planning criteria and assumptions such that transmission facilities constructed in one Planning Area could reasonably be expected to provide benefits to loads in the other. Absent the proposed transition period, Entergy ratepayers would immediately share in the costs of MVPs that were not planned, designed, or built to benefit Entergy's ratepayers, but were planned to benefit MISO loads, without any showing that these network upgrades provide benefits to the Second Planning Area.

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[132] *ATSI Order*, 129 FERC ¶ 61,249 at P 114.

[133] Filing Parties November 28 Filing, Curran Test. at 5.

70. We find that it is not unjust and unreasonable for MISO and its existing transmission owners to agree to establish a transition period to ensure that new transmission facilities are planned using consistent planning criteria and assumptions, allowing for the identification of beneficiaries in the combined MISO footprint before allocating transmission costs across the two Planning Areas. This implementation of consistent planning in the two Planning Areas will facilitate MISO's application of its transmission planning process and planning criteria to the combined Planning Areas after the transition period has ended. At the end of the five-year transition period, MISO will plan for the combined Planning Areas as a single MISO transmission system and costs will be shared between the two Planning Areas in accordance with MISO's existing cost allocation methods under Attachment FF, consistent with the distribution of the benefits that these transmission facilities have been found to provide through MISO's transmission planning process. This approach is consistent with MISO's existing MVP planning process, in which MISO and its stakeholders evaluate the costs and benefits associated with any project that is considered for MVP cost allocation, rejecting the proposed MVP treatment of a project if it is not justified, and MISO aggregates projects into a portfolio to ensure that the benefits and the costs of the projects accrue throughout the MISO region.[134]

71. The Commission recognizes the differences of opinion regarding the appropriateness of the proposed transition period. As the courts have noted, the Commission's review under section 205 is limited to determining whether a proposal is just and reasonable and not unduly discriminatory or preferential, not "whether a proposed rate schedule is more or less reasonable than alternative rate designs."[135] Although Filing Parties' propose to treat the Entergy Operating Companies differently from other utilities that have integrated into MISO as transmission-owning members in the past, we find that the proposal is not unduly discriminatory or preferential. Protesters have not shown that any previous MISO entrant presented a similar lack of historical coordination in transmission planning with MISO or otherwise was similarly situated

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[134] *See*, *e.g.*, MVP Rehearing Order, 137 FERC ¶ 61,074 at P 132.

[135] *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *see also Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that, under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one"); *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282, at P 29 (finding that "the 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") (*LG&E*), *order on reh'g*, 116 FERC ¶ 61,020 (2006).

(e.g., scope, geography) to the Entergy Operating Companies. Given these considerations, we find it is just and reasonable for Filing Parties to adopt a transition period given that Entergy's proposed integration as a transmission-owning MISO member presents unique challenges.

72. We disagree with Illinois Commission that such a negotiated solution to facilitate new entry is harmful to RTOs or should be generally applicable to all transmission owners. Filing Parties' proposal will apply on only a temporary basis to facilitate a new RTO entrant and is specifically tailored to address the unique concerns raised by Entergy's proposed integration into MISO. Preventing RTOs from proposing Tariff revisions of this nature would hamper the voluntary expansion of RTOs.

73. We also disagree with Illinois Commission that the proposed modifications to the MISO Tariff are contrary to the *Duquesne Order* and Opinion No. 472. In the *Duquesne Order*, the Commission interpreted the PJM tariff to determine whether Duquesne's RTO withdrawal request satisfied the terms of Duquesne's contractual obligations, consistent with the Commission's requirements for evaluating RTO withdrawal requests.[136] In particular, the Commission's finding that, upon Duquesne's withdrawal from PJM, the Duquesne zone was not subject to PJM's future-period, annually-updated Transmission Enhancement Charges was "based on [the Commission's] interpretation of the *applicable tariff language*, i.e., on the PJM OATT at schedule 12."[137] In stating that "a new transmission owner joining PJM would become subject to these charges . . . [a]nd a departing transmission owner leaving PJM would, pursuant to this language, no longer be subject to these charges," the Commission was merely describing how the existing provisions of schedule 12 of the PJM tariff would apply to new and departing transmission owners. The Commission did not preclude the modification of these provisions for new PJM entrants, nor did the Commission find that the requirements of the existing PJM tariff are applicable to all new RTO entry requests.

74. Illinois Commission does not support or explain its argument that in Opinion No. 472, the Commission "found that it need not provide special treatment to AEP in

[136] *Duquesne Order*, 124 FERC ¶ 61,219 at P 13 (citing, *e.g.*, *LG&E*, 114 FERC ¶ 61,282 at P 27).

[137] *Id.* PP 162-163 (emphasis added). The Commission also stated that "*given the language of the tariff*, PJM is not permitted to allocate future-period project costs to a former transmission owner based on the fictional assumption that this former transmission owner's zone can or should remain a part of PJM for future-year schedule 12 purposes." *Id.* P 167 (emphasis added).

order to accomplish AEP's integration into PJM."[138] While Illinois Commission contends that the Commission should make the same finding with regard to Filing Parties' proposal, it does not explain why the Commission's findings with regard to AEP's integration into PJM should apply to Entergy's proposed integration into MISO. Instead, Illinois Commission points to language in Opinion No. 472 in which the Commission found that section 205(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA)[139] does not require extensive findings of fact on the quantifiable benefits of the integration of AEP into PJM and affirmed that if a cost-benefit analysis is required, the benefits of the integration had been shown to exceed the costs.[140] We are not persuaded that the Commission's findings in Opinion No. 472 regarding the requirements of PURPA section 205 inform our consideration of whether Filing Parties' proposal under section 205 of the FPA to facilitate a new RTO entrant is just and reasonable. Moreover, assuming Opinion No. 472 stands for the proposition that the Commission "need not provide special treatment to AEP in order to accomplish AEP's integration into PJM,"[141] this does not mean that Filing Parties did not demonstrate in this case that a transition period is warranted based on the unique circumstances presented here.

75. We find it unnecessary to grant Missouri Commission's request that Filing Parties perform a preliminary study of the comparability of the two Planning Areas' systems. It is undisputed that there has been no coordinated planning between two Planning Areas. Filing Parties have shown that there are significant differences between the Planning Areas that demonstrate that the use of a transition period is just and reasonable, and no further showing is necessary. We conclude that the record before us is adequate to evaluate Filing Parties' proposal and thus reject Westar's request that this matter be set for hearing and Missouri Commission's request that we require MISO to continue with its stakeholder process.

76. We disagree with Illinois Commission and Midwest Transmission Customers' contention that accepting Filing Parties' proposal would be inconsistent with the Commission's rejection of MISO's Market Service proposal. Rather, we agree with Filing Parties that the Market Service Order is distinguishable from the instant proposal. The Market Service proposal would have provided access indefinitely to MISO's markets to an entity that "… would not turn over functional control of its transmission facilities,

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[138] Illinois Commission Comments at 12.

[139] 16 U.S.C. § 824a-3 (2006).

[140] Illinois Commission Comments at 12.

[141] *Id.*

would continue to administer its own tariff and its own transmission planning, and would continue to charge a pancaked rate for transmission service through or out of its system."[142] In contrast, Filing Parties propose a transition period during which costs will not be shared between the two Planning Areas so that no entity must bear the costs of a transmission facility from which it has not been shown to benefit, consistent with cost causation principles. In addition, Filing Parties' proposed transition period will be applicable only for a temporary period in order to facilitate the integration of a new RTO entrant. Therefore, we find that rather than endangering the integrity of the RTO, as suggested by Midwest Transmission Customers, the proposed transition period will strengthen MISO by facilitating the integration of new entrants.

77. We also find that the transition period is not inconsistent with the Commission's past acceptance of an "Excluded Projects List" in MISO. The "Excluded Projects List" consisted of transmission projects that were excluded from regional cost allocation under RECB because those projects would be moving forward with development and construction regardless of whether the RECB Task Force was successful in developing a regional cost allocation policy.[143] The Commission conditionally accepted MISO's proposed "Excluded Projects List" on that basis.[144] East Texas Cooperatives assert that Filing Parties can not rely upon the Commission's acceptance of an "Excluded Projects List" because in that proceeding stakeholders potentially impacted by the costs and benefits of the projects in question had been involved through MISO's MTEP process, and the "Excluded Projects List" was the compromise that resulted from that prior involvement. We disagree.

78. As an initial matter, we find that the adoption of a proposed transition period, as compared with the use of an "Excluded Projects List" that is subject to extensive stakeholder discussion, can also be just and reasonable given the far more sizeable and distant Second Planning Area that may be integrated into the MISO footprint. In any case, we note that the stakeholder process for the "Excluded Projects List" largely involved suggestions that MISO adopt bases for eligibility other than whether the projects were previously planned or were in advanced stages of planning (e.g., parties suggested that eligibility consider the in-service dates of facilities). Here, Filing Parties' proposal largely recognizes whether transmission projects are previously planned or are being

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[142] Market Service Order, 126 FERC ¶ 61,139 at P 11.

[143] RECB I Order, 114 FERC ¶ 61,106 at PP 108-109.

[144] *Id.* P 113. Consistent with MISO's representations, the Commission noted that the actual list is based on the planned project list with some additions of proposed projects that MISO has determined to be in advanced stages of planning.

planned for purposes unique to the particular Planning Area and, if so, excludes such projects from cost sharing across both Planning Areas. Cost sharing across both Planning Areas could only occur if such cost sharing is commensurate with benefits.

79. We find that Illinois Commission's arguments regarding the existing cost sharing provisions of the MISO Tariff constitute collateral attacks on the RECB I Order, RECB I Rehearing Order, RECB II Orders, MVP Order, and MVP Rehearing Order, and we will not address them here. Illinois Commission also does not support its reasoning for concerns regarding potential unintended consequences and administrative burdens associated with the proposed Tariff revisions. Moreover, we disagree with Upper Peninsula-Wisconsin PSC's argument that the transition period should apply to Baseline Reliability Projects and Market Efficiency Projects, but not to MVPs, as Filing Parties' rationale for the transition period applies equally to MVPs. For example, as Filing Parties note, MVPs that have been, and are soon to be, approved prior to the transition period were planned only for the First Planning Area.

80. Cleco has not shown that the Planning Areas should be treated separately on a permanent basis. The record in this proceeding suggests that the lack of coordinated and common transmission planning procedures between the Planning Areas, and any resultant disparity in their levels of transmission infrastructure, will be remedied by the application of MISO's existing transmission planning procedures to the Second Planning Area during the transition period. Treating the Planning Areas separately on a permanent basis would allow new entrants in the Second Planning Area to enjoy the benefits of RTO membership (e.g., associated with being dispatched as part of Midwest ISO's energy markets) while escaping a significant portion of the costs associated with those benefits (e.g., MVP costs), which is contrary to the Commission's findings in the Market Service Order.[145] As a result, we are not persuaded that Filing Parties' proposal for cost sharing between the two Planning Areas of network upgrades approved after the transition period, to the extent that such sharing is required under Attachments FF and/or FF-6, is unjust and unreasonable.

81. Finally, we note that Filing Parties' proposal would apply to utilities adjacent to Entergy that decide to integrate into MISO during the transition period. As such new entrants would likely be similarly situated to Entergy (e.g., their systems have not been planned comparably to, or in coordination with, MISO), it is appropriate to establish a common treatment for new entrants in the Second Planning Area. However, if an adjacent utility desires dissimilar treatment, it could negotiate with MISO to establish the terms under which it will join MISO and submit such a proposal, along with proper

[145] Market Service Order, 126 FERC ¶ 61,139 at P 67.

support, in its integration filing(s). This should address the concern that Filing Parties' proposal would apply to Cleco, in the event that it chooses to join MISO.

2. Length of Transition Period

a. November 28 Filing

82. Filing Parties' proposed transition consists of a fixed period of five years, starting when at least one of the Entergy Operating Companies fully integrates into MISO. Filing Parties believe that five years will be adequate to comparably plan for the combined Planning Areas. Filing Parties claim that, based on MISO's experience with transmission planning studies, five years is typically sufficient to plan the various kinds of projects based on the Tariff's applicable criteria.[146]

83. Filing Parties note that, while MISO's June 3 Waiver Request sought a transition period of five to ten years, the first five years of that transition period would have been sufficient to comparably plan projects for the combined Planning Areas. They state that the additional five year period was intended to account for the time it could take for actual benefits to be realized as planned facilities are constructed, and reach their respective in-service dates. Filing Parties propose a fixed, five-year transition period because "five years will be adequate to comparably plan for the combined Planning Areas, and the resulting plans constitute a sufficient basis for the regional allocation of their costs (to the extent called for by the Tariff for each type of project) based on their estimated net benefits."[147]

b. Comments and Protests

84. Arkansas Cooperative and East Texas Cooperatives argue that Filing Parties' proposed five-year transition period is too long. Arkansas Cooperative states that Filing Parties have not fully explained whether a length of five years for the transition period is necessary, nor have they explained why a similar transition period has not been offered to previous MISO entrants. Arkansas Cooperative argues that three years should be sufficient for MISO to do the necessary transmission planning – two years to gather the necessary information and one additional year to produce a transmission expansion plan that fully incorporates the needs of the Entergy region.[148] Arkansas Cooperative also

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[146] Filing Parties November 28 Filing, Transmittal Letter at 10 (citing Curran Test. at 10).

[147] *Id.* at 10-11 (citing Curran Test. at 10-11).

[148] Arkansas Cooperative Protest at 14.

argues that to the extent that such studies show that upgrades are necessary, extending the transition period will only lengthen the period during which Entergy's consumers incur the costs of RTO participation without receiving commensurate benefits. Arkansas Cooperative is concerned that "those costs may include needlessly high levels of congestion costs as well as deregulated prices in a market dominated by Entergy's generation and without economic access to significant alternative suppliers."[149] Further, Arkansas Cooperative argues that extending the transition period will only result in extending the period during which load is captive to the existing resources in the Entergy footprint. Arkansas Cooperative, therefore, urges that the transition period be reduced from five years to three, if the proposed Tariff revisions are accepted.[150]

85. East Texas Cooperatives argue that, if the proposal is accepted, the Commission should require that the transition period last no longer than the time required to conduct the necessary planning studies, which should take no longer than 12 to 18 months given the existing models and prior analyses of the Entergy system.[151] They state that the testimony included by Filing Parties does not provide an adequate basis to conclude that the five-year transition period is just and reasonable. According to East Texas Cooperatives, Filing Parties offer no explanation for why the planning studies have previously taken five years to complete, nor do they provide insight into the scope of the prior studies or what, if any, foundation existed to provide those studies. They argue that the framework for the tools needed to ensure the construction of necessary transmission already exists or can be promptly developed and deployed. East Texas Cooperatives point out that as Entergy's Independent Coordinator of Transmission, SPP has developed system models that can speed up the study process and that have already identified key transmission projects that would significantly upgrade Entergy's system.[152] East Texas Cooperatives maintain that the existing problems on Entergy's system are due to Entergy's use of only a three-year planning horizon and participant funding, not due to the lack of models available. They further argue that the five-year transition period "will only perpetuate the inertia that has stymied the projects needed to improve reliability and reduce congestion on the Entergy system."[153]

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[149] *Id.* at 15.

[150] *Id.*

[151] East Texas Cooperatives Protest at 17.

[152] *Id.* at 12-13.

[153] *Id.* at 14.

86. Missouri Commission argues that, if the proposal is accepted as is, the transition period should be truncated if the two systems are discovered to be comparable through a study supported and voted on by MISO stakeholders.[154] Missouri Commission supports the recommendation made by Public Service Commission of Wisconsin with regard to MISO's June 3 Waiver Request to have a stakeholder task force recommend measures of comparability, and to make any comparability determination only after consulting with the appropriate state commissions.[155]

87. Illinois Commission argues that MISO should be required to revise the definition of the "Second Planning Area's Transition Period" to specify the starting date for the period, namely "the integration date of the first Entergy Corporation Operating Company that signs the ISO Agreement."[156] Further, Illinois Commission states that MISO should modify the description of the starting date for the transition period in proposed section III.A of Attachment FF-6 to be more definitive.[157] Specifically, Illinois Commission proposes that MISO adopt the language found in proposed section 1.597.a,[158] which it asserts is clearer and more definitive than the language currently found in section II.A.[159]

88. Illinois Commission states that, although Filing Parties argue that the proposed transition period is for a fixed period of five years, that period is not locked in at five years. Illinois Commission argues that because MISO's normal planning cycle is an 18-month period that begins on June 1 of one year and ends in December of the succeeding year, the language regarding MVP planning during the transition period in

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[154] Missouri Commission Protest at 6.

[155] *Id.* at 8-9 (citing Tariff Waiver Order, 136 FERC ¶ 61,212 at P 19).

[156] *Id.* at 21.

[157] Illinois Commission notes that proposed section III.A provides that "[t]he five year transition period shall commence when the first transmission-owning member of the Second Planning Area conveys functional control of its transmission facilities to the Transmission Provider to provide Transmission Service under Module B of this Tariff." *Id.* at 22.

[158] Illinois Commission notes that section 1.597 provides that the five-year transition period begins "on the integration date of the first Entergy Operating Company that signs the ISO Agreement." *Id.*

[159] *Id.*

proposed sections II.B.3.a and II.B.3.b[160] effectively extends the transition period by up to 18 months. Illinois Commission argues that as a result, the proposed transition period does not meet the requirement established by the Tariff Waiver Order that a proposed transition period must include specific metrics for purposes of determining the precise duration and termination of the transition period.[161]

89. Illinois Commission argues that the proposed transition period is not so much a transition period as a "time-out" period. Illinois Commission explains that because the Second Planning Area would bear no costs of any MVPs terminating exclusively in the First Planning Area during the five-year transition period, and may not share in those costs after the transition period if the cost-benefit test is not satisfied, it is an exemption period for the Second Planning Area, not a transition period. Illinois Commission argues that the verbiage should be clarified accordingly.[162]

c. Answer

90. Regarding the length of the five-year transition period, Filing Parties state that five years are necessary, not just to identify and approve transmission infrastructure requirements, but to identify and address all pertinent issues, particularly those associated with MVPs. Filing Parties argue that protestors have not cited or produced any evidence refuting the testimony included in the November 28 Filing, which explains that MISO's experience with the planning of MVPs and non-MVPs indicates the reasonableness of a five-year timeframe for transmission planning. Filing Parties state that given MISO's experience performing MVP analyses for the First Planning Area since 2002,[163] they

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[160] Illinois Commission states that sections II.B.3.a and II.B.3.b refer to MVP portfolios that are approved before or during the five-year transition period "or at the conclusion of the next MTEP cycle following the end of the Second Planning Area's Transition Period." Illinois Commission Comments at 23.

[161] *Id.* at 23-24.

[162] *Id.* at 22-23.

