131 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Midwest Independent Transmission System Operator, Inc.	Docket Nos.	ER05-6-006, 010, 015, 033
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC		EL04-135-008, 012, 017, 035
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC		EL02-111-009, 012, 013, 017, 025, 029, 035, 053
Ameren Services Company		EL03-212-003, 004, 008, 010, 015, 022, 026, 031, 049

ORDER ON REHEARING

(Issued May 21, 2010)

1. In this order, we deny the requests for rehearing of the November 2003 Rehearing Order,[1] the December 2003 Clarification Order,[2] the Going Forward Principles Order,[3]

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,212 (2003) (November 2003 Rehearing Order).

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,288 (2003) (December 2003 Clarification Order).

the November 2004 Order,[4] the November 2004 Clarification Order,[5] the February 2004 Order,[6] the February 2005 Order,[7] and the June 2005 Order.[8]

I. Background

2. On July 31, 2002, the Commission issued an order[9] that conditionally accepted the compliance filings of certain of the former Alliance Companies, under which they proposed to join either Midwest Independent Transmission System Operator, Inc. (Midwest ISO) or PJM Interconnection LLC (PJM), as consistent with Order No. 2000.[10] The Commission's acceptance was subject to satisfactory compliance with certain conditions, one of which was that a solution addressing the through-and-out rates between Midwest ISO and PJM must be developed.

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[3] *Midwest Indep. Transmission Sys. Operator, Inc*., 106 FERC ¶ 61,262 (2004) (Going Forward Principles Order).

[4] *Midwest Indep. Transmission Sys. Operator, Inc*., 109 FERC ¶ 61,168 (2004) (November 2004 Order).

[5] *Midwest Indep. Transmission Sys. Operator, Inc*., 109 FERC ¶ 61,243 (2004) (November 2004 Clarification Order).

[6] *Midwest Indep. Transmission Sys. Operator, Inc*., 106 FERC ¶ 61,106 (2004) (February 2004 Order).

[7] *Midwest Indep. Transmission Sys. Operator, Inc*., 110 FERC ¶ 61,107 (2005) (February 2005 Order).

[8] *Midwest Indep Transmission Sys. Operator, Inc*., 111 FERC ¶ 61,409 (2005) (June 2005 Order).

[9] *Alliance Co*., 100 FERC ¶ 61,137 (2002), *order on reh'g*, 103 FERC ¶ 61,274 (2003) (Alliance 2002 Order).

[10] *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 Snohomish, County Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

3. The Commission explained that these former Alliance Companies' choices, standing alone, appeared to produce unjust and unreasonable rates, terms, and conditions for transmission services but that these conditions would ensure just and reasonable rates, terms, and conditions for transmission services. The Commission particularly found that one of the primary obstacles to the formation of Regional Transmission Organizations (RTOs) had been rate pancaking for transactions crossing RTO borders, and that both Midwest ISO and PJM agreed that this was an issue. The Commission stated that, in light of the former Alliance Companies' RTO choices and in view of the comments received in response to those choices, the resolution of the inter-RTO rates was fundamental to its decision to accept the choices of Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively, ComEd), and certain operating companies of American Electric Power Service Corporation (AEP) to join PJM. Further the Commission found that resolving the inter-RTO rates was fundamental to establishing a single common market between the two RTOs, another condition established in the Alliance 2002 Order. Therefore, the Alliance 2002 Order instituted an investigation and hearing under section 206 of the Federal Power Act (FPA)[11] before an administrative law judge in Docket No. EL02-111-000, with regard to the rates under the Midwest ISO and PJM open access transmission tariffs for through-and-out service between the RTOs, which result in rate pancaking, and with respect to the protocols relating to the distribution of revenues associated with such through-and-out service.[12]

4. In the 2003 Initial Decision in Docket No. EL02-111-000,[13] the Presiding Judge determined that there was a lack of precedential authority that would permit the elimination of the through-and-out rates for transactions between the expanded Midwest ISO and expanded PJM under the circumstances of that proceeding. The Presiding Judge recommended that, if in a change of policy, the Commission was to order it, the Commission should adopt, without requiring the filing of new rate cases, a transitional lost revenue recovery mechanism, such as one of the Seams Elimination Charge/Cost Adjustment/Assignment (SECA) proposals submitted by the parties, to prevent cost shifting.

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[11] 16 U.S.C. § 824e (2006).

[12] Alliance 2002 Order, 100 FERC ¶ 61,137 at P 49-50.

[13] *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 63,049 (2003) (2003 Initial Decision).

5. In an order on the 2003 Initial Decision issued July 23, 2003,[14] the Commission disagreed with the Presiding Judge's finding that there was a lack of precedential authority to eliminate the through-and-out rates between the expanded Midwest ISO and expanded PJM under the circumstances of the case and concluded that Midwest ISO and PJM regional through-and-out rates, when applied to transactions sinking within the proposed Midwest ISO-PJM footprint, are unjust and unreasonable. Two rate structures to replace inter-RTO rate pancaking were advocated in the hearing: (1) pure license plate rates[15] (advocated by the original or "classic" PJM transmission owners (TOs), a number of transmission dependent utilities in the region, and load serving entities in Wisconsin and Michigan); and (2) license plate rates with a two-year transitional lost-revenue recovery mechanism (SECA)[16] (advocated by Midwest ISO TOs and the former members of the proposed Alliance RTO).[17] The Commission found that mechanisms like

[14] *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (July 2003 Order).

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

[16] The SECA would be a non-bypassable surcharge to license plate zonal rates for delivery to load within the RTOs. The SECA would recover revenues that would be lost due to the elimination of rate pancaking from loads in each RTO based on the revenues received in a recent historical test period associated with transactions to serve that load. During the transition period, the load in each license plate pricing zone or subzone in the importing RTO would pay approximately the same amount in the aggregate through the SECA surcharge as had been previously paid through the regional through-and-out rates for service to such load. However, the surcharges would be designed as a uniform rate to be assessed on all deliveries to loads within the zone or subzone within the importing RTO, not just those deliveries associated with through-and-out transactions.

[17] The former Alliance RTO members include: AEP, Ameren Services Co. on behalf of Union Electric Co. and Central Illinois Public Service Co. (collectively, Ameren), ComEd, FirstEnergy Corp. on behalf of American Transmission Systems, Inc. (ATSI) (collectively, FirstEnergy), Illinois Power Co. (Illinois Power), Northern Indiana Public Service Co. (NIPSCO) and Dayton Power and Light Co. (Dayton).

the SECA, if properly structured, could serve as a reasonable transition mechanism to mitigate abrupt cost shifting that would otherwise occur with the replacement of rate pancaking with license plate rates. However, it found the record inadequate at that time to establish the SECA as a just and reasonable replacement rate. It, therefore, adopted a license plate rate design without the SECA, effective November 1, 2003, but stated that transmission owners may pursue the SECA through filings under section 205 of the FPA.[18]

6. The Commission also stated that, even with the elimination of Midwest ISO and PJM through-and-out rates, in the near term the region will still be riddled with seams, with the through-and-out rates under the individual tariffs of certain former Alliances Companies who had yet to integrate with their RTO[19] acting as toll gates that impeded the realization of more efficient and competitive electricity markets in the region and that preserved a competitive advantage for the non-RTO members' generation. Accordingly, the Commission established an investigation under section 206 of the FPA in Docket No. EL03-212-000 to determine whether the through-and-out rates under the companies' tariffs should be eliminated.

7. The Commission subsequently suspended the effective date for the elimination of rate pancaking, pending Commission action on requests for rehearing. In an order issued on November 17, 2003, the Commission granted in part, and denied in part, requests for rehearing of the July 2003 Order that addressed the 2003 Initial Decision in Docket No. EL02-111.[20] Specifically, it: (1) denied rehearing with respect to the finding in the July 2003 Order that Midwest ISO and PJM through-and-out rates, when applied to transactions sinking within the proposed Midwest ISO/PJM footprint, are unjust and unreasonable; (2) granted rehearing with respect to the rate design to replace the through-and-out rates, adopting the SECA transitional lost revenue recovery mechanism to take effect for a two year transition period; (3) postponed the date for the new rate design to take effect until April 1, 2004; and (4) directed compliance filings to implement that rate design effective April 1, 2004.

8. Specifically, the Commission directed compliance filings to: (1) eliminate the through-and-out rates for new transactions sinking in the combined region, effective Apri1 1, 2004, but retain the through-and-out rates for certain existing transactions during a two-year transition period, after which the through-and-out rates would be eliminated

[18] 16 U.S.C. § 824d (2000).

[19] AEP, Ameren, ComEd, FirstEnergy Corp., Illinois Power, NIPSCO, and Dayton.

[20] November 2003 Rehearing Order, 105 FERC ¶ 61,212.

for all transactions sinking in the combined region; and (2) implement the SECA transitional lost revenue recovery mechanism during the two-year transition period.[21] On December 17, 2003, the Commission clarified that the through-and-out rates were eliminated for reservation requests made on or after November 17, 2003, for service commencing on or after April 1, 2004.[22]

9. As noted above, the SECA would charge the load in the importing RTO for access to transmission facilities of the exporting RTO in proportion to the benefits that load within the importing RTO will realize when pancaked rates are no longer paid for transmission service over the transmission facilities in the exporting RTO to serve such load. The SECA revenues would be distributed to the transmission owners in the exporting RTO to offset their cost of service otherwise born by local load through license plate rates. The load in the importing RTO would pay approximately the same amount in the aggregate through the SECA surcharge as had previously been paid to serve such load through regional through-and-out rates. However, the surcharges would be non-bypassable, (i.e., they would be assessed on all deliveries by customers within the importing RTO, not only the deliveries associated with through-and-out transactions), thereby avoiding the harmful effects on economic choices caused by customers having to pay multiple charges when crossing the seam under the existing rate design. Transactions under grandfathered agreements and transactions that sink outside of the combined region would not be included in these calculations since rate pancaking was not eliminated for such transactions. North American Electric Reliability Corporation hourly scheduling tag data would be used to identify the loads benefiting from the use of particular through-and-out transactions, and lost through-and-out service revenues would be assigned to loads on the basis of such analysis.

10. As proposed by the sponsoring transmission owners, the SECA would be derived using historic test-period data and would assign lost revenue responsibility to the load in each license plate pricing zone. Specifically, the revenue responsibility for each zone would be based on the amount of energy in mega watt hours (MWh) that sank in the zone during the test period that crossed the Midwest ISO-PJM seam (determined using tag data

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[21] In a companion order in Docket No. EL03-212-000, issued concurrently with the November 2003 Rehearing Order, the Commission directed the elimination of the through-and-out rates under the individual-company tariffs for transactions sinking in the combined region and adopted the same replacement rate design adopted in the November 2003 Rehearing Order for inter-RTO service, effective April 1, 2004. *See Midwest Indep. Transmission Sys. Operator, Inc*., 105 FERC ¶ 61,216 (2003) (Ameren 2003 Order).

[22] December 2003 Clarification Order, 105 FERC ¶ 61,288.

and excluding transactions under grandfathered agreements) multiplied by the average regional through-and-out rate revenues per MWh of the transmission providers involved in the transaction across Midwest ISO-PJM seam. The zonal revenue responsibility would then be divided by the total load in the zone and firm point-to-point transactions sinking within the zone, excluding grandfathered transactions, resulting in the per-unit zonal SECA charges that would be assessed on the actual demand of each load-serving entity taking service into the zone for each month that the SECA is in effect.

11. The Commission also clarified the following specific attributes of the SECA:

Test Period: the Commission found that the SECA should be based on the most recent historical data available and required that the SECA be based on calendar-year 2002 data during the first year of the transition period and calendar-year 2003 data during the second year of the transition period, with adjustments for known and measurable differences to most closely reflect future trading patterns;[23]

Hubbing Adjustments: the Commission found that the SECA should be adjusted for so-called "hubbing" transactions where tag data shows that the transaction sank in a particular zone, but the underlying transaction actually served load in another zone, either in the same RTO or outside of the RTO; such adjustments should allocate transmission revenues associated with the transaction to the load actually served by the transaction, if the load is located within the combined region in which rate pancaking has been eliminated, or should exclude such revenues, if the load is located outside of the combined region where rate pancaking has not been eliminated;[24]

Subzones: the Commission found that the SECA obligations should be developed on a subzonal basis, reflecting the tagged schedules to each load-serving entity in a license plate pricing zone;[25]

Shift-to-Shipper Claims: the Commission provided that, as part of the compliance filing process, it will allow load-serving entities under existing fixed-price contracts for bundled power supply that continue into the transition period to demonstrate that the supplier is the shipper for such transactions and to propose that the supplier be required to pay the SECA

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[23] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 66.

[24] *Id.* P 80.

[25] *Id.* P 85.

charges for that portion of the load-serving entity's load served by the contract (so-called "shift-to-shipper" claims);[26] and

Existing Contract Credit: the Commission provided that load-serving entities with existing transmission arrangements that continue into the transition period, and continue to pay regional through-and-out rates, should receive adjustments to their SECA obligations necessary to prevent double recovery for such transmission.[27]

12. Subsequently, the Commission provided time for the parties to participate in a stakeholder process to develop the SECA compliance filings and established settlement judge procedures, facilitated by the Chief Administrative Law Judge (Chief Judge), to further aid the parties.[28]

13. On February 4, 2004, the Chief Judge filed a report with the Commission on the parties' progress in the ongoing discussions, along with their agreement that the date for the elimination of through-and-out rates should be extended from April 1, 2004, to May 1, 2004 but with the two-year transition period continuing to run from April 1, 2004 (i.e., effectively shortening the transition period).[29] On February 6, 2004, the Commission accepted this agreement to extend the date for the elimination of through-and-out rates to May 1, 2004, allowing the parties additional time to resolve matters consensually.[30]

14. On March 5, 2004, the Chief Judge filed a report and an agreement among the parties,[31] noting that the parties had participated in fourteen full days of formal settlement negotiations (often involving over 100 participants), and that there had been numerous meetings involving individual participants or groups of participants. This resulted in an agreement, the Going Forward Principles and Procedures (Going Forward Principles),

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[26] *Id*. P 45.

[27] *Id.*

[28] *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,105 (2004).

[29] *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 63,010 (2004).

[30] February 2004 Order, 106 FERC ¶ 61,106.

[31] *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 63,024 (2004) (Going Forward Principles).

that was supported or joined in by 84 parties (some representing more than one utility) that was accepted by the Commission by order dated March 19, 2004.[32]

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

16. On September 3, 2004, the Chief Judge issued a report indicating that, after further settlement and stakeholder conferences, two major groups of parties had reached an impasse. The Chief Judge stated that it appeared that there would be two competing proposals filed with the Commission on October 1, 2004. The Chief Judge added that additional meetings and conferences were planned in an attempt to come to further agreement.[33]

17. In light of the potential for two alternative proposals, and the need to adopt a single long-term transmission pricing structure, the Commission initiated an FPA section 206 proceeding in Docket No. EL04-135-000 and established a refund effective date of December 1, 2004. This proceeding was implemented to ensure that the Commission had adequate authority to implement a new long-term transmission pricing structure for all parties across the combined region.[34]

[32] Going Forward Principles Order, 106 FERC ¶ 61,262.

[33] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 63,034 (2004).

[34] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,313 (2004), *reh'g denied*, 111 FERC ¶ 61,057 (2005).

18. On October 1, 2004, two competing proposals were submitted. The Unified Plan Proponents[35] filed their proposed Unified Plan. Unified Plan Proponents included the majority of Midwest ISO and PJM TOs, including several independent transmission companies, and a cross section of other stakeholders, including several large transmission-dependent utilities, municipals and cooperatives, independent generators, power marketers, large retail customers, consumer advocates, and state commissions.

[35] The Unified Plan Proponents included: (1) certain Midwest ISO TOs: Alliant Energy Corporate Services, Inc., on behalf of its operating company affiliate Interstate Power and Light Co.; American Transmission Co., LLC; Cinergy Services, Inc., on behalf of Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co. (collectively, Cinergy); City of Columbia Water and Light Dept. (Columbia, MO); City Water, Light & Power (Springfield, IL); FirstEnergy; Hoosier Energy Rural Electric Coop., Inc.; Indianapolis Power & Light Co.; International Transmission Co.; Michigan Electric Transmission Co., L.L.C. (METC); Minnesota Power, and its subsidiary Superior Water, L&P; Michigan Public Power Agency; Montana-Dakota Utilities Co.; NIPSCO; Northern States Power Co. and Northern States Power Co. Wisconsin; Northwestern Wisconsin Electric Co.; Otter Tail Corp.; Southern Illinois Power Cooperative; and Southern Indiana Gas & Electric Co.: (2) certain PJM TOs; Allegheny Electric Coop., Inc. (Allegheny); Dayton; Jersey Central Power and Light Co.; Metropolitan Edison Co.; Pennsylvania Electric Co.; Old Dominion Electric Coop.; PPL Electric Utilities Coop.; PECO Holdings, Inc., on behalf of Potomac Electric Power Co., Delmarva Power & Light Co., and Atlantic City Electric Co.; Public Service Electric and Gas Co.; Rockland Electric Co.; and UGI Utilities, Inc.; and (3) additional stakeholders: Blue Ridge Power Agency; Borough of Chambersburg, Pennsylvania; Central Virginia Electric Coop.; the Michigan cities of Bay City, Croswell, Dowagiac, Eaton Rapids, Hart, Portland, Sebewaing, St. Louis, and Sturgis; Coalition of Midwest Transmission Customers; Consumers Energy Co. (Consumers Energy); Craig-Botetourt Electric Coop.; Detroit Edison Co. (Detroit Edison); Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation EME, LLC (collectively, Edison Mission); Electri-Cities of North Carolina, Eastern Agency; Great River Energy; Madison Gas and Electric Co.; Michigan Public Service Commission and Michigan South Central Power Agency (collectively, Michigan agencies); MidAmerican Energy Co.; Missouri Joint Municipal Electric Utility Commission; Nordic Marketing LLC.; Pennsylvania Office of Consumer Advocate; Pennsylvania Public Utility Commission; PJM Industrial Customer Coalition; PSEG Energy Resources & Trade, LLC; Southern Maryland Electric Cooperative Inc. (Southern Maryland); Soyland Power Coop., Inc. (Soyland); Thumb Electric Coop.; Village of Chelsea; Virginia Municipal Electric Association No. 1; Wisconsin Electric Power Co. (Wisconsin Electric) and Edison Sault Electric Co. (Edison Sault); Wisconsin Public Power, Inc.; Wisconsin Public Service Corp. and Upper Peninsula Power Co. (WPSC); and Wolverine Power Supply Coop., Inc. (Wolverine).

These entities represented 77 percent of the transmission owners, 59 percent of the net plant investment in transmission infrastructure, and 63 percent of the miles of transmission line in the combined region, and they received 33 percent of the revenues for through-and-out service in the region in 2002.

19. The Unified Plan was comprised of two parts: (1) the Regional Zonal Rate Design, which consisted of the license plate rate structure currently in place in PJM and Midwest ISO, and a section 205 filing consisting of proposed adjustments to the license plate zonal rates of certain Midwest ISO TOs to account for the reduction in revenues for through-and-out service reflected in those rates; and (2) an Offer of Settlement, on behalf of all of the Unified Plan Proponents, that included a moratorium on rate design changes through May 31, 2008, a requirement that protocols for allocating responsibility for certain new transmission facilities (i.e., those that benefit customers in both RTOs) be developed and filed by April 1, 2005, to take effect June 1, 2005, and an offer of transitional payments to certain entities.

20. Regional Pricing Plan Sponsors[36] filed a competing long-term regional transmission pricing proposal (Regional Pricing Plan) pursuant to section 206 of the FPA. Regional Pricing Plan Sponsors represented 23 percent of the transmission owners in the combined region. These entities represented 41 percent of the net plant investment in transmission infrastructure and 37 percent of the miles of transmission line in the combined region, and they received 67 percent of the revenues for through-and-out service in the regions in 2002.

21. The Regional Pricing Plan proposed to recover two-thirds of each transmission owner's revenue requirement through license plate rates but restructure inter-RTO and intra-RTO rates in the region so that the remaining third would be recovered through a regional pricing mechanism. This regional pricing mechanism reflected an allocation of a portion of the costs of certain high-voltage facilities through a regional average "postage stamp" rate (the voltage-based element),[37] and a portion of the costs of

[36] The Regional Pricing Plan Sponsors included: Allegheny Power, on behalf of Monongahela Power Co., Potomac Edison Co., and West Penn Power Co.; Ameren; American Electric Power Service Corp. on behalf of Appalachian Power Service Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co., and Wheeling Power Co. (collectively, AEP); Exelon Corp. on behalf of ComEd and PECO Energy Co. (PECO) (collectively, Exelon); Illinois Power; and LG&E Energy, LLC, on behalf of Louisville Gas & Electric Co. and Kentucky Utilities Co. (collectively, LG&E).

[37] In contrast to license plate rates, under which customers serving load within the RTO pay rates based on the embedded cost of the transmission facilities in the local transmission pricing zone where the load is located, under a postage stamp rate design all

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transmission facilities to net importing zones based on a system flow analysis (the usage-based element).

22. In the November 2004 Order, the Commission addressed these two competing proposals for a new transmission rate design to supersede through-and-out rates in the combined region.[38] The Commission found that neither of the two proposals had been shown to be just and reasonable, but rather, they might be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, the Commission: (1) conditionally accepted the license plate rate design embodied in one of the proposals, the Regional Zonal Rate Design, for filing and suspended it for a nominal period, to become effective on December 1, 2004, subject to refund; (2) rejected the Offer of Settlement contained in that proposal as unduly discriminatory; and (3) adopted the SECA transition methodology previously adopted in the November 2003 Rehearing Order, also to become effective on December 1, 2004, the date that regional through-and-out rates would be eliminated.[39] The Commission also required that the RTOs and their transmission owners develop and file, within 180 days of the date of that order, a proposal for allocating to customers in each RTO the cost of new transmission facilites that are built in one RTO but provide benefits in the other RTO.[40]

23. In addition, Midwest ISO, PJM, and their transmission owners were directed to make compliance filings implementing the SECA methodology adopted in the November 2004 Order on or before November 24, 2004, as the parties had previously agreed to in the Going Forward Principles. The order indicated that these filings should: (1) reflect December 1, 2004, as the effective date for the elimination of through-and-out rates for reservations pursuant to requests made on or after November 17, 2003, for service commencing on or after April 1, 2004, for transactions to serve load within the other RTO where transmission service was taken under the tariff of the other RTO; (2) reflect April 1, 2006, as the effective date for the elimination of through-and-out rates for all transactions to serve load within each RTO where transmission service was taken under the tariff of the other RTO; and (3) incorporate the SECA mechanism as a

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customers taking transmission service for delivery to load within the RTO (or, in the case of the Regional Pricing Plan, within the combined region) pay the same rate, reflecting the average embedded costs of the transmission facilities throughout the RTO.

[38] November 2004 Order, 109 FERC ¶ 61,168.

[39] *Id.* P 5.

[40] *Id.* P 60.

transitional rate mechanism effective December 1, 2004, through March 31, 2006.[41] Under the SECA methodology, the SECA rates for the period beginning December 1, 2004, through March 31, 2005, (Rate Period 1) were to be based on 2002 test-year data, and the SECA rates for the period beginning April 1, 2005, through March 31, 2006, (Rate Period 2) were to be based on 2003 test-year data.

24. On November 30, 2004, an order granting clarification of the November 2004 Order was issued in response to an emergency motion for clarification filed on November 23, 2004, by AEP.[42] The order clarified that AEP, ComEd, and Dayton (collectively, New PJM Companies) may recover lost revenues associated with the elimination of intra-RTO rate pancaking, through March 31, 2006, through the SECA transition methodology in Docket No. EL04-135-000.[43]

25. On November 24, 2004, PJM and PJM TOs (acting through the PJM and PJM West Transmission Owners Agreement Administrative Committees) and Midwest ISO and Midwest ISO TOs submitted for filing revisions to the PJM and Midwest ISO tariffs as directed in the November 2004 Order. Both PJM and the PJM TOs and Midwest ISO and Midwest ISO TOs filed revisions to their November 24 filings in December and January.

26. On December 13, 2004, AEP, ComEd, and Dayton submitted a compliance filing in accordance with the Commission's clarification granted in the November 2004 Clarification Order. Their compliance filing contained revised tariff sheets to the PJM tariff to collect, through the SECA, intra-RTO lost revenues and correct the subzone SECAs within the ComEd zone to collect Midwest ISO TOs' lost revenues.

27. On February 10, 2005, the Commission accepted the compliance filings submitted in November, December, and January and, consistent with the Going Forward Principles settlement and prior Commission orders, suspended them for a nominal period, to become effective December 1, 2004, subject to refund and surcharge, as appropriate, and established hearing procedures.[44]

28. Revised SECA compliance filings were submitted in February through May 2005, reflecting, among other things, the addition of new transmission-owning members to

[41] *Id.* P 61, 66.

[42] November 2004 Clarification Order, 109 FERC ¶ 61,243.

[43] *Id.* P 9.

[44] February 2005 Order, 110 FERC ¶ 61,107.

PJM[45] and to update the SECA rates effective April 1, 2004, to reflect the 2003 test year. On June 16, 2005, the Commission accepted these filings and suspended them for a nominal period, to become effective December 1, 2004, January 1, 2005, April 1, 2005, or May 1, 2005, as requested, subject to refund and surcharge as appropriate, established hearing procedures, and consolidated the hearing on these compliance filings with the ongoing hearing addressing the compliance filings accepted in the February 2005 Order.[46]

29. In June 2005, AEP, Dayton, and Exelon filed an errata to a previous SECA compliance filing submitted in April 2005 making minor SECA rate changes and correcting errors. In addition, Midwest ISO filed proposed tariff revisions to implement the SECA and rate relief granted to Nordic Marketing, LLC and Nordic Marketing of Michigan, LLC. In August 2005, Midwest ISO filed revisions to the sub-zonal SECA charges in Schedule 22 of Midwest ISO tariff. On September 12, 2005, and October 6, 2005, the Commission accepted these filings and suspended them for a nominal period, to become effective as requested, subject to refund and surcharge as appropriate, established hearing procedures, and consolidated the hearing on these compliance filings with the ongoing hearing addressing the compliance filing accepted in the February 2005 Order and the June 2005 Order.[47]

II. Requests for Rehearing

30. The parties listed in Appendix A filed requests for rehearing of the November 2003 Rehearing Order, December 2003 Clarification Order, November 2004 Order, November 2004 Clarification Order, February 2005 Order, and June 2005 Order. In addition, a number of parties filed requests for rehearing of the Ameren 2003 Order.[48]

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[45] Duquesne Light Company (Duquesne) joined PJM effective January 1, 2005, and Virginia Electric Power Company (Dominion) joined PJM effective May 1, 2005.

[46] June 2005 Order, 111 FERC ¶ 61,409.

[47] *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,267; *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,010 (2005).

[48] Edison Mission filed requests for rehearing of: (1) the February 2004 Order delaying the elimination of through–and-out rates from April 1, 2004, to May 1, 2004; and (2) the Going Forward Principles Order delaying the elimination of through-and-out rates from May 1, 2004, to December 1, 2004. We will deny rehearing. The delay in the elimination of through-and-out rates ultimately to December 1, 2004, was explained in both orders, and we are not persuaded that our decision in 2004 to delay the effective date and the explanation that we provided in 2004 in those orders for our delaying the

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31. Joint Consumer Advocates request that the Commission clarify, or in the alternative reconsider, that they timely intervened and were inadvertently omitted from the list of intervenors in the Appendix, and from the list of parties identified in footnote 20, of the November 2004 Order, as filing an intervention and comments in support of the Unified Plan and protests to the Regional Pricing Plan.[49]

III. Discussion

A. Procedural Issues

32. The companies that were subject to the investigation in Docket No. EL03-212-000 were integrated with an RTO before the Commission's action in the Ameren 2003 Order in Docket No. EL03-212-000 took effect. Thus, service under their individual company tariffs that was previously provided at pancaked rates was voluntarily replaced by service under the RTO tariff at non-pancaked rates before the elimination of rate pancaking directed in the Ameren 2003 Order took effect, and accordingly, their requests for rehearing of the Ameren 2003 Order in Docket No. EL03-212-000 are moot and are hereby dismissed.

33. We agree that Joint Consumer Advocates' intervention was inadvertently omitted from the November 2004 Order, and they are, in fact, parties.

34. Certain parties have settled their outstanding issues in this proceeding with some or all of the other parties affected by such issues. To the extent that the settlements provide that those parties' rehearing requests are deemed withdrawn with respect to their counterparties to the settlement agreements, we address their rehearing requests only to the extent that they have not been withdrawn with respect to other parties and/or to the extent that such rehearing requests have been incorporated by reference into the rehearing requests of other parties that are still pending before the Commission.

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effective date – largely due to the agreement of virtually all of the parties to the proceeding to delay the effective date – were defective. *See* Going Forward Principles Order, 106 FERC ¶ 61,162 at P 1, 4, 5-6, 18; February 2004 Order, 106 FERC ¶ 61,106 at P 1, 3.

[49] Joint Consumer Advocates Request for Rehearing of the November 2004 Order.

B. Substantive Issues

1. The November 2004 Order's Rejection of the Unified Plan's Offer of Settlement and the Regional Pricing Proposal

a. Requests for Rehearing

35. A number of parties seek rehearing of the Commission's adoption of license plate rates coupled with the SECA transition mechanism in the November 2004 Order. Some parties state that the Commission erred in implementing the SECA, in light of the Going Forward Principles settlement. Some parties state that the Commission erred in failing to accept, in full, the Unified Plan, including the offer of transitional settlement payments. Others request rehearing of the Commission's rejection of the Regional Pricing Proposal and the usage-based and voltage-based cost allocation mechanisms embodied in that proposal.

36. Many requests for rehearing of the November 2004 Order criticize the Commission for reintroducing the SECA. For example, NIPSCO argues that the Commission has failed to recognize that, due to the passage of time, serious questions regarding the SECA methodology and implementation, and the likelihood of continued litigation, have rendered the SECA an almost universally unattractive solution.[50] NIPSCO recognizes that the elimination of through-and-out rates without a transition mechanism could lead to cost shifting, but it asserts that the Offer of Settlement in the Unified Plan was the most appropriate and easily-implementable solution for handling the transition to license plate rates.[51]

37. The Unified Plan Proponents argue that the Commission erred in its failure to fully accept the Unified Plan and in its rejection of the Offer of Settlement. First, the Unified Plan Proponents assert that the November 2004 Order misunderstood the intent and purpose of the proposed transition payments. The Unified Plan Proponents state that because transition mechanisms are allowed but not mandated under Commission policy when eliminating rate pancaking, any offer of transition payments cannot legally be unduly discriminatory or unsupported under the FPA.[52] The Unified Plan Proponents state that the offer of transition payments was not intended to provide lost revenue recovery and was consistent with the Commission's acceptance of the Going Forward

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[50] NIPSCO Request for Rehearing of the November 2004 Order at 4.

[51] *Id*.

[52] Unified Plan Proponents Request for Rehearing of the November 2004 Order at n.31.

Principles settlement. They argue that the Going Forward Principles already provided for lost revenue recovery and no additional transition mechanism was required.[53] They argue that the Commission failed to address the arguments and evidence presented in the Unified Plan in support of its proposed transition payments, yet the Commission rejected them as unsupported. The Unified Plan Proponents assert that their filing presented detailed information on the revenues that companies were receiving under through-and-out rates, information on the impacts of through-and-out rate elimination, and explanations of why certain companies were not entitled to transition payments. The Unified Plan Proponents also argue that the November 2004 Order provides no basis for rejecting the rate design stability provision of the Offer of Settlement, under which the license plate rate structure would have been kept in place in Midwest ISO and PJM through May 31, 2008. In addition, the Unified Plan Proponents state that the Commission's statement in the November 2004 Order that "…the competing proposals in this proceeding would require that the Commission revisit and shorten these existing transition periods [for license plate rates], which we find unnecessary to address the issue present under the current circumstances, i.e., inter-RTO transmission service," mischaracterized their proposal. The Unified Plan Proponents argue that their plan did not revisit and shorten the initial term for license plate rates. In fact, they argue that the Offer of Settlement specifically provided for rate design stability by requiring license plate rates through May 31, 2008.

38. AEP, Exelon, and Ameren, joint sponsors of the Regional Pricing Plan, argue that the Commission erred in rejecting their proposal. They state that the Regional Pricing Plan was not materially deficient and could have been implemented on December 1, 2004, subject to refund and further investigation, contrary to the Commission's findings in the November 2004 Order. AEP, Exelon, and Ameren state that, given the Commission's decision to implement the SECA to address cost shifts, they are not challenging the November 2004 Order 's directive to maintain license plate rates within Midwest ISO and PJM through the RTOs' respective initial fixed periods. However, AEP, Exelon, and Ameren request that the Commission clarify that it did not intend to preclude the evaluation of rate mechanisms that would allocate costs of existing

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[53] Unified Plan Proponents Request for Rehearing of the November 2004 Order at 12 (*citing* Going Forward Principles Order, 106 FERC ¶ 61,262 at P 19):

> …we find that continuation of through and out rates to December 1, 2004, with a replacement effective December 1, 2004 is an agreed-upon transition mechanism favored by the parties and satisfies any obligation imposed on the Commission to fashion an appropriate remedy for rates, terms and conditions found to be unjust and unreasonable.

transmission facilities between Midwest ISO and PJM prior to February 1, 2008. AEP, Exelon, and Ameren state that it is not necessary to preclude such inter-RTO cost allocation in order to respect the initial fixed term for license plate rate structure within Midwest ISO.

39. AEP, Exelon, and Ameren also argue that the Commission inappropriately treated the Regional Zonal Rate Design in the Unified Plan as a section 205 filing. They assert that both the Regional Pricing Proposal and the Unified Plan were made in the ongoing section 206 proceeding and that both should have been considered under the same standard of review. They assert that neither pricing plan was, nor could have been, filed under section 205 because the exclusive and unilateral rights to file any changes in, or relating to, transmission rate design under the PJM tariff under section 205 requires approval under section 6.5.1 of both the PJM East Transmission Owners Agreement and the PJM West Transmission Owners Agreement, and such approval was never obtained. They state that, thus, the Commission erred in characterizing the Regional Zonal Rate Design as a section 205 filing and by applying different standards of review to the two competing, long-term transmission pricing proposals.[54]

40. BG&E states that a regional postage stamp rate for high-voltage facilities is needed now, not the SECA. It states that the transitional SECA need not be placed into, and remain in, effect until April 1, 2006. Rather, it states, the Commission has a full record before it to approve a voltage-differentiated postage stamp/license plate rate design. It states that, if the Commission takes such action today as a means of avoiding the SECA, opposition will be less because avoidance of the SECA will be a significant impetus for parties to acquiesce to the postage stamp rate design for high-voltage facilities. It states that, if the Commission takes such action, the parties should see clearly that it is in their best interest to come together over the only remaining viable option for pricing transmission service in the combined region. Accordingly, it requests that the Commission on rehearing approve rate design principles based on a voltage-differentiated postage stamp/license plate rate design and convene settlement judge procedures on an expedited basis to work toward a filing to implement a new rate design so as to terminate the SECA transition period.

41. On rehearing of the November 2004 Order, PJM/MISO Regional Group, WPSC, Wisconsin Electric, and Detroit Edison[55] argue that the SECA is inconsistent with the

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[54] AEP, Exelon, and Ameren Joint Request for Rehearing of the November 2004 Order at 11-13.

[55] PJM/MISO Regional Group Request for Rehearing of the November 2004 Order at 35-41; WPSC Request for Rehearing of the November 2004 Order at 12-17; Wisconsin Electric Request for Rehearing of the November 2004 Order at 8-10; and Detroit Edison Request for Rehearing of the November 2004 Order at 15-16.

Going-Forward Principles settlement and that the Going Forward Principles made clear that a SECA mechanism would become effective, subject to refund, if and only if the Commission had not made effective a replacement pricing structure as of December 1, 2004, subject to nominal suspension and refund. They claim that the Commission affirmatively accepted this commitment in its order approving the Going Forward Principles and that that order could only be read as concluding that a long-term pricing structure definitely would be implemented on December 1, 2004 (subject to refund and further proceedings if appropriate), that no further transition mechanism would be necessary or appropriate, and that the SECA would be abandoned. They contend that the Commission failed to justify the November 2004 Order's reversal of the Going Forward Principles Order. They also claim that many agreed, in the Going Forward Principles settlement, to extend the elimination of the regional through-and-out rates through November 2004 only because they expected to avoid the SECA, and many put their procedural due process rights on hold pending the development of a long-term solution that would obviate the need for the SECA methodology. In addition, the PJM/MISO Regional Group claim that, even if the Commission had appropriately adopted the SECA pursuant to the Going Forward Principles, the SECA compliance filings are inconsistent with the procedural requirements of the Going Forward Principles. It states that the Going Forward Principals provided that any party wishing to pursue the SECA after the October 1 filings were completed was required to follow a timeline and procedural process set forth in the Going Forward Principles so that all other interested parties could participate meaningfully in the development of SECA rates before they were filed on November 24, 2004, but no party followed these procedures.[56]

b. <u>Commission Determination</u>

42. We are not persuaded to grant rehearing of the Commission's decisions in the November 2004 Order to reject the Unified Plan's Offer of Settlement and the Regional Pricing Plan. We continue to find that, on balance, license plate rates for the cost of existing facilities coupled with inter-RTO allocation of the cost of new cross-border facilities and the SECA transition methodology is a just and reasonable rate design to replace the unjust and unreasonable transactional through-and-out rates and is entirely consistent with the Going Forward Principles.

43. The Commission previously found rate pancaking resulting from through-and-out rates for transactions sinking in the combined region to be unjust and unreasonable and adopted a replacement rate design consisting of license plate rates and the SECA lost revenue recovery mechanism for a two-year transition period. The Commission found

[56] PJM-MISO Regional Group Request for Rehearing of the November 2004 Order at 41-42.

that, without the SECA mechanism, there would be significant cost shifts between the local loads of the two RTOs. It further found that the SECA represented a reasonable transition mechanism to address revenue losses and potential cost shifts arising from the elimination of rate pancaking.[57]

44. In the Going Forward Principles, which was supported by a vast majority of stakeholders in this proceeding,[58] it was subsequently agreed that the elimination of through-and-out rates would be deferred by 8 months, from April 1, 2004, until December 1, 2004, in the hopes that, at that time, a long-term replacement rate design could be adopted that would obviate the need for the SECA transition mechanism over which the parties were deeply divided. The Commission accepted that agreement in the hopes that, in accordance with the principles and procedures provided by the agreement, the Commission would be able to adopt a long-term replacement rate design to take effect on December 1, 2004, 16 months sooner than provided in the November 2003 Rehearing Order, and that such a long-term replacement rate design would render the SECA transition mechanism unnecessary.

45. The Going Forward Principles specifically called for the elimination of through-and-out rates effective December 1, 2004, regardless of whether the Commission was able to implement on that date one of the long-term pricing proposals filed on October 1, 2004.[59] The Going Forward Principles committed the transmission owners in

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[57] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 44.

[58] Attachment A lists the 84 parties that supported the Going Forward Principles agreement. Only three parties, Edison Mission Energy, Wisconsin Electric Power and Ameren, opposed the agreement. Going Forward Principles, 106 FERC ¶ 63,024, at Attachment A.

[59] The Going Forward Principles Order, 106 FERC ¶ 61,262, Attachment, provide that:

> Through and out rates at issue in this proceeding will remain in effect until December 1, 2004, at which time a transmission pricing structure that eliminates seams throughout the "[c]ombined [r]egion" …must take effect subject to nominal suspension and refund as described below and subject to the principles and procedures set forth herein … the simultaneous elimination on December 1, 2004 of the through and out rates at issue in this proceeding and the effectiveness of a replacement pricing structure are non-severable events.

(continued)

the combined region to file, on or before October 1, 2004, long-term pricing proposals under section 205 of the FPA, with a proposed effective date of December 1, 2004, to replace the through-and-out rates. However, contrary to the commitments in the Going Forward Principles, no long-term pricing proposals were filed under section 205 on October 1, 2004. Instead, two new proposals were introduced in the ongoing section 206 proceedings.

46. As the Commission explained in the November 2004 Order, neither the Unified Plan nor the Regional Pricing Proposal fully met the requirements of the Going Forward Principles, neither had been shown to be just and reasonable, and neither could be implemented on December 1, 2004.[60] Based on the record in these proceedings, the Commission found that license plate rates for recovery of the cost of existing facilities, coupled with an inter-RTO allocation mechanism for the cost of new facilities that are built in one RTO but provide benefits to customers in the other RTO, represent an appropriate long-term rate design to replace through-and-out rates. However, as the Commission previously found in these proceedings, the adoption of license plate rates to replace the through-and-out rates would result in significant cost shifts between the native loads of the two RTOs and a transition mechanism to phase-in such cost shifts was, therefore, appropriate. Thus, the Commission could not adopt this new rate design to

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Id. P 1.