[163] Filing Parties state that the development of MVP Portfolio 1 began in 2002 with exploratory studies for MTEP 2003, leading up to the Regional Generation Outlet Study in 2008 that was the basis for identifying many initial MVPs. Filing Parties January 10, 2012 Answer at 19.

believe that the evaluation of a portfolio that includes both Planning Areas, can be completed in the five-year timeframe of the proposed transition period.[164]

91. In response to Illinois Commission's concern regarding the start of the five-year transition period, Filing Parties state that while signing the Transmission Owners Agreement[165] reflects a new member's acceptance of its terms, the effective date of a new transmission owner's integration is based on the transfer of functional control of transmission facilities. Filing Parties further explain that this is how it has treated previous integrations of new transmission owners. Filing Parties state that it is thus appropriate for the five-year transition period to start when functional control over the relevant transmission facilities is transferred to MISO.[166]

d. January 25 Letter and February 3 Response

92. The January 25 Letter noted that the cost-benefit test considers MVPs approved "at the conclusion of the next MTEP cycle following the end of the Second Planning Area's Transition Period" and asked Filing Parties to explain in detail the process, including "what appears to be a timing issue."[167] In response, Filing Parties state that the language "at the conclusion of the next MTEP cycle following the end of the Second Planning Area's Transition Period" is needed to accommodate differences in the schedules for the five-year transition period and for the MISO Board of Directors' approval of MVPs. Filing Parties explain that, under MISO's current MTEP approval cycle, the MISO Board of Directors approve or reject MVPs in December of each year. They state that, absent this language, if the five-year transition period were to commence on July 1, 2013 and end on June 30, 2018, it would effectively cut the transition period six months short, to December 2017. Filing Parties explain that the proposed language permits an MVP portfolio that is identified during the five-year transition period to be

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[164] *Id.* at 19-20.

[165] MISO, FERC Electric Tariff, MISO Transmission Owner Agreement (0.0.0) (Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation) (Transmission Owners Agreement).

[166] Filing Parties January 10, 2012 Answer at 18-19.

[167] January 25 Letter at 3.

included in the Combined MVP Portfolio (e.g., in December 2018), without extending the duration of the transition period.[168]

e. Commission Determination

93. We conditionally accept the proposed five-year transition period, subject to the Tariff revisions discussed below. Filing Parties have demonstrated that, based on MISO's experience with transmission planning studies, five years is typically sufficient to plan the various kinds of projects based on the applicable criteria in MISO's existing Tariff. We also note that a transition period of five years is consistent with certain of MISO's current transmission planning horizons.[169] As MISO will begin planning for the Second Planning Area at the beginning of the five-year transition period, it should have sufficient time to plan for additional new entrants that are appropriately included in the Second Planning Area and join MISO at any point during the five-year transition period. In addition, given the large geographic scope of the proposed integration and MISO's lack of familiarity with the Entergy system, the proposed five-year transition period is a reasonable timeframe for MISO to review and compare the current states of the transmission systems in the two Planning Areas, to apply its existing transmission planning protocols to the Second Planning Area, and to identify any necessary transmission projects.

94. We are not persuaded that Filing Parties should be required to truncate the five-year transition period. Neither Arkansas Cooperative nor East Texas Cooperatives have demonstrated that a shorter transition period would provide MISO with sufficient time to gain necessary expertise, complete its planning studies, identify the necessary transmission upgrades, or develop a Combined MVP Portfolio. We also disagree that the five-year transition period could cause Entergy's customers to incur the costs of MISO membership without receiving the associated benefits. If one or more of the Entergy Operating Companies integrates into MISO, the benefits of MISO membership – including more effective congestion management through centralized market dispatch, improved reliability and efficiency, and generation investment deferral – would start to accrue to Entergy's customers during the transition period. In addition, we deny Missouri Commission's request to require, at this time, that Filing Parties truncate the transition period based on the potential results of future studies. In the event that MISO and its stakeholders determine in the future that the transition period should be shortened, Filing Parties may submit a proposal, under section 205 of the FPA, to do so.

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[168] Filing Parties February 3 Response at 5.

[169] We note that section I.A.8.a of Attachment FF to MISO's Tariff requires that MISO's MTEP use a minimum planning horizon of five years.

95. We agree with Filing Parties that the five-year transition period should commence "when the first transmission-owning member of the Second Planning Area conveys functional control of its transmission facilities to the Transmission Provider," consistent with proposed section III.A of Attachment FF-6. As Filing Parties note, this is consistent with the effective dates for the integrations of MidAmerican and Dairyland.[170] Filing Parties state that "[w]hile the signing of the Transmission Owners Agreement reflects a new [m]ember's acceptance of its terms, the effective date of a new [transmission-owning member's] integration is based on the transfer of functional control of transmission facilities."[171] As such, we will not require Filing Parties to modify the description of the start date for the five-year transition period in proposed section III.A of Attachment FF-6, as Illinois Commission requests. We do, however, agree with Illinois Commission that Filing Parties should modify the definition of the "Second Planning Area's Transition Period" in proposed section 1.597b to include the starting date for the five-year transition period. We also find that Filing Parties should revise the language in proposed section 1.597a that describes the starting date for the five-year transition period to match the language proposed in section III.A. Accordingly, we require Filing Parties to submit, in the compliance filing directed below, revisions to sections 1.597a and 1.597b to specify the start of the five-year transition period, consistent with the description given in proposed section III.A of Attachment FF-6.

96. We note that while in some sections of the proposed Tariff revisions, Filing Parties propose a transition period of five years (e.g., section 1.597b), in other sections Filing Parties suggest that a longer transition period is needed, so that the Combined MVP Portfolio may include MVPs approved at the conclusion of the next MTEP cycle following the end of the Second Planning Area's Transition Period (e.g., section II.B.3.a of Attachment FF-6). We agree with Filing Parties that the end of the five-year transition period should accommodate MISO's current MTEP approval cycle, as the MISO Board of Directors approves or rejects MVPs in December of each year. As Filing Parties explain, if the transition period commences on July 1, 2013, preventing MISO from

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[170] Filing Parties state that MidAmerican signed the Transmission Owners Agreement on May 29, 2009, while the effective date of its integration was September 1, 2009. They add that Dairyland signed the Transmission Owners Agreement on October 2, 2009, while "its integration was phased to become initially effective in early 2010, and fully effective on June 1, 2012." Filing Parties January 10, 2012 Answer at 19 (citing, *e.g.*, MidAmerican Order, 128 FERC ¶ 61,046 at P 62; *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,221 (2009), *order on reh'g*, 131 FERC ¶ 61,163 (2010)).

[171] *Id.* at 18-19.

considering MVPs approved at the MISO Board of Directors meeting in December 2018 would effectively cut the transition period short by six months, to December 2017.[172] Such a result would be contrary to Filing Parties' reasoning for requesting a five-year transition period, as they explain that five years is consistent with MISO's experience in performing MVP analyses for the First Planning Area,[173] and could decrease the likelihood that MISO will find a Combined MVP Portfolio that satisfies the cost-benefit test. As a result, we conditionally accept Filing Parties' proposal for a five-year transition period on the basis that the five-year transition period should end on the day after the first December MISO Board of Directors meeting that considers any proposed Combined MVP portfolio (i.e., the end of that MTEP approval cycle in which the five-year transition period ends in).[174] We will require Filing Parties to submit, in the compliance filing directed below, revisions to modify the Tariff accordingly.[175] In response to Illinois Commission's concerns regarding the length of the transition period, we find that this will ensure that the transition period is sufficiently fixed for ratemaking purposes.

97. Finally, we do not require Filing Parties to rename the five-year "transition" period, as Illinois Commission requests, because this term appropriately reflects the transitional nature of Filing Parties' proposal.

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[172] Filing Parties February 3 Response at 5.

[173] Filing Parties state that the development of the first MVP portfolio began in 2002 with exploratory studies for MTEP 2003, leading up to the Regional Generation Outlet Study in 2008 that was the basis for identifying many initial MVPs. While this period exceeds the requested five-year transition period, Filing Parties believe that the evaluation of a portfolio that includes both Planning Areas "can be completed in the shorter 5-year timeframe of the proposed transition period." Filing Parties January 10, 2012 Answer at 19.

[174] We note that the Transmission Owners Agreement requires that all meetings of the MISO Board of Directors are noticed in a timely manner and are open to the public. Transmission Owners Agreement, Art. VII, § 7.1.

[175] For example, MISO will need to revise the definition of "Second Planning Area's Transition Period" in section 1.597b of the Tariff, so that it provides that the transition period will last for a period of five years, ending on the day following the end of the conclusion of the MTEP cycle that is at least five years, but no more than six years, following the date when the first transmission-owning member of the Second Planning Area conveys functional control of its transmission facilities to MISO.

3. Transmission Planning During Transition Period

a. November 28 Filing

98. During the five-year transition period, Filing Parties propose that MISO will apply to the Second Planning Area its existing transmission planning processes, including both the MTEP under Attachment FF of the Tariff, and the Generation Interconnection Procedures under Attachment X of the Tariff. Filing Parties propose in Attachment FF-6 that, upon the start of the five-year transition period, MISO will review and compare the current states of the two Planning Areas' transmission systems for compliance with the transmission planning criteria in Attachment FF of the MISO Tariff. In particular, Filing Parties state that MISO will conduct planning studies for Baseline Reliability Projects, Market Efficiency Projects, and MVPs in order to identify, by the end of the five-year transition period, projects planned for the Second Planning Area using the same process and criteria applicable to the First Planning Area.[176] Filing Parties explain that MISO will evaluate MVPs with the goal of identifying a portfolio of MVPs that would result in net benefits to each zone in the combined Planning Areas. Filing Parties state that, pursuant to the existing provisions of Attachment FF, the planning processes will include the following key elements: 1) development of models; 2) testing of models against applicable planning criteria; 3) development of possible solutions to identified transmission issues; 4) selection of preferred solution; 5) determination of funding and cost responsibility; and 6) monitoring progress on implementation of solutions.[177]

99. Filing Parties propose that MISO undertake three key studies for Entergy's transition. First, for reliability purposes, MISO will perform planning analyses that will test the transmission system, with the Second Planning Area included, under a wide variety of conditions, as described in Attachment FF. Filing Parties explain that the analyses will use standard industry applications to model steady state power flow, angular and voltage stability, short-circuit, and other parameters, as determined by MISO to be appropriate and compliant with Attachment FF and other applicable criteria. Second, MISO will perform a top congested flowgate study designed to identify transmission solutions where market efficiency impacts exceed transmission project

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[176] Filing Parties state that MISO plans to identify Baseline Reliability Projects and Market Efficiency Projects that have been approved during the transition period or that have been determined during the transition period to be solutions for identified needs that have a forecast in-service date no more than five years after the end of the transition period.

[177] Filing Parties November 28 Filing, Transmittal Letter at 11-12 (citing Curran Test. at 11-13).

costs. Filing Parties explain that the study will look at historical congestion where available, as well as projections of future congestion to identify areas where transmission solutions may provide benefits in excess of costs. Third, MISO will conduct a study in order to develop a portfolio of MVPs with the Second Planning Area included in the planning process. Filing Parties state that the newly developed MVP portfolio, in combination with any previously approved MVPs, should result in benefits spread across the combined footprint commensurate with the allocation of costs.[178]

100. As part of their proposal, Filing Parties propose definitions of the Planning Areas. They propose to define the First Planning Area as MISO's transmission system as it is immediately before the first Entergy Operating Company's integration, as it may be modified by: 1) the addition of transmission facilities in the Midwest portion of the United States (i.e., Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Montana, North Dakota, Ohio, South Dakota, and Wisconsin) where transmission facilities not under MISO's functional control are subsequently conveyed under Module B of the Tariff; or 2) the withdrawal of a member from MISO. Filing Parties propose to define the Second Planning Area as the geographic area of MISO consisting of the states where Entergy owns and/or operates transmission facilities (i.e., Arkansas, Louisiana, Mississippi, and Texas) and any future additions of adjacent areas where transmission facilities are conveyed to the functional control of MISO to provide transmission services pursuant to Module B of the Tariff.[179]

101. Filing Parties propose that during the five-year transition period, MISO will submit to the Commission annual reports regarding its progress in comparably planning network upgrades for the Planning Areas.[180]

b. <u>Comments and Protests</u>

102. Illinois Commission identifies several concerns relating to Filing Parties' transmission planning proposal. Illinois Commission states that each transmission-owning utility must be categorized into either the First Planning Area or the Second Planning Area. Illinois Commission contends that the proposed definitions of the Planning Areas are not mutually exclusive and, therefore, must be revised. In particular, Illinois Commission argues that, while Missouri is specifically included in the definition of the First Planning Area, a transmission-owning utility in Missouri that is adjacent to

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[178] *Id.*, Transmittal Letter at 13-14 (citing Curran Test. at 14-15).

[179] *Id.*, Transmittal Letter at 5-6.

[180] *Id.*, Transmittal Letter at 18.

Entergy and joins MISO could be categorized as part of the Second Planning Area.[181] Illinois Commission also submits that the November 28 Filing contradicts itself as to whether a transmission-owning utility in Ohio that wanted to join MISO would be part of the First Planning Area.[182]

103. Illinois Commission also states that throughout proposed Attachment FF-6, Filing Parties distinguish between projects "that have been approved" and projects "that have been determined to be a solution to meet an identified need." Illinois Commission submits that, while projects that have been approved indicates projects that have been approved by the MISO Board of Directors, it is not clear who will be responsible for determining and specifying the latter set of projects, nor how they will be determined. Illinois Commission argues that the Commission should require MISO to explain who will make these determinations, the criteria for making them, and the difference between such a determination and approval.[183]

104. According to Illinois Commission, Filing Parties' use of the terms "compare" and "comparability" in sections II.B and II.B.1 of proposed Attachment FF-6 is misplaced and should be reconciled. Illinois Commission maintains that the purpose of MISO's transmission planning process is to assess the extent to which each Planning Area conforms to MISO's planning criteria, not to compare the two Planning Areas, and that comparability is the expected result of applying these same criteria to both Planning Areas.[184]

105. Missouri Commission states that, during the stakeholder process, MISO stated that benefits to the Second Planning Area could not be used to justify a Market Efficiency Project terminating exclusively in the First Planning Area. Missouri Commission is concerned that MISO did not propose Tariff language that "guarantees the separation of the Planning Areas."[185] Missouri Commission urges the Commission to reject the

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[181] Illinois Commission Comments at 20-21 (citing Filing Parties November 28 Filing, MISO, FERC Electric Tariff, § 1.597a (0.0.0)).

[182] *Id.* at 21 (citing Filing Parties November 28 Filing, Transmittal Letter at 5, Curran Test. at 3, MISO, FERC Electric Tariff, § 1.231a (0.0.0)).

[183] *Id.* at 27 (citing, *e.g.*, Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), §§ II.B.1, II.B.2, IV.A.2(b)(ii)).

[184] *Id.* at 26-27 (citing Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), §§ II.B and II.B.1).

[185] Missouri Commission Protest at 7.

proposal unless there is Tariff language explicitly stating that benefits to the Second Planning Area will not be used to justify projects that terminate exclusively in the First Planning Area, and vice versa.[186] In the event that the Commission accepts the proposal, Missouri Commission requests that the Commission require MISO to provide additional information regarding how transmission planning will occur in the Planning Areas, including whether the Second Planning Area will be considered in calculations of congestion, adjusted production cost, and other benefit-related metrics for transmission planning in the First Planning Area.[187]

106. NRG Companies assert that Filing Parties' proposal does not address how Entergy intends to ensure that its existing transmission planning process will be incorporated into MISO's transmission planning process such that 1) Entergy's ongoing transmission planning is consistent with MISO's reliability and economic planning and 2) there is no delay in developing needed transmission infrastructure.[188] They urge the Commission to "direct Entergy to describe how its existing transmission planning and development process will be integrated into MISO without delaying the development of needed transmission infrastructure and make any necessary corresponding changes to its own [t]ariff to facilitate such seamless integration."[189]

107. According to NRG Companies, Entergy effectively has only a five-year planning horizon,[190] while MISO looks at both a five- and 20-year planning horizon.[191] They add that MISO uses its economic planning criteria to identify and implement transmission upgrades not required to meet reliability criteria over the longer planning horizon. To prevent the delay of transmission development beyond Entergy's planned integration into

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[186] *Id.*

[187] *Id.* at 10.

[188] NRG Companies agree with Filing Parties that MISO should perform planning studies to identify a Combined MVP Portfolio and congestion relief projects. NRG Companies Comments at 5 (citing Filing Parties November 28 Filing, Transmittal Letter at 13).

[189] *Id.* at 9.

[190] *Id.* at 6 (citing, *e.g.*, *Entergy Services, Inc.*, 137 FERC ¶ 61,040 (2011)).

[191] *Id.* at 7 (citing *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,164 at P 70 (2008), *order on compliance*, 127 FERC ¶ 61,169 (2009), *order on compliance*, 130 FERC ¶ 61,232 (2010)).

MISO, NRG Companies argue that the disconnect between the planning horizons used by Entergy and MISO should be addressed before Entergy's planned integration, so that transmission planning in Entergy during the interim period prior to Entergy's integration is comparable to that in MISO.[192] Moreover, NRG Companies contend that Filing Parties' proposal lacks any discussion of how MISO will recover transition costs, including those associated with transmission planning, incurred before Entergy becomes a transmission-owning MISO member. NRG Companies believe that even if Entergy never joins MISO, such planning studies and cost recovery information would benefit Entergy, its stakeholders, and the Commission.[193]

108. NRG Companies also contend that Entergy should commit to move forward with expanding its transmission infrastructure to reduce congestion before its planned integration into MISO. They add that Entergy should memorialize such commitment in its tariff to ensure that needed transmission projects are proposed and evaluated in a manner consistent with the MISO Tariff. NRG Companies claim that Entergy has not developed the transmission infrastructure necessary to alleviate congestion, disadvantaging competitors. NRG Companies argue that unless Entergy begins to address the long-term causes of congestion on its system, NRG Companies, as load serving entities, will experience higher congestion costs when Entergy integrates into MISO. Moreover, NRG Companies contend that MISO may not allocate them sufficient Auction Revenue Rights to protect their historical transmission entitlements.[194]

109. In addition, NRG Companies state that Filing Parties' proposal does not address how Entergy will ensure that the implementation of necessary transmission infrastructure will not be delayed if it does not join MISO. They add that such issues must be addressed well in advance of Entergy's planned integration.[195]

c. <u>Answer</u>

110. In response to Illinois Commission's concerns regarding the treatment of entities in Missouri and Ohio under the proposed definitions of the Planning Areas, Filing Parties state that they are willing to modify, on compliance, 1) the definition of the Second

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[192] *Id.*

[193] *Id.* at 5-6.

[194] *Id.* at 7-8.

[195] *Id.* at 8-9.

Planning Area to state that the adjacent areas are those not part of the First Planning Area and 2) the definition of the First Planning Area to include Ohio.[196]

111. Filing Parties contend that Illinois Commission opposes any comparison of the Planning Areas during the transitional planning process, which ignores the need to address the asymmetry between the Planning Areas before upgrade costs can be properly allocated across them. Filing Parties maintain that such a comparison is necessary to ensure that the cost allocation between the Planning Areas is roughly commensurate with benefits, consistent with *Illinois Commerce Commission*.[197]

112. In response to Missouri Commission, Filing Parties clarify that under Attachment FF-6, benefits in the Second Planning Area will not be used to justify projects terminating exclusively in the First Planning Area, and vice versa.[198]

113. Filing Parties argue that NRG Companies' comments on the desirability of MISO's and Entergy's taking preparatory steps for the proposed integration are beyond the scope of this proceeding. Nonetheless, Filing Parties note that MISO has already been coordinating with Entergy to the extent appropriate to facilitate and prepare for integration. Filing Parties explain that, in its state filings, Entergy has indicated that it has contingency plans in case the integration with MISO does not occur. Further, Filing Parties argue that the transition process herein should be accepted independently of NRG Companies' concerns about preparation for MISO integration, or contingency planning for non-integration.[199]

d. January 25 Deficiency Letter and February 3 Deficiency Letter Response

114. In the January 25 Letter, Commission Staff noted that proposed section II.B.3 of the MISO Tariff distinguishes between projects that have been "approved," "planned or approved," and "identified," and asked Filing Parties to explain the differences between these categories of projects (e.g., at what point in the applicable planning process is a project "identified," "planned," and/or "approved") and the significance and purpose of these distinctions.[200] In their response, Filing Parties state that in MISO's transmission

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[196] Filing Parties January 10, 2012 Answer at 14, n.34.

[197] *Id.* at 20-21.

[198] *Id.* at 22.

[199] *Id.* at 33.

[200] January 25 Letter at 4.

planning process, "planned and approved" refers to a project that has been thoroughly vetted through the Order No. 890 transmission planning process and has been approved by the MISO Board of Directors for inclusion in Appendix A of the MTEP, thus requiring a good faith effort to build on the part of the Transmission Owner. Filing Parties add that "identified or planned" refers to a project that has been demonstrated as a potential solution to an identified reliability, economic, and/or policy need, and is typically included in Appendix B of the MTEP. MISO adds that projects included in Appendix B are expected to be required in the future but have not yet been approved by the MISO Board of Directors.[201]

e. **Commission Determination**

115. The November 28 Filing ensures that MISO will apply its existing transmission planning protocols to the Second Planning Area during the five-year transition period in order to identify the Baseline Reliability Projects, Market Efficiency Projects, and MVPs needed in the Second Planning Area. Filing Parties' proposal ensures that, after the five-year transition period, the two Planning Areas will be comparably planned and the estimated benefits from network upgrades will be roughly commensurate with the allocation of their associated costs under Attachment FF of the MISO Tariff.[202] Accordingly, we will conditionally accept Filing Parties' proposal for transmission planning in the two Planning Areas during the five-year transition period, subject to the compliance requirements discussed below. We will also accept Filing Parties' proposal that MISO will submit to the Commission annual reports regarding its progress in comparably planning network upgrades for the Planning Areas.

116. We share Illinois Commission's concerns with respect to Filing Parties' proposed definitions of the two Planning Areas. As proposed, these definitions are not mutually exclusive and suggest that certain transmission-owning utilities (besides the Entergy Operating Companies) that may be considering joining MISO could be included in either Planning Area, or both of them.[203] Moreover, the definition of the Second Planning Area indicates that it consists of the "states" where Entergy owns or operates transmission facilities (i.e., Arkansas, Louisiana, Mississippi, and Texas). As a result, the proposed

[201] Filing Parties February 3 Response at 5.

[202] We note that the proposal provides for immediate cost sharing of MVP and non-MVP facilities that terminate in both Planning Areas.

[203] We note that Filing Parties have indicated their willingness to revise these definitions to address Illinois Commission's concerns. Filing Parties January 10, 2012 Answer at 14, n.34.

Tariff revisions regarding the Second Planning Area could apply to regions within a state but not part of Entergy's transmission system and thus outside of MISO (e.g., so that the proposed allocation of MVP costs would apply to the entire State of Texas). In addition, the definition of the Second Planning Area incorrectly refers to "Transition Period,"[204] rather than "Second Planning Area's Transition Period." Accordingly, we will require MISO to submit, in the compliance filing directed below, Tariff revisions to ensure that 1) the definitions of the First Planning Area and the Second Planning Area do not identify overlapping regions; 2) the definition of the Second Planning Area does not include regions within a state where transmission facilities have not been conveyed to the functional control of MISO; and 3) the definition of the Second Planning Area refers to the "Second Planning Area's Transition Period" rather than "Transition Period." We note that as a result of future negotiations with transmission-owning utilities that wish to integrate into MISO, Filing Parties may file revisions to these definitions to address whether specific utilities should be considered part of the First Planning Area or Second Planning Area.[205]

117. We do not understand Illinois Commission to be opposing any comparison of the Planning Areas in the transmission planning process, as Filing Parties contend in their Answer. Rather, Illinois Commission opposes proposed Tariff language[206] that mischaracterizes MISO's existing transmission planning process under Attachment FF as requiring MISO "to compare one planning area to another planning area."[207] We agree

[204] The MISO Tariff defines "Transition Period" as "[t]he six (6) year period beginning February 1, 2002, the first day the Transmission Provider began providing Transmission Service, and ending January 31, 2008, the last day of the sixth year after the Transmission Provider began providing Transmission Service." MISO, FERC Electric Tariff, § 1.662 (0.0.0).

[205] For example, the definition of the Second Planning Area suggests that it includes the transmission facilities of all of the Entergy Operating Companies. In the event that one or more Entergy Operating Companies does not integrate into MISO, this definition should be updated accordingly.

[206] For example, proposed section II.B states that MISO will ". . . compare the current states of the transmission systems in the First Planning Area and the Second Planning Area" pursuant to Attachment FF, and proposed section II.B.1 states that MISO will apply the Baseline Reliability Project criteria of Attachment FF "to determine to what extent the Second Planning Area is not comparable." Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), §§ II.B and II.B.1.

[207] Illinois Commission Comments at 26.

that the existing provisions of Attachment FF require no such comparison. Instead, consistent with Filing Parties' proposal, comparability in planning Baseline Reliability Projects and Market Efficiency Projects between the two Planning Areas will be achieved in that "MISO's existing transmission planning processes for the First Planning Area will be comparably and consistently applied in the Second Planning Area upon the start of the [five-year] transition period."[208] To ensure consistency between Attachments FF and FF-6, we require Filing Parties to submit, in the compliance filing directed below, Tariff revisions to ensure that Attachment FF-6 does not indicate that Attachment FF requires a comparison of the two Planning Areas.

118. We agree with Illinois Commission that in Filing Parties' proposed Tariff revisions, Filing Parties have not clearly distinguished between transmission projects that have been "approved" and transmission projects that have been "determined to be a solution to meet an identified need."[209] In their response to the January 25 Letter, Filing Parties explain that a "planned and approved" transmission project has been vetted through the MISO transmission planning process and approved by the MISO Board of Directors for inclusion in Appendix A of the MTEP, while an "identified or planned" transmission project has been demonstrated as a potential solution to an identified reliability, economic, and/or public policy need and is typically included in Appendix B of the MTEP, but has not yet been approved by the MISO Board of Directors.[210]

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[208] Filing Parties November 28 Filing, Transmittal Letter at 11. We note that proposed section II.B.1 captures this idea with regarding to Baseline Reliability Projects, providing that:

> At the end of the Second Planning Area's Transition Period, the Transmission Provider shall have identified [Baseline Reliability Projects] for the Second Planning Area based on the same [Baseline Reliability Project] process and criteria applicable to the First Planning Area, in order to achieve comparability between the First Planning Area and the Second Planning Area.

Id., MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § II.B.1. Proposed section II.B.2 also includes similar language regarding Market Efficiency Projects. *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § II.B.2.

[209] For example, section II.B of Attachment FF-6 refers to variously to projects that have been "approved," "determined to be a solution to meet an identified need," "planned or approved," and "identified as needed."

[210] Filing Parties February 3 Response at 5.

Consistent with Filing Parties' clarification, we will require Filing Parties to submit, in the compliance filing directed below, Tariff revisions to consistently refer to projects in terms of whether they have been "planned and approved by the MISO Board of Directors for inclusion in Appendix A of the MTEP" or "identified or planned but not yet approved by the MISO Board of Directors."

119. In response to Missouri Commission's concerns, we note that Filing Parties clarify that under Attachment FF-6, benefits in the Second Planning Area will not be used to justify projects terminating exclusively in the First Planning Area, and vice versa.[211] To ensure that this is reflected in the Tariff, we require MISO to submit, in the compliance filing directed below, Tariff revisions to reflect Filing Parties' clarification. As for the other information requested by Missouri Commission regarding Filing Parties' transmission planning proposal, we are not persuaded that further clarification or Tariff revision is needed. We note that, during the five-year transition period, MISO will employ its existing, Commission-approved transmission planning protocols to the Second Planning Area, pursuant to Attachments FF and X of the Tariff.

120. We deny NRG Companies' request to require further explanation of how Entergy's existing transmission planning process may be integrated with that of MISO. The five-year transition period is designed, in part, to remedy the dissimilarities between MISO's and Entergy's existing planning processes by providing MISO with ample time to 1) review and compare the current states of the transmission systems in both Planning Areas, 2) consistently apply its transmission planning processes to the Second Planning Area, and 3) identify any necessary Baseline Reliability Projects, Market Efficiency Projects, and MVPs in the Second Planning Area.[212] We are not persuaded that this process will necessarily disrupt or cause undue delays in the development of transmission projects to address congestion in the Second Planning Area.

121. We do not require Entergy to revise its transmission planning process during the interim period prior to its proposed integration with MISO, including to ensure that MISO and Entergy employ similar transmission planning horizons, as NRG Companies request, because transmission planning prior to Entergy's proposed integration and the commencement of the five-year transition period is beyond the scope of this proceeding. In addition, we do not address NRG Companies' contention that Filing Parties' proposal lacks any discussion of how MISO will recover transition costs incurred before Entergy becomes a transmission-owning member because this issue is also beyond the scope of this proceeding. We note, however, that the Commission granted MISO's request for

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[211] Filing Parties January 10, 2012 Answer at 22.

[212] *See*, *e.g.*, Filing Parties November 28 Filing, Transmittal Letter at 11.

authorization to defer for future recovery certain costs associated with the proposed integration of the Entergy Operating Companies.[213]

122. We deny NRG Companies' request to require Entergy to commit to expanding its transmission infrastructure prior to its integration with MISO, as transmission planning prior to Entergy's proposed integration and the commencement of the five-year transition period is beyond the scope of this proceeding. In addition, we do not address NRG Companies' concerns regarding congestion costs in the event that Entergy becomes a transmission-owning member of MISO, as they are not related to the proposed Tariff revisions and, as such, are also beyond the scope of this proceeding.

123. Finally, NRG Companies have not explained the basis for their concern that Entergy would delay the implementation of necessary transmission infrastructure in the event that it does not join MISO, nor why such a delay would occur as a result of Filing Parties' proposal. In the event that one or more Entergy Operating Companies do not join MISO, the transmission planning protocols that were previously approved by the Commission will continue to apply. Moreover, Entergy must satisfy the requirements of Order No. 1000, which will, among other things, provide greater transparency in the regional transmission planning process. We also note that, according to Filing Parties, Entergy has developed contingency plans in the event that it does not join MISO as a transmission-owning member.[214]

4. Cost Allocation

a. November 28 Filing

124. With respect to cost allocation, Filing Parties propose to facilitate Entergy's integration into MISO through the adoption of new Attachment FF-6 (Transmission Expansion Planning and Cost Allocation for Second Planning Area's Transition). Filing Parties state that Attachment FF-6 describes how the costs of identified network upgrades will be allocated during and after the Second Planning Area's Transition Period. In addition, Filing Parties note that Attachment FF will continue to govern allocation of the costs of MTEP projects, except as specifically modified by Attachment FF-6.[215] With

[213] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,018 (2012).

[214] Filing Parties January 10, 2012 Answer at 33 (citing, *e.g.*, Hugh T. McDonald Test. at 146 (Sept. 7, 2011) and 374 (Sept. 8, 2011), Docket No. 10-011-U, Arkansas Public Service Commission).

[215] Filing Parties November 28 Filing, Transmittal Letter at 5.

regard to the allocation of MVP costs, Filing Parties also propose revisions to Schedule 26-A, which describes the MVP usage rate,[216] and Attachment MM, which describes the calculation of the MVP usage rate.

125. Filing Parties propose to apply different cost allocation rules to MTEP network upgrades during and after the transition period. Filing Parties explain that all network upgrades approved in MISO before the transition period will, by their nature, terminate only within the First Planning Area. Filing Parties state that during the transition period, the costs of these network upgrades will not be allocated to the Second Planning Area, but rather will be allocated only within the First Planning Area pursuant to the Tariff's cost allocation rules for the particular category of network upgrade.[217] Moreover, Filing Parties add that the First Planning Area will not be allocated any costs of any projects approved in the Second Planning Area's transmission plan before the transition period.[218]

126. Filing Parties explain that the costs of network upgrades that terminate in both Planning Areas and that are either 1) approved during the transition period or 2) determined during the transition period to be solutions for identified needs with a forecast in-service date no more than five years after the end of the transition period will be allocated to both Planning Areas during the transition period in accordance with the Tariff's cost allocation rules for the particular category of network upgrade under Attachment FF.[219] Filing Parties propose that during the transition period, the costs of network upgrades approved during the transition period that terminate exclusively in either Planning Area will be allocated solely within that Planning Area, pursuant to the applicable cost allocation rules for the particular category of network upgrade under Attachment FF, as modified by Attachment FF-6.[220]

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[216] Under the existing MISO Tariff, MISO recovers the cost of MVPs via a system-wide usage rate charged to all monthly net actual energy withdrawals, export schedules, and wheel-through schedules, except for monthly net actual energy withdrawals provided under grandfathered transmission agreements and for export schedules and wheel-through schedules for deliveries that sink in PJM. *See*, *e.g.*, MISO, FERC Electric Tariff, Sch. 26-A (0.0.0).

[217] Filing Parties November 28 Filing, Transmittal Letter at 5.

[218] *Id.*, Transmittal Letter at 15.

[219] *Id.*

[220] *Id.*

127. Filing Parties also indicate that during and after the transition period, the costs of non-MVP network upgrades terminating exclusively in the Second Planning Area that are determined during the transition period to be solutions for identified needs that have a forecast in-service date no more than five years after the end of the transition period will be allocated within only the Second Planning Area, in accordance with the applicable cost allocation rules for the particular category of network upgrade under Attachment FF, as modified by Attachment FF-6.[221] According to Filing Parities, exclusion of the costs of such network upgrades from allocation across both Planning Areas is consistent with or similar to the "exclude lists" that the Commission previously approved for other new MISO entrants.[222] Moreover, Filing Parties contend that the costs of these network upgrades "will not be shared with the First Planning Area because projects meeting that criteria would typically have been approved, and external factors which might delay approval do not negate the fact that the projects in question were identified through the application of consistently applied planning criteria during the transition period to be needed to achieve comparability with the First Planning Area."[223]

128. Filing Parties propose that after the transition period, the costs of non-MVPs approved *before* the transition period that terminate exclusively in either Planning Area will be allocated only within that Planning Area. Filing Parties propose that after the transition period the costs of non-MVPs approved *during* the transition period that terminate exclusively in either Planning Area will be allocated within that Planning Area pursuant to the cost allocation rules for the particular category of network upgrade under Attachment FF.

129. With respect to MVPs, Filing Parties assert that during the transition period, MISO will attempt to develop a portfolio of MVPs for the combined Planning Areas (Combined MVP Portfolio). MISO will then apply a cost-benefit test to the Combined MVP Portfolio to determine whether: 1) the benefits for each local resource zone in the First Planning Area from MVP Portfolio$_2$,[224] in addition to the reduction in the costs that

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[221] *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § IV.A.2(b)(ii).

[222] *Id.*, Transmittal Letter at 15-16.

[223] *Id.*, Transmittal Letter at 17.

[224] Filing Parties propose to define MVP Portfolio$_2$ as "the portfolio of MVPs that includes the Second Planning Area in the planning process and is approved either during the Second Planning Area's Transition Period or at the conclusion of the next MTEP cycle following the end of the Second Planning Area's Transition Period." *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § II.B.3(b).

would be allocated to it for MVP $Portfolio_1$[225] if these costs were shared with the Second Planning Area, exceed the costs that it is allocated for MVP $Portfolio_2$; and 2) each local resource zone in the Second Planning Area will also receive a net benefit from MVP $Portfolio_2$ when accounting for both its share of the costs for MVP $Portfolio_2$ and the costs associated with MVP $Portfolio_1$ that it would be allocated under Attachment FF-6.[226] Filing Parties explain that this cost-benefit test ensures that each local resource zone in the First Planning Area does not experience a degradation in the net benefits estimated for MVP $Portfolio_1$ and that each local resource zone in the Second Planning Area will receive a net benefit from the Combined MVP Portfolio.[227]

130. Filing Parties propose that if MISO identifies a Combined MVP Portfolio that satisfies the cost-benefit test by the end of the transition period, then the costs of MVPs approved before or during the transition period that terminate exclusively in either Planning Area will be shared across both Planning Areas.[228] Filing Parties state that such regional cost allocation will be phased in over eight years at gradually increasing annual percentages of 12.5 percent.[229] If MISO does not identify a Combined MVP Portfolio that satisfies the cost-benefit test before the end of the transition period, Filing Parties propose that MISO allocate the costs of all MVPs approved after the end of the transition period using the planning processes and cost allocation procedures set forth in Attachment FF as it exists at the time of the projects' approvals.[230] Moreover, in this case the costs of MVPs terminating exclusively in the First Planning Area and approved

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[225] Filing Parties propose to define MVP $Portfolio_1$ as "the portfolio of 17 MVPs approved for the First Planning Area during MTEP10 and MTEP11 plus any other MVP portfolios planned for or exclusively benefiting the First Planning Area that are approved before or during the Second Planning Area's Transition Period or at the conclusion of the next MTEP cycle following the end of the Second Planning Area's Transition Period." *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § II.B.3(a).

[226] *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § II.B.3.

[227] *Id.*, Transmittal Letter at 16.

[228] *Id.*

[229] *Id.*

[230] *Id.*

before or during the transition period will not be regionally allocated across both Planning Areas.[231]

131. Filing Parties propose to allocate the costs of network upgrades approved after the end of the transition period across the combined Planning Areas pursuant to Attachment FF.[232]

132. In addition, Filing Parties state that within six months before the end of the transition period, MISO will report to the Commission whether it has identified, or its preliminary analysis suggests that it will identify by the end of the transition period, a portfolio of MVPs for the combined Planning Areas that satisfies the cost-benefit test.[233]

b. Comments and Protests

i. Cost Causation

133. Illinois Commission maintains that Filing Parties have not supported the argument that unfair subsidization could result if the Second Planning Area is allocated a share of the cost of MVPs that were planned only for the First Planning Area. According to Illinois Commission, MISO's MTEP 11 contains its most current MVP portfolio, but the related data do not show MVP benefits for each project or transmission owner. As a result, Illinois Commission contends that "[t]here is no data in MTEP 11 to support *any* conclusion about benefits for *any* individual transmission owner zone," including the Second Planning Area.[234] Instead, Illinois Commission argues that MISO's rationale for the MVPs in MTEP 11 was that they purportedly provide "widespread benefits to the region," rather than to the zone of any particular transmission owner.[235] Illinois Commission concludes that MISO must either allocate MVP costs across both Planning Areas or provide MVP benefit data for individual projects and transmission owners to substantiate MISO's concern about unfair subsidization by the Second Planning Area.[236]

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[231] *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § IV.B.3.

[232] *Id.*, Transmittal Letter at 17.

[233] *Id.*, Transmittal Letter at 18.

[234] Illinois Commission Comments at 30 (emphasis in original).