> …these Going-Forward Principles and Procedures commits the Commission to implement a pricing structure in the [c]ombined [r]egion as of December 1, 2004 that eliminates seams throughout the [c]ombined [r]egion and that implements a replacement transmission pricing structure as of that date…

Id. P 2.

> …in no event will through and out rates remain in place beyond December 1, 2004 irrespecive of whether there is an agreed-upon long-term transmission pricing structure, and the Commission likewise obligates itself to choose a replacement and to put that replacement in place on December 1, 2004 (subject to refund, if appropriate).

Id. P 19 (footnote omitted).

[60] November 2004 Order, 109 FERC ¶ 61,168 at P 55.

take effect December 1, 2004, without a reasonable transition mechanism to control cost-shifts. Moreover, the Going Forward Principles also provided that "a replacement rate structure that would result in material reductions in transmission revenue or cost shifts could allow for the possibility of a reasonable phase-in of such a pricing structure."[61]

47. While the Unified Plan contained an offer of transitional settlement payments, those payments were found to be unduly discriminatory and, therefore, could not be adopted. However, the Going Forward Principles recognized the possibility that the Commission might be unable to fully implement a long-term replacement pricing structure on December 1, 2004, and provided for contingencies. The Going Forward Principles provided that backstop SECA compliance filings would be made by November 24, 2004, and would take effect, subject to nominal suspension and refund, on December 1, 2004, if the Commission were unable to fully implement one of the long-term pricing proposals on that date.[62]

48. Thus, adoption of the SECA mechanism in the November 2004 Order is entirely consistent with the Going Forward Principles settlement. In keeping with the scope and intent of the Going Forward Principles to implement a long-term pricing solution for inter-RTO transmission service, the Commission adopted license plate rates for the recovery of the costs of existing facilities and inter-RTO allocation of the cost of new facilities built to benefit loads in both RTOs. However, as the Commission has previously recognized in these proceedings, replacement of rate pancaking with license plate rates can result in abrupt cost shifts between the loads of the two RTOs, but a transitional lost revenue recovery mechanism such as the SECA provides a reasonable transition mechanism to address costs shifts that result from the replacement of rate pancaking with license plate rates. Accordingly, recognizing the potential for material cost shifts, the Commission, in the November 2004 Order, in accordance with the Going Forward Principles, implemented a reasonable phase-in of the license plate rate proposal,[63] with the SECA serving as the interim pricing mechanism during the transition to license plate rates, from December 1, 2004, through March 31, 2006.

49. In response to Unified Plan Proponents' arguments protesting the Commission's rejection of the Offer of Settlement, we disagree. In justifying the proposed transition

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[61] Going Forward Principles Order, 106 FERC ¶ 61,262, Attachment at P 11 (2004).

[62] *Id*. P 2.

[63] The Unified Plan Proponents, many of which ardently oppose the SECA transition mechanism, recognized themselves that the Going Forward Principles contemplated a phase-in of the replacement rate structure. Unified Plan, Tr. Letter at 95.

payments, Unified Plan Proponents rely heavily on "revenue neutrality amounts" that New PJM Companies agreed on in a settlement with the PJM transmission owners in the PJM expansion proceeding.[64] Unified Plan Proponents take the amounts contemplated in that settlement, which reflected that AEP would be integrated into PJM in early 2003, and subtract from those amounts the revenues that the New PJM Companies received from the continuation of through-and-out rates under their individual-company tariffs while their integration into PJM was delayed in 2003 and 2004. As a point of comparison, Unified Plan Proponents show that the transition payments in the Offer of Settlement are greater than the amounts agreed upon in the PJM expansion proceeding, after adjusting for the revenues recovered due to the continuation of through-and-out service under their individual-company tariffs and suggest that, on this basis, the proposed payments in the Offer of Settlement are just and fair. This assumption is unfounded. The settlement's "revenue neutrality amounts" were meant to address a two-year transition period only for the elimination of rate pancaking within PJM, assuming that AEP would be integrated into PJM on February 1, 2003. The settlement in Docket No. ER03-262 did not address transitional issues associated with the elimination of inter-RTO rate pancaking, nor did it address transmission rates for service within PJM after January 1, 2005. Moreover, the proposed effective date for the rate proposal in the PJM expansion proceeding was suspended, and the proposal was never implemented. Accordingly, the amounts for compensation agreed upon there cannot be used as a reasonable basis for rates for inter-RTO service or for service within PJM during the transition period.

50. Moreover, Unified Plan Proponents' Offer of Settlement would have assigned cost responsibility for funding the proposed transition payments based on proximity to AEP, ComEd, and Dayton's transmission systems, with no support that the proposed allocation reflected the benefits from the elimination of rate pancaking. In contrast, the SECA methodology identifies beneficiaries of the elimination of rate pancaking based on actual usage of through-and-out transmission service during a representative test period and allocates responsibility for the cost of through-and-out service in proportion to those benefits.

51. Unified Plan Proponents also claim that their proposal explained why their proposed transition payments were not discriminatory. In their proposal, Unified Plan Proponents merely stated that Ameren and Illinois Power, who were not offered transition payments, had already been compensated for joining Midwest ISO.[65] This is

[64] Unified Plan, Tr. Letter at 96 (referring to an agreement among the New PJM Companies and the pre-expansion PJM TOs to sponsor a section 205 filing of proposed revisions the PJM tariff to integrate the New PJM Companies into PJM).

[65] *See* Unified Plan, Tr. Letter at 99 (*citing* 106 FERC ¶ 61,200 (2004), 106 FERC ¶ 61,260 (2004), and 104 FERC ¶ 61,178 (2003)).

not a sufficient reason to deny payments to these transmission owners because the proceedings addressing the integration of the transmission owners into Midwest ISO dealt only with intra-RTO lost revenue compensation and not with transition issues associated with the elimination of regional through-and-out rates, which is the subject of the instant proceeding. With respect to the Unified Plan Proponents' statement that, because transition mechanisms are allowed but not mandated under Commission policy when eliminating rate pancaking, any offer of transition payments cannot legally be unduly discriminatory or unsupported under the FPA, we disagree. The Offer of Settlement's transition payments were opposed as unduly discriminatory by parties that would have been responsible for the transition payments but received none of the transition revenues, and thus, the Commission was obligated to consider the proposal on its merits to determine whether it was just and reasonable and not unduly discriminatory. In evaluating the Offer of Settlement, the Commission agreed with those parties in finding the settlement payments to be unduly discriminatory.

52. In response to Unified Plan Proponents' arguments that the Unified Plan did not attempt to revisit and shorten the initial fixed terms for license plate rates, we clarify that we did not intend to imply that the Unified Plan sought to shorten the period during which license plate rates would be in place. Both proposals required that the initial fixed terms for license plate rates be revisited. The Regional Pricing Proposal would have shortened the period in which license plate rates would be in place in each RTO, while the Unified Plan's Offer of Settlement contained provisions that would have lengthened the period in which license plate rates must remain in place in each RTO (by six months for Midwest ISO and three years for PJM). However, the November 2004 Order rejected the Offer of Settlement, including the rate design moratorium as unnecessary and inappropriate. As stated in the November 2004 Order, in accepting the use of license plate rates coupled with the transitional SECA, the Commission was not altering the initial fixed term in place for the use of license plate rates in PJM or Midwest ISO.

53. We disagree with AEP, Exelon, and Ameren that the Regional Pricing Proposal could have been implemented on December 1, 2004. The Regional Pricing Proposal was burdened with numerous factual deficiencies. As explained in the November 2004 Order, the Regional Pricing Proposal lacked sufficient support for both the voltage-based and usage-based methods of transmission cost recovery. Other than general statements in an eleven-page affidavit of an engineer regarding the function of high-voltage facilities versus low-voltage transmission facilities, no analysis of the transmission facilities in the combined region was presented with the Regional Pricing Proposal to support its proposed cut-off for determining which higher-voltage facilities perform a regional function as opposed to a local function. Similarly, the usage-based element of the Regional Pricing Proposal relied on an unproven and highly contested market flow model that has never been used to determine regional cost allocation for ratemaking purposes. These deficiencies, among numerous other factual and design concerns raised in protests to the Regional Pricing Proposal, made it impossible to implement the Regional Pricing

Proposal on December 1, 2004. While the Going Forward Principles provided for December 1, 2004, implementation of the SECA with nominal suspension and subject to refund, that settlement contained no such procedure for the immediate implementation of a wholly new cost recovery mechanism being proposed for the first time in these on-going section 206 proceedings, such as the Regional Pricing Proposal, that would require further investigation through additional proceedings.

54. In response to AEP, Exelon, and Ameren's concern that the Commission failed to address cost shifting after the end of the SECA transition period, we disagree. In fact, we thoroughly addressed cost shifting by adopting the SECA to provide a period of lost revenue recovery in order to ease the transition to license plate rates and allow transmission owners a chance to adjust their downstream rates accordingly. As stated in the November 2004 Order, the Commission's adoption of license plate rates for the recovery of the cost of existing facilities, coupled with inter-RTO allocation of the cost of new facilities and the transitional SECA, is an appropriate replacement for the eliminated through-and-out rates, consistent with our precedent and policies for regional transmission pricing. We disagree with BG&E that the Commission had an adequate record upon which to adopt a postage stamp rate design for recovery of the cost of high-voltage facilities in the combined region. As discussed above and in the November 2004 Order, the proposed voltage-differentiated methodology in the Regional Pricing Plan was not adequately supported and raised numerous issues of material fact.

55. Moreover, the proposal would have required that the Commission revisit and reverse its earlier approval, in its initial order approving the formation of Midwest ISO, of the initial fixed period for the use of license plate rates for intra-RTO service in Midwest ISO, which transmission owners relied upon in their decision to proceed with the formation of Midwest ISO.[66] As the Commission explained, it does not take lightly modification of the bargains that transmission owners relied upon in forming RTOs.[67] With respect to other inter-RTO cost allocation methods for existing facilities that respect the initial fixed term for license plate rates for intra-RTO service, as AEP, Exelon and Ameren discuss, we note that none was filed prior to the end of the initial fixed term, which ended February 1, 2008. With respect to the period following the end of the initial fixed term for license plate rates for inter-RTO service, the Commission did entertain a

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[66] *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231 at 62,167-68, *order on reconsideration*, 85 FERC ¶ 61,250, *order on reh'g*, 85 FERC ¶ 61,372 (1998).

[67] *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,042, at P 81, 82, 94 (2005), *order on reh'g*, 112 FERC ¶ 61,311 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007).

proposal filed by AEP pursuant to section 206 seeking adoption of a postage stamp rate design for all new and existing high-voltage facilities across the combined Midwest ISO/PJM region when the Commission re-evaluated the continuation of license plate rates beyond the initial fixed term. However, the Commission found that AEP had failed to meet its burden to show that the continuation of the license plate rate design for existing facilities in Midwest ISO and PJM was unjust and unreasonable.[68]

56. The fact that a stakeholder process, provided in the Going Forward Principles settlement, to develop the November 24, 2004, SECA compliance filings was not initiated does not invalidate those filings. While the Going Forward Principles did call for a stakeholder process before the submittal of the SECA compliance filings, there were no penalties or consequences established in the Going Forward Principles for failure to conduct that stakeholder process. The Commission will not reject the SECA filings because a stakeholder process was not initiated. Parties desiring a stakeholder process had ample opportunity to voice concerns at the hearing held on the compliance filings and before the Commission.

57. Finally, we disagree with AEP, Exelon, and Ameren's argument that the Commission reviewed the two proposals under different standards.[69] The moving party has the burden to demonstrate that its proposal is just and reasonable; whether filed under section 205 or section 206, a moving party's filing would be equally subject to a requirement that its filing meets a just and reasonable standard because both statutory provisions ultimately rely on that same standard.[70] The just and reasonable standard is,

[68] *American Electric Power Service Corp*, 122 FERC ¶ 61,083, *reh'g denied*, 125 FERC ¶ 61,341. In compliance with the November 2004 Order, the RTOs submitted the required proposals for allocating the cost of new cross-border facilities built for reliability or economic purposes, and by orders dated November 21, 2005, January 31, 2008, and November 3, 2009, the Commission conditionally accepted the proposals. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

[69] The Unified Plan was filed under Docket Nos. EL02-111, EL03-212, and EL04-135, as part of the ongoing compliance filings in this section 206 proceeding. Unified Plan Filing at n.4. The Unified Plan Proponents also included in their filing a proposal, under section 205, to adjust Midwest ISO TOs' zonal license plate rates under the Midwest ISO tariff to exclude credits for revenues that would be lost due to the elimination of rate pancaking between the RTOs (this proposal initiated Docket No. ER05-6-000). The Regional Pricing Proposal was filed under section 206.

[70] *See* 16 U.S.C. §§ 824d(e), 824e(b) (2006).

thus, the only standard under which the Commission can review both proposals. Regardless of whether filed under section 205 or section 206, having found that the existing rate design that resulted in rate pancaking was unjust and unreasonable,[71] the Commission appropriately reviewed both proposals under the just and reasonable standard and found that, in their originally-proposed form, neither was shown to be just and reasonable.[72] After its review, the Commission conditionally accepted a license plate rate design embodied in the Unified Plan and added a transition mechanism and reevaluation as a reasonable approach, consistent with the Commission's transmission pricing policies and precedent.[73]

2. SECA Methodology

a. Requests for Rehearing

58. Multiple parties raise arguments in their requests for rehearing contesting the justness and reasonableness of the SECA transitional lost revenue recovery mechanism, arguing that it is based on inappropriate motives of providing lost revenue recovery and maintaining revenue neutrality, is an unjustified departure from basic ratemaking principles, and is fundamentally unworkable. For example, Wisconsin Electric argues in its request for rehearing of the November 2003 Rehearing Order that the SECA transition mechanism is excessively complicated, potentially discriminatory, problematic to implement, and poses the risk to parties of paying more by way of the SECA than they would have paid in pancaked transmission charges.

59. Several parties argue that the Commission erred by failing to explain how the record, which did not support a finding to adopt a transitional lost revenue recovery mechanism in the July 2003 Order, now supports such a finding.[74] They claim that no

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[71] Unlike section 205, section 206 requires a showing that the pre-existing rate is unjust and unreasonable. *Compare* 16 U.S.C. § 824d (2006) *with* 16 U.S.C. § 824e (2006). In this proceeding, though, the Commission has already found the pre-existing rate design unjust and unreasonable as explained earlier in the order.

[72] November 2004 Order, 109 FERC ¶ 61,168 at P 55.

[73] *Id.* P 59.

[74] The July 2003 Order stated that:

> no party to this proceeding has developed a record sufficient for us to order increased rates or to adopt a particular transitional rate mechanism for any party in this proceeding. July 2003 Order, 104 FERC ¶ 61,105 at n.80.

(continued)

new facts have been added to the record that would justify departure from the Commission's prior conclusion that the record is insufficient to adopt any transitional lost revenue recovery mechanism. On rehearing of the November 2003 Rehearing Order, Classic PJM, Detroit Edison and Michigan Agencies[75] argue that the SECA transitional mechanism is not just and reasonable, and the Commission did not have a full record to justify its adoption. Classic PJM asserts that the evidence did not show that the SECA produced a just and reasonable rate since no final SECA rate has ever been calculated, and thus, the Commission could not determine whether the SECA rate would be unduly discriminatory.[76] Joint Consumer Advocates note that parties proposing the SECA have not stated for the record what the level of the charge would be in total or for any particular group of customers and that there has been no proposal for how to allocate the charge among the Classic PJM zones. They also state that there is simply no evidence in the record on the effect of the measures adopted by the Commission in the November 2003 Rehearing Order to mitigate the impact of the SECA. At the very least, Joint Consumer Advocates state, a party seeking to institute a rate must present evidence on what the charge would be in order for the Commission to find that the rate is just and reasonable. Joint Consumer Advocates argue that the Commission erred by adopting the SECA without sufficient record evidence to determine whether the transmission owners' proposals for SECA charges are just and reasonable.[77]

60. WPSC argue in their request for rehearing of the November 2003 Rehearing Order that the Commission's commitment to providing lost revenue recovery ignores the fact that the former Alliance Companies have already received transitional rate relief through the continued collection of through-and-out rate revenue under their individual-company

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The November 2003 Rehearing Order, in turn, stated:

> As we stated in the July 23 Order, the record does not give the Commission a sufficient basis to establish the proposed SECA as a superseding rate. November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 43.

[75] Classic PJM Request for Rehearing of November 2003 Rehearing Order at 11-13; 23, 48; Detroit Edison Request for Rehearing of November 2003 Rehearing Order at 4-5, 13-16; Michigan Agencies Request for Rehearing of November 2003 Rehearing Order at 7-9.

[76] Classic PJM Request for Rehearing of the November 2003 Rehearing Order at 23, 48.

[77] Joint Consumer Advocates Request for Rehearing of November 2003 Rehearing Order at 4-6.

tariffs after most transmission owners in the combined region had already eliminated rate seams. WPSC argue that the Commission should not allow the imposition of lost revenue recovery mechanisms on customers as a result of the illogical RTO choices of certain former Alliance Companies. They state that the status quo for addressing lost revenue responsibility should be based on a rationally configured RTO, (i.e., as if ComEd and AEP joined Midwest ISO instead of PJM) consistent with the base line adopted for the "hold harmless" protection adopted for Wisconsin and Michigan entities with respect to congestion and loop flow caused by ComEd and AEP's choices to join PJM rather than Midwest ISO.[78] Wisconsin Electric similarly argues in its request for rehearing of the November 2003 Rehearing Order that the SECA is a misguided effort to provide a transition mechanism to transmission owners that had delayed RTO membership. Southwestern argues in its request for rehearing of the November 2004 Order that the level of SECA charges should be mitigated by offsetting the amount of lost revenues to be collected against the benefit that transmission owners receive from joining an RTO.

61. On rehearing of the November 2003 Rehearing Order, Detroit Edison also argues that the Commission's adoption of the SECA is inconsistent with Commission precedent concerning rate pancake elimination and transitional lost revenue recovery mechanisms. Detroit Edison asserts that in *New England Power Pool*,[79] the Commission rejected a proposal that was similar to the SECA.[80]

62. On rehearing of the November 2003 Rehearing Order, Detroit Edison disagrees with the underlying assumption of the SECA methodology that, by placing all SECA cost responsibility on sink-zone customers, the SECA assigns the costs of rate pancake elimination in proportion to the benefits received by customers as a result of no longer having to pay through-and-out rates. Detroit Edison contends that evidence presented at hearing by multiple parties, and statements made by the Commission, indicate that the elimination of rate pancaking will not benefit only sink-zone customers. Detroit Edison contends that transmission owners, generators, and all customers in the combined region will benefit from the elimination of rate pancaking, yet the SECA inappropriately assigns all lost revenue responsibility to sink-zone customers alone.[81] Detroit Edison argues that

[78] WPSC Request for Rehearing of November 2003 Rehearing Order at 13-14.

[79] 83 FERC ¶ 61,045 at 61,239 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001) (*NEPOOL*).

[80] Detroit Edison Request for Rehearing of November 2003 Rehearing Order at 39-42.

[81] *Id.* at 16-18.

the non-bypassable nature of the SECA violates the basic principle of cost causation because Detroit Edison could be forced to pay SECA charges to ComEd even if it never uses ComEd's transmission system during the transition period.[82] Wisconsin Electric mirrors these concerns, stating that the Commission has not made any showing that the lost revenues to be recovered from customers will actually correspond to the benefits that those customers will realize and that the SECA effectively delays any customer benefit from the elimination of rate pancaking and is unduly discriminatory. Strategic also claims that the SECA is discriminatory and anticompetitive to the extent that it relieves from the funding obligation marketers and other power suppliers that do not have historical load against which the SECA is assessed.[83]

63. Detroit Edison asserts that, in addressing the SECA's shortcomings, it has proposed two alternative methodologies to recover lost revenues. Under the first proposal, lost revenues would be recovered from entities based on their actual invoices for service taken during the test period. It states that the Commission rejected this proposal, finding that it could lead to under recovery of lost revenues and produce unfair results because many customers are marketers that can change their level of trading activity from year to year. Detroit Edison asserts that the Commission apparently misunderstood the proposal, since marketers cannot go back in time to the historical test period and change their trading activity, and thus, could not avoid paying for lost revenues based on actual invoices.[84]

64. Under Detroit Edison's second alternative, the lost revenues would be spread among all load in the combined region, which was a concept supported by other parties, including trial staff. However, Detroit Edison contends that the Commission ignored these proposals in the November 2003 Rehearing Order. It states that such proposals are not ground breaking, and when addressing responsibility for take-or-pay liabilities in the gas industry (when the Commission was similarly limited in its ability to assign costs on cost-causation principles by the filed rate doctrine), the Commission resorted to an approach that spread costs widely across customers and industry segments based on the benefits that would accrue to such entities in the future as a result of industry restructuring; the courts later affirmed this approach.[85]

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[82] *Id.* at 25-27.

[83] Strategic Request for Rehearing of November 2003 Rehearing Order at 10-12.

[84] Detroit Edison Request for Rehearing of November 2003 Rehearing Order at 19-20.

[85] *Id.* at 21-24 (*citing United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996)).

65. In their requests for rehearing of the February 2005 Order,[86] Detroit Edison and Quest argue that the February 2005 Order is inconsistent with an order issued on the same day regarding ISO New England, Inc. (ISO-New England)[87] Specifically, they point to the February 2005 Order, which states, "[t]he SECA would recover lost revenues from transmission customers in each license plate pricing zone in proportion to the benefits those customers will realize as a result of the elimination of rate pancaking . . ."[88] They say that this finding is contradicted by the following statement in the ISO New England Order:

> While certain costs may be borne by some market participants over the short term, in connection with the [New York Independent System Operator, Inc.'s (NYISO's)] elimination of this inefficient inter-regional seam, on balance, it is the Commission's judgment that the overall short-term and long-term benefits for all market participants and the market as a whole significantly outweigh any such costs. For example, while New York Municipal may incur the loss of revenue credits associated with the elimination of [t]hrough-and-[o]ut Service charges under the transactions to which these charges have applied in the past, the elimination of this seam will also permit New York Municipal to participate in new transactions that might not have been feasible before. This is so because, as we have found before, the elimination of rate pancaking promotes efficiency and competition.[89]

66. Detroit Edison and Quest argue that the Commission should, therefore, grant rehearing and find that the elimination of rate pancaking benefits not only customers in sink zones, but also generators, marketers, and all loads in the combined region. Detroit Edison also claims that the Commission acted arbitrarily and capriciously by taking a narrow view of the benefits associated with the elimination of rate pancaking in the combined region in the February 2005 Order, but then finding in another order that the

[86] Detroit Edison Request for Rehearing of February 2005 Order at 10; Quest Request for Rehearing of February 2005 Order at 11.

[87] *ISO New England, Inc.* 110 FERC ¶ 61,111 (2005) (ISO New England Order).

[88] February 2005 Order, 110 FERC ¶ 61,107 at n.3.

[89] ISO New England Order, 110 FERC ¶ 61,111 at P 21 (footnote omitted).

elimination of inter-regional seams between ISO-New England and the NYISO would benefit all market participants and the markets as a whole.[90]

67. In its request for rehearing, Classic PJM argues that the Commission's theory that the SECA allocates costs in proportion to benefits is based on the unsubstantiated assumption that the cost of transmission was associated with the marginal cost of power in the importing zone, even though there is no record evidence supporting that assumption. It contends that other factors, such as fuel prices, are more likely to impact the marginal cost of imported power than through-and-out rates. It states that prices in PJM and elsewhere are generally set by local peaking units and that imports from base-load units are more likely to displace infra-marginal generation than generation that sets the market clearing price. It asserts that the Commission mistakenly assumes that generators and marketers will reduce the price for generation as a result of the elimination of rate pancaking, even though there is no record evidence that such price reductions will occur, let alone that they will occur in the same magnitude as the eliminated through-and-out rates or newly-imposed SECA charge.[91]

68. WPSC in its request for rehearing also argue that a transmission customer's use of a neighboring transmission system for through-and-out service does not create an obligation to continue using or paying for that system, although the SECA would create such an obligation. WPSC further maintains that unrebutted testimony in the hearing held in Docket No. EL02-111 demonstrates that transmission owners build their systems primarily to meet the needs of local customers and not to provide through-and-out service. Therefore, they argue that the elimination of through-and-out rates does nothing more than leave local customers with the obligation to pay for the fixed costs of the transmission system that was initially built to serve those customers. WPSC argue that, taking this into consideration, it is impossible to justify that a lost revenue recovery mechanism is needed to prevent cost shifting to local customers. Such an assumption, they contend, implies that transmission owners incurred fixed costs to build facilities to provide through-and-out service, which is contrary to the unrebutted testimony in this proceeding that transmission owners built their systems to serve their local loads.

69. The Michigan Agencies argue that the Commission erred by prematurely rejecting the Presiding Judge's recommendation that Wisconsin and Michigan entities be able to "opt-out" of the SECA and continue to pay pancaked rates. They state that the opt-out would avoid placing a disproportionate level of responsibility for lost revenues on entities

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[90] Detroit Edison Request for Rehearing of February 2005 Order at 9-12; Quest Request for Rehearing of February 2005 Order at 10-11.

[91] Classic PJM Request for Rehearing of November 2003 Rehearing Order at 57-58.

like the Michigan Agencies that have historically imported little power and experience little or no benefit from the elimination of rate pancaking. They state that, having adopted the mechanism without knowing what the resulting rates will be, the Commission should not prematurely foreclose a practical, and temporary, solution.[92]

70. On rehearing of the November 2003 Rehearing Order, Classic PJM argues that the SECA requires ratepayers to pay for services that they do not receive and, thus, constitutes an unlawful taking without compensation, in violation of Article V of the United States Constitution, which provides that no person shall have private property taken for public use without compensation.[93] Classic PJM claims that many of these customers have never purchased power that has been brought into their zone using regional through-and-out services, and many may never use such service. Classic PJM contends that the Commission mistakenly rationalizes this cost socialization by finding that all customers in the zone benefit when one or more customers in that zone buy power sourced outside of their RTO or their zone. They assert that this rationale is not supportable or logical in a developed competitive market, such as PJM's, where the load is supplied by numerous entities and those load-serving entities' commercial arrangements are constantly evolving. Classic PJM states that, while PJM as a whole has enough generation to serve load, many competitive retail suppliers have imported power to meet their commitments. With the recession and lowering of power prices, a number of these suppliers have exited the market since the 2002-2003 test period, leaving the default suppliers of new load-serving entities to pay SECA charges even though they had nothing to do with the imports upon which they are based.[94]

71. Classic PJM states that, if the Commission's SECA directives are implemented, PJM TOs will be collecting from the PJM transmission customers lost revenues of Midwest ISO TOs, and vice versa. It argues that the Commission lacks the authority to impose such a rate increase under the FPA where the increase is to benefit a third-party system. It argues that, at a minimum, the FPA would require the Commission to make a finding that the PJM TOs' rates are unjust and unreasonable on the basis that they are too low. In addition, Classic PJM argues that the Commission lacks authority under the FPA

[92] Michigan Agencies Request for Rehearing of November 2003 Rehearing Order at 14-16.

[93] Classic PJM Request for Rehearing of November 2003 Rehearing Order at 35-37.

[94] *Id.* at 59-60.

to accept a rate for a service when, as is the case here, no customers in the PJM region will receive an actual service or benefit.[95]

72. Classic PJM asserts that the net result of the SECA mechanism is to shift costs from wholesale transmission customers to load-serving entities. It argues that this tax on load-serving entities shifts costs because it allows wholesale transmission customers, who are currently responsible for the through-and-out rates for their exports, to shift these charges to load-serving entities in the importing area who may not be able to pass some of those costs on to their retail customers. Classic PJM claims that there is nothing in the FPA that authorizes the Commission to tax load-serving entities generally in support of revenue neutrality programs.[96] Classic PJM also argues that the Commission's proposal that load-serving entities under rate freezes be permitted to book unrecovered SECA charges as a regulatory asset simply shifts the burden of the unlawful taking to a different generation of customers and is not an adequate remedy to the imposition of a charge where there is no service rendered.

73. The PJM/MISO Regional Group, in their request for rehearing of the November 2004 Order, state that, because PJM does not tag transactions within its market, it is impossible to identify which loads within PJM use energy imported from Midwest ISO. This lack of tag information, they state, makes it impossible to allocate SECA responsibility on a zonal or sub zonal basis within PJM, thus making it impossible to impose a SECA within PJM without producing unduly discriminatory results.[97]

74. They also allege that, in an effort to embellish their lost revenues, SECA proponents designed the SECA to unreasonably rely on gross directional power flows rather than real net power flows, thus applying the SECA to paper flows that are many times higher than real power flows.[98] Further, they state that, because the through-and-out rates were fixed and unavoidable, load-serving entities would not have taken them into account when deciding to take deliveries under them, and it is, therefore, not appropriate to allocate lost through-and-out revenues to load-serving entities based on such deliveries.[99] In addition, they state that it is virtually impossible to adjust the

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[95] *Id.* at 39-40.

[96] *Id.* at 35.

[97] PJM/MISO Regional Group Request for Rehearing of November 2004 Order at 28.

[98] *Id*.

[99] *Id.* at 30.

historical data to exclude revenues associated with so-called "hubbing" transactions, where the tag shows that the transaction sank in a particular zone, but the energy was simultaneously exported to another zone or to a sink outside of the combined region. They state that hubbing adjustments will require a number of judgment calls about indefinite situations, and will require inordinate amounts of time, and will still be inaccurate.[100]

75. The PJM/MISO Regional Group argues that the SECA methodology, by relying on historical test-year data, can create double payments in situations where the entity responsible for serving a particular load today is different than the entity responsible for serving load in the test year. They argue that the current load-serving entity will have its own costs to recover, which may not include purchases from the other side of the inter-RTO border.[101]

76. The Michigan Agencies argue in their request for rehearing of the November 2003 Rehearing Order that the transitional lost revenue recovery concept upon which the SECA is based is an unwarranted departure from cost based rates. They argue that the SECA bears no relationship to each transmission owner's revenue requirement because it is inappropriately founded on the concept of revenue neutrality and unreasonably maintains current revenue levels without examining the underlying cost of service. The Michigan Agencies further argue that the Commission's November 2003 Rehearing Order erroneously classifies the SECA as a change in rate design and not a change in rate level. The Michigan Agencies state that the end result of the SECA for many customers is a clear increase in rates and must be treated as such with appropriate record evidence examining the relevant cost of service information for the rates in question, which, they claim, is lacking in the SECA proposals. Wisconsin Electric echoes these concerns.

77. Detroit Edison states that record evidence in this proceeding shows that the New PJM Companies view the SECA as revenue additive rather than revenue neutral. In support, Detroit Edison cites an internal ComEd email that it states is part of the record in this proceeding, which reads, "[a]fter the transition period ends, we will probably only be allowed to cover our revenue requirement so the best estimate we can give at this time is that our transmission revenue will fall to zero."[102] Detroit Edison claims that this

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[100] *Id.* at 31.

[101] *Id.* at 29.

[102] Detroit Edison Request for Rehearing of November 2003 Rehearing Order at 11-12.

statement indicates that ComEd views lost revenue recovery as an addition to its revenue requirement.[103]

78. Detroit Edison criticizes the Commission's decision to implement the SECA lost revenue recovery mechanism without cost support to justify the levels of lost revenue to be collected. Detroit Edison states that requiring cost support might alleviate the need for a SECA because it would allow the Commission to look at the relationship between current revenues and costs and allow transmission owners a means to address any potential under recovery of their cost of providing service.[104] Detroit Edison argues in its request for rehearing of the November 2003 Rehearing Order that, without cost support, the SECA will over recover lost revenues because it does not take into account potential declining usage of through-and-out service by individual customers and because the SECA will recover more than test-period lost revenues due to load growth. Detroit Edison contends that, by not requiring an updated cost-of-service study, the Commission imposed a lost revenue recovery mechanism in isolation from the other parts of a transmission owner's rates.[105] Quest similarly argues that there is no support for the level of lost revenues or the underlying assumption that certain transmission providers will lose significant revenues that will not be made up in the new seamless marketplace. Without cost support, Quest alleges, there is no way to verify that the SECA is just and reasonable.[106]

79. Multiple TDUs, in their request for rehearing of the November 2004 Order, request that the Commission clarify that SECA obligations will not increase due to load growth.[107] Multiple TDUs note that, in the November 2003 Rehearing Order, the Commission rejected concerns about the over-recovery of lost revenues due to load growth, finding that increased revenues due to load growth is typical of stated rates that are routinely accepted by the Commission and reflects that additional costs are likely to be incurred to support additional levels of service. However, Multiple TDUs argue that the SECA as adopted in the November 2004 Order is not meant to address the cost of new facilities because the November 2004 Order requires a specific mechanism, separate

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[103] *Id.*

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

[105] *Id.* at 36; *see also* Virginia Commission Request for Rehearing of November 2003 Rehearing Order at 9-15.

[106] Quest Request for Clarification and Rehearing of November 2003 Rehearing Order at 9-10.

[107] Multiple TDUs Request for Rehearing of November 2004 Order at 32, 33.

from the SECA, to address the recovery of the cost of new transmission facilities to facilitate inter-RTO service.

80. Joint Consumer Advocates argue that the SECA should be based on the level of through-and-out service revenues embodied in the transmission owners' Commission-authorized revenue requirement. To do otherwise, they claim, could result in transmission owners either over or under-recovering their authorized revenue requirement (though with the dramatic increases in energy transactions recently, they believe the under-recovery scenario unlikely). Similarly, Southwestern claims that the Commission should limit the SECA transitional lost revenue recovery mechanism to an amount equal to the revenue credit reflected in transmission rates for transmission service over the RTO seams in order to prevent over-recovery.[108]

81. Midwest TDUs request clarification that SECA charges are subject to the outcomes of section 205 or 206 proceedings that either reduce the underlying rates during the 2002-2003 test period or fix a cost-based revenue requirement below the revenue neutral level. For example, they point out that most of the relevant 2002-2003 Midwest ISO charges were subject to refund, through the ongoing litigation over Midwest ISO TOs' return on equity. Further, they request that SECA charges be subject to refund if the Commission finds during the period that they remain under suspension, or in a section 205 or 206 proceeding that starts before the transition period ends, that the pancaked transmission charges collected during the 2002-2003 level exceeded costs.[109]

b. Commission Determination

82. Some parties point to evidence that existing transmission facilities have been built to serve local load, not to provide through-and-out service, and they argue that, therefore, local load should bear responsibility for the cost of those facilities. In the Commission's adoption of license plate rates for recovery of the cost of existing facilities as a component of the appropriate long-term replacement to through-and-out rates, the Commission recognized this. However, the Commission also recognized the need to provide a mechanism to prevent abrupt cost shifts, due to the replacement of through-and-out rates with license plate rates, during a transition period to allow transmission owners time to adjust their rates to customers within their pricing zones accordingly. The SECA provides an appropriate transition mechanism for this purpose, to prevent these abrupt cost shifts. Moreover, by assigning responsibility for lost revenues to loads that benefit from imports made available by through-and-out service, the SECA is consistent

[108] Southwestern Request for Rehearing of November 2004 Order at 5-6, 9-10.

[109] Multiple TDUs Request for Rehearing of November 2003 Rehearing Order at 6-8.

with the prior rate regime under which those using and benefiting from a transmission provider's system were allocated a share of the costs of the transmission systems which they used and from which they benefitted.

83. Under the prior rate regime, entities taking through-and-out transmission service contributed to the costs of the systems that they used by paying transactional through-and-out charges, which resulted in rate pancaking, for their through-and-out service reservations. However, this rate design interferes with generation purchase decisions and can lead to significant market inefficiencies. Accordingly, one of the central tenets of the Commission's policy on RTOs is that they must eliminate rate pancaking within a region of appropriate scope and configuration.[110] In the instant proceedings, due to the RTO scope and configuration that resulted from the RTO choices of certain transmission owners, the Commission found that the continuation of rate pancaking between PJM and Midwest ISO violated Order No. 2000's requirement that RTOs eliminate rate pancaking within a region of appropriate scope and configuration. Therefore, transactional charges for through-and-out service to serve load in the combined region of these two RTOs were inconsistent with the requirements of Order No. 2000 and, thus, constituted unjust and unreasonable rates.[111]

84. In transitioning away from these transactional charges for through-and-out service, as RTOs formed and expanded, the Commission has determined that, where the replacement of rate pancaking with license plate rates would result in significant shifts in transmission costs, it is appropriate to provide a mechanism for recovery of lost through-and-out revenues to prevent abrupt cost shifts and thereby ease the transition to license plate rates.[112] Accordingly, during a transition period, it is appropriate to maintain traditional rate-making principles and allocate these lost revenue obligations to load in proportion to the benefits that the load receives from through-and-out service from the other RTO's transmission system, while recovering such revenues in a manner that does not interfere with the efficient operation of the market (as the transactional through-and-out service charges did).

85. Many of the criticisms of the SECA mechanism are arguments that the SECA does not properly align costs with benefits. Going forward, all customers have access to the

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[110] *See* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,173.

[111] July 2003 Order, 104 FERC ¶ 61,105 at P 29, *reh'g denied*, November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 9.

[112] *See Alliance Companies*, 94 FERC ¶ 61,070 (2001); *Alliance Companies*, 99 FERC ¶ 61,105 (2002); November 2003 Rehearing Order, 105 FERC ¶ 61,212; Ameren 2003 Order, 105 FERC ¶ 61,216.

transmission system of the entire combined region and can transact freely over that system without paying transactional through-and-out charges. The benefits from the elimination of this rate pancaking can reasonably be expected to be experienced more broadly, both geographically and across different segments of the industry (i.e., generators, marketers, load serving entities), than just the loads that benefitted from imports under the previous pancaked rates. For instance, where it was previously uneconomic to serve loads more geographically remote from the seam with imports across the seam because multiple transactional charges made such transactions uneconomic, the elimination of through-and-out rates can reasonably be expected to make such transactions economic. In addition, in certain instances, where generators and marketers selling a bundled product are not the marginal resource in the market into which they are selling, they may not pass on to their customers all or any of the savings in transmission costs due to the elimination of rate pancaking, and, thus, may benefit from the elimination of rate pancaking. However, based on the record in this proceeding, it is not possible to precisely identify all of the benefits associated with the elimination of rate pancaking and how those benefits will be distributed; no methodology has been proposed that precisely assesses such benefits, nor is it likely that such benefits could be identified and quantified with precision. However, some entities will benefit more than others, particularly those loads that were served with through-and-out service at pancaked rates, who now will benefit from decreased transmission costs for existing import levels and can be expected to benefit from increased imports as such imports will become even more economic due to the elimination of rate pancaking. In this situation, allocating lost revenues to load in proportion to through-and-out service used to serve that load under pancaked rates, as the SECA transitional lost revenue recovery methodology does, is a reasonable approach to mitigating cost-shifting during the transition period because it allocates costs in proportion to the benefits that can reasonably be identified. Moreover, the SECA is the only mechanism that could be implemented to meet the objectives of the Going Forward Principles settlement to eliminate inter-RTO rate pancaking beginning December 1, 2004, while preventing abrupt cost shifts between the local loads of different transmission systems.

86. In shifting to a load-based surcharge, some argue that the SECA improperly assigns all lost revenue responsibility to load-serving entities, even though generators and marketers will also benefit from seamless transmission access, and some argue that the SECA is based on the mistaken assumption that the elimination of through-and-out rates will be reflected in a dollar-for-dollar reduction in the price of imported power. In the November 2003 Rehearing Order, the Commission recognized that the elimination of through-and-out rates will not necessarily be passed through dollar for dollar by generators and marketers in every instance. However, the Commission found that offsetting factors mitigated the impact of those situations when they are not. First, the elimination of through-and-out rates will result in greater availability of generation resources and increased competition between local and remote generators, putting downward pressure on market prices and leading to reduced power costs to load-serving

entities from both local and remote generation.[113] Second, load-serving entities will be able to reserve service from the point where power is injected into the combined Midwest ISO-PJM grid to the ultimate delivery point from which load is served, without paying pancaked rates, thus enabling load-serving entities to negotiate power supply contracts based on the market price where the resource is located, rather than where the load is located.[114] Thus, even though certain generators and marketers may receive some benefits from rate pancake elimination in certain situations, the overall benefits of more competitive and efficient supply will flow through to load-serving entities in the form of reduced power costs to serve load. Thus, a load-based surcharge is reasonable.

87. Furthermore, as noted above, no party proposed a methodology to identify the benefits that would accrue to generators and marketers upon which to allocate costs reasonably to those entities. The only proposal to allocate costs to such entities was Detroit Edison's proposal to charge all entities that took transmission service in the test period a lost revenue obligation based on the charges for through-and-out service that they were invoiced during the test period. However, as the Commission stated in the November 2003 Rehearing Order, developing lost revenue obligations based on actual invoices during the test period will lead to under-recovery of lost revenues and produce unfair results because many of the transmission customers during the test period are marketers that may have changed their level of trading activity since the test period, may have left the market in the combined region, or may no longer be in business. Thus, it may not be possible to recover any lost revenue obligation from such entities, and it would be unreasonable to charge marketers who were in business during the test period a lost revenue obligation if they have left the market and do not benefit from the elimination of rate pancaking during the transition period. In contrast, load-serving entities must continue to transact in the market to arrange power supplies to meet their load-serving obligations during the transition period, even if they are no longer purchasing from the same generator or marketer from which they purchased during the test period.