[235] *Id.* (citing Filing Parties November 28 Filing, Curran Test. at 6).

[236] *Id.* at 30-31.

134. Upper Peninsula-Wisconsin PSC maintain that the proposed allocation of MVP costs is contrary to cost causation principles. They state that, according to MISO, MVPs will strengthen and enhance reliability across the integrated transmission system on which all regional load and exports rely.[237] They further state that, in conditionally accepting MISO's MVP proposal, the Commission found that MVPs ". . . would benefit *all users of the integrated transmission system, regardless of whether the ultimate point of delivery is to an internal or external load*."[238] According to Upper Peninsula-Wisconsin PSC, integration into MISO will increase Entergy's use of the MISO transmission system and its associated benefits, but under Filing Parties' proposal, Entergy would not share in any of the costs of MVPs that were approved prior to the transition period. They argue that by joining MISO, Entergy would no longer be considered an external load and would no longer have to pay MVP charges based on its exports from MISO.[239]

135. Upper Peninsula-Wisconsin PSC argue that the claim by MISO's witness, Jennifer Curran, that Entergy will not benefit from MVPs approved before the five-year transition period is contradictory. According to Upper Peninsula-Wisconsin PSC, Ms. Curran claims that Entergy will not benefit from such MVPs because MVPs approved prior to Entergy's integration were not planned for significant increases in north-to-south transmission capacity, but she also states that additional transmission is not necessary in order to integrate Entergy into MISO.[240] Upper Peninsula-Wisconsin PSC assert that if north-to-south transmission capacity is sufficient for Entergy's integration, then Entergy will inherently have access to the benefits of MVPs approved prior to the five-year transition period.[241]

136. Upper Peninsula-Wisconsin PSC argue that Entergy should pay MVP costs as of their integration date because Entergy will immediately enjoy the benefits of MISO membership, including those associated with MVPs. They state that regardless of

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[237] Upper Peninsula-Wisconsin PSC Comments at 8 (citing MISO July 15, 2010 Filing, Docket No. ER10-1791-000, at 3).

[238] *Id.* (citing MVP Order, 133 FERC ¶ 61,221 at P 439 (emphasis added by Upper Peninsula-Wisconsin PSC)).

[239] *Id.* at 8-9.

[240] Upper Peninsula-Wisconsin PSC Comments at 9 (citing Filing Parties November 28 Filing, Curran Test. at 15, 21).

[241] *Id.*

whether MISO and Entergy have engaged in comparable planning, MVPs are designed to confer system-wide benefits that will accrue to Entergy upon their integration. According to Upper Peninsula-Wisconsin PSC, MISO's analysis of MVP benefits shows that MVPs increase the capability of the transmission system, thereby providing additional and more reliable access to cheaper generation and reducing the cost to serve load.[242] They discuss the benefits MISO estimated for MVPs approved in MTEP 11,[243] and contend that it is reasonable to expect that Entergy will see benefits from MVPs as a participant in MISO's markets. Moreover, they maintain that, once Entergy joins MISO, Entergy will become part of the integrated MISO transmission system and will immediately enjoy the benefits of MISO's energy, ancillary services, and resource adequacy markets. Upper Peninsula-Wisconsin PSC contend that MVPs approved in MTEP 11 dramatically improve the system's ability to share generation, which is a key driver of MISO's estimation of the reliability, market efficiency, and other benefits associated with Entergy's integration.[244] They conclude that Entergy should not be allowed to enjoy the benefits associated with MISO membership without paying the associated transmission costs.[245]

137. Westar states that Filing Parties attempt to justify the proposed transition and phase-in periods by suggesting that Entergy will not benefit from MTEP projects during the transition period and thus should not be allocated their costs,[246] implying that Entergy will not benefit from the economic market transfers between MISO and Entergy facilitated (at least in part) by these projects. Westar asserts that Filing Parties' suggestion is illogical and unreasonable, and contrary to the position that Entergy has

[242] Upper Peninsula-Wisconsin PSC Comments at 5-6 (citing MISO, *MVPs Create Jobs, Benefits for States*, *available at* https://www.midwestiso.org/Library/Repository/Communication%20Material/Power%20Up/MVP%20Benefits%20-%20Total%20Footprint.pdf).

[243] *Id.* at 6-7 (citing MISO, *MISO Transmission Expansion Plan 2011*, *available at* https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP11/MTEP11%20Draft%20Report.pdf).

[244] *Id.* at 7-8 (citing MISO webpage regarding the benefits of Entergy's participation, *available at* https://www.midwestiso.org/WhatWeDo/StrategicInitiatives/Pages/EntergyInitiative.aspx).

[245] *Id.* at 10.

[246] Westar Protest at 6.

taken before state commissions in proceedings concerning its decision to join MISO. Moreover, Westar contends that without the completion of the MTEP projects, including MVPs, the production-cost benefits that MISO expects to achieve as a result of including Entergy's generation in its economic joint dispatch, as well as the additional cost savings for operating reserves and planning reserves that MISO anticipates to attain with Entergy's membership, would not be possible.[247]

138. Westar contends that Filing Parties' proposal is discriminatory, unjust and unreasonable, and thus requests that the Commission reject the proposal.[248] Specifically, Westar states that under the proposal, the Second Planning Area will not be allocated any costs during the transition period.[249] Moreover, Westar asserts that although the Combined MVP Portfolio (if one is identified) will be planned to benefit both MISO and Entergy, the Second Planning Area will only be allocated a proportion of its full share of these MVPs' costs during the eight-year phase-in period.[250] Westar maintains that in contrast, transmission customers moving power from MISO to non-market areas other than the Second Planning Area will be charged the full MVP usage rate during the five-year transition period and eight-year phase-in period. According to Westar, there is no basis to charge these transmission customers any differently from transmission customers exporting power from MISO to the Second Planning Area.[251]

139. Westar contends that these transmission customers are therefore not being treated comparably, and Filing Parties' proposal is thus discriminatory, unjust and unreasonable under Section 205(b) of the FPA.[252] Westar continues that the Commission has explained that under Section 205(b), the proper scope of inquiry "should consider whether 'the same kind of service under substantially similar conditions' is rendered to each of the customers, and whether differences in rates might be justified by 'substantial

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[247] *Id.*

[248] *Id.* at 7.

[249] *Id.* at 2-3 (citing Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), §§ IV (A.1) and IV (A.2.b.i)).

[250] *Id.* (citing Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), §§ III.C and IV.B.5; Filing Parties November 28 Filing, Transmittal Letter at 16).

[251] *Id.* at 5.

[252] *Id.* at 3-4, 5.

lawful differences in cost of service or operating conditions.'"[253] In addition, Westar argues that the Commission has addressed a similar situation in *Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corp.*, in which Westar states that the Commission found that the transmission rates charged to the Power Authority of the State of New York and passed through to out-of-state customers may have been unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful in comparison to those charged to in-state customers and set the matter for hearing.[254]

140. Cleco submits that, since Filing Parties concede that MVPs approved prior to the five-year transition period were not planned for and will not benefit the Second Planning Area,[255] it would be unlawful to approve a mechanism to allocate the associated costs to the Second Planning Area.[256] Cleco adds that the analysis of the costs and benefits of the MVPs in MTEP 11 has already occurred.[257] Cleco contends that the Commission cannot delegate its authority so that MISO will decide, five years from now, whether circumstances have changed so that it is appropriate to apply a rate that would be unfair if applied today.[258] Cleco concludes that Filing Parties' proposal is deficient and should be rejected, as it lacks proof that RTO-wide cost sharing will be commensurate with the sharing of benefits.

141. Cleco argues that Filing Parties' proposal weighs heavily in favor of the First Planning Area. Cleco submits that the five-year transition period will not shield the Second Planning Area from sharing the cost of MVPs that were approved prior to their integration into MISO. Cleco adds that most of the costs associated with such MVPs will not be allocated prior to the end of the transition period because cost recovery does not begin until after facilities are built and, if Entergy joins MISO in 2013, none of the MVPs

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[253] *Id.* at 4 (citing *Re Wisconsin Michigan Power Co.*, 54 P.U.R.3d 321, Docket No. E-7026 (Jan. 1, 1964)).

[254] Westar Protest at 4-5 (citing *Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corp.*, 58 FERC ¶ 61,096, at 61,345 and 61,347 (1991)).

[255] Cleco December 19, 2011 Protest at 7 (citing Filing Parties November 28 Filing, Curran Test. at 6).

[256] *Id.* at 2 (citing *Illinois Commerce Commission*, 576 F.3d at 477; MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 123-129).

[257] *Id.* at 7.

[258] *Id.* at 8-9.

approved by MISO will be in service until after the five-year transition period ends.[259] Moreover, Cleco also asserts that there is no parallel provision to allow projects that were previously approved in the Second Planning Area to be allocated to the First Planning Area and that it is likely that such costs will not be shared during the first 10 years that Entergy is in MISO. Cleco contends that, as a result, the First Planning Area has a head start on the facilities that will be eligible for inter-regional cost socialization. Cleco maintains that, rather than creating winners and losers, any inter-regional cost allocation should be phased-in equally in both directions.[260]

ii. MVP Precedent

142. Entergy argues that the proposed allocation of MVP costs is consistent with the Commission's MVP cost allocation findings in the MVP Rehearing Order. Entergy states that, in the MVP Rehearing Order, a quantitative analysis of the benefits versus the costs of an indicative starter list of MVPs provided the Commission with "'an articulable and plausible reason' for determining that the regional usage and the tangible and quantified benefits of MVPs . . . will be distributed to users across the region in a manner that justifies regional allocation of MVP costs."[261] Entergy contends that, in this proceeding, there has been no such showing, and Filing Parties have indicated that an immediate allocation of costs between the Planning Areas would result in unfair subsidization.[262] Entergy also claims that, in the MVP Rehearing Order, the Commission justified the MVP rate by reasoning that MISO's open and transparent planning process is designed to ensure that the benefits of MVP portfolios are spread broadly across the entire footprint.[263] Entergy maintains that, since Entergy's operating companies have not been part of the stakeholder process leading to the approval of MVPs prior to their

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[259] *Id.* at 11 (citing MISO April 8, 2011 Petition for Declaratory Order, Docket No. EL11-34-000, Ex. B, Charles River Associates, *Cost Benefit Analysis of Entergy/Cleco Power or Entergy Arkansas Joining the Midwest ISO, addendum Study*, at 8-9 (Mar. 10, 2011)).

[260] *Id.* at 12-13.

[261] Entergy Comments at 12 (citing MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 127, 129).

[262] *Id.* at 12-13 (citing Filing Parties November 28 Filing, Curran Test. at 5-6).

[263] *Id.* at 13 (citing MVP Rehearing Order, 137 FERC ¶ 61,074 at P 132).

integration, their interests, and those of their customers, have not been represented in the planning process.[264]

143. In contrast, Arkansas Cooperative, East Texas Cooperatives, and Midwest Transmission Customers contend that the proposed MVP cost allocation is inconsistent with the Commission's findings in the MVP proceeding. They claim that, if broad MVP cost socialization is appropriate due to the benefits produced by MVPs, as MISO argued and the Commission found,[265] then Entergy will receive roughly commensurate benefits and costs and should not enjoy special treatment. Arkansas Cooperative and East Texas Cooperatives argue that the proposal directly conflicts with the Commission's findings in the MVP proceeding that MISO members should share in the costs of geographically-distant facilities. In particular, Arkansas Cooperative notes the Commission's finding that "all load would benefit from MVPs" and should thus pay for the costs of such projects.[266] East Texas Cooperatives note the Commission's finding that "[t]he fundamental benefit of the facilities supporting regional power flows is the flexibility they provide to deliver energy and operating reserves more efficiently and reliably within and between balancing areas through the [MISO] footprint, by way of centralized generation dispatch."[267] East Texas Cooperatives also note that the Commission stated:

> Although the benefits of integrated regional planning may be more appreciated to greater or lesser degrees at different times by different customers with respect to different groups of transmission projects, these benefits are nevertheless experienced by *all* [MISO] members and accrue over time. Too granular a focus would undermine the benefits and advantages provided by membership in [MISO].[268]

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[264] *Id.*

[265] *See*, *e.g.*, East Texas Cooperatives Protest at 11-12 (citing MISO Motion for Leave to Answer and Answer, Docket No. ER10-1791-000, at 41-54; MVP Order, 133 FERC ¶ 61,221 at PP 384-385).

[266] Arkansas Cooperative Protest at 12 (citing MVP Order, 133 FERC ¶ 61,221 at P 385).

[267] East Texas Cooperatives Protest at 12 (citing MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 116, 125).

[268] *Id.* (citing MVP Rehearing Order, 137 FERC ¶ 61,074 at P 126).

East Texas Cooperatives contend that, if even users beyond MISO's interface with another RTO benefit from MVPs, then Entergy would surely benefit upon joining MISO and should share in MVP costs.[269] Arkansas Cooperative argues that exempting Entergy from all MVP charges for five years, and permanently from some MVP charges, is unduly preferential and discriminatory, adding that it is unaware of any instance in which the Commission has shown comparable preference to a new entrant in MISO.[270]

144. Moreover, Arkansas Cooperative argues that Filing Parties' proposal is contrary to the Commission's findings in the MVP proceeding regarding the portfolio approach to selecting MVPs, the MTEP process, and free rider concerns. Arkansas Cooperative states that the Commission directed MISO to utilize a portfolio approach to selecting MVPs to ensure that all load will benefit from MVPs,[271] and determined that the MTEP process will protect MISO stakeholders from having to pay MVP costs in excess of the associated benefits.[272] Arkansas Cooperative contends that the Commission thus determined that the existing MISO Tariff guarantees that all load in the MISO region will benefit from MVPs and concludes that separate Tariff provisions are not necessary to accommodate Entergy. Arkansas Cooperative also maintains that MISO asserted, and the Commission largely agreed, that failure to assess MVP charges to all entities withdrawing energy from MISO would create a free rider problem. Arkansas Cooperative asserts that, due to the absence of factual materials in Filing Parties' proposal,[273] it is impossible to know whether a free rider problem would result from accepting the proposed Tariff provisions.[274]

iii. <u>Combined MVP Portfolio</u>

145. Arkansas Cooperative, Upper Peninsula-Wisconsin PSC, and Illinois Commission are concerned that Filing Parties do not clearly explain how MISO would, after the proposed transition period, allocate the costs of MVPs approved before or during the transition period in the event that a Combined MVP Portfolio is not identified before the

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[269] *Id.*

[270] Arkansas Cooperative Protest at 12.

[271] *Id.* (citing MVP Order, 133 FERC ¶ 61,221 at P 54).

[272] *Id.* at 12-13 (citing MVP Order, 133 FERC ¶ 61,221 at P 203).

[273] *Id.* at 13 (citing MISO July 15, 2010 Filing, Docket No. ER10-1791-000, Tab G, Curran Test. at 10).

[274] *Id.* at 14.

end of the transition period. Arkansas Cooperative maintains that such costs would appear to be allocated on a postage-stamp basis across the entire MISO footprint, consistent with Filing Parties' statement that such costs would be "allocated in accordance with Attachment FF."[275] Arkansas Cooperative asserts that, in testimony before the Arkansas Public Service Commission, Entergy stated that, if the cost-benefit test is not satisfied for either Planning Area, "no MVP costs (including costs of MVP Portfolio [1]) would be allocated to [the Second Planning Area] unless the benefits of the transmission projects exceed the costs."[276] Arkansas Cooperative requests that the Commission direct MISO to revise the Tariff to clarify the MVP costs that may be allocated to the Second Planning Area if the cost-benefit test is not satisfied by the end of the transition period.[277]

146. Upper Peninsula-Wisconsin PSC maintain that Entergy's stakeholders or the relevant state commissions could delay or otherwise not approve a Combined MVP Portfolio and, therefore, the Second Planning Area would never have to pay for MVPs approved before or during the transition period. They add that, if there is only a slight degradation in the benefits to any zone in the First Planning Area, MVP costs would not be shared between the Planning Areas, regardless of whether the resultant benefit-cost ratio exceeds the relevant thresholds.[278]

147. Illinois Commission argues that, for the period following the proposed transition period, Filing Parties are silent as to the proposed allocation of the cost of MVPs that terminate exclusively in either Planning Area and were approved before or during the transition period. Illinois Commission maintains that this information is critically important to consumers in both Planning Areas, but neither proposed Attachment FF of the Tariff nor Ms. Curran's testimony address this issue.[279] Illinois Commission infers that the Second Planning Area will not share in the cost of such MVPs. Illinois Commission asserts that Filing Parties' discussion of the allocation of MVP costs if the cost-benefit test is met, but not if the test is not met, is another example of the "non-

[275] *Id.* at 16.

[276] *Id.* (citing *Entergy Arkansas, Inc.*, Docket No. 10-011-U, Supplemental Direct Testimony of Richard C. Riley at 17 (November 28, 2011)).

[277] *Id.* at 16-17.

[278] Upper Peninsula-Wisconsin PSC Comments at 11-12.

[279] Illinois Commission Comments at 14-15 (citing Filing Parties November 28 Filing, Curran Test. at 19).

symmetry in treatment" between the Planning Areas.[280] While Illinois Commission argues that the Commission should reject Filing Parties' proposal, it requests that, if the Commission instead accepts the proposal, the Commission should direct MISO to describe how MVP costs will be allocated if the cost-benefit test is or is not met and incorporate this clarification into the MISO Tariff.[281]

148. Illinois Commission contends that, for the period following the proposed transition period, Filing Parties' support for the proposed allocation of the cost of MVPs approved at the conclusion of the first MTEP cycle after the end of the transition period is internally inconsistent. According to Illinois Commission, Ms. Curran states that such costs would be subject to the proposed eight-year phase-in, but this information was not included in proposed Attachment FF-6 of the Tariff. Illinois Commission is concerned that, since this issue is not specifically addressed in proposed Attachment FF-6, "preference will be given to Entergy in this circumstance as well."[282]

iv. Cost-Benefit Test

149. Illinois Commission argues that the formula for the cost-benefit test appears to be designed so that the test is not passed. It claims, for example, that Filing Parties specify that MVP benefits will be counted for a 20-year period, but leaves open the possibility of using more than 20 years – up to infinity – to calculate MVP costs. Illinois Commission adds that, while costs will begin to be counted upon the approval date of each project, benefits will only be counted starting when the last project in the Combined MVP Portfolio goes into service. Illinois Commission submits that, as a result, many years of benefits associated with MVPs other than the last project in the portfolio will not be calculated. Illinois Commission also maintains that Filing Parties have not specified the metric that will be used in calculating MVP benefits and may use a very conservative definition of benefits to ensure that the cost-benefit test is not satisfied.[283] Illinois Commission asserts that unless the benefit metric is specified in the Tariff, the decision about what benefits to count or exclude is left entirely to MISO's discretion.[284] Moreover, Illinois Commission contends that Filing Parties have not specified other

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[280] *Id.* at 16.

[281] *Id.* at 27-28.

[282] Illinois Commission Comments at 16-17.

[283] *Id.* at 17-18.

[284] *Id.* at 28-29.

important calculation elements, including the discount rate. Illinois Commission concludes that proposed Attachment FF-6 is "designed to protect the [S]econd [P]lanning [A]rea from sharing in the costs of projects in the [F]irst [P]lanning [A]rea while requiring the [F]irst [P]lanning [A]rea to share in costs of projects in the [S]econd [P]lanning [A]rea."[285] Illinois Commission argues that the Commission should reject proposed Attachment FF-6 or, if not, require Filing Parties to identify and specify the benefit metric and all other relevant elements of the calculations that will be used in the cost-benefit test.[286]

150. North Little Rock argues that the formula for the cost-benefit test in proposed section II.B.3.g.1 of Attachment FF-6 is unclear. It asserts, for example, that the formula contains a delta symbol that appears to indicate the change in MVP costs for the First Planning Area with and without the Second Planning Area, but the Tariff is not clear regarding how MISO will apply this formula to projects that have not yet been identified. North Little Rock also maintains that it is unclear whether the variable for the number of years of costs in the formula for the cost-benefit test is designed to have a termination point consistent with the 20-year benefit calculation.[287] North Little Rock adds that Ms. Curran does not provide an explanation as to how the net benefits of an MVP portfolio will be determined.[288] North Little Rock does not seek details of the formula for the cost-benefit test now, as it believes that these details are unknowable now, including which Entergy Operating Companies will ultimately join MISO, which projects will be included in MVP portfolios at the end of the five-year transition period and the associated costs and benefits, and how such MVP costs will affect rates in the Planning Areas.[289] Instead, since North Little Rock maintains that the Commission does not have sufficient information to make a final determination regarding the allocation of MVP costs, North Little Rock requests that the Commission clarify that prior to allocating to customers in the Second Planning Area the costs of MVPs terminating in the First Planning Area, MISO must make a filing under section 205 of the FPA. North Little Rock argues that such a filing would give interested parties an opportunity to challenge the assessment of

[285] *Id.* at 19.

[286] *Id.* at 28-29.

[287] North Little Rock Comments at 4-5.

[288] *Id.* at 5 (citing Filing Parties November 28 Filing, Curran Test. at 18).

[289] *Id.* at 5-6.

costs and enable the Commission to perform its duty to ensure just and reasonable rates.[290]

151. Cleco argues that the cost-benefit test is so abstract as to be meaningless. It states that Filing Parties do not define the inputs MISO will use to determine whether the test is met. According to Cleco, Filing Parties acknowledge that unfair subsidization could result if, immediately upon Entergy's integration, the Second Planning Area were allocated a share of MVPs that were planned only for the First Planning Area. Cleco submits that the passage of five years cannot turn an unfair cost allocation into a fair one. Cleco maintains that, as a result, there is no basis for the Commission to conclude that MISO's future decision regarding whether cost sharing is appropriate will be just and reasonable.[291]

v. Non-MVPs

152. Illinois Commission argues that Filing Parties attempt to create the illusion of symmetry in the proposed cost allocation to distract from the preference provided to the Second Planning Area. Illinois Commission states that section IV.B.1 of proposed Attachment FF-6[292] exempts the Second Planning Area from paying a portion of the cost of Baseline Reliability Projects and Market Efficiency Projects that were approved prior to the five-year transition period.[293] Illinois Commission states that section IV.B.1 gives the illusion of symmetry by also exempting the First Planning Area from responsibility for costs of any projects planned or approved in the Second Planning Area's transmission plan prior to the commencement of the transition period. However, Illinois Commission argues, there is no basis to even contemplate such cost sharing by the First Planning Area because projects planned or approved in the Second Planning Area's transmission plan prior to the commencement of the transition period were, by definition, not planned or approved under a regional process.[294] Illinois Commission explains that, as a result,

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[290] *Id.* at 2, 6 (citing *MISO Transmission Owners*, 373 F.3d at 1368).

[291] Cleco December 19, 2011 Protest at 7-8.

[292] Section IV.B.1 of proposed Attachment FF-6 states: "Load and/or Pricing Zone(s) in the Second Planning Area shall not be allocated any costs associated with [Baseline Reliability Projects], [Generator Interconnection Projects], [Transmission Delivery Service Projects], and [Market Efficiency Projects] that were approved before the commencement of the Second Planning Area's Transition Period."

[293] Illinois Commission Comments at 13.

[294] *Id.*

proposed section IV.B.1 exempts the Second Planning Area from all cost associated with regionally-planned projects approved in the First Planning Area prior to the five-year transition period and, at the same time, does not exempt the First Planning Area from any costs.[295]

153. Cleco states that non-MVP facilities built in the Second Planning Area up to ten years after Entergy joins MISO will not be eligible for socialization, whereas non-MVPs approved in the First Planning Area after the five-year transition period will be eligible. Cleco maintains that this result is inequitable and there is no effort to show that the inequity will produce benefits in either region that are roughly commensurate to the costs in either region.[296]

154. Cleco contends that any non-MVP approved during the transition period and terminating exclusively in the First Planning Area should never be allocated to the Second Planning Area. Cleco explains that the proposed Tariff revisions state that during the transition period, "load and/or pricing zones in the Second Planning Area shall not be allocated any costs of any MTEP projects… approved during the Second Planning Area's Transition Period and terminating exclusively in the First Planning Area."[297] Cleco then explains that Ms. Curran states that the allocation during the five-year transition period of non-MVP costs will remain in place after the transition period. Cleco argues that, to avoid doubt and potential litigation, the Commission should affirm that the allocation of the cost of non-MVPs, whether they are approved during the transition period or not, remains fixed once made.[298]

vi. <u>Other Cost Allocation Issues</u>

155. Missouri Commission maintains that MISO has provided no information regarding how the Second Planning Area would be organized for cost allocation purposes, including how the Second Planning Area will be divided into sub-regions for cost allocation purposes. Without this information, Missouri Commission argues that it is difficult to assess the fairness of the proposed cost allocation for transmission projects that terminate in both Planning Areas. Missouri Commission urges the Commission to

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[295] *Id.* at 14.

[296] Cleco December 19, 2011 Protest at 12.

[297] *Id.* at 13 (citing Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § IV.A.2(b)(i)).

[298] *Id.* at 13-14.

require MISO to provide information regarding how the Second Planning Area will be treated before allocating the costs of any projects terminating in both Planning Areas.[299]

156. Cleco argues that the phrase "shall be responsible for the applicable cost allocation" in existing section III.A.1 of Attachment FF indicates that the allocation within the Second Planning Area of the cost of projects approved during the five-year transition period is negotiable, particularly with respect to costs that are to be locally allocated within the Second Planning Area."[300] Cleco states that it believes that provision for such negotiations (e.g., upon the proposed entry of a neighbor of Entergy's into the Second Planning Area) is appropriate. However, Cleco requests that, as a backstop in the event that such negotiations are not fruitful, the Commission should clarify that cost responsibility for any non-MVP projects approved for the Second Planning Area will be fixed, by zone, on the dates of approval of such projects. Cleco also asks the Commission to clarify that, since a transmission-owning utility such as Cleco would enter MISO, if at all, as its own pricing zone, any non-MVP Entergy projects approved prior to Cleco joining MISO would never be allocated to Cleco.[301]

c. <u>Answers</u>

157. Filing Parties disagree with protestors who argue that the proposed transition is unduly preferential to Entergy, and unduly discriminatory to MISO's existing transmission owners, because the Second Planning Area will be spared from the costs of MVPs from which they benefit. Filing Parties contend that there is no undue preference or discrimination when different treatment is based on substantial distinctions that justify the difference. According to Filing Parties, the proposed transition is based on substantial asymmetry that requires different cost allocation rules for MVPs and for upgrades terminating exclusively in either Planning Area. Filing Parties also explain that the complete set of benefits that Entergy is expected to receive from joining MISO should not be confused with the subset of benefits it can receive from MVPs. Filing Parties state that other benefits of integration with MISO are not necessarily tied to MVPs, and are paid for by transmission customers through rates other than the MVP usage rate.[302]

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[299] Missouri Commission Protest at 8.

[300] Cleco December 19, 2011 Protest at 14 (citing Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § IV.A.2(b)(i)).

[301] *Id.* at 14-15.

[302] For example, transmission customers are assessed charges under Schedule 10 (ISO Cost Recovery Adder), Schedule 17 (Energy Market Support Administrative

(continued…)

158. Filing Parties argue that the Commission has found that the regional cost allocation rules are just and reasonable as applied to the First Planning Area, but that such a finding has neither been sought nor made regarding the application of such rules in the Second Planning Area. According to Filing Parties, the expectation of regional cost-sharing of pre-transition MVPs within the First Planning Area is not determinative of the propriety of sharing the cost of those MVPs with a Second Planning Area that will make MISO a significantly larger network and that may or may not experience benefits from the pre-transition MVPs. Filing Parties state that the MVP orders' findings of regional MVP benefits, and the appropriateness of regional cost allocation, pertained to load in the existing MISO footprint for which MVPs were then planned. Filing Parties state that the planning and benefit estimates for MISO's existing footprint did not address the significantly larger combined MISO footprint that would result from Entergy's integration.[303]

159. Filing Parties disagree with Cleco's argument that there should be no cost sharing of pre-transition MVPs under any circumstances. Filing Parties argue that if the integrated planning of the two Planning Areas during the transition period can develop a Combined MVP Portfolio that provides both Planning Areas with net MVP benefits, the appropriate outcome is post-transition regional sharing in the cost of the pre-transition MVPs, as proposed in the November 28 Filing. Filing Parties state that moreover, contrary to Cleco's claim, cost-sharing between the Planning Areas should not be limited to MVPs that connect them, because the pre-transition MVPs can lay the foundation for, and significantly contribute to, the benefits from MVPs that connect the Planning Areas.[304]

160. Filing Parties argue that there is no merit to Cleco's criticism that, under MISO's proposal, only the cost of pre-transition MVPs in the First Planning Area could potentially be shared with the Second Planning Area (subject to satisfaction of the cost-benefit test). Filing Parties state that, since the Second Planning Area does not have MVPs or their equivalent, there is no comparable regional planning/benefits basis for the First Planning Area to share the cost of the Second Planning Area's pre-transition projects. Filing Parties contend that this is not unfair to the Second Planning Area, because the different cost allocation treatment of pre-transition MVPs of the First

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Service Cost Recovery Adder), and Schedules 3, 5, and 6 with regard to reserves/ancillary services.

[303] Filing Parties January 10, 2012 Answer at 12.

[304] *Id.* at 13-14.

Planning Area is based on a substantial distinction regarding how their respective projects were planned before the transition period.[305]

161. Filing Parties argue that, notwithstanding any assertions to the contrary, it is fair to allocate across the two Planning Areas the cost of projects terminating in both of them. Filing Parties argue that such an allocation is reasonable, and does not require further details about the organization of the Second Planning Area.

162. Filing Parties state that the cost-benefit test is in the nature of a condition for the post-transition regional allocation across both Planning Areas of the cost of the Combined MVP Portfolio, which consists of "MVP Portfolio #1" approved before the transition period, and "MVP Portfolio #2" approved or identified during the transition period.[306] According to Filing Parties, if the condition is not met, then it necessarily follows that the cost of the Combined MVP Portfolio cannot be allocated across both Planning Areas. Filing Parties explain that, absent that condition, the cost of MVP Portfolio #1 cannot be allocated regionally pursuant to Attachment FF-6, but this does not preclude the cost of MVP Portfolio #2 from being allocated regionally pursuant to Attachment FF, based on a cost-benefit assessment that is independent of MVP Portfolio #1, but uses the same cost-benefit criteria originally applied to the latter. Filing Parties further explain that section II.B.3 of Attachment FF-6 expressly states that Attachment FF's criteria will first be applied to determine the MVP status of projects comprising MVP Portfolio #2, before applying the cost-benefit test for the Combined MVP Portfolio. Filing Parties argue that there is no inconsistency between the post-transition application of Attachment FF to MVP Portfolio #2 if the cost-benefit test of Attachment FF-6 is not met, because the non-satisfaction of the cost-benefit test for the Combined MVP Portfolio does not preclude the possibility of MVP Portfolio #2 providing the Second Planning Area with sufficient net benefits under Attachment FF's benefit criteria to warrant allocating a share of MVP Portfolio #2 costs to the Second Planning Area pursuant to Attachment FF.[307] Filing Parties state that the cost-benefit test for the Combined MVP Portfolio under Attachment FF-6 will apply the same benefit metrics previously applied to MVP Portfolio #1 under Attachment FF. The only difference, Filing Parties state, is that, for purposes of the Combined MVP Portfolio, the benefit assessment will combine or aggregate MVP Portfolio #1 and MVP Portfolio #2.

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[305] *Id.* at 28.

[306] As discussed in the January 25 Letter, *see infra* P 165, Filing Parties refer to "MVP Portfolio #1" and "MVP Portfolio #2" in their answer.

[307] Filing Parties January 10, 2012 Answer at 26-27.

163. Filing Parties claim that the cost-benefit test adequately defines comparability in terms of planning under a common Tariff and using a common set of criteria. They contend that there is nothing vague about their proposed framework for assessing comparability of the Planning Areas.[308] Filing Parties contend that the cost-benefit formula's timeframe for calculating costs cannot be reasonably construed as up to infinity. Filing Parties explain that the rationale behind having the fixed benefits period of 20 years and 20 years or more of costs is twofold: 1) full benefits will not be achieved until the complete MVP portfolio is in-service, so it is appropriate to calculate benefits based on the in-service date of the MVP portfolio, not any individual project; and 2) costs, on the other hand, are incurred immediately upon commencement of construction of an individual project, so there is a need to capture costs as incurred.[309]

164. Filing Parties argue that the symmetry in non-allocation of pre-transition non-MVP costs across both Planning Areas is not illusory, as those costs will not be shared between the Planning Areas. Filing Parties contend that the intention and the actual effect of the proposed sections IV.B.1 and IV.B.2(a) of Attachment FF-6 is to provide for such symmetry between the Planning Areas, i.e., neither Planning Area's pre-transition and transition period non-MVPs will be shared with the other Planning Area, even after the transition period. According to Filing Parties, this symmetry is not undermined by any difference in how pre-transition non-MVPs were planned in each Planning Area, as the determinative factor is that they were planned prior to or during the transition period. Filing Parties argue that, similar to the "Excluded Projects List" for the original RECB proposal, the key factor is the fact of prior planning, not the manner of such planning.[310]

165. As for Cleco's concerns regarding possible future scenarios, Filing Parties believe that the proposed Tariff language clearly provides that non-Entergy entities that join the Second Planning Area will not be responsible for the cost of non-MVPs approved before they joined.[311]

d. <u>January 25 Letter and February 3 Response</u>

166. The January 25 Letter stated that there appears to be a contradiction between proposed section II.B.3 of Attachment FF-6 and Filing Parties' answer regarding the

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[308] *Id.* at 29.

[309] *Id.* at 27-28.

[310] *Id.* at 28.

[311] *Id.* at 31.

definitions of Combined MVP Portfolio, MVP $Portfolio_1$ and MVP Portfolio #1, and/or MVP $Portfolio_2$ and MVP Portfolio #2. Filing Parties respond that the definitions in proposed section II.B.3 of Attachment FF-6 are the correct definitions.[312]

167. The January 25 Letter asked Filing Parties to explain how MISO will develop the Combined MVP Portfolio, including 1) whether all MVPs approved in either Planning Area during the transition period must be included in this portfolio and 2) whether MVP portfolio(s) will be adjusted in the event that a Combined MVP Portfolio fails the cost-benefit test (i.e., whether the cost-benefit test could be applied iteratively, to multiple configurations). Filing Parties respond that during the transition period, MISO will follow its Order No. 890-compliant open and transparent planning process to determine whether an MVP $Portfolio_2$ can be identified that meets the MVP criteria defined in Attachment FF. Filing Parties further respond that the evaluation of projects that may comprise an MVP $Portfolio_2$ will include consideration of alternative solutions to determine the configuration that best addresses the identified transmission issues and ensures costs of the portfolio are allocated commensurate with benefits.[313]

168. The January 25 Letter asked Filing Parties to explain the proposed cost-benefit test, including how MISO will calculate annual benefits for MVP $Portfolio_2$ and the change in annual costs associated with MVP $Portfolio_1$. In response, Filing Parties replied that the annual benefits for MVP $Portfolio_2$ will be calculated by evaluating the difference between the existing transmission system, including MVP $Portfolio_1$, and the Combined MVP Portfolio, for each local resource zone in the Planning Areas for each benefit metric. They state that the present value calculation will include 20 years starting when the last project in MVP $Portfolio_2$ goes into service. According to Filing Parties, MISO will calculate annual benefits by using the same factors that were considered in evaluating the benefits of MVP $Portfolio_1$ (e.g., congestion and fuel savings, reduced operating reserves, reduced transmission line losses, reduced system planning reserve margin, and avoided future transmission investment). Filing Parties explain that the change in MVP $Portfolio_1$ annual costs for a local resource zone in the First Planning Area will be calculated as the difference between: 1) "annual costs for a Local Resource Zone in the First Planning Area for MVP $Portfolio_1$, including the load in the Second Planning Area; and 2) annual costs for a Local Resource Zone in the First Planning Area for MVP $Portfolio_1$, without including the load in the Second Planning Area."[314]

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[312] Filing Parties February 3 Response at 2.

[313] *Id.* at 3.

[314] *Id.* at 3-4.

169. The January 25 Letter noted an apparent inconsistency between when Filing Parties explain that the proposed cost-benefit test will estimate costs "for a minimum of 20 years," while the benefits will be calculated "for 20 years." Filing Parties explain in response that the difference in the number of years potentially included in the present value calculation of costs compared to the number of years included in the present value calculation of benefits is intentional. Filing Parties note that the full benefits of an MVP portfolio are achieved when all of the individual projects are in-service, which is why the first year included in the 20-year present value benefits calculation starts once the final project is in-service. Filing Parties further note that if projects in the portfolio have staggered in-service dates, the present value calculation of costs will capture those additional years of costs that will be incurred by customers prior to the full portfolio being in service, thus more accurately reflecting the overall expected value of the portfolio.[315]

170. The January 25 Letter asked Filing Parties to explain, in the event that the Combined MVP Portfolio does not satisfy the cost-benefit test, how MISO will allocate the cost of 1) MVPs approved before or during the transition period that terminate exclusively in the First Planning Area and 2) MVPs approved during the transition period that terminate exclusively in the Second Planning Area. In response, Filing Parties explain that if the Combined MVP Portfolio does not satisfy the cost-benefit test, the cost of MVPs included in MVP Portfolio_1, i.e., those approved before the transition period and that terminate exclusively in the First Planning Area, would be allocated only to the First Planning Area. Filing Parties further explain that the costs associated with MVPs approved during the transition period, assuming there is no Combined MVP Portfolio that satisfies the cost-benefit test, would be allocated across both Planning Areas if it is shown that such MVPs, on a portfolio basis, meet the MVP criteria of Attachment FF as it exists at the time of the project's approval and provide net benefits to each local resource zone. Filing Parties also explain that if a project does not meet the MVP criteria of Attachment FF on its own, then the project may still be individually evaluated for qualification as a Baseline Reliability Project or Market Efficiency Project under the then-applicable criteria of Attachment FF.[316]

171. The January 25 Letter requested that, if Filing Parties believe that certain MVP costs could still be shared (e.g., pursuant to Attachment FF) if the Combined MVP Portfolio does not satisfy the cost-benefit test, they should explain how such cost sharing will occur. In reply, Filing Parties state that MVP costs could still be shared across the Planning Areas if an MVP portfolio is identified that provides sufficient net benefits to

[315] *Id.* at 4.