88. Likewise, others argue that the benefits due to the elimination of rate pancaking will accrue to load throughout the combined region and that lost revenues should be spread broadly, citing to the Commission's treatment of take or pay costs in the course of gas industry restructuring. The Commission chose to allocate take or pay costs to customers based on the benefits that would accrue to customers from gas industry restructuring. The courts affirmed the Commission's allocation of take or pay costs to customers who would benefit from restructuring in that situation, but specifically rejected

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[113] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 45.

[114] *Id*.

the allocation of take or pay costs to certain customers who had not been shown to benefit from industry restructuring.[115] Moreover, unlike the gas industry restructuring, which provided benefits broadly to customers using the pipelines, the benefits due to the elimination of the rate pancaking seam between Midwest ISO and PJM depend on the geographic and electrical proximity of Midwest ISO and PJM customers to that seam. Entities that propose to allocate lost revenues broadly to all load in the combined region do not cite to any evidence that the benefits due to the elimination of rate pancaking will accrue to all load in the combined region so broadly, nor are we aware of any such evidence. Here, we cannot find that benefits from elimination of the inter-RTO seam will be spread uniformly among all load in the combined region. In this situation, we cannot find that spreading the lost revenues uniformly is just and reasonable.

89. We disagree with Detroit Edison and Quest that the Commission acted inconsistently in adopting the SECA transition methodology in the instant proceeding while declining to adopt a transition mechanism when accepting the elimination of rate pancaking between ISO-New England and the NYISO. In contrast to this proceeding, the RTOs in New England and New York and affected transmission owners agreed to eliminate inter-regional rate pancaking without a transition mechanism, and there was no evidence in the record that the elimination of rate pancaking in that instance would result in significant cost shifts. Rather, one customer group protested the increase in its transmission rate that would result from the elimination of rate pancaking, but that group did not allege that it would not benefit from the elimination of the inter-RTO seam, and the Commission found that they would experience off-setting benefits.

90. Classic PJM argues that the SECA methodology allocates lost revenues to entities that have never used such service or purchased power that was brought into their zone using regional through-and-out service. They state that it is not supportable to assume that all customers in a zone benefit when one or more customers import power. The PJM/Midwest ISO Regional Group argues that, because PJM does not tag transactions within its market, it is impossible to allocate SECA responsibility on a subzonal basis within the Classic PJM region, making it impossible to implement the SECA within the Classic PJM region. We disagree with Classic PJM and the PJM/Midwest ISO Regional Group that the SECA is unjust and unreasonable when implemented in the Classic PJM region. Load-serving entities in a zone can benefit from imports, even if they purchase power from local supply resources, because imports will displace more expensive marginal resources, lowering the market price for power for all purchases, even purchases from local resources, and those with their own local generation resources benefit from imports when they purchase power during outages.

[115] *KN Energy, Inc. v. FERC,* 968 F.2d 1295, 1302-04 (D.C. Cir. 1992); *United Gas Distrib. Cos. v. FERC,* 88 F.3d 1105, 1186-88 (D.C. Cir. 1996).

91. Classic PJM argues that the SECA mechanism produces unreasonable results because Classic PJM has sufficient resources to serve its load, but test period data includes significant imports by retail marketers, many of whom have since exited the market. We disagree that these facts render the SECA unreasonable when applied to the Classic PJM region. Even though Classic PJM has sufficient generation to meet its load, imports can be expected to displace output from local generation when it is more expensive, providing economic benefits that reflect underlying fundamentals in the regional market, and we would not expect the fact that individual marketers may have left the retail market to change this situation. In addition, we do not agree with Classic PJM that the SECA methodology will result in double payments where responsibility to serve a particular load has changed since the test year. While the new load-serving entity will have its own costs to recover, those will reflect the benefit of more economic imports, even if the marketer is purchasing from local supply resources, as discussed above, given that decreased transmission costs will make available alternative power supplies with the elimination of rate pancaking.

92. Classic PJM also argues that the SECA inappropriately allocates lost revenues to load based on gross directional power flows rather than on net power flows, thus embellishing the claimed lost revenues. We disagree that the SECA overstates lost revenues because it relies on gross directional power flows; rather this simply reflects that through-and-out service charges were levied on gross directional through-and-out service reservations, and it is reasonable to expect that those who reserve and pay for such service found it beneficial to do so. Moreover, Classic PJM has not explained how the use of gross directional flows overstates claimed lost revenues. Classic PJM also argues that the SECA transitional lost revenue recovery methodology inappropriately allocates lost revenues on hourly scheduled flows even though the through-and-out rates were fixed, reservation-based charges that were unavoidable at the time that market participants decided to schedule hourly transactions. However, as we explain in the order on the initial decision being issued concurrently, utilizing an average rate is necessary because it is almost impossible to calculate directly the transmission charges paid to other transmission owners by a given load due to the increased number of transactions involving power marketers who do not have detailed bills showing the amount of transmission charges paid by the power marketers. Furthermore, a principal benefit of the elimination of through-and-out rates is increased trading and the resulting tendency to equalize delivered prices at various locations. Merely holding reserved transmission capacity would not produce such benefits until energy is actually scheduled for delivery using a reservation. Therefore, delivered energy is arguably a better indicator than reserved transmission capacity of the relative benefits of the elimination of through-and-out rates, and thus, allocating lost revenues to parties based on their use of transmission

reservations (i.e., to those parties with relatively high load factors) is just and reasonable.[116]

93. We also disagree with Classic PJM that the SECA represents a charge for no service rendered and, thus, represents an unlawful taking of private property. In these proceedings, the Commission has adopted a replacement rate design in the combined region that eliminates transactional-based charges for service through-and-out of each Midwest ISO and PJM region to serve load in the other region. In place of those charges, the Commission adopted license plate rates and the transitional SECA, which is a surcharge for a transitional period ending March 31, 2006, for delivery to load in each RTO in order to compensate transmission owners in the other RTO for revenues that would be lost due to the elimination of transactional-based charges for through-and-out service to serve the load in the other RTO. Customers serving load in each RTO pay the zonal license plate rates applicable to the load being served and the SECA transitional lost revenue recovery and get access to the entire combined Midwest ISO and PJM transmission system without incurring pancaked access charges. Thus, contrary to Classic PJM's assertion, the SECA rates, in this case, are associated with what can reasonably be considered a new service, access to the Midwest ISO system, which is now provided to customers serving load in the PJM region under the PJM tariff.

94. We also disagree with Classic PJM that the Commission lacks authority under the FPA to impose a "rate increase" on PJM customers.[117] It is well-settled that the rates, terms, and conditions of jurisdictional service are subject to the Commission's jurisdiction and the Commission's review under sections 205 and 206 of the FPA.[118] We find that no party disputes that the PJM tariff is subject to our jurisdiction. Accordingly, we have the authority to change the rates, terms, and conditions of service under the PJM tariff, which the Commission did by establishing the SECA transitional lost revenue recovery mechanism in place of pancaked rates that existed before under the Midwest ISO tariff. In addition, we disagree with Classic PJM that the Commission needed to find

[116] *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) ("allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.") *Id.*

[117] In fact, neither section 205 nor section 206 bars rate increases; rather they only dictate that whatever rate is adopted be just and reasonable. And, in appropriate circumstances, a just and reasonable rate may, in fact, be an increased rate. *See* 16 U.S.C. §§ 824d, 824e (2006).

[118] *Nevada Power Co. v. Enron Power Marketing Co., Inc.*, 108 FERC ¶ 61,074, at P 32 (2004).

that the existing license plate zonal rates under the PJM tariff were too low before it could fix a higher rate. Rather, the Commission found that, for power moved through one of the RTOs for delivery to the other RTO, the pre-existing pancaked rates were unjust and unreasonable.[119] And the Commission found that a license plate rate, with a transitional mechanism to avoid abrupt and significant cost shifting, was just and reasonable. That is all the Commission needed to find, and that is what it did find. Further, the SECA is not a rate "increase" but rather represents essentially a new rate under the PJM tariff for new service (i.e., access to the Midwest ISO system). Thus, the SECA transitional lost revenue recovery methodology is designed to recover the costs of providing the benefit of accessing the Midwest ISO system.[120] In this regard, we note that the Commission has previously found that Midwest ISO's markets will produce benefits to those with access to the Midwest ISO grid.[121]

95. We are not persuaded by Classic PJM's argument that the SECA cannot be implemented because of difficulties associated with performing "hubbing adjustments" to the test period data to exclude revenues associated with transactions where the tag shows that it sank in a particular zone but the energy was simultaneously exported to another zone or to a sink outside of the combined region. While we recognize the difficulties in implementing the new rate design, we established hearing procedures to provide all parties the opportunity to develop an appropriate record upon which such implementation issues can be addressed.

96. A number of parties argue that the Commission did not have an adequate record upon which to adopt the SECA in the November 2003 Rehearing Order. We disagree. In the July 2003 Order, the Commission did not adopt the SECA mechanism because the record at that time did not provide a basis for establishing SECA rates. Instead, it invited SECA rates to be filed under section 205 of the FPA. In response, several parties

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[119] We note that, in the Going Forward Principles, the transmission owners in each RTO agreed that a replacement pricing structure that eliminates rate pancaking between the RTOs would take effect December 1, 2004, and committed the Commission to implement such a replacement pricing structure that eliminates seams through the combined region as of that date.

[120] *Transmission Owners of the Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,339, *order on reh'g*, 113 FERC ¶ 61,122 (2005), *aff'd sub nom. East Kentucky Power Coop., Inc. v. FERC*, 373 F.3d 1361 (D.C. Cir. 2007); 489 F.3d 1299 (D.C. Cir. 2007) (discussing the benefits that will flow to all users of the Midwest ISO grid).

[121] *Id.* P 33.

contended that the Commission violated section 206 by finding the through-and-out rates to be unjust and unreasonable without simultaneously establishing a replacement lost revenue recovery mechanism and that the Commission placed its burden of finding a just and reasonable rate upon the utilities to make new rate filings under section 205. In the November 2003 Rehearing Order, the Commission agreed with parties that argued that the section 205 filing option was inadequate to implement lost revenue recovery mechanism, but still found that the record did not give the Commission a sufficient basis to establish the proposed SECA as a superseding rate.[122] Therefore, instead of requiring that any filings seeking to recover lost revenues be made under section 205, the Commission directed section 206 SECA compliance filings, with adequate supporting data, to establish SECA rates and simultaneously implement them with the elimination of Midwest ISO and PJM regional through-and-out rates on April 1, 2004.

97. While the Commission acknowledged that the record did not allow it at that time to establish the actual SECA rates, the Commission did find that the record was adequate to allow it to adopt the SECA methodology and direct filings to implement the SECA. In the November 2003 Rehearing Order, the Commission explained the rationale for the SECA and why it was a reasonable approach under the circumstances. As we discuss below, we found that, without such a mechanism, there would be a significant cost shift between the native loads of the two RTOs and that transitional lost revenue recovery mechanisms such as the proposed SECA could serve as reasonable transitional mechanisms to address revenue losses and cost shifts arising from the elimination of rate pancaking. The Commission stated that, by recovering lost revenues from each zone proportionate to the benefit that each zone receives from the elimination of rate pancaking and recovering such costs through a non-bypassable surcharge for delivery within the zone, such transitional lost revenue recovery mechanisms better control cost shifting than conventional license plate rates without transitional surcharges, while simultaneously avoiding the injurious effects on the efficient use of the grid associated with allowing continued rate pancaking. The Commission further explained that, by fixing the superseding rate in this section 206 proceeding, the Commission would mitigate cost shifting during the transition period to ensure just and reasonable rates upon the elimination of the through-and-out rates.[123]

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[122] The Commission found that even Midwest ISO TOs, who filed testimony that included SECAs calculated for the region, stated that their calculated rates were not proposed at that time for Commission approval. *See* Ex. No. MISO TOs-1, 25:9-13. Mr. Heintz stated that the data was not confirmed and checked, which would need to be done in a compliance filing. November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 43 n.90.

[123] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 44.

98. The Going Forward Principles delayed those filings until November 24, 2004, but as provided for in the Going Forward Principles, the compliance filings were ultimately accepted for filing, subject to nominal suspension, to take effect December 1, 2004, subject to refund and further procedures. Protestors raised a number of factual issues regarding the rates in the SECA compliance filings and requested that the Commission establish hearing procedures to address those issues, and the Commission did so.[124] The Commission also specifically required that supporting documentation be provided as part of the hearing. The issues raised in the protests to the compliance filings were addressed in the hearing, and the final SECA rates are being determined based on the outcome of the hearing in the order on initial decision being issued concurrently, consistent with the Going Forward Principles.

99. With respect to WPSC's argument that the SECA methodology ignores the fact that the former Alliance Companies continued to charge pancaked rates under their individual-company tariffs after most transmission owners in the region eliminated seams and Wisconsin Electric's argument that the SECA is a misguided effort to provide a transition mechanism to transmission owners that delayed RTO membership, the Commission's intent in adopting the SECA transitional lost revenue recovery mechanism is to provide an orderly transition for the restructuring of regional transmission pricing resulting from RTO formation, while preventing abrupt and significant cost shifts among transmission customers. It is not intended to reward or penalize utilities for the timing of the implementation of their voluntary RTO choices. Similarly, we will not adopt Southwestern's proposal that the Commission offset the amount of lost revenues individually collected by the benefits that transmission owners individually will receive from joining an RTO. The SECA mechanism was adopted to mitigate shifts in transmission costs among customers due to the elimination of rate pancaking in this proceeding. It is not intended to address more generally the costs and benefits associated with RTO formation, nor is it necessary to expand the scope of this proceeding in order to establish a just and reasonable replacement rate for transmission service in the combined region.

100. With respect to WPSC's claim that the appropriate baseline for lost revenue recovery should be based on a rationally-configured RTO (i.e., as if ComEd and AEP joined Midwest ISO instead of PJM) in the November 2003 Rehearing Order, the Commission clarified that the SECA methodology is the appropriate methodology for addressing lost revenues due to the elimination of intra-RTO rate pancaking within the combined region and should be the same mechanism adopted in this proceeding for the

[124] *See* February 2005 Order, 110 FERC ¶ 61,107 at P 20, 38; June 2005 Order, 111 FERC ¶ 61,409 at P 26, 38.

elimination of inter-RTO rate pancaking.[125] Thus, the Wisconsin and Michigan parties' lost revenue responsibility under the SECA would be the same regardless of whether ComEd and AEP joined PJM or Midwest ISO.

101. We also disagree with the general assertion that the SECA will lead to the over recovery of transmission costs and that the Commission must investigate whether the overall level of the existing rates is just and reasonable in conjunction with changing the rate design. While the Commission allowed cost of service evidence to be presented in the earlier hearing held in Docket No. EL02-111,[126] it subsequently found that none of the evidence showed that the existing rates were resulting in the over recovery of costs.[127] Therefore, in the November 2003 Rehearing Order, the Commission limited action to a change in the development of the rate rather than in the rate level.[128] Using current through-and-out service revenues ensures that the Commission's action leaves transmission owners revenue neutral as a result in the change in methodology, as the Commission had no basis on the record to reduce overall rate levels. With respect to parties' concerns regarding the overall level of the existing rates, the redesign may in practice result in increased revenues being collected from some individual customers, but the parties have not explained how the redesign interacts with the overall level of the rates to render that level unjust and unreasonable, nor do we find that it does.

102. We also disagree with assertions that the SECA is not cost based. As the Commission has stated in earlier orders, this proceeding is focused on changing the rate design for inter-RTO service. Because the SECA maintains the revenue levels of the prior through-and-out rates, the SECA does not depart from cost-based considerations; it merely alters the rate design under which the existing revenue levels are collected.

103. In response to Multiple TDUs' and others' concerns that the SECA may over collect due to load growth, in the November 2003 Rehearing Order, the Commission acknowledged the potential of increased lost revenue collection due to load growth but reasoned that this is consistent with stated rates typically accepted by the Commission, where increased revenues due to increased throughput compensate utilities for any additional costs incurred as a result of the increased usage of their systems. While Multiple TDUs correctly point out that the November 2004 Order provided for a cost recovery mechanism, separate from the SECA, to address the recovery of the cost of new

[125] *See* November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 44, n.92.

[126] *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,014 (2003).

[127] July 2003 Order, 104 FERC ¶ 61,105 at P 51.

[128] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 46-47.

facilities built in one RTO but providing benefits to customers in the other,[129] that mechanism was not put into place until later, and no costs of new facilities were allocated between the RTOs during the SECA transition period.

104. We deny Michigan Agencies' claim that the Commission erred in rejecting the "opt-out" from the SECA for Wisconsin and Michigan entities that the presiding judge recommended. In the November 2003 Rehearing Order, the Commission found that, while concerns about the impacts on Michigan and Wisconsin entities as a result of a transitional lost revenue recovery mechanism were valid, it could not allow Michigan and Wisconsin entities to "opt-out" of the SECA and continue to pay pancaked rates, as the Commission had already found that rate pancaking distorts economic choices and denies the benefits of more efficient and competitive markets.[130]

105. Moreover, the Commission found that the concerns of the Wisconsin and Michigan entities about the SECA methodology had been addressed by a specific feature of the methodology adopted by the Commission. Specifically, the Commission noted that the opt-out feature had been proposed to address arguments that the 2001 test year proposed in the hearing is unrepresentative of the transition period because Michigan was subject to a significant amount of hubbing transactions associated with exports to Canada under exclusive international border buy-resale restrictions that are no longer in place. However, it found that, with the use of data for the calendar-years 2002 and 2003 to derive the SECA rates and the adjustments to the North American Energy Reliability Corporation tag data directed in that order, the SECA transitional lost revenue recovery mechanism is just and reasonable as a transitional rate mechanism to be assessed to

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[129] The November 2004 Order, 109 FERC ¶ 61,168 at P 60 stated:

> the Commission will require the RTOs and their transmission owners to develop a proposal for allocating to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO.

As noted above, in compliance with the November 2004 Order, the RTOs submitted the required proposals for allocating the cost of new cross-border facilities built for reliability or economic purposes, and by orders dated, November 21, 2005, January 31, 2008, and November 3, 2009, the Commission conditionally accepted the proposals.

[130] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 94.

Michigan and Wisconsin entities to mitigate cost shifts that would otherwise occur due to the elimination of the through-and-out rates.[131] Michigan Agencies argue that the Commission erred in rejecting the opt-out feature without knowing what the resulting rates will be. However, Michigan Agencies do not persuade us that the Commission erred in rejecting the opt out feature in the November Rehearing 2003 Order; with the adjustments to the test year data provided by the SECA methodology, the SECA is just and reasonable when implemented in the Wisconsin and Michigan zones.

106. We disagree with Detroit Edison that the adoption of the SECA is inconsistent with the Commission's rejection of transition payments proposed as part of the restructuring of the New England Power Pool. Detroit Edison argues that the proposal rejected there was very similar to the SECA. However, the Commission rejected the proposal in that proceeding for failing to explain or support the underlying methodology and the specific payments that were proposed.[132] In contrast, in the instant proceeding, the record demonstrated that there would be significant cost shifts without the SECA, and the SECA methodology was sufficiently developed and supported for the Commission to adopt it as a just and reasonable replacement rate.

107. With respect to Midwest TDUs' request for clarification that SECA charges are subject to the outcomes of section 205 or 206 proceedings that either reduce the underlying rates during the 2002-2003 test period or fix a cost-based revenue requirement for that period below the revenue neutral level, we agree that that is necessarily the case, and transmission owners have incorporated necessary adjustments in the SECA compliance filings.

3. <u>Retroactive Ratemaking, Filed Rate Doctrine and Procedural Issues</u>

a. <u>Requests for Rehearing</u>

108. Detroit Edison argues that the compliance filing process ordered by the Commission violates the due process rights and customer protections afforded by the FPA by improperly bifurcating the approval process for the SECA transitional lost revenue recovery mechanism and the approval of actual rates.[133]

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[131] *Id.* P 96.

[132] *NEPOOL*, 83 FERC ¶ 61,045 at 61,239.

[133] Detroit Edison Request for Rehearing of November 2003 Rehearing Order at 8.