[316] *Id.* at 6.

each local resource zone in both Planning Areas under Attachment FF criteria, thereby justifying the sharing of costs pursuant to Attachment FF across both Planning Areas.[317]

172. The January 25 Letter noted an apparent contradiction between proposed section IV.B.3 of Attachment FF-6 and Filing Parties' answer regarding whether the cost of MVPs approved during the transition period that terminate exclusively in the First Planning Area can be allocated to the Second Planning Area in the event that the Combined MVP Portfolio does not satisfy the cost-benefit test. In response, Filing Parties state that the costs of MVPs approved before the start of the transition period that terminate exclusively in the First Planning Area will only be shared with the Second Planning Area after the transition period if a Combined MVP Portfolio is identified that meets the cost-benefit test. Further, Filing Parties state that the costs of MVPs that terminate exclusively in the First Planning Area that are approved during the transition period could be shared with the Second Planning Area, if those MVPs are shown to meet the MVP criteria of Attachment FF on their own.[318]

173. The January 25 Letter asked Filing Parties to explain, in the event that the Combined MVP Portfolio does not satisfy the cost-benefit test, how the cost of MVPs approved before and/or during the transition period could be shared across both Planning Areas after the transition period pursuant to Attachment FF. In response, Filing Parties state that the only scenario in which the costs associated with MVP Portfolio_1 would be shared with the Second Planning Area is if the Combined MVP Portfolio passes the cost-benefit test detailed in section II.B.3 of Attachment FF-6. Filing Parties expect this approval to be near the end of the five-year transition period based on experience with the development of MVP Portfolio_1. Filing Parties further explain that if the Combined MVP Portfolio does not meet the cost-benefit test and MVP Portfolio_2 does not meet the MVP criteria of Attachment FF on its own, then any projects identified for MVP Portfolio_2 may be individually evaluated for qualification as a Baseline Reliability Project or Market Efficiency Project.[319]

174. The January 25 Letter asked the Filing Parties to explain how the cost of MVPs approved during the transition period that terminate in both Planning Areas will be allocated after the proposed transition period (e.g., shared across both Planning Areas pursuant to Attachment FF). In response, Filing Parties note that the costs of MVPs terminating in both Planning Areas that are approved during the transition period will be

[317] *Id.* at 7.

[318] *Id.* at 7-8.

[319] *Id.* at 8.

shared across both Planning Areas if either: the MVPs, as part of MVP $Portfolio_2$, meet the Combined MVP Portfolio cost-benefit test under Attachment FF-6; or MVP $Portfolio_2$ meets the MVP criteria of Attachment FF on its own.[320]

175. Finally, the January 25 Letter requested that Filing Parties explain the treatment of MVPs approved after the transition period. Filing Parties respond that, after the transition period, the treatment of MVPs approved thereafter, terminating in either or both Planning Areas, will be pursuant to the criteria in section II.C and the cost allocation methodology in section III.A.2.g of Attachment FF. Specifically, Filing Parties note that if an MVP portfolio is approved that meets the MVP criteria in Attachment FF, including providing broad regional benefits across each of the local resource zones of both Planning Areas commensurate with the allocation of costs, then the cost of that portfolio will be shared across both Planning Areas.[321]

e. Protests on February 3 Response

176. Cleco states that the Filing Parties' response to the January 25 Letter has reinforced, rather than allayed, Cleco's concerns. First, Cleco argues that the Combined MVP Portfolio heavily favors the First Planning Area because it includes facilities planned exclusively for the First Planning Area but not the Second Planning Area and the associated cost-benefit test applies different tests for the Planning Areas. According to Cleco, the test seems to be more permissive of a result in which MVP $Portfolio_1$ costs degrade MVP $Portfolio_2$ benefits to the Second Planning Area than it is of a result in which MVP $Portfolio_2$ costs degrade MVP $Portfolio_1$ benefits to the First Planning Area. Cleco maintains that, as a result, there could be pressure to treat projects in the Second Planning Area as non-MVPs, with more local cost allocations than MVPs, in order to satisfy the cost-benefit test.[322] Second, Cleco argues that the inputs for the cost-benefit test are too high-level and the Commission cannot delegate its responsibility to determine whether a rate meets the statutory just and reasonable standard by accepting the cost-benefit test.[323] Third, Cleco argues that the two Planning Areas should plan separately on a permanent basis.[324]

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[320] *Id.*

[321] *Id.* at 9.

[322] Cleco February 24, 2012 Protest at 2-4.

[323] *Id.* at 5.

[324] *Id.* at 6.

177. Upper Peninsula-Wisconsin PSC reiterate their previous arguments, including that MVPs by their nature are intended to provide system-wide benefits to all transmission system users and would provide such benefits to Entergy as soon as it becomes a MISO member. Accordingly, Upper Peninsula-Wisconsin PSC oppose Filing Parties' failure to provide for the immediate allocation of MVP costs to Entergy.[325] They maintain that, due to the complexity of the cost-benefit test, it is unclear that Entergy will pay its fair share of MVP costs, and add that the eight-year phase-in period is unduly preferential to Entergy and unduly discriminatory to existing MISO customers.[326] Upper Peninsula-Wisconsin PSC state that they are unaware of MISO's adoption of similar practices for integrating other new entrants and claim that Filing Parties have not provided a convincing rationale for applying such a comprehensive study process to Entergy's integration.[327] They add that the proposed transition period and phase-in period will result in a bifurcated market consisting of the First Planning Area and Second Planning Area, which is contrary to Order No. 2000's requirements regarding the scope and regional configuration of organized markets.[328] Upper Peninsula-Wisconsin PSC state, however, that they do not object to Entergy's integration into MISO or MISO's decision not to allocate the costs of Baseline Reliability Projects and Market Efficiency Projects to Entergy. Upper Peninsula-Wisconsin PSC explain that those projects stand on a different footing than MVPs and are generally tied to pricing zones that are geographically and electrically near the transmission upgrade and, therefore, the decision not to allocate the costs of those projects to Entergy is reasonable.[329]

f. <u>Answer to Protests on February 3 Response</u>

178. In response to Cleco, Filing Parties argue that the fact that the Combined MVP Portfolio includes, on an individual basis, MVPs planned for the First Planning Area does not preclude the possibility of developing, on an integrated basis, a Combined MVP Portfolio with net benefits to both Planning Areas. Filing Parties add that pre-transition MVPs can contribute significantly to the benefits from MVPs that connect the Planning Areas.[330] Filing Parties assert that the cost-benefit test for the First Planning Area is

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[325] Upper Peninsula-Wisconsin PSC February 24, 2012 Protest at 3-12.

[326] *Id.* at 12-14.

[327] *Id.* at 16.

[328] *Id.* at 17-18.

[329] *Id.* at 14-15.

[330] Filing Parties March 15, 2012 Answer at 4.

consistent with the requirement that costs allocated and benefits received be at least roughly commensurate. Filing Parties also argue that if the MVP Portfolio$_2$ costs allocated to the First Planning Area are greater than the MVP Portfolio$_1$ costs allocated to the Second Planning Area, that cost disparity could be offset by MVP Portfolio$_2$ benefits received by the First Planning Area.[331] Filing Parties add that Cleco's concern that projects could be mischaracterized as non-MVPs is wholly speculative and state that their February 3 Response does not imply that the consideration of other MVP configurations would involve any re-classification of projects as non-MVPs.[332]

179. Filing Parties argue that the cost-benefit test is not too high-level, as Cleco maintains, because the test will apply to the same benefit metrics and types of inputs previously applied to the cost-benefit calculation for MVP Portfolio$_1$ under existing Attachment FF. Filing Parties argue that there is no reason why these inputs will not likewise suffice for the Combined MVP Portfolio or would involve an undue delegation of ratemaking authority.[333]

180. Filing Parties disagree with Upper Peninsula-Wisconsin PSC's contention that Entergy should share in existing MVP costs immediately upon joining MISO. Filing Parties argue that, without the relevant data and analysis conducted during the transition period, it is premature to assume that MVP Portfolio$_1$ costs should be shared with the Second Planning Area.[334] They state that the Commission's findings regarding the appropriateness of regional cost allocation "pertained to load in the existing MISO footprint for which MVPs were then planned – not the entire Eastern Interconnection or any other part thereof that may be asymmetrical to the existing footprint."[335] Filing Parties maintain that the proposed transition is not unduly preferential because the Second Planning Area's integration will substantially increase MISO's footprint on a magnitude that far exceeds the integration of recent new transmission owners, and adds that previous new entrants joined MISO before the Commission's acceptance of the MVP methodology.[336] Filing Parties add that the eight-year phase-in period is appropriate,

[331] *Id.* at 5-6.

[332] *Id.* at 6-7.

[333] *Id.* at 7-8.

[334] *Id.* at 9.

[335] *Id.* at 10.

[336] *Id.* at 11.

noting that no data have been submitted that would cast doubt on the reasonableness of MISO's projections regarding the approximate time it takes for MVPs to reach their in-service dates.[337]

g. **Commission Determination**

181. We find that proposed allocation of the cost of network upgrades approved before, during, and after the five-year transition period, as conditioned below, to be just and reasonable. Given the unique circumstances surrounding Entergy's proposed integration into MISO, we find Filing Parties' proposal regarding how the Planning Areas begin sharing the cost of certain network upgrades to be just and reasonable. For example, as discussed above, Entergy and MISO do not have a seams agreement and have not had any historical opportunity to study their respective transmission infrastructure levels and plans. The transmission systems of MISO and Entergy have not been planned using consistent planning criteria and assumptions such that transmission facilities constructed in one Planning Area could reasonably be expected to provide benefits to loads in the other. Implementation of consistent planning in the two Planning Areas will facilitate MISO's application of its transmission planning process and planning criteria to the combined Planning Areas after the transition period has ended. MISO will then plan for the combined Planning Areas as a single MISO transmission system and costs will be shared between the two Planning Areas in accordance with MISO's existing cost allocation methods under Attachment FF, consistent with the distribution of the benefits that these transmission facilities have been found to provide through MISO's transmission planning process.

i. **Cost Allocation During Transition Period**

182. Before the transition period, projects in the First Planning Area were not planned for the Second Planning Area, and as a result, it is reasonable for Filing Parties to propose that those costs not be allocated to the Second Planning Area without a demonstration of net benefits. Until MISO applies its existing transmission planning process to the Second Planning Area, so that both Planning Areas use common processes and criteria, there is no basis to conclude that the Planning Areas will mutually derive benefits from projects that terminate exclusively in either Planning Area, such that regional cost sharing would allocate costs in a manner that is roughly commensurate with the associated benefits. As the Seventh Circuit has explained, "[a]ll approved rates must reflect to some degree the costs actually caused by the customer who must pay for them. Not surprisingly, we

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[337] *Id.* at 12.

evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."[338]

183. Filing Parties' proposed Tariff language indicates that MVPs approved during the transition period that terminate exclusively in the First Planning Area will be considered in the cost-benefit test as part of MVP Portfolio$_1$ and that the cost of these projects will be shared across the Planning Areas only if the Combined MVP Portfolio satisfies the cost-benefit test.[339] However, in their answer, Filing Parties indicate that MVP Portfolio$_1$ will include only the cost of MVPs approved before the transition period and that the cost of all MVPs approved during the transition period could be shared across the Planning Areas, even if the Combined MVP Portfolio fails to satisfy the cost-benefit test. Filing Parties state in their February 3 Response that the proposed definitions provided in the Tariff "are the correct definitions,"[340] without resolving the tension between the Tariff language and their answer. We understand Filing Parties' response to the deficiency letter to mean that MVPs approved during the transition period that terminate exclusively in the First Planning Area should be considered as part of MVP Portfolio$_2$, not MVP Portfolio$_1$ [341] Accordingly, we require Filing Parties to submit, in the compliance filing directed below, revisions to include all projects approved during the transition period or at the conclusion of the next MTEP cycle following the end of the transition period in MVP Portfolio$_2$.

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[338] *Illinois Commerce Commission*, 576 F.3d at 476 (citing *K N Energy*, 968 F.2d at 1300; *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C. Cir. 2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-1321 (D.C. Cir. 2004); *MISO Transmission Owners*, 373 F.3d at 1368; *Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 4-5).

[339] Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), §§ II.B.3.a and IV.B.3.

[340] Filing Parties February 3 Response at 2.

[341] *See id.* at 6. We base this understanding on Filing Parties' explanation that, if the Combined MVP Portfolio does not satisfy the cost-benefit test, "[c]osts of MVPs that terminate exclusively in the First Planning Area that are approved during the transition period could be shared with the Second Planning Area if those MVPs, are shown to meet the MVP criteria of Attachment FF on their own." To effectuate this, state Filing Parties, such projects must be included in MVP Portfolio$_2$, as Filing Parties propose that projects in MVP Portfolio$_1$ will be ineligible for consideration for cost sharing across the Planning Areas pursuant to Attachment FF.

184. For the allocation of costs of projects approved during the transition period that terminate in both Planning Areas, Filing Parties propose in section IV.A.2(a) of Attachment FF-6 that, if such projects are non-MVPs, the associated costs will be allocated in accordance with the existing provisions of Attachment FF (i.e., so that costs may be shared across both Planning Areas) during the transition period. We find this provision to be just and reasonable because any such projects will be planned for both Planning Areas by applying MISO's existing transmission planning procedures and a determination will be made through those procedures that such projects will benefit both Planning Areas. We note that Filing Parties do not propose Tariff revisions regarding the allocation during the transition period for the cost of MVPs approved during the transition period that terminate in both Planning Areas. As a result, such costs will be shared across both Planning Areas during the transition period, pursuant to the existing provisions of Attachment FF.[342] To provide clarity for MISO's customers, we require Filing Parties to submit, in the compliance filing directed below, revisions to section IV.A.2(a) of Attachment FF-6 to provide that the cost of MVPs approved during the transition period that terminate in both Planning Areas will be shared across both Planning Areas during the transition period.

ii. Cost Allocation After Transition Period

185. We accept Filing Parties' proposal to report to the Commission six months before the end of the transition period regarding whether MISO expects to find a Combined MVP Portfolio that satisfies the cost-benefit test. We agree with Filing Parties that satisfaction of the cost-benefit test is a sufficient showing to warrant additional cost sharing across the Planning Areas. In the event that the Combined MVP Portfolio does not satisfy the cost-benefit test, MVPs approved during the transition period that terminate exclusively in either Planning Area could be included in future MVP portfolios and, if the MVPs satisfy the existing benefit criteria of Attachment FF, the associated costs would be shared across the Planning Areas. Moreover, if MVPs approved during the transition period that terminate exclusively in either Planning Area cannot satisfy the conditions for cost sharing across the Planning Areas, pursuant to Attachments FF and FF-6, they will be eligible for consideration as Baseline Reliability Projects and Market Efficiency Projects. This explanation, provided in Filing Parties' answer and February 3 Response, addresses concerns regarding the allocation after the transition period of the cost of MVPs approved during the transition period that terminate exclusively in either

[342] Proposed section I of Attachment FF-6 provides that "[e]xcept as specifically identified in this Attachment FF-6, the allocation of the cost of MTEP projects shall in all other respects be governed by Attachment FF." Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § I.

Planning Area in the event that the Combined MVP Portfolio does not satisfy the cost-benefit test.

186. With regard to the allocation after the transition period of the cost of network upgrades approved during the transition period that terminate in both Planning Areas, Filing Parties state in their February 3 Response that MVPs approved during the transition period that terminate in both Planning Areas will be shared across both Planning Areas if either the Combined MVP Portfolio satisfies the cost-benefit test under Attachment FF-6 or MVP $Portfolio_2$ meets the MVP criteria of Attachment FF.[343] Filing Parties do not provide any rationale for placing these conditions on the sharing of the cost of MVPs that terminate in both Planning Areas, while no similar condition is imposed for non-MVPs that terminate in both Planning Areas.[344] As discussed above, we accept Filing Parties' proposal that the cost of MVPs that terminate in both Planning Areas will be shared across both Planning Areas during the transition period, and we are not persuaded that this allocation should change after the transition period ends. In addition, we find that the costs of any such MVPs, i.e., MVPs approved during the transition period that terminate in both planning areas will be shared, pursuant to Attachment FF.[345] To provide clarity to MISO's customers, we will require Filing Parties to submit, in the compliance filing directed below, revisions to section IV.B of Attachment FF-6 to provide that the cost of MVPs approved during the transition period that terminate in both Planning Areas will be shared across both Planning Areas after the transition period.

187. We disagree with Cleco that Filing Parties' proposal favors the First Planning Area. The Second Planning Area will share the cost of MVPs approved before the transition period that terminate exclusively in the First Planning Area only if the Combined MVP Portfolio satisfies the cost-benefit test, such that resource zones in the Second Planning Area receive net benefits. We find that the cost-benefit test of the Combined MVP Portfolio will provide the necessary information on whether sharing the associated MVP costs across both Planning Areas would be roughly commensurate with the corresponding benefits. In particular, the cost-benefit test assesses whether each resource zone in the First Planning Area would experience a decrease of the measured benefits as a result of the Combined MVP Portfolio and that each resource zone in the Second Planning Area will derive net benefits from the Combined MVP Portfolio. We

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[343] Filing Parties February 3 Response at 8.

[344] We note that Filing Parties also do not address the allocation of such MVP costs in the event that these conditions are not met (e.g., which Planning Area would bear responsibility for MVPs that terminate in both Planning Areas).

[345] *See supra* n.342.

also note that projects that are "in-service, under construction, or approved for construction by . . . the date a Transmission Owner becomes a signatory member of the [Transmission Owners] Agreement" are ineligible to be classified as MVPs, pursuant to the existing provisions of Attachment FF,[346] and we will not revisit these provisions in this proceeding.

188. With regard to the consideration of projects for inclusion in the Combined MVP Portfolio, the January 25 Letter asked Filing Parties to address "whether MVP portfolio(s) will be adjusted in the event that a Combined MVP Portfolio fails the cost-benefit test (i.e., whether the cost-benefit test could be applied iteratively, to multiple configurations)." In their response, Filing Parties state that "[t]he evaluation of projects that may comprise an MVP Portfolio$_2$ will include consideration of alternative solutions to determine the configuration that best addresses the identified transmission issues and ensure costs of the portfolio are allocated commensurate with benefits." We require Filing Parties to submit, in the compliance filing directed below, revisions to reflect this clarification in the Tariff.

189. We agree with protesters that further Tariff revisions are needed to reflect the allocation after the transition period of the cost of MVPs terminating exclusively in either Planning Area that are approved before or during the transition period, in the event that the Combined MVP Portfolio does not satisfy the cost-benefit test. In particular, Filing Parties state in their February 3 Response that if the Combined MVP Portfolio does not satisfy the cost-benefit test, 1) MISO will allocate to the First Planning Area the costs of MVPs approved before the transition period that terminate exclusively in the First Planning Area and 2) MISO will apply the existing provisions of Attachment FF to determine whether the costs of MVPs approved during the transition period will be shared across the Planning Areas.[347] We require Filing Parties to submit, in the compliance filing directed below, Tariff revisions to reflect these clarifications.

190. In addition, Filing Parties clarify that, if the Combined MVP Portfolio does not satisfy the cost-benefit test, the cost of MVPs approved during the transition period may still be shared across the Planning Areas, pursuant to the existing provisions of Attachment FF.[348] This clarification contradicts the proposed Tariff language. In particular, section IV.B.3 of proposed Attachment FF-6 provides that the cost of MVPs approved before and during the transition period that terminate exclusively in the First

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[346] MISO, FERC Electric Tariff, Att. FF (1.0.0), § II.C.3.a.

[347] *See*, *e.g.*, Filing Parties February 3 Response at 6-8.

[348] *Id.* at 7.

Planning Area may be shared across the Planning Areas only if the Combined MVP Portfolio satisfies the cost-benefit test.[349] We direct Filing Parties to modify the language in section IV.B.3 so that it does not apply to MVPs approved during the transition period (i.e., so that it applies only to MVPs approved before the transition period).

191. We disagree that the cost-benefit test is unduly discriminatory or designed so that it cannot be satisfied by the Combined MVP Portfolio. Determining whether resource zones in the First Planning Area will experience a decrease in the measured benefits is a reasonable approach to ensure that the First Planning Area is not required to share the cost of MVPs approved during the transition period that terminate exclusively in the Second Planning Area in the event that they experience a reduction of net benefits as a result of the proposed integration of Entergy. Similarly, as MVPs were planned only for the First Planning Area prior to the transition period, it is reasonable for MISO not to apply the same cost-benefit test to measure net benefits in the Second Planning Area. MISO did not plan MVPs for the Second Planning Area prior to the transition period and, therefore, cannot determine a baseline of existing benefits for the Second Planning Area. As a result, MISO cannot determine whether the Second Planning Area experiences a reduction in the existing net benefits associated with MVPs as a result of the proposed integration of Entergy.

192. However, we agree with Illinois Commission that Filing Parties have not addressed why the costs and benefits of MVPs should not be addressed over an identical interval of time (e.g., 20 years). Filing Parties' argument – that the full benefits of an MVP portfolio will not be experienced until all of the projects in that portfolio are in service – does not suggest that an MVP portfolio will not produce any benefits until the last project is in service or that such benefits should not be considered in the cost-benefit test.[350] In addition, we note that Filing Parties provided additional clarification regarding the formula for the cost-benefit test, including the annual benefits for MVP Portfolio_2, the change in MVP Portfolio_1 annual costs for a resource zone in the First Planning Area, and

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[349] Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § IV.B.3. We note that proposed Attachment FF-6 provides that "[e]xcept as specifically identified in this Attachment FF-6, the allocation of the cost of MTEP projects shall in all other respects be governed by Attachment FF." *Id.*, MISO, FERC Electric Tariff, Att. FF-6 (0.0.0), § I.

[350] We note that the benefit-to-cost ratio applied to MVPs justified solely on the basis of MVP criteria 2 and 3 considers the financial benefits and costs of a given project for the first 20 years of the project's life. MISO, FERC Electric Tariff, Att. FF (1.0.0), § II.C.7.

the applicable discount rate.[351] We require Filing Parties to submit, in the compliance filing directed below, Tariff revisions to modify the cost-benefit test to 1) measure MVP costs and benefits over an identical 20-year interval and 2) to reflect Filing Parties' clarifications regarding the cost-benefit formula, including the annual benefits for MVP Portfolio_2, the change in MVP Portfolio_1 annual costs for a resource zone in the First Planning Area, and the applicable discount rate.

iii. MVP Precedent

193. We also find that Filing Parties' proposed allocation of MVP costs during the transition period is consistent with the Commission's findings in the MVP proceeding. The Commission's acceptance of the regional allocation of MVP costs rested, in part, on the Commission's finding that the portfolio approach to project selection "ensures that [MVP] benefits will be widely spread around the [MISO] region."[352] When assembling MVPs approved before the transition period for the First Planning Area into portfolios, MISO's consideration of whether the associated benefits will be widely spread would not consider the Second Planning Area. As a result, allocating such MVP costs to the Second Planning Area in a manner similar to the allocation of MVP costs to other MISO members, immediately upon Entergy's proposed integration, has not been supported. Applying the proposed cost-benefit test to the Combined MVP Portfolio provides assurance that the Planning Areas will share the cost of MVPs that terminate exclusively in either Planning Area only if they share sufficient MVP benefits. Moreover, Entergy will be allocated MVP costs under Attachment FF for all MVPs identified after the transition period in the same manner as any other transmission-owning MISO member. We also note that Filing Parties' proposal establishes a five-year transition period for particular new entrants, not existing transmission owners who were members when the MVPs were planned.

iv. Non-MVPs

194. We disagree with protestors maintaining that the proposed allocation of costs for the Planning Areas must be symmetrical. There are differences between the Planning Areas that indicate that they are not similarly situated and that warrant differing treatment for the Planning Areas. With regard to Cleco's concern regarding the lack of symmetry in the treatment of non-MVPs identified between the Planning Areas, we note that, according to Filing Parties, "there are initial indications that the Second Planning Area's

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[351] Filing Parties February 3 Response at 3-4.

[352] MVP Order, 133 FERC ¶ 61,221 at P 54; *see also* MVP Rehearing Order, 137 FERC ¶ 61,074 at P 132.

level of transmission infrastructure to address congestion is less than that of the First Planning Area."[353] We find that, similar to the Commission's previous acceptance of MISO's "Excluded Projects List," the proposal represents a reasonable approach for MISO to implement regional cost sharing of transmission projects after the transition period.[354] Finally, in response to Cleco concern about the cost of non-MVPs approved during the transition period and terminating exclusively in the First Planning Area being allocated to the Second Planning Area, we note that, under Filing Parties' proposal, the cost of non-MVPs approved during the transition period that terminate exclusively in either Planning Area will continue to be allocated to the respective Planning Area after the transition period.

v. Other Issues

195. We recognize that the organization of the Second Planning Area for cost allocation purposes (e.g., the applicable pricing zones and planning sub-regions) is important to understanding the allocation of MTEP costs.[355] However, without knowing whether one or more of the Entergy Operating Companies and/or adjacent utilities will integrate into MISO, MISO cannot determine the configuration of the Second Planning Area at this time. Therefore, we dismiss as beyond the scope of this proceeding Missouri Commission's concerns regarding how the Second Planning Area would be organized for cost allocation purposes, as this issue will instead be addressed in future filing(s) to integrate entrants from the Second Planning Area into MISO. It is premature to address Cleco's concerns regarding its potential treatment if it chooses to integrate into MISO, including whether Cleco should be treated as its own pricing zone or whether such a pricing zone should be responsible for certain non-MVP costs. Cleco's concerns regarding the specific terms of its potential future integration into MISO should instead be raised in the event that Cleco proposes to join MISO.

vi. MVP Usage Rate

196. Filing Parties propose to revise the description of the MVP usage rate in Schedule 26-A of the Tariff so that it provides that during the transition period, the MVP

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[353] Filing Parties November 28 Filing, Curran Test. at 7.

[354] *See*, *e.g.*, RECB I Order, 114 FERC ¶ 61,106 at PP 108-111.

[355] For example, eighty percent of the cost of Market Efficiency Projects are allocated on a sub-regional basis among MISO's three existing planning sub-regions in proportion to the benefits that MISO determines each sub-region will receive from the project. MISO, FERC Electric Tariff, Att. FF (1.0.0), § III.A.f(ii).

usage rate "shall be limited to a particular Planning Area with regard to MVPs terminating exclusively therein, pursuant to Attachment FF-6." This language could be interpreted to suggest that the application of the MVP usage rate will not apply to export and wheel-through transactions by external entities. We direct Filing Parties to submit, in the compliance filing directed below, revisions to the description of the MVP usage rate in Schedule 26-A to address this concern.

197. Filing Parties also propose to revise Schedule 26-A so that it provides that after the transition period, section IV.B.3 of Attachment FF-6 "shall govern the Planning Area(s) under which an [MVP usage rate] shall be applicable due to MVPs approved before the Second Planning Area's Transition Period."[356] We direct Filing Parties to submit, in the compliance filing directed below, revisions to Schedule 26-A to reflect that after the transition period, Attachment FF-6 will also govern the MVP usage rate applicable due to MVPs approved during the transition period in the event that the Combined MVP Portfolio satisfies the cost-benefit test (e.g., so that the eight-year phase-in period will apply).

198. Section 2 of Schedule 26-A currently provides that MISO will remit MVP usage rate revenues to transmission owners and/or independent transmission companies "in proportion to their annual pro-rata share of the total MVP revenue requirement as determined under Attachment MM."[357] We direct Filing Parties to submit, in the compliance filing directed below, revisions to Schedule 26-A to reflect the revisions to the total MVP revenue requirement proposed in Attachment MM (e.g., so that MISO may remit revenues to certain market participants in proportion to their annual *pro rata* share of the total MVP revenue requirement "in the applicable Planning Area(s)").

199. In addition, the proposed revisions to Schedule 26-A may not fully reflect the proposed revisions to Attachment MM, and vice versa. Filing Parties' proposed revisions to section 4(a) of Attachment MM suggest that there will be two types of MVP usage rates: "a [MISO] system-wide rate applied to all Planning Areas pursuant to Attachment FF, or a rate applied to a specific Planning Area where a project terminates exclusively pursuant to Attachment FF-6."[358] In contrast, Filing Parties' proposed revisions to Schedule 26-A continue to characterize the MVP usage rate as a single, "system-wide

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[356] Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Sch. 26-A (1.0.0).

[357] MISO, FERC Electric Tariff, Sch. 26-A (0.0.0).

[358] Filing Parties November 28 Filing, MISO, FERC Electric Tariff, Att. MM (3.0.0), § 4(a).

rate" and suggests that the application of this rate "shall be limited to a particular Planning Area" for certain MVPs during and after the transition period.[359] To address these issues, we require Filing Parties to submit, in the compliance filing directed below, Tariff revisions to ensure that Schedule 26-A and Attachment MM provide consistent descriptions of the MVP usage rate.

200. We find that the proposed revisions to section 4(a) of Attachment MM do not adequately explain, or differentiate between, how MISO will calculate a system-wide MVP usage rate and MVP usage rates for each Planning Area, as needed, during and after the five-year transition period. In particular, Filing Parties do not provide separate formulas for these rates. Instead, they propose to add the phrase "for the applicable Planning Area(s)" to the existing determination of the total MVP annual revenue requirements, the monthly MVP usage rate, and monthly withdrawal weighting factor.[360] As a result, Attachment MM no longer describes how MISO will make these determinations on a system-wide basis. Filing Parties also propose that a rate will apply to a specific Planning Area "where a project terminates exclusively pursuant to Attachment FF-6,"[361] which does not convey that this rate may apply only to MVPs approved before or during the transition period, nor that Attachment FF-6 will govern whether this rate will apply to those projects.

201. Moreover, if different MVP usage rates could apply to transactions in each Planning Area, Filing Parties do not explain in section 4(a) of Attachment MM how these rates would apply to external entities with export or wheel-through transactions, including on what basis these rates will be applied to external entities (e.g., based on their export and wheel-through transactions in each respective Planning Area) and how the applicable MVP usage rate(s) will be determined (e.g., the charges applicable to a wheel-through transaction that passes through a single Planning Area versus both Planning Areas). In addition, the proposed revisions to Attachment MM do not explain the determination of the MVP usage rate(s) in the event that the Combined MVP Portfolio satisfies the cost-benefit test such that MISO must apply an eight-year phase-in period for

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[359] *Id.*, MISO, FERC Electric Tariff, Sch. 26-A (1.0.0).

[360] Filing Parties' proposed revisions also provide that MISO will calculate Monthly MVP Revenue Requirements by multiplying the Total MVP Annual Revenue Requirements "either system-wide in all Planning Areas pursuant to Attachment FF, or in a specific Planning Area where a project terminates exclusively pursuant to Attachment FF-6," by a Monthly Withdrawal Weighting Factor. *Id.*, MISO, FERC Electric Tariff, Att. MM (3.0.0), § 4(a).

[361] *Id.*, MISO, FERC Electric Tariff, Att. MM (3.0.0), § 4(a).

sharing certain MVP costs across the Planning Areas. To address these issues regarding section 4(a) of Attachment MM, we require Filing Parties to submit, in the compliance filing directed below, an explanation of 1) how MISO will determine MVP usage rates for each Planning Area to recover MVPs costs that are not shared across the Planning Areas; 2) how MISO's determination of MVP usage rates for each Planning Area differs from its existing determination of the system-wide MVP usage rate; 3) how the system-wide MVP usage rate and MVP usage rates for each Planning Area will apply to export and wheel-through transactions; and 4) how the MVP usage rate for each Planning Area will be determined during the potential eight-year phase-in period. As needed, Filing Parties should also include corresponding Tariff revisions.

202. Finally, we note that Filing Parties do not propose any revisions to existing section 4(b) of Attachment MM, which provides that "[e]xcept as provided above, the [MVP usage rate] will be charged monthly, in accordance with the Market Settlements Business Practices Manual, to Market Participants with Monthly Net Actual Energy Withdrawals, [Withdrawing Transmission Owner Monthly Net Actual Energy Withdrawals] as defined in Schedule 39, Real-Time Export Schedules, and Real-Time Through Schedules."[362] While this provision appropriately describes the application of the existing system-wide MVP usage rate, it does not reflect the provisions of proposed Attachment FF-6 regarding the allocation of costs associated with MVPs approved before or during the transition period that terminate exclusively in either Planning Area.[363] Accordingly, we require Filing Parties to submit, in the compliance filing directed below, revisions to Attachment MM to address this issue.

5. Eight-Year Phase-In Period After Five-Year Transition Period

a. November 28 Filing

203. Filing Parties propose that, if the Combined MVP Portfolio satisfies the cost-benefit test, the five-year transition period will be followed by a phase-in of the regional allocation of MVP costs over eight years, in gradually increasing increments of 12.5 percent. Filing Parties state that the proposed eight-year phase-in of the regional allocation of MVP costs is reasonable in this circumstance because it will broadly track the timing of MVP construction, so that cost allocation would be fully implemented

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[362] MISO, FERC Electric Tariff, Att. MM (2.5.0), § 4(b).

[363] For example, during the transition period, the MVP usage rate to recover the cost of MVPs approved before the transition period that terminate exclusively in the First Planning will not apply to the monthly net actual energy withdrawals of market participants in the Second Planning Area.

closer to the actual realization of benefits once the MVPs come into service. Accordingly, Filing Parties propose a post-transition MVP cost allocation phase-in period of eight years because MISO's experience with the MVP Portfolio$_1$ indicates that eight years is the approximate range of time it will take for each approved MVP portfolio to be constructed and to reach its in-service date.[364]

204. Filing Parties note that the Commission rejected as unsupported a four-year phase-in period for MVP cost allocation, but claim that the rationale for the proposed eight-year phase-in period is different.[365] They state that the proposed eight-year phase-in period, like the four-year phase-in period proposed in the June 3 Waiver Filing, recognizes the need to avoid free ridership. Filing Parties add that the eight-year phase-in period also focuses on generally harmonizing the timing of cost allocation and benefit accrual for MVPs by phasing in the percentage of cost allocation over the average construction period of MVP portfolios. Filing Parties state that, given the lack of historical planning, operating or seams coordination between the Planning Areas, and particularly in light of the large scope of an MVP portfolio, eight years is a reasonable transition timeframe to phase in the costs of the portfolios.[366]

b. Comments and Protests

205. Entergy argues that the proposed phase-in of the MVP cost allocation is consistent with the Commission's findings in the MVP Rehearing Order. Entergy states that, in the MVP Rehearing Order, the Commission rejected as unsupported MISO's proposal to phase in the allocation of MVP costs for new RTO members.[367] Entergy argues that, in this proceeding, Filing Parties have provided supportive testimony for the proposed five-year transition period and subsequent eight-year phase-in period.[368]

206. By contrast, Upper Peninsula-Wisconsin PSC argue that Filing Parties' proposed eight-year phase-in period for cost allocation of MVPs is unduly preferential for Entergy

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[364] Filing Parties November 28 Filing, Transmittal Letter at 10 (citing Curran Test. at 22).

[365] *Id.* (citing MVP Rehearing Order, 137 FERC ¶ 61,074).

[366] *Id.*

[367] Entergy Comments at 13-14 (citing MVP Rehearing Order, 137 FERC ¶ 61,074 at P 132).

[368] *Id.* at 14 (citing Filing Parties November 28 Filing, Curran Test. at 10-11, 20-22).

and unduly discriminatory against existing MISO transmission customers. According to Upper Peninsula-Wisconsin PSC, the relevant issue is not comparability, as Filing Parties claim, but benefits, and the proposal fails to demonstrate that Entergy does not benefit from MVPs. They point out that Entergy is currently subject to an MVP usage charge if it uses MISO's transmission system to access generation in MISO, on the assumption that it benefits from the MVPs.[369]

207. Arkansas Cooperative is concerned that the proposed eight-year phase-in period may delay the development of MVPs. Arkansas Cooperative argues that the perception that some beneficiaries will free ride on projects during the phase-in period is likely to influence decision makers and project developers in determining the timing of those projects, resulting in yet more delay in developing needed transmission capacity. Arkansas Cooperative also argues that MISO provides little explanation as to why it will need such a long phase-in period for Entergy when it has never had such a long phase-in period for any other new member. Arkansas Cooperative states that MISO also fails to explain why costs incurred in connection with MVPs should be recovered from some project beneficiaries but not from others during the phase-in period, or, for that matter, any period. Arkansas Cooperative asserts that the proposal appears to be discriminatory on its face. It adds that, if a phase-in period is deemed appropriate, the four-year phase-in period proposed in the June 3 Waiver Filing should suffice.[370]

208. East Texas Cooperatives argue that the combined thirteen-year transition and phase-in periods are both unnecessary and not adequately supported by Filing Parties.[371] They add that Filing Parties provide no valid reason to support a 13-year transition period that does not apply to any other utility joining MISO. East Texas Cooperatives also argue that, if the Commission accepts the proposed phase-in period, it should require Filing Parties to apply the four-year phase-in period previously in MISO's Tariff. They further argue that Filing Parties did not explain why a four-year phase-in period should not be applied here.[372]

209. Illinois Commission also argues that Filing Parties have not supported the eight-year phase-in period, which Illinois Commission states will effectively continue for 13 years from the date that the first Entergy Operating Company integrates into MISO. It

[369] Upper Peninsula-Wisconsin PSC Comments at 10-11.

[370] Arkansas Cooperative Protest at 15-16.

[371] East Texas Cooperatives Protest at 4.