109. Some parties argue that they were unaware that the purchasing decisions that they were making in 2002 and 2003 would result in a surcharge that would be applied during the sixteen-month transition period (December 2004-March 2005). They assert that pursuant to *Associated Gas,* the Commission was required to provide notice prior to the test period in 2002.[134] Parties state that in that case the court found that customers were not put on notice before their 1981-1982 purchases that they could be subject to surcharges flowing from their earlier purchasing decisions.[135] In this case, parties argue that, similarly, they were not put on notice that the purchasing decisions they were making during the 2002-2003 test period would set the charges that they would pay. Parties contend that, as the court explained, "the relevant question is not which costs are 'current' and which are 'past.' Rather, the appropriate inquiry seeks to identify the purchase decisions to which the costs are attached."[136] Parties argue here that the relevant purchasing decisions were made in 2002-2003 and, since they lacked adequate notice prior to that historical test period, the SECA violates the filed rate doctrine.

110. On rehearing of the February 2005 Order, a number of parties argue that the Commission violated the filed rate doctrine by accepting the SECA transitional lost revenue recovery mechanism to take effect December 1, 2004.[137] Detroit Edison and Green Mountain explain that, since the Commission did not accept the SECA implementation compliance filings, and thereby fix the SECA rate, until February 10, 2005, yet allowed the SECA transitional lost revenue recovery mechanism to become effective as of December 1, 2004, the Commission violated the FPA and the filed rate doctrine. Detroit Edison adds that the Commission could not have fixed the SECA as of December 1, 2004, because several of the implementation filings were submitted after that date, and the Commission conceded that the pre-existing record did not give the Commission a sufficient basis to establish any proposed SECA as a superseding rate. Detroit Edison also argues that the Commission erred in not granting a

[134] *Associated Gas Distributors v. FERC*, 893 F.2d 349 at 354-57 (D.C. Cir. 1989) (*Associated Gas*).

[135] *Id.* at 356.

[136] *Id.* at 355.

[137] *See, e.g.*, Joint Consumers Advocate Request for Rehearing of February 2005 Order at 2-3.

reasonable delay in the billing of the SECA in view of concerns that the SECA will harm certain customers notwithstanding their being subject to refund.[138]

111. Detroit Edison also claims that for customers within Midwest ISO, another filed rate doctrine problem arises as a result of the difference between the initial SECA compliance filing that Midwest ISO TOs submitted on November 24, 2004, and the amended compliance filing that they submitted on December 17, 2004. Detroit Edison explains that the former did not contain actual rates but set forth a formula by which Midwest ISO TOs proposed to recover the lost revenues claimed by the transmission owners in PJM. Detroit Edison asserts that the December 17, 2004, compliance filing mooted that former approach by eliminating the formula and instead imposing fixed monthly SECA obligations on specific subzones. Detroit Edison asserts that Midwest ISO Transmission Owners' December 17, 2004, compliance filing mooted their original compliance filing, which underscores the fact that customers did not have reasonable notice of charges as of December 1, 2004. Detroit Edison contends that this lack of notice compounds the filed rate doctrine problem and further demonstrates that the Commission erred by allowing the SECA to become effective December 1, 2004.[139] Detroit Edison also states that the Commission failed to address the filed rate doctrine arguments in PJM/MISO Regional Group's January 7, 2005, protest to the SECA compliance filings. Detroit Edison asserts that the February 2005 Order appropriately found that the SECA implementation compliance filings, as well as the protest and comments concerning the filing, raised "issues of material fact" that could not be resolved based on the existing record and were more appropriately addressed in an evidentiary hearing. However, Detroit Edison contends that the PJM/MISO Regional Group's filed rate doctrine arguments presented an issue of law and not of fact; thus, the Commission's failure to respond constitutes a breach of the Commission's obligation to engage in reasoned decision-making.[140]

112. Detroit Edison argues that the SECA is an impermissible ratemaking scheme and violates the filed rate doctrine, since the SECA uses past periods to establish future charges despite the fact that customers did not have the requisite notice during those past periods.[141] On rehearing of the November 2004 Order, PJM/MISO Regional Group and

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[138] Detroit Edison Request for Rehearing of February 2005 Order at 3-6; Green Mountain Request for Rehearing of February 2005 Order at 7-9 (*citing Electrical Dist. No. 1 v. FERC*, 774 F.2d 490 (D.C. Cir. 1985) (*Electrical District No. 1*)).

[139] Detroit Edison Request for Rehearing of February 2005 Order at 6-7.

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

[141] Detroit Edison Request for Rehearing of November 2004 Order at 6-8.

Detroit Edison also argue that *PG&E*[142] supports their position that the SECA violates the rule against retroactive ratemaking and that the SECA violates the filed rate doctrine.[143] Quest argues that accepting the compliance filings effective April 1, 2005, despite the fact that there were no stated rates to be collected until at least May 4, 2005, constitutes a violation of the filed rate doctrine and constitutes illegal and impermissible retroactive ratemaking.[144]

113. On rehearing of the June 2005 Order, several parties[145] state that the Commission violated the filed rate doctrine by accepting an April 1, 2005, effective date for revised SECA charges (based on 2003 data) that are intended to collect the PJM TOs' lost revenues for the second part of the transition period. Detroit Edison asserts that transmission customers within Midwest ISO had no knowledge of their SECA charges between April 1, 2005, and May 3, 2005, because the PJM TOs failed to submit a required compliance filing in a timely fashion. Detroit Edison argues that ignoring that failure and requiring customers in Midwest ISO to pay SECA charges that were not on file with (much less accepted by) the Commission constitutes a violation of the filed rate doctrine. Thus, Detroit Edison asks that the Commission grant rehearing and find that the PJM TOs forfeited their opportunity to benefit from the SECA transitional lost revenue recovery mechanism for at least the period from April 1, 2005, through May 3, 2005. Detroit Edison explains that no SECA charges for customers within Midwest ISO were properly filed with the Commission as of April 1, 2005. Detroit Edison explains that the SECA charges for the first part of the transition period expired on March 31, 2005, by the terms of the Midwest ISO tariff and the PJM TOs' belated submission of lost revenue claims based on 2003 data prevented Midwest ISO and its transmission owners from filing replacement tariff sheets that contained revised SECA charges until May 4, 2005. Thus, the SECA charge applicable to customers within Midwest ISO should be zero for at least the time period during which that void existed in the Midwest ISO tariff.[146]

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[142] *Pacific Gas & Electric Co.*, 373 F.3d 1315 (D.C. Cir. 2004) (*PG&E)*.

[143] Detroit Edison Request for Rehearing of November 2004 Order at 6-8; PJM/MISO Regional Group Request for Rehearing of November 2004 Order at 12-15.

[144] Quest Request for Rehearing of June 2005 Order at 5-8; Detroit Edison Request for Rehearing of June 2005 Order at 12-14.

[145] *See, e.g.*, Detroit Edison Request for Rehearing of June 2005 Order at 4; Multiple TDUs Request for Rehearing of June 2005 Order at 6-7; Strategic Request for Rehearing of June 2005 Order at 8-10.

[146] Detroit Edison Request for Rehearing of June 2005 Order at 4-8.

114. While the parties note that the Commission announced that it intended to revise the SECA charges effective April 1, 2005, the parties state that requiring Midwest ISO customers to pay SECA charges that were not on file with the Commission constitutes a violation of the filed rate doctrine and that the earliest date that the Commission could be said to "fix" the just and reasonable rate was the date on which the compliance filing was accepted for filing.[147] Hoosier and Green Mountain assert that the earliest possible effective date for these 2003-based SECA charges, consistent with *Electrical District No. 1*,[148] would have been June 16, 2005, the date on which the Commission accepted the tariffs for filing.

115. Hoosier and Green Mountain add that, since there is no substantial, credible evidence to support the rates requested, the Commission should have delayed the implementation of the SECA until after it has ruled on the questions to be determined in the evidentiary hearing directed by the February and June 2005 Orders.[149] Quest asserts that on rehearing the Commission must articulate reasons for its decision to set the matter for hearing despite the statutory arguments opposing the imposition of the SECA.[150] Quest also argues that the SECA compliance filings were inadequately supported and that the amount of lost revenues that will be authorized upon conclusion of the hearing is likely to be significantly lower than the filed rates. Thus, Quest states that, in light of this, and the significant financial burden the rates place on load serving entities, it is appropriate to defer the implementation of the SECA until it is properly vetted.[151] Quest asserts that this particular case is different than "ordinary" utility rate proceedings filed pursuant to section 205 of the FPA. For example, Quest states that transmission owners have not been forced to supply cost information that is required under Part 35 of the Commission's regulations, and the Commission has not sought additional information or support that interested parties can review and rebut.[152]

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[147] *See, e.g.*, Quest Request for Rehearing of June 2005 Order at 5-7; Hoosier Request for Rehearing of June 2005 Order at 7-8.

[148] Green Mountain Request for Rehearing of June 2005 Order at 7-8; Hoosier Request for Rehearing of June 2005 Order at 7-8.

[149] Green Mountain Request for Rehearing of June 2005 Order at 6-8; Hoosier Request for Rehearing of June 2005 Order at 6-8.

[150] Quest Request for Rehearing of February 2005 Order at 8.

[151] *Id.* at 6.

[152] *Id.* at 7.

116. Multiple TDUs adopt by reference the request for rehearing filed by Detroit Edison with one qualification. They explain that they disagree with the statement that any interim relief should flow equally to everyone. Multiple TDUs assert that parties that are particularly unable to pay SECA charges, even subject to refund, should be allowed to defer that obligation until it is further litigated and better defined and to amortize their SECA payment obligation over a longer period. They add that limiting interim relief to those parties that suffer irreparable harm while waiting for refunds is consistent with traditional remedial standards and that avoiding irreparable harm by granting targeted interim relief is not discriminatory.[153]

117. On rehearing of the February 2005 Order, Hoosier argues that the Commission erred by imposing only a nominal suspension period upon the compliance filings in violation of its own well-settled suspension policy. Hoosier argues that, because the Commission found that the compliance filings were not just and reasonable, under *West Texas Utilities Company*,[154] the Commission should have followed its existing policy and imposed the statutory maximum five-month suspension or provided sufficient reasoning to justify departure from precedent.[155]

118. On rehearing of the November 2003 Rehearing Order, Classic PJM argues that the Commission failed to evaluate the SECA under the *Mobile-Sierra*[156] public interest standard in its imposition of the SECA transitional lost revenue recovery mechanism, which may reopen numerous agreements retroactively changing the costs or allocation of costs for transmission service in agreements. Classic PJM contends that, during the test years, load-serving entities contracted for transmission service under rate, terms, and conditions as provided for in standard transmission service agreements and that these contracts have been completed and the charges fully paid. Classic PJM asserts that, without a public interest showing, the Commission is prohibited from reopening these contracts and adding charges. They assert that market based power sales agreements between load-serving entities and generators or marketers would be similarly inappropriately impacted.

[153] Multiple TDUs Request for Rehearing of February 2005 Order at 2.

[154] 18 FERC ¶ 61,189 (1982).

[155] Hoosier Request for Rehearing of February 2005 Order at 7-8.

[156] *United Gas Pipe Line Co. v. Mobile Gas Service Corp*., 350 U.S. 332, 345 (1956); *FPC v. Sierra Pacific Power Co.,* 350 U.S. 348, 355 (1956) (*Mobile-Sierra*).

119. On rehearing of the June 2005 Order, Detroit Edison states that the Commission also erred by accepting for filing SECA charges that unduly discriminate against load-serving entities that are not transmission owners and, therefore, had no opportunity to present known and measurable differences between the test year and the transition period. Specifically, Detroit Edison states that the load-serving entities that are not transmission owners face a substantive disadvantage because the SECA charges that they must pay, subject to the outcome of hearing proceedings, are higher than if they had received the same opportunity as did load-serving entities that are transmission owners that had the opportunity to embed their comparable changes in the SECA charges that the Commission accepted for filing in the June 2005 Order.[157] On rehearing of the June 2005 Order, Detroit Edison, Green Mountain, and Hoosier also claim that the Commission erred by allowing Midwest ISO and PJM to collect interest on SECA charges for which billing was delayed while they developed billing procedures. The parties state that both Commission precedent and equity dictate that transmission customers should not pay interest on top of SECA charges when they had no control over whether a billing delay occurred, especially since the transmission owners (AEP and Exelon) that urged the Commission to impose interest are largely responsible for the billing delay.[158] Green Mountain and Hoosier state that nothing in the approved tariff of either RTO provides for the addition of interest, in addition to the SECA charges themselves, due to the inability of the RTOs to issue bills.[159]

120. On rehearing of the June 2005 Order, Duquesne argues that the Commission's acceptance of the requested effective dates violates the Commission's prior notice requirements. Duquesne explains that, under the FPA, rates are required to be filed at least 60 days prior to the date on which they will take effect, and under the Commission's rules the Commission can waive the 60-day prior notice requirement where a party shows that "extraordinary circumstances" prevented a timely filing to justify a retroactive effective date. Duquesne claims that, in this case, the proponents of the retroactive effective dates did not assert any cause for the late filing, much less extraordinary circumstances, and the Commission failed to set forth a demonstration of extraordinary circumstances or explain why this standard did not apply. Thus, Duquesne contends that the Commission erred by rendering a decision that is arbitrary, capricious, and unsupported by substantial evidence, and the Commission should grant rehearing and

[157] Detroit Edison Request for Rehearing of June 2005 Order at 15-16.

[158] *Id.* at 11-12.

[159] Green Mountain Request for Rehearing of June 2005 Order at 8; Hoosier Request for Rehearing of June 2005 Order at 8.

impose effective dates that are no less than one day after the relevant compliance filings.[160]

b. Commission Determination

121. Many of the arguments described above are already addressed in the prior section of this order. The Commission adds further analysis here nonetheless.

i. Burden of Proof

122. We disagree with Detroit Edison and the Virginia Commission's claim that the Commission improperly assigned burdens of proof and that the Commission improperly shifted the burden to customers by adopting SECA charges in a compliance phase of existing proceedings rather than requiring new filings. The Commission has already addressed the propriety of the SECA and the Commission's rationale for implementing the SECA and the corresponding burden of proof.[161]

123. In the November 2003 Rehearing Order, in addressing requests for rehearing of the July 2003 Order, the Commission noted that several parties contended that the Commission violated section 206 by finding the regional through-and-out rates to be unjust and unreasonable without simultaneously establishing a replacement lost revenue recovery mechanism and that the Commission placed the burden of finding a just and reasonable rate upon the utilities to make new rate filings under section 205. The Commission noted that some parties argued that a section 205 filing option was inadequate to implement lost recovery mechanisms and that some parties argued that there was insufficient record evidence to evaluate the SECA.[162]

124. In response to these requests for rehearing, the Commission granted rehearing. The Commission found that the record that then existed did not give it a sufficient basis to establish at that time the proposed SECAs as superseding rates. Therefore, instead of requiring that any filings seeking to recover lost revenues be made under section 205, the Commission directed section 206 compliance filings that would contain a transitional surcharge to recover lost regional through-and-out rate revenues, which could be implemented simultaneously with the elimination of Midwest ISO and PJM regional

[160] Duquesne Request for Rehearing of June 2005 Order at 6-11.

[161] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 42-53.

[162] *Id*. P 40-41.

through-and-out rates (originally, as of April 1, 2004).[163] The Commission also explained that, by fixing the superseding rate in a section 206 proceeding, the Commission would mitigate cost shifting during the transition period to ensure just and reasonable rates upon the elimination of the regional through-and-out rates.[164] We find that same rationale relevant here and find that it answers the parties' objections.

ii. **Due Process**

125. We also disagree with Detroit Edison's and Classic PJM's assertions that their due process rights were violated. The concept of applying a transitional lost revenue recovery mechanism in the transition away from pancaked rates for transactions crossing the PJM/Midwest ISO border has been discussed by the parties and the Commission many times during the course of these proceedings. Thus, the parties have had numerous opportunities to raise issues related to this transitional lost revenue recovery mechanism, long since known as the SECA, certainly since July 2002[165] and going forward. More recently, in the November 2004 Order, the Commission directed Midwest ISO, PJM, and their transmission owners to make filings toimplement the SECA transitional lost revenue recovery mechanism adopted in the November 2004 Order.[166] Parties again had an opportunity to comment on the SECA transitional lost revenue recovery mechanism in responses to various filings implementing the SECA. In fact, after considering the comments filed by the parties, in the February 2005 and June 2005 Orders, the Commission accepted for filing those implementation filings, but established hearing procedures to address concerns raised regarding implementation issues and to allow the parties to further develop the record on the proposed SECA charges. We add that the ultimate just and reasonable rate will be based and, as reflected in our contemporaneous order on the initial decision, is based – on the outcome of this hearing, and the Commission will bear – and has borne – the burden of justifying the reasonableness of the compliance rates, including addressing adjustments proposed by customers.

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[163] We found that even Midwest ISO TOs, that filed testimony that included SECA charges calculated for the region, stated that their calculated rates were not proposed at this time for Commission approval. *See* Exhibit No. MISO TOs-1, p.25:9-13. Mr. Heintz stated that the data was not confirmed and checked and would need to be done in a compliance filing. November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 43, n.90.

[164] *Id.* P 44.

[165] *See Alliance Cos.*, 100 FERC ¶ 61,137 at P 49-52 (2002), *order on reh'g*, 103 FERC ¶ 61,274 at P 50, 53 (2003); *accord Alliance Cos.*, 99 FERC ¶ 61,105 at 61,442-47 (2002).

[166] November 2004 Order, 109 FERC ¶ 61,168 at P 55-66.

iii. Filed Rate Doctrine and Retroactive Ratemaking

126. Some parties argue that the SECA constitutes retroactive ratemaking and violates the filed rate doctrine because it uses historical, test year data, without prior notice, to establish the SECA rate and charges.[167] We disagree.

127. In the November 2003 Rehearing Order, the Commission affirmed the presiding judge's findings that the SECA methodology does not constitute retroactive ratemaking.[168] The presiding judge found the cases cited by those alleging that the SECA constitutes retroactive ratemaking to be inapposite because those cases dealt with recovery of past losses, while the proposed SECA surcharges, the presiding judge found, are not designed to recoup past losses. More specifically, the presiding judge found that the SECAs are not in place of past lost revenues, but of future lost revenues. The presiding judge found that the SECA charges would take the place of lawful revenues that would otherwise have been expected in the future if through-and-out charges were not eliminated. The presiding judge found that it is only the calculation of the SECA rates that is based on a past test period, as almost every rate sanctioned by the Commission and the courts is derived. The presiding judge further found that the magnitude of the charges would not be set on the basis of past lost revenues, although the rates would be; rather, the magnitude of the charges would be determined on the basis of the level of future deliveries to serve load, to which the SECA rates would be applied, no differently than with other lawful rates and charges.[169]

128. Several parties argue that this ignores the fact that the customers are charged based on power imported in the past, prior to their receiving notice that such transactions would subject them to future charges. We continue to affirm the presiding judge's findings and deny rehearing. The SECA methodology looks to a recent historical test period to allocate future lost revenues to each zone. This reflects common and long-standing ratemaking practice that allows the use of reasonably representative historical test period data to develop rates.[170] As the presiding judge found, the zonal SECA transitional lost

[167] *See*, *e.g.*, Detroit Edison Request for Rehearing of November 2004 Order at 6-8; PJM/MISO Regional Group Request for Rehearing of November 2004 Order at 12-15.

[168] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 48 n.97.

[169] 2003 Initial Decision, 102 FERC ¶ 63,049 at P 87-90.

[170] *See* 18 C.F.R. §§ 35.13(d)(3)(i), (d)(4) (2009) (allowing rates to be set based on a so-called Period I, historical test year). Indeed, even a forward-looking, future test year can often include historical data. *See* 18 C.F.R. § 35.13(d)(3)(ii)(A) (2009). And these (continued)

revenue recovery mechanism surcharge is levied not on past purchase decisions, but on future purchase decisions (i.e. customers' purchases of transmission service for deliveries to load in each RTO during the transition period) for access to the transmission facility of the other RTO.

129. As the filed rate doctrine and rule against retroactive ratemaking "relate to purchasers, their guiding concern is '[p]roviding the necessary predictability,' allowing 'purchasers … to know in advance the consequences of the purchasing decisions they make.'"[171] "[W]hen determining whether a FERC order violates either the filed rate doctrine or the rule against retroactive ratemaking, th[e] court inquires whether, as a practical matter, the purchasers … had sufficient notice that the approved rate was subject to change."[172] "The filed rate doctrine simply does not extend to cases in which buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service."[173] In other words, "it is not that notice relieves the Commission of the bar on retroactive ratemaking, but that it 'changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.'"[174]

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regulations have been in place since the early 1980s. *See* 18 C.F.R. § 35.13(d)(3), (4) (1982).

[171] *Towns of Concord v. FERC*, 955 F.2d at 75. *See also Texas Eastern Transmission Corp. v. FERC*, 102 F.3d 174, 188-89 (D.C. Cir. 1996) (filed rate doctrine "seeks to prevent customers from relying on certain rates, only to find later that their purchasing decisions have been upset and their costs increased."); *Public Utilities Comm'n of California v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993) ("when determining whether a FERC order violates either the filed rate doctrine or the rule against retroactive ratemaking, this court inquires whether, as a practical matter, the purchasers of the [energy] had sufficient notice that the approved rate was subject to change.").

[172] *Public Utilities Comm'n of California v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993).

[173] *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992).

[174] *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C. Cir. 1990).

130. The SECA transitional lost revenue recovery mechanism is a surcharge applied to license plate zonal rates for point-to-point and network transmission service in the combined region during the sixteen-month transition period (December 1, 2004, through March 31, 2006). The SECA rates reflect an allocation of transmission owners' lost revenues based on through-and-out service taken during a historical test period. The SECA rates in effect for Rate Period 1, December 1, 2004, through March 31, 2005, are based on 2002 test-year data, and the SECA rates in effect for Rate Period 2, April 1, 2005 through March 31, 2006, are based on 2003 test-year data.

131. Utility rates are, as noted above, often based on historical test period data, typically historical data is used to develop a per-unit cost-of-service rate. This rate is then applied to future purchases. Similarly, here the zonal and subzonal SECA rates were developed based on 2002-2003 test-period data and then were applied to transmission service taken prospectively. The level of the rate applicable in a particular zone or subzone was based on an allocation of lost revenues to that zone or subzone based on purchases of through-and-out service to serve load in that zone or subzone during the historical test year.

132. In July 2002, the Commission made clear that the through-and-out rates between PJM and Midwest ISO would be changing.[175] Furthermore, on rehearing of that order, the Commission stated that, while it was not making a final determination of the appropriate replacement rate design, the parties could look to the SECA methodology that had been preliminarily approved for use by the Alliance RTO and Midwest ISO to replace the elimination of rate pancaking within the Alliance RTO and between the two RTOs.[176] During the hearing several parties proposed the SECA as a transition mechanism to prevent cost shifts as the region eliminated the through-and-out rates and transitioned to a license plate rate. Discussions included utilizing the calendar-year 2002 and 2003 data to develop the SECA mechanism.[177] After further discussion and another hearing, several parties again requested that the Commission reconsider the SECA as a transition mechanism. In the November 2003 Rehearing Order, the Commission agreed, finding the SECA to be a just and reasonable, short-term transitional rate.[178] Consequently, by November 2003, parties had actual notice that a SECA rate would be developed and, as discussed in the hearing and provided for in the Chief Judge's report, knew that it would utilize calendar-year 2002 and 2003 data to determine that rate.

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[175] Alliance 2002 Order, 100 FERC ¶ 61,137 at P 38, 49-52.

[176] June 2003 Rehearing Order, 103 FERC ¶ 61,274 at P 4, 51-53, n.46.

[177] July 2003 Order, 104 FERC ¶ 61,105 at P 44-57.

[178] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 42-53, 64, 67.

133. In March 2004, the Commission accepted the Going Forward Principles, in which the SECA methodology, including the use of 2002 and 2003 historical test-year data,[179] was agreed to by virtually all of the parties as a back-stop mechanism if the Commission was unable to adopt a permanent replacement rate design by December 1, 2004.[180] By agreeing to the Going Forward Principles, the parties waived any notice deficiency as to utilizing test year data. In *Transwestern*, the court found, where parties have agreed to have the rates take effect before their exact formulation, the parties have waived any such deficiency.[181]

134. Subsequently, the parties were unable to agree on a single, permanent replacement rate design and submitted two competing proposals. Consequently, the parties, having sought a single agreed-to solution but having filed two competing proposals, assumed the risk that one or the other or neither proposal would be accepted and, having agreed to the SECA as a backstop, assumed the risk that the SECA, including its usage of historical test-year data to determine the SECA rate, would be implemented on December 1, 2004.[182]

135. In any event, the relevant purchasing decisions did not take effect until December 1, 2004, the beginning of the transition period. The SECA rate thus applied only to purchases of transmission service for deliveries to load during the sixteen-month transition period from December 1, 2004, through March 31, 2006; the SECA was designed as a short-term transition that would allow parties to recover revenues that would otherwise be lost due to the elimination of rate pancaking on December 1, 2004.

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[179] The Going Forward Principles settlement did not specifically state that calendar-years 2002 and 2003 would be utilized to develop the SECA rate. However, by referencing the SECA mechanism, the settlement incorporated the SECA mechanism as proposed during the 2002 hearing procedures, which included using historical test period data to develop the SECA rate.

[180] Going Forward Principles Order, 106 FERC ¶ 61,262 at P 18-25. Wisconsin Electric, Edison Mission, and Ameren filed protests to the Going Forward Principles settlement. Generally, the parties opposed extending the elimination of the through and out rates until December 1, 2004. *Id.* P 11-17. We found the protests unpersuasive. *Id.* P 18-25.

[181] *Transwestern*, 897 F.2d at 578.

[182] *See Texas Eastern Transmission Corp. v. FERC*, 966 F.2d 1506, 1509 (D.C. Cir. 1992) (denying petition challenging Commission's interpretation of a settlement that waived filed rate doctrine claims as not including particular parties).

In the November 2003 Rehearing Order and the November 2004 Order parties were, again, told that they would be subject to the SECA surcharge for their transmission service purchases deliveries to load during the transition period, which did not begin until December 1, 2004. While the SECA utilized data concerning purchases during calendar years 2002 and 2003 to develop its rate, it was applied only to purchases of transmission service beginning December 1, 2004. Thus, prior to the sixteen-month transition period, the parties were on notice that beginning December 1, 2004, parties benefitting from the elimination of through-and-out rates would be subject SECA charges.

136. Furthermore, the Commission provided for adjustments to the extent that the test-year data was unrepresentative of a customer's purchases during the transition period. This process required customers to demonstrate that the SECA compliance filings did not reflect the customer's current purchases. To the extent that during the transition period customers did not benefit from the elimination of through-and-out rates as they predicted by the test-period data, their SECA charges would be adjusted accordingly.[183] In the hearing on the SECA compliance filings, customers were provided ample opportunity to propose adjustments to the test-period data to the extent that it was no longer representative of their benefits from through-and-out service during the transition period. In the order on initial decision, being issued concurrently, we approve a number of such adjustments where they were sufficiently supported.

137. Additionally, contrary to Multiple TDUs' argument, the Commission did provide interim relief for those entities that demonstrated that compliance with the November 2004 Order would result in irreparable harm.[184]

138. We disagree with claims that *PG&E* supports the contention that the SECA is an impermissible form of retroactive ratemaking and violates the filed rate doctrine. In *PG&E* the court found that what was at issue was an "additional charge" for service that had already been provided.[185] The court agreed that the assessment of such a charge for past services that had already been paid for was impermissible; the imposition of an additional charge for a previous transaction was impermissible.[186]

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[183] July 2003 Order, 104 FERC ¶ 61,105 at P 54; November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 61.

[184] *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,022, at P 13 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,142, at P 19-21 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,387, at P 16 (2005).

[185] *PG&E*, 373 F.3d at 1319.

[186] *Id.* at 1320.

139. In contrast to the circumstances in *PG&E*, the SECA is not an assessment of a new, additional charge for services already delivered and paid for; rather it is a charge for transmission services purchased during the transition period.[187]

140. In addition, the courts have held that the rule against retroactive ratemaking does not extend to cases where the customers are on notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.[188] Unlike in *PG&*E, we find that the parties had notice that the Commission was concerned with rate pancaking in the region and that the Commission was considering revising the through-and-out rates, at least as early as July 2002 – well before the transition period at issue here. In the Alliance 2002 Order, the Commission conditionally accepted the compliance implementation filings of Alliance Companies under which they proposed to join either Midwest ISO or PJM, consistent with Order No. 2000. In doing so, the Commission found that one of the primary obstacles to RTO formation had been rate pancaking for transactions crossing RTO borders, and both Midwest ISO and PJM agreed that this was an issue. In light of Alliance Companies' RTO choices and in view of the comments, the Commission stated that the resolution of inter-RTO rates was fundamental

[187] We also note that, in the November 2003 Rehearing Order, in addressing arguments that the SECA violated ratemaking principles, the Commission affirmed the presiding judge's finding that the SECA did not result in retroactive ratemaking and did not violate the filed rate doctrine, and in so doing, the Commission discussed why the SECA did not violate traditional ratemaking principles. November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 48.

The Commission stated that, consistent with the principle of cost causation, the load of an importing utility should pay a fair share of the costs of the exporting utility's transmission facilities for its use of those facilities. The Commission explained that such payments previously had been made via transactional-based charges that now have been determined by the Commission to no longer be just and reasonable for the combined region. A transitional lost revenue recovery mechanism ensured that, during a transition period to a new rate design, the parties continue to pay the costs of facilities that they use and from which they benefit; the SECA transitional lost revenue recovery mechanism establishes a charge that approximates the expected use of the exporting utility's transmission system during the transition period. *Id.*

[188] *See, e.g.*, *Consolidated Edison Co. of New York, Inc. v. FERC*, 347 F.3d 964, 968-70 (D. C. Cir. 2003). *See also Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,203, at P 20-22 (2004); *Cities of Anaheim v. California Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,387, at P 17-18 (2005).

to establishing a single, common market. Therefore, the Commission instituted, under section 206 of the FPA, an investigation of inter-RTO rates. The Commission added that, while it was instituting a section 206 proceeding, it nevertheless encouraged Midwest ISO and PJM to develop a solution to eliminate rate pancaking between the organizations on their own as expeditiously as possible.[189] Similarly, *Associated Gas* explains that the relevant inquiry is "identi[fication of] the purchase decisions to which the costs are attached," and, thus, whether ratepayers are paying "a surcharge, over and above the rates on file at the time of sale, for [a commodity] they had already purchased.[190] That is not what is occurring here. While the SECA looks to an historical test year (a long standing practice, as explained elsewhere in this order), the charge is then applied to purchases of future transmission service during the transition period.

141. Several parties also argue that the Commission violated the filed rate doctrine by making the SECA rate effective December 1, 2004, prior to the Commission accepting the compliance filings and prior to the time that some of the compliance filings were made.[191] The statute provides that "[w]henever the Commission…shall find that any rate…collected by any public utility…is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate…to be

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[189] Alliance 2002 Order, 100 FERC ¶ 61,137 at P 49-52. In fact, the parties were on notice that there would be a change in rates and rate design even earlier: as early as April 2002. In *Alliance Co.*, 99 FERC ¶ 61,105 (2002), the Commission found reasonable a proposed rate design based on a single non-pancaked rate using a license plate approach that would apportion responsibility for lost revenues to load within the Midwest ISO and to customers wheeling out of or through Midwest ISO on the basis of the benefit that those customers would receive as a result of eliminating pancaking. The license plate rate for delivery to load within each license plate pricing zone would include two surcharges to recover lost revenues: a zonal transition adjustment and a super-regional rate adjustment. *Id.* at 61,442-47.

[190] *Associated Gas*, 893 F.3d at 355-56.

[191] This discussion provides the general facts and identifies the surrounding legal issues regarding the compliance filings. However, parties, in fact, made numerous compliance filings at various times some with differing effective dates to address individual issues. For example, AEP made its compliance filing on December 13, 2004. Furthermore, regarding Duquesne's integration on January 1, 2004, Midwest ISO filed its compliance filing as to the associated lost revenues on February 7, 2004. However, both of these, and other similar compliance filings, raise the same legal concerns addressed above.

thereafter observed and in force, and shall *fix* the same by order."[192] In *Electrical District No. 1* the court found that a Commission order establishing only general principles to determine a new rate would result in unforeseeable rate adjustments and, therefore, did not sufficiently "fix" a rate.[193] The court then found that, because the compliance filing contained the actual rate information required to determine the actual rate, the earliest the rate could become effective was upon the Commission's acceptance of the compliance filing. However, in *Transwestern* the court clarified this finding, conceding that its prior orders on the issue had not been "altogether clear" and explaining that the "Commission need not confine rates to specific, absolute numbers but may approve a tariff containing a rate 'formula' or a rate 'rule.'" The court further stated that, where the Commission "explicitly adopts a formula and indicates when it will take effect, courts may not…say that such a formula may never qualify as a 'rate.'"[194] The SECA transitional lost revenue recovery mechanism is more akin to the formula or rule identified in *Transwestern* than to the stated numerical rate at issue in *Electrical District No. 1*.

142. In the November 2004 Order, following up on the Going Forward Principles agreed to by virtually all of the parties to these proceedings and accepted by the Going Forward Principles Order, the Commission, as relevant here, adopted the SECA transitional lost revenue recovery mechanism previously adopted in a prior order to be effective December 1, 2004, and directed Midwest ISO, PJM and their transmission owners to make compliance filings implementing the SECA to be effective December 1, 2004.[195] While the compliance filings containing the actual charges were not submitted until after the SECA went into effect (i.e., after December 1, 2004) "absolute precision does not apply where the parties have <u>agreed</u> that the rates shall take

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[192] 16 U.S.C. § 824e(a) (2006) (emphasis added).

[193] *Electrical District No. 1*, 774 F.2d at 492-93.

[194] *Transwestern*, 897 F.2d at 577-78.The court's more recent decision in *City of Anaheim v. FERC*, 558 F.3d 521 (D.C. Cir 2009), does not warrant a different result. In that case, the court explained that the Commission could not, under section 206, make a rate increase effective June 1, 2006 when the Commission's order was issued on February 13, 2007, some seven months later. *Id*. at 523; *accord* at 522. Here, as explained in the text, the Commission's order adopting the SECA effective December 1, 2004 was issued prior to December 1, 2004, and, as well, was pursuant to the even earlier Going Forward Principles agreed to by virtually all of the parties and accepted by the Commission in March 2004.

[195] November 2004 Order, 109 FERC ¶ 61,168 at P 1, 54-55, 59, 61, 66.

effect before their exact formulation."[196] The Going Forward Principles provided for the SECA as a transition mechanism to take effect December 1, 2004, if the Commission was unable to adopt a permanent replacement rate. The Commission accepted this agreement in March 2004, in the Going Forward Principles Order. Accordingly, by agreement, the SECA could take effect December 1, 2004, and in fact, the parties established the due date for the original SECA compliance filings to be only six days prior to the effective date. Consequently, the parties were on notice that the SECA would take effect without knowing the exact formulation of the SECA rates, and they assumed the risk of not knowing the exact formulation of the rates, since they did not give the Commission enough time to act on the compliance filings prior to the December 1, 2004, effective date.[197]

143. Regarding Quest's argument pertaining to Part 35 of the Commission's regulations, we note that when we established the hearing on the SECA compliance filings we ordered parties to provide supporting information relevant to the SECA charges. Furthermore, because the SECA involves the allocation of costs in establishing a transitional lost revenue recovery charge and not revenue levels, the myriad requirements of Part 35 are not relevant here.

144. As to Detroit Edison, Green Mountain, and Hoosier's objections to paying interest, we note that the payment of interest is necessary to ensure full compensation for the time value of not paying the principal earlier. Moreover, there should be no harm resulting from the payment of interest, since those paying interest have benefitted from retaining the principal and, thus, the use of the principal, longer then if they had paid the principal earlier.[198] Furthermore, there has been no showing that the companies unreasonably delayed billing.[199]

145. We also disagree with Hoosier's argument on rehearing of the February 2005 Order that the Commission violated its suspension policy by imposing a nominal suspension upon the compliance filings. In the Going Forward Principles, the parties,

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[196] *Transwestern*, 897 F.2d at 578 (emphasis added).

[197] Six days did not allow parties time to comment on such filings, let alone time for the Commission to analyze and address in an order those various filings.

[198] *E.g., Virginia Electric and Power Co.*, 128 FERC ¶ 61,026, at P 43-45 (2009); *accord Washington Urban League v. FERC*, 881 F.2d 1381, 1386 (D.C. Cir. 1989) (payment of interest represents payment for the time value of money held).

[199] *See Kentucky West Virginia Gas Co.*, 48 FERC ¶ 61,071, at 61,336 (1989).

including Hoosier,[200] agreed to a nominal suspension in these circumstances.[201] Moreover, a nominal suspension complies with our suspension policy, as the proposed SECA transitional recovery mechanism was not intended as a rate increase, much less an increase more than ten percent excessive.

146. Furthermore, suspension decisions are made in a statutorily-defined and relatively short time frame based on only the parties' preliminary arguments and the Commission's preliminary analysis; they do not have the benefit of discovery and a full evidentiary record and briefing; they, thus, reflect a "rough, first-cut review" because that is all that can be done in the time available and with the information and arguments available. Thus, the Commission generally does not reconsider its decision regarding the length of a suspension period.[202]

147. We disagree with Classic PJM's *Mobile-Sierra* "public interest" argument. First, the SECA does not alter contracts nor does it impose an additional charge on 2002-2003 test-period sales. As previously discussed, the SECA was applied prospectively for transmission service taken during the sixteen-month transition period beginning December 1, 2004, and ending March 31, 2006. Additionally, the contracts at issue here were standard agreements under the PJM and Midwest ISO tariffs, which do not require the Commission to apply a "public interest" standard.

148. Regarding Detroit Edison's argument that the SECA unduly discriminated against load-serving entities that were not transmission owners, we disagree. At the hearing, addressed in our contemporaneous order on initial decision, parties had the opportunity to present evidence of known and measurable differences between the test-year data and the transition-period usage. Furthermore, we established Docket No. EL04-135-000 to provide load-serving entities, and others, refund protection to protect against overpayment of SECA charges prior to the hearing, should such protection be necessary.

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[200] *See* Going Forward Principles, 106 FERC ¶ 63,024, Attachment A, list of supporting parties.

[201] *Id.* Attachment at P1.

[202] *E.g. Pennsylvania Electric Co*., 20 FERC ¶ 61,401, at 61,817 (1982); *Gulf States Utilities Co.*, 37 FERC ¶ 61,174, at 61,422 (1986); *Northern States Power Co*., 53 FERC ¶ 61,236, at 61,976 (1990); *Jersey Central Power & Light Co.*, 56 FERC ¶ 61,376, at 62,435-36 (1991); *Appalachian Power Co.*, 59 FERC ¶ 61,313, at 62,158 (1992).

149. Finally, we disagree with Duquesne's argument regarding the applicability of the Commission's 60-day notice requirements. The June 2005 Order accepted the SECA compliance filings made under section 206 and pursuant to the Going Forward Principles. The Commission's 60-day notice requirement, a requirement of section 205, does not apply in such circumstances.[203]

4. Intra-PJM Lost Revenue Recovery

a. Requests for Rehearing

150. Some parties request rehearing of both the November 2004 Clarification Order and the February 10, 2005 Order, with respect to the collection of intra-PJM lost revenues through the SECA mechanism. The November 2004 Order stated:

> [w]e note that the total scope of lost revenues subject to the SECA in the combined proceedings in Docket Nos. EL02-111 and EL03-212 would now be significantly less due to the fact that all individual transmission owners are within RTOs and the lost revenues at issue are only those associated with crossing the Midwest ISO/PJM border. The approximate amount of lost revenues at issue before was $325 million/year, according to the October 14, 2004 SECA filing of AEP, ComEd and Dayton. Adjusting to only include lost revenues associated with inter-RTO transactions reduces this amount by approximately $110 million/year to a new total of about $215 million/year.[204]

151. In response to AEP's Emergency Motion for Clarification filed on November 23, 2004, the Commission clarified that parties in PJM could file to recover intra-PJM lost revenues, "through the SECA methodology in Docket No. EL04-135-000."[205] Some parties contest this clarification and the filings submitted by New PJM Companies to implement the SECA rates for recovery of intra-PJM lost revenues.

152. PJM/MISO Regional Group classify the November 2004 Clarification Order as a "miscarriage of justice and a serious violation of [parties'] due process and administrative

[203] *See* 16 U.S.C. § 824d (2006); 18 C.F.R. § 35.3 (2009).

[204] November 2004 Order, 109 FERC ¶ 61,168 at P 61 n.41.

[205] November 2004 Clarification Order, 109 FERC ¶ 61,243 at P 9.

rights."[206] They argue that the Commission erred in acting on the AEP motion without properly considering the answers and responses to the motion. They argue that the Commission's November 2004 Clarification Order clearly failed to give appropriate consideration to the arguments made in response to AEP's motion because the order dismisses them altogether in a footnote. They also state that the Commission violated its own regulations by issuing an order on the AEP motion without an intervening order shortening the response time for answers. PJM/MISO Regional Group states that the Commission's action on this matter results in over $110 million additional costs on customers in New Jersey, Pennsylvania, Maryland, Delaware, the District of Columbia, West Virginia, Indiana, Michigan, Kentucky, Virginia, and Ohio, implemented without any true consideration of arguments in opposition to the increased costs. In order to remedy the violation of due process rights for those opposed to the AEP motion, PJM/MISO Regional Group request that the November 2004 Clarification Order be vacated and request an opportunity to present oral argument on the issue of intra-PJM lost revenue recovery.

153. The PJM/MISO Regional Group further argue that any lost revenue claims by AEP should be considered in light of the fact that AEP has admitted that one-third of its "lost revenues" are related to transactions from its merchant generation business to its transmission company, which brings into question whether the corresponding lost revenues for such affiliate transactions can truly be considered "lost." They also state that AEP has had more than adequate compensation for lost revenues through the continuation of through-and-out revenue well beyond the original time in which AEP was supposed to have joined an RTO. PJM/MISO Regional Group point to a settlement in another proceeding where AEP had agreed to a revenue neutrality amount for compensation for lost revenues in joining PJM, and PJM/MISO Regional Group speculate that AEP has recovered most of that amount by way of continued through-and-out revenues. Furthermore, they argue that, in addition to the continued collection of through-and-out revenues, AEP will accrue significant benefits as a result of its integration into PJM. The PJM/MISO Regional Group contend that, in light of these benefits and the costs born by all of PJM to integrate AEP, it is even more unreasonable for AEP to seek additional transitional compensation through the collection of intra-PJM lost revenues. PJM/MISO Regional Group continue by arguing that the imposition of intra-PJM SECA rates will reduce, if not eliminate, the benefits for the rest of PJM from the integration of AEP. PJM/MISO Regional Group also claim that the November 2004 Clarification Order is inconsistent with the Commission's rejection of similar intra-RTO lost revenue claims made by Ameren.

[206] PJM/MISO Regional Group Request for Rehearing of November 2004 Order at 6-7.

154. Joint Consumer Advocates argue that, in its November 2004 Clarification Order, the Commission violated the due process rights of parties by failing to notice AEP's motion and issuing an order on the motion prior to the response time provided in Rule 213 of the Commission's Rules of Practice and Procedure and by failing to issue an order shortening the response time on the motion. Therefore, Joint Consumer Advocates claim, the Commission should reconsider the arguments opposing AEP's motion. Joint Consumer Advocates also state that they concur with the rehearing request filed by PJM/MISO Regional Group.

155. In its request for rehearing of the Commission's November 2004 Clarification Order, Wabash Valley asserts that, due to the passage of time with the delay in RTO membership by the New PJM Companies and because of the continued collection of through-and-out rate revenue during that time, New PJM Companies should not be entitled to collect intra-PJM lost revenues.

156. On rehearing of the February 2005 Order, PJM Regional Group (which is comprised of many of the same parties as the PJM/MISO Regional Group, which filed for rehearing of the November 2004 Clarification Order) argues that the Commission again failed to address arguments against intra-PJM SECA charges. Specifically, PJM Regional Group complain that the Commission erred by not rejecting the December 13 filing to implement intra-PJM SECA rates, because AEP, ComEd, and Dayton failed to make the necessary showing under section 206 that the existing rates of PJM and the PJM TOs are unjust and unreasonable.[207] PJM Regional Group state that the PJM TOs put forth a mechanism to provide for lost revenue recovery that provided a share of lost revenues to each new PJM member (the November 24, 2004, filing submitted by the PJM TOs, which did not include SECA rates for intra-PJM lost revenues) and that this was accepted by the Commission and is the existing filed rate under section 206 of the FPA. Accordingly, the PJM/MISO Regional Group argue that this mechanism must first be found unjust and unreasonable before a new rate (i.e., the December 13, 2004, filing by AEP that did include intra-PJM lost revenues) can be established under section 206 of the FPA, which they claim the Commission failed to find and AEP, ComEd, and Dayton failed to demonstrate. Even after a finding that the existing rate is unjust and unreasonable, PJM Regional Group state that the Commission must either establish a new just and reasonable rate, or order PJM and the PJM TOs to file a rate that conforms to the parameters that the Commission has established. However, PJM Regional Group claims, the Commission in effect authorized a third party to change the PJM Tariff, exceeding its authority under sections 205 and 206 of the FPA and violating the filing rights of the PJM TOs.

[207] PJM Regional Group Request for Rehearing of February 2005 Order at 6-8.

157. In their request for rehearing of the February 2005 Order, AEP and Exelon ask that the Commission clarify the February 2005 Order by explicitly directing all PJM TOs to comply with Paragraphs 37 and 38 of that order and directing them to take all action necessary to implement intra-PJM SECA rates, including participation in future compliance filings and the development of evidentiary support for SECA rates to implement the Commission's directives.[208]

b. Commission Determination

158. We affirm the Commission's clarification in the November 2004 Clarification Order that intra-PJM lost revenues associated with the elimination of through-and-out rates may be collected through the SECA methodology. The November 2004 Clarification Order explained the apparent contradiction between the November 2003 Rehearing Order and footnote 41 of the November 2004 Order. In the November 2003 Rehearing Order, where the Commission first ordered the implementation of the SECA rate design, the Commission also stated that "the transition rate mechanisms associated with the elimination of intra-RTO rate pancaking within the combined region should be the same as the mechanism prescribed here for the elimination of inter-RTO rate pancaking."[209] The November 2004 Clarification Order, in turn, explained that AEP, ComEd, and Dayton could make a filing to recover intra-PJM lost revenues through the SECA methodology,[210] and the Commission's February 2005 Order accepted and placed that filing into effect, consistent with the Commission's prior statement on intra-RTO lost revenues in the November 2003 Rehearing Order.[211]

159. Some intervenors claim that, in acting quickly on AEP's motion and in not addressing parties' arguments against the motion in the November 2004 Clarification Order, the Commission violated the due process rights of the parties opposed to AEP's motion. We disagree. We note that time was of the essence in responding to AEP's motion. In accordance with the November 2004 Order, and as provided for in the Going Forward Principles settlement, through-and-out rates were scheduled to be eliminated on December 1, 2004, to be replaced by the SECA transitional lost revenue recovery mechanism also to be effective on December 1, 2004. Therefore, it was necessary to act on the AEP motion for clarification by that date in order to permit proper recovery of lost

[208] AEP and Exelon Request for Rehearing of February 2005 Order at 6-7.

[209] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 44 n.92.

[210] November 2004 Clarification Order, 109 FERC ¶ 61,243 at P 8-9.

[211] February 2005 Order, 110 FERC ¶ 61,107 at P 37.

revenues through implementation of the SECA, in accordance with the principles and guidance set forth in the Commission's November 2003 Rehearing Order. Because the comments in response to AEP's motion were filed on the same day that the November 2004 Clarification Order was issued, it was not possible to expressly respond to the parties' arguments, yet still have the order issued before the December 1, 2004, effective date for the SECA. We note also here, however, that any due process concerns are moot given both the ample opportunity for parties to comment on the actual filings made by AEP, ComEd, and Dayton to implement the intra-PJM SECA rates, and we are giving further consideration to arguments on the intra-PJM SECA rates here.

160. Some interveners argue that AEP, ComEd, and Dayton should not be allowed to recover intra-PJM lost revenues through the SECA because they had agreed to a revenue neutrality amount as part of a settlement in a prior proceeding, and they have been fully compensated through continued collection of through-and-out rates. These are not convincing arguments to deny AEP, ComEd, and Dayton transitional lost revenues to ease the transition to license plate rates, as adopted in the November 2004 Order. As discussed earlier in this order, the revenue neutrality amount was a product of a settlement that was never executed and only addressed rates for a fixed period. The settlement did not address what rate structure would be in place following the revenue neutrality amount. Here, we are addressing the replacement rate structure, and the Commission has adopted license plate rates as the appropriate replacement to through-and-out rates. However, in order to address potential cost shifts and to provide transmission owners a transition period of lost revenue recovery and an opportunity to adjust their rates for their pricing zones accordingly, the Commission adopted the SECA transitional lost revenue recovery mechanism. Accordingly, it is appropriate for AEP, ComEd, and Dayton to collect intra-PJM lost revenues through the same methodology as inter-RTO lost revenues.[212]

161. With respect to arguments that implementing SECA rates to recover intra-PJM lost revenues effectively negates the benefits that the rest of PJM will receive from the integration of the New PJM Companies, as stated earlier, that is beyond the scope of this proceeding. As with the inter-RTO SECA rates, the intra-PJM SECA rates are intended to address the collection of lost revenues resulting from the elimination of pancaked rates, not to address the broader costs and benefits associated with PJM expansion. Furthermore, we note that the arguments that intra-PJM SECA rates will negate any of the benefits resulting from the addition of the New PJM Companies only concern the transition period. After the transition period, the benefits of greater access to generation resources through broadened transmission access will continue, while collection of intra-PJM lost revenues will cease.

[212] November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 44 n.92.

162. In response to PJM/MISO Regional Group's argument that the November 2004 Clarification Order contradicts the Commission's rejection of Ameren's request for an intra-RTO SECA, we disagree. At the time of Ameren's request, Ameren and Midwest ISO had already dealt with the elimination of intra-RTO rate pancaking and the issue of lost revenue compensation. In the case of AEP, ComEd, and Dayton, as the Commission noted in the November 2004 Clarification Order, they "were integrated into PJM in the midst of the inter-RTO rate proceedings and have not had an opportunity to fully recovery their lost revenues associated with the elimination of intra-RTO rate pancaking."[213]

163. We disagree with PJM Regional Group's assertion that the Commission's acceptance of the December 13, 2003 intra-PJM SECA filing was beyond our section 205 and 206 authority and a violation of the PJM TOs' filing rights. As the Commission stated in the February 10, 2005 Order, the particular allocation of filing rights between and among the various PJM entities is irrelevant in this case because the Commission was acting under its section 206 authority in accepting the intra-PJM SECA rates filed by AEP, Dayton, and ComEd in their December 13, 2004, filing.[214] PJM Regional Group further claims that the Commission failed to find the existing rate unjust and unreasonable before establishing the new rate (i.e., the December 13, 2004 SECA filing submitted by AEP). We disagree. As we stated in the November 2004 Clarification Order, AEP, ComEd, and Dayton are in different positions from other transmission owners because their integration into PJM did not provide them with an opportunity to fully recover their lost revenues, specifically lost revenues associated with intra-PJM transmission service, and as such, the rates for intra-PJM transmission service were unjust and unreasonable.[215]

5. SECA Implementation Issues

a. Historic Test Year

i. Requests for Rehearing

164. Joint Consumer Advocates contend that the SECA methodology is based on flawed assumptions. Joint Consumer Advocates state that the SECA methodology, by

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[213] November 2004 Clarification Order, 109 FERC ¶ 61,243 at P 9.

[214] February 2005 Order, 110 FERC ¶ 61,107 at P 37 n.12.

[215] November 2004 Clarification Order, 109 FERC ¶ 61,243 at P 9.

basing surcharges on the level of exports in a historic test year, falsely assumes that import and export transactions occurring while the surcharge is in effect will be similar to trading patterns during the test year.[216] Joint Consumer Advocates state that this assumption is flawed because the entities responsible for serving various loads have changed significantly as a result of retail competition and other market changes.

165. Classic PJM argues that the November 2003 Rehearing Order fails to differentiate between using historic test-year data to establish a utility's revenue requirements in a traditional rate case and using test-year data to establish the SECA. While using a historic test year in a rate case makes sense (because a regulated utility's service territory and customer base is relatively stable), Classic PJM argues that it does not make sense to use a historic test year to establish a transitional charge across nearly the entire eastern interconnection. Past trading patterns, it argues, are not indicative of future patterns, which shift from year-to-year, especially in an industry with rapidly changing corporate structures, trading patterns and market designs, as is prevalent throughout the Midwest ISO and PJM regions. In addition, it states that the Commission has acknowledged that new generation came on line in both 2002 and 2003, and other generating stations may have experienced extended outages that would likely not be repeated during the transition period.[217] Southwestern and Quest also argue that the 2002 test-year data is stale and should be updated (i.e., that 2003 and 2004 data should be used).[218]

166. Similarly, Multiple TDUs cite several examples to support their assertion that revenues in the aggregate during the test year are demonstrably not predictive of revenues that would be garnered during the transition period.[219] Multiple TDUs state that data regarding AEP's revenues from firm and non-firm transmission service from 2000 through 2003, filed with the Regional Pricing Proposal on October 1, 2004, show strikingly different revenue trends for different paths. Multiple TDUs claim that these data indicate that revenue trends in 2002-2003 are probably not indicative that AEP would have received similar through-and-out rate revenue during 2005-2006, had it

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[216] Joint Consumer Advocates Request for Rehearing of November 2003 Rehearing Order at 6.

[217] Classic PJM Request for Rehearing of November 2003 Rehearing Order at 54-55.

[218] Southwestern Request for Rehearing of November 2003 Rehearing Order at 10-11; Quest Request for Rehearing of November 2003 Rehearing Order at 17-18.

[219] Multiple TDUs Request for Clarification and Rehearing of November 2004 Order at 6-23.

remained a stand-alone transmission owner able to charge a through-and-out rate. They state that revenues from through-and-out service with points of delivery outside of the combined region decreased during the 2000-2003 period, while revenues associated with deliveries to PJM and Midwest ISO increased. They suggest that such trends reflect that AEP and other generators in its area took advantage of new opportunities to reach the far side of each RTO while paying only one pancake. However, they state that, had AEP not joined an RTO, such transactions could have been subject to multiple transmission access charges.[220] They also suggest that increased revenues for firm service reflect customers' efforts to gain priority over soon–to-be depancaked paths. They state that such data raise genuine issues of material fact as to whether 2002-2003 revenues would have been sustainable had AEP not joined an RTO.

167. Multiple TDUs also state that test-year revenues should be adjusted to reflect revenue reductions associated with the expiration of long-term transactions that are attributable to market forces that led the transmission customer to limit its transaction term when it entered into the transaction. According to Multiple TDUs, when a transaction ends, whether during the 2002-2003 test period or before the transition period ends, there is no basis to assume that, but for the elimination of through-and-out rates, the associated revenue stream would continue past the transaction's termination date. PJM/MISO Regional Group echoes these concerns.

168. In its request for rehearing of the November 2004 Order , Detroit Edison requests clarification that the SECA charges to be in effect during December 2004 through March 2005 should reflect the corresponding months of the 2002 test year, not the entire 2002 test year. If the Commission fails to clarify the November 2004 Order accordingly, Detroit Edison argues, it will inappropriately inflate customers' SECA obligations by double counting transmission utilization during the summer peak period.

169. In their request for rehearing of the June 2005 Order, Detroit Edison points out that, in response to concerns about the need to closely reflect future trading patterns, the Commission adopted the current approach in which SECA charges for the first part of the transition period are based on 2002 data and the SECA charges for the second part of the transition period are based on 2003 data. Detroit Edison states that 2004 is the most recent period for which a complete calendar year of data is available and that using the 2004 test-year data would more clearly reflect trading patterns and transmission grid use during the transition period and would decrease the need for adjustments to reflect known and measurable differences between the test year and the transition year. Detroit Edison

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[220] Multiple TDUs Request for Rehearing of November 2004 Order at 24-26, (*citing* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,180; *GridFlorida LLC,* 94 FERC ¶ 61,363, at 62,337 (2001).

states that the Commission failed to address this issue in the June 16, 2005 Order and that the Commission should direct parties to use the most recent data available in filings to collect lost revenues.

ii. Commission Determination

170. We deny the requests for rehearing of the use of an historical test year as the basis for the SECA. The Commission provided hearing procedures to allow parties the opportunity to present evidence that the test-year data are unrepresentative and should be adjusted. We also find unconvincing those who argue that we should reject the use of the SECA because transactions during the test year will not exactly match transactions during the current year. The historical test year is a reasonable starting point; indeed, as discussed elsewhere in this order, it is expressly allowed and has long been allowed by our filing regulations.[221] In any event, the critical issue is whether an entity benefits from through-and-out service, not whether it actually chooses to use it. For example, an entity that is not using through-and-out service can benefit from the elimination of through-and-out rates if the entity has replaced an import with a purchase of local generation because the price of local generation was affected by and benefits from the availability of the import.

171. We also find the use of calendar-year 2002 and 2003 data to be appropriate. Though 2004 data became available during the hearing, requiring re-calculations using 2004 data is unnecessary in light of the Commission's determination that the SECA may be adjusted for known and measurable changes. Entities that believed that adjustments to 2002-2003 data were supported by 2004 data were given the opportunity to present such evidence as part of the hearing process, and did. We address those proposals in the order on the initial decision concerning the SECA compliance filings being issued concurrently.

172. We reject Detroit Edison's suggestion that only four months of 2002 data corresponding to the first four months of the transition period should be used to calculate the SECA for those four months for the reasons explained in the order on the initial decision being issued concurrently.

b. Transition Period

i. Requests for Rehearing

173. PJM/MISO Regional Group request that the Commission change the expiration date of the transition period from March 31, 2006, to October 31, 2005. They argue that

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[221] *See* 18 C.F.R. § 35.13 (2009).

the two-year transition period should be based on the original through-and-out rate elimination deadline of November 1, 2003 (the date mandated in the July 2003 Order). They points out that transmission owners have been on notice since July 2003 that there was to be an end to their through-and-out revenue and that they should adjust their business and financial decisions accordingly. Though the November 2003 Rehearing Order extended the deadline for regional through-and-out elimination to April 1, 2004, The PJM/MISO Regional Group argue the Commission erred in the November 2004 Order when it directed the transition period to end on March 31, 2006 (two years after the delayed April 1, 2004, deadline). In doing so, it argues, the Commission, without any explanation, effectively extended the initial 24-month transition period to 29 months. Therefore, PJM/MISO Regional Group requests that the Commission change the transition period expiration date to October 31, 2005 (two years after the original November 1, 2003, deadline).[222]

ii. Commission Determination

174. We deny the PJM/MISO Regional Group's request for rehearing on this issue and affirm that the transition period should end on March 31, 2006. The PJM/MISO Regional Group is incorrect in its belief that the November 2004 Order changed the period that the appropriate transitional lost revenue recovery mechanism to accompany license plate rates would be in effect - the only expiration date for this mechanism provided in the Commission's orders has been March 31, 2006. Though the July 2003 Order stated that the Commission believed that a two-year transition period for the transitional lost revenue recovery mechanism is appropriate,[223] it did not establish a specific expiration date for the transition period because no transitional lost revenue recovery mechanism was adopted in that order. In contrast, on reconsideration in the November 2003 Rehearing Order, the Commission adopted the transitional lost revenue recovery mechanism, directed compliance filings to implement it,[224] and also affirmed the two-year transition period.[225] In addition, the November 2003 Rehearing Order changed to April 1, 2004, the date on which rate pancaking would be eliminated. Since the November 2003 Rehearing Order was the first to adopt the transitional lost revenue recovery mechanism, the expiration of the transition period for that mechanism was correctly based on the date for rate pancake elimination also established in the November

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[222] PJM/MISO Regional Group Request for Rehearing of November 2004 Order at 42-43.

[223] July 2003 Order, 104 FERC ¶ 61,105 at P 54.

[224] *Id.* P 43.

[225] *Id.* P 75-79.

2003 Rehearing Order - namely March 31, 2006 (originally established as two years after the April 1, 2004 date for elimination of rate pancaking but, as a consequence of the Going Forward Principles, subsequently changed to December 1, 2004 through March 31, 2006).

c. Average Rate

i. Request for Rehearing

175. In their request for rehearing of the November 2003 Rehearing Order, WPSC requests that the Commission clarify that the rate used to calculate lost revenue obligations should be based on actual transmission invoices. They state that certain SECA proponents have proposed to use an average through-and-out rate. They state that, for utilities such as WPSC that use through-and-out service primarily during off-peak hours, use of an average rate would over state the revenue generated by WPSC's through-and-out transactions and unreasonably inflate its lost revenue obligation.

176. The PJM/MISO Regional Group argue in their request for rehearing of the November 2004 Order that, because the through-and-out rates were charged based on reservations while the SECA is developed based on hourly interchange transactions, use of an average hourly rate to develop the SECA discriminates against load-serving entities with higher load factor utilization of their through-and-out reservations, because they will pay a higher percentage of the SECA assigned to the zone than they paid in through-and-out rates. They state that, to be historically accurate at the transmission-customer level, the calculation of the SECA transitional lost revenue recovery mechanism's actual rate would have to be done for every customer, which they concede would be a monumental undertaking. However, they state that using an average rate sacrifices accuracy for simplicity and leaves many customers in a state of being forced to subsidize others.[226]

ii. Commission