[372] *Id.* at 15.

points out that distinguishing between a five-year transition period and eight-year phase-in period "does not mean the real phase-in period magically becomes eight, rather than thirteen years."[373] Illinois Commission argues that the proposed eight-year phase-in of cost allocation for MVPs, subject to the cost-benefit test being satisfied, is just an addition to the transition period by another name. Illinois Commission explains that the testimony included in the filing justifies an eight year phase-in period based on the latest forecasted in-service date for any of the projects in the 2011 MVP Portfolio.[374] Illinois Commission argues that this is irrelevant because the latest of those projects will be completed by 2019, yet the phase-in period will continue until at least 2026. Illinois Commission therefore concludes that the Commission should reject as unsupported the eight-year phase-in period.[375]

c. <u>Answers</u>

210. Filing Parties disagree with Arkansas Cooperative and East Texas Cooperatives' argument that the four-year phase-in sought previously is enough for the current proposal. Filing Parties explain that the previously-proposed four-year MVP cost allocation phase-in for new transmission owners, which the Commission rejected as unsupported, involved a different context of potential new RTO members from areas adjoining MISO's existing footprint, with which MISO has a history of transmission coordination and seams management. In contrast, Filing Parties state, the phase-in period proposed in the November 28 Filing pertains to potential new transmission owners from an area external to MISO's existing footprint that is apparently asymmetrical to MISO's existing footprint.[376] Filing Parties also argue that that the Commission's prior rejection of the four-year phase-in does not preclude consideration of a phase-in for the different context of an asymmetrical new Planning Area. Further, Filing Parties explain that, subsequent to the June 3 Waiver Filing, MISO determined that due to the differences between the Planning Areas, it is appropriate to provide an eight-year phase-in period for Entergy's integration based on the average time expected for the MVP portfolio to reach in-service dates, so that the phase-in of cost allocation would broadly track the timing of the receipt of MVP benefits.[377]

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[373] Illinois Commission Comments at 25-26.

[374] *Id.* at 26 (citing Filing Parties November 28 Filing, Curran Test. at 21-22).

[375] *Id.*

[376] Filing Parties January 10, 2012 Answer at 29.

[377] *Id.* at 30.

211. Arkansas Cooperative answers that Filing Parties' claim that the June 3 Waiver Filing involved different circumstances is false. Arkansas Cooperative argues that MISO did not attempt to limit the four-year transition period to new transmission owners from areas adjacent to the existing MISO footprint, or to those with whom MISO has a history of transmission coordination and seams management.[378]

d. Commission Determination

212. We find that, in the event that the Combined MVP Portfolio satisfies the cost-benefit test, it is just and reasonable for MISO to phase-in, over an eight-year period, cost sharing between the Planning Areas for MVPs that are approved before or during the transition period and that terminate exclusively in either Planning Area. In this unique circumstance, given the lack of historical planning, operating agreements, or seams coordination between the Planning Areas, we find that phasing in cost sharing over a transitional, eight-year period is a reasonable approach. We also recognize there may be other reasonable ways to phase-in the costs between the Planning Areas. According to Filing Parties, MISO's experience with MVPs approved before the transition period indicates that eight years is the approximate amount of time it will take for each approved MVP portfolio to be constructed and reach its in-service date. The eight-year phase-in period will broadly track the timing of MVP construction, so that cost allocation will be fully implemented closer to the actual realization of benefits at the in-service dates of MVPs.[379] Moreover, as Filing Parties explain, MVPs approved before the transition period address west-to-east congestion and were not planned to significantly increase north-to-south transmission capacity, and as a result, it is reasonable to assume that the Second Planning Area will not immediately benefit from such MVPs in the same way a party on the western or eastern seam of MISO would.[380] Considering the proposed 8-year phase-in mechanism was designed based on MISO's experience with MVPs and the Filing Parties' reached an agreement on this phase-in, we find that the proposed phase-in is just and reasonable.

213. While we recognize that MISO has not previously requested a similar phase-in period for integrating new entrants, a temporary, eight-year phase-in period is not unduly discriminatory or preferential, in light of the unique facts and circumstances presented by

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[378] Arkansas Cooperative Answer at 3-4 (citing MISO July 15, 2010 Filing, Docket No. ER10-1791-000, Transmittal Letter at 26).

[379] Filing Parties November 28 Filing, Transmittal Letter at 10 (citing Curran Test. at 22).

[380] *Id.*, Curran Test. at 21.

Entergy's proposed integration into MISO, as discussed above. We are not persuaded that Entergy is similarly-situated to previous new entrants into MISO, nor that entities in the Second Planning Area would immediately benefit from MVPs upon their integration. Moreover, we note that the proposed eight-year phase-in period is one aspect of the negotiated solution between the parties designed to reach a fair and equitable result between existing and potential transmission-owning members of MISO. In addition, we note that the Commission previously required MISO to implement a transitional marginal loss refund approach[381] "available to all existing transmission customers for a period of five years and to all new transmission customers for a period of one year from the start of the Day 2 markets."[382] The Commission found it appropriate to provide an expanded congestion cost hedge[383] "to entities located in a[] N[arrow] C[onstrained] A[rea] designated as such at the start of the market or within six months of the start of the market . . . for a five-year transition period."[384]

214. We find Arkansas Cooperative's argument that projects may be delayed due to the perception that some beneficiaries will free ride during the phase-in period to be speculative and unsupported. As Filing Parties explain, MVPs approved before the transition period primarily address west-to-east congestion, and as such, "there is no real

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[381] The Commission required MISO to refund the difference between the marginal loss charge and either historical loss charges associated with existing transmission service or average loss charges calculated by MISO. The Commission stated that this transitional measure addressed "the circumstances of many parties that perceive that they could pay higher rates than they do today under existing contracts, because many load-serving entities in the [M]ISO footprint serve their load with distant generation that they own or have under long-term contracts." *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at PP 74, 77 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *order on reh'g*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisconsin Public Power Inc. v. FERC*, 2007 U.S. App. LEXIS 17257 (D.C. Cir. July 20, 2007).

[382] TEMT II Order, 108 FERC ¶ 61,163 at P 73.

[383] The Commission stated that "[o]ur decision to provide this additional coverage to entities in significantly congested load pockets stems from our intention to guarantee market participants that are highly dependent on existing firm transmission services and that are potentially subject to high congestion charges that they will receive sufficient F[inancial] T[ransmission] R[ights] or an equivalent financial hedge to hold them harmless with respect to the changes in the market design." *Id.* P 90.

[384] *Id.*

concern that entities in the Second Planning Area would be 'free riders' on benefits from" MVPs approved before the transition period.[385]

215. While the Commission rejected as unsupported a four-year phase-in period for MVP cost sharing by new MISO entrants in the MVP Rehearing Order, it did so without prejudice to MISO "submitting future filing(s) under section 205 of the FPA to address any transmission issues associated with the integration of new transmission-owning members of [MISO] . . . along with appropriate support for its proposal."[386] We find here that, due to the unique circumstances of Entergy's proposed integration, the eight-year phase-in period has been appropriately supported.

216. We also find that the Illinois Commission misunderstands Filing Parties' rationale for using MISO's experience with MVP $Portfolio_1$ as a basis for the eight-year phase-in period. As described by Filing Parties, the eight-year phase-in period is not based on the latest forecasted in-service date for any of the projects in the 2011 MVP Portfolio, as Illinois Commission asserts. Rather, Filing Parties have used the eight years as a guide for "generally harmonizing the timing of cost allocation and benefit accrual for MVPs by phasing in the percentage of cost allocation over the average construction period of MVP portfolios."[387]

6. Other Issues

a. Comments and Protests

217. Arkansas Cooperative and Midwest Transmission Customers note that, on December 5, 2011, Entergy announced that it would divest its transmission business and merge it with a newly-formed subsidiary of ITC Holdings Corp. (ITC) in 2013, subject to the completion of certain closing conditions including certain regulatory approvals.[388] Arkansas Cooperative states that it would be inappropriate for the Commission to make any factual or legal determination regarding the Entergy-ITC transaction in this

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[385] Filing Parties November 28 Filing, Curran Test. at 21.

[386] MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 324-325.

[387] Filing Parties November 28 Filing, Transmittal Letter at 10.

[388] *See*, *e.g.*, Midwest Transmission Customers Protest at 6 (citing ITC, *Entergy to Divest and Merge Electric Transmission Business Into ITC, Creating Industry-Leading Electric Transmission Company* (Dec. 5, 2011) *available at* http://www.itctransco.com/itc-holdings/news/breaking-news/press-release.html).

proceeding because Entergy has not yet made any filing seeking approval of the transaction.[389] Midwest Transmission Customers argue that the Commission should reject the proposed cost allocation treatment for Entergy because it is unclear how the proposed agreement between Entergy and ITC will affect Entergy's transmission assets. Midwest Transmission Customers argue that a necessary prerequisite for the proposed transition would be that Entergy owned and/or controlled the transmission assets in question, but Entergy is currently not in position to make that representation. Midwest Transmission Customers maintain that ITC has not indicated its position on the integration of the Entergy transmission system into MISO, nor does the available information indicate how and when the merged company would obtain the necessary regulatory approvals. Midwest Transmission Customers contend that, as a result, the Commission may approve a plan that never comes to fruition or involves parties other than those participating in the current proceeding. They conclude that the highly speculative nature of this transaction should be resolved prior to any Commission action in this proceeding.[390]

218. Arkansas Cities maintain that any considerations other than the proposed cost allocation and transition period (e.g., any terms and conditions or service under the MISO Tariff to which Arkansas Cities may be obligated to comply) should be deferred until guidance is received from state commissions on MISO and ITC.[391] Arkansas Cities claim that the precise nature of how they will receive transmission service from MISO or ITC remains unexplained, and the ITC sale will further complicate the regulatory process. They add that MISO needs to provide additional details so that Arkansas Cities can make business decisions (e.g., whether to act as a market participant or seek an agent).[392] Arkansas Cities note that they operate public systems, which in some cases have or are contemplating public debt, and hence, the material change in operation and ownership between RTOs with or without day-ahead markets and in different geographic regions are material matters.[393]

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[389] Arkansas Cooperative Protest at 17.

[390] Midwest Transmission Customers Protest at 6-7.

[391] Arkansas Cities Motion to Intervene at 6.

[392] Arkansas Cities are concerned that incrementally high congestion costs will be assessed to the cities of Hope and Prescott, and that MISO has not addressed many issues regarding long-term transmission rights. *Id.* at 7.

[393] *Id.* at 6-7.

219. Arkansas Cooperative argues that, if the Commission accepts Filing Parties' proposal, the Commission should clarify that its acceptance does not constitute a finding that, after Entergy's integration, MISO would continue to satisfy the requirements of Order No. 2000 regarding the minimum characteristics and functions of an RTO.[394] Arkansas Cooperative states that it would be premature for the Commission to consider these issues,[395] as neither MISO nor the Entergy Operating Companies have filed with the Commission the rate schedules and related contracts that would transfer operational control of the companies' transmission facilities to MISO. In particular, Arkansas Cooperative is concerned that the integration of Entergy into MISO raises significant questions regarding whether MISO would continue to have an appropriate scope and configuration, including whether Entergy's integration would exacerbate loop flows and transmission congestion.[396] Arkansas Cooperative is also concerned that Entergy's integration into MISO could create a permanent seam between Entergy and SPP that would run through Arkansas Cooperatives' operating and service territory. Arkansas Cooperative maintains that such a seam would perpetuate congestion on transmission paths that it relies on to serve its loads, reduce its operational flexibility by requiring it to comply simultaneously with the tariffs of two RTOs, and require it to pay pancaked rates to both MISO and SPP.[397]

220. Arkansas Cooperative contends that, if the Commission accepts Filing Parties' proposal, the Commission should clarify that its acceptance does not constitute a finding that Entergy lacks or has mitigated its generation market power if it joins MISO. Arkansas Cooperative states that Entergy has not filed an updated market power analysis or an amendment to its market-based rate tariff, nor have MISO or Entergy filed with the Commission the rate schedules and related contracts that would transfer operational control of the companies' transmission facilities to MISO.[398] Arkansas Cooperative notes that the Entergy Operating Companies do not have market-based rate authority with their balancing authority area and must make sales of capacity and energy within that

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[394] Arkansas Cooperative Protest at 8-9 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089).

[395] Arkansas Cooperative argues that, if necessary, the Commission should address any of these issues only after setting them for hearing and providing intervenors an opportunity for discovery. *Id.* at 10.

[396] *Id.* at 8-9.

[397] *Id.* at 9-10.

[398] Arkansas Cooperative Protest at 5-6.

mitigated market at cost-based rates.[399] According to Arkansas Cooperative, there are indications that the Entergy Operating Companies would operate in a submarket in MISO if they were to transfer operational control of their transmission facilities to MISO. Arkansas Cooperative also asserts that there could be local market power issues within the proposed Planning Area that are not present elsewhere in MISO. Arkansas Cooperative concludes that this proceeding does not provide an appropriate forum for determining the relevant geographic market for evaluating the Entergy Operating Companies' market power, pursuant to Order No. 697,[400] adducing evidence concerning the market power of the Entergy Operating Companies if they were to join MISO, or broadening the Entergy Operating Companies' now-limited authority to charge market-based rates in wholesale and ancillary services markets.[401]

221. Cleco maintains that Filing Parties' proposal should not be treated as a regional cost allocation proposal pursuant to Order No. 1000 or prejudice Cleco's Order No. 1000 compliance options. Cleco states that, in arguing for broad socialization of MVP costs across both Planning Areas, MISO's proposal reads in some respects like an Order No. 1000 cost allocation compliance filing. Cleco argues that Commission acceptance of Filing Parties' proposal would not be dispositive as to whether the proposal is compliant with Order No. 1000 and, therefore, should not be treated as a regional cost allocation proposal.[402] Cleco requests that the Commission clarify that, even if Filing Parties' proposal is accepted and Entergy joins MISO, Cleco may continue to plan regionally with

[399] *Id.* at 6-7 (citing, *e.g.*, *Entergy Services, Inc.*, 115 FERC ¶ 61,260, *order on reh'g*, 116 FERC ¶ 61,276 (2006)).

[400] *Id.* at 6-7 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011)).

[401] Arkansas Cooperative argues that, if necessary, the Commission should address any of these issues only after setting them for hearing and providing intervenors an opportunity for discovery. *Id.* at 7-8.

[402] Cleco December 19, 2011 Protest at 15-16 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 795).

SPP, regardless of how interconnected it is with Entergy, should Cleco choose to not join MISO.[403]

222. Cleco argues that Filing Parties' proposal does not meet the requirements of Order No. 1000. In particular, Cleco contends that MISO has offered no proof that RTO-wide socialization of costs will result in a sharing of costs that is roughly commensurate with the sharing of benefits and, as such, fails to satisfy the first Order No. 1000 cost allocation principle, which requires that cost be allocated in a way that is roughly commensurate with benefits.[404] Cleco also states that there is no evidence to support the notion that ratepayers in Louisiana will benefit from large-scale projects in the Midwest, thereby contravening the second Order No. 1000 principle, which prohibits the involuntary allocation of costs to non-beneficiaries.[405]

b. Answers

223. In their answer, Filing Parties argue that all of these issues are beyond the scope of this proceeding, and even if the Commission were to consider them, they would not preclude acceptance of the November 28 Filing. As regards Entergy's transaction with ITC, Filing Parties stress that this proceeding involves issues associated with the location and configuration of transmission facilities to be integrated into MISO, not whether their owner is an entirely new RTO member or an existing member to which ownership of such facilities will be transferred. Filing Parties state that Entergy has confirmed that the functional control of such facilities will be transferred to MISO under either ownership scenario, and the set of Entergy transmission customers involved in the MISO integration remains the same.[406]

224. In its answer, Entergy maintains that the Commission should accept the November 28 Filing without delay and reject arguments regarding Entergy's proposed agreement with ITC, as the disposition of Entergy's transmission assets does not complicate or create uncertainties regarding Filing Parties' proposal. Entergy explains that Entergy and ITC are both committed to transferring functional control of the Entergy Operating Companies' transmission assets to MISO, and the proposed Tariff revisions are necessary regardless of whether Entergy or ITC owns the transmission assets. Entergy

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[403] *Id.* at 16-17.

[404] *Id.* at 16 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622).

[405] *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637).

[406] Filing Parties January 10, 2012 Answer at 32-33.

adds that, regardless of who owns the transmission assets, the proposed Tariff revisions are critically important to the determination by Entergy's regulators regarding Entergy Operating Companies' proposal to join MISO and will have a significant impact on the costs borne by Entergy's customers if those transmission assets become part of MISO.[407]

225. With respect to Arkansas Cooperative's Order No. 2000 arguments, Filing Parties submit that Entergy's integration is consistent with MISO's regional scope and configuration and, thus, will not adversely affect MISO's RTO characteristics and functions.[408] In response to Filing Parties' answer, Arkansas Cooperative contends that the Commission has not been asked to rule on questions involving MISO's scope and configuration in this docket. It adds that nothing raises more questions about the acceptability of the scope and configuration of a MISO that includes Entergy than Filing Parties' repeated announcements that Entergy is not an adjacent transmission owner and that MISO and Entergy have no history of transmission coordination or seams management.[409]

226. Contrary to Arkansas Cooperative's market power concerns, Filing Parties state that this proceeding requests only approval of the transition procedures for a Second Planning Area. Filing Parties also contend that an RTO, by nature, is designed to avoid and mitigate market power and, therefore, Entergy's integration should foster market competition in the Second Planning Area.[410]

227. In response to Cleco's Order No. 1000 compliance concerns, Filing Parties claim that the November 28 Filing is consistent with the cost causation principles reflected in Order No. 1000. Filing Parties maintain that, as such, any of the proposed transition's potential effects on Cleco's Order No. 1000 compliance options will be reasonable, and in any event, it is premature at this time to address any such possible effects.[411]

c. Commission Determination

228. As an initial matter, we find that the arguments raised here are beyond the scope of this proceeding. The subject of this filing is solely a transitional transmission planning

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[407] Entergy Answer at 2-4.

[408] Filing Parties January 10, 2012 Answer at 32.

[409] Arkansas Cooperative Answer at 4-5.

[410] Filing Parties January 10, 2012 Answer at 32.

[411] *Id.* at 33.

and cost allocation proposal regarding Entergy's proposed integration into MISO. However, as discussed below, we address some of the arguments to explain our position on these matters.

229. First, concerning the proposed ITC transaction, Filing Parties have made clear that these two events are separate and distinct. We agree. As Entergy notes in its answer, the proposed Tariff revisions are relevant to Entergy's regulators and transmission customers regardless of the ownership status of the transmission facilities. Also, while Entergy and ITC have announced their proposed business transaction, it would not be reasonable to delay this proceeding due to ITC-related issues that are not yet ripe for consideration.

230. Second, we note that while this filing addresses certain issues associated with Entergy's proposed integration into MISO, it is not a section 205 filing seeking to integrate Entergy as a transmission-owning member of MISO. Thus, we dismiss as beyond the scope of this proceeding the arguments regarding integration-related issues not specifically before us, such as compliance with Order No. 2000. In the event that a proposal to integrate Entergy into MISO comes before the Commission, parties will have the opportunity at that time to present integration-related concerns.

231. Also, we do not making any findings regarding Order No. 1000 compliance, as this filing is separate and distinct from future Order No. 1000 compliance filings. Further, as the Commission stated in Order No. 1000, "[w]hether an existing [transmission planning and cost allocation] process was approved previously by the Commission is not dispositive of whether that process complies with this Final Rule."[412] Accordingly, compliance with Order No. 1000 will be the subject of a future filing and will, thus, be addressed in that proceeding.

232. Finally, we grant Filing Parties' requested effective date of June 1, 2013, and grant waiver of our notice requirements[413] to allow the delayed effective date, as the parties have demonstrated good cause for their request.

[412] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 795.

[413] *See* 18 C.F.R. § 35.3 (2011).

The Commission orders:

(A) Filing Parties' proposed Tariff revisions are hereby conditionally accepted, to be effective June 1, 2013, as discussed in the body of this order.

(B) Filing Parties are hereby directed to submit a compliance filing within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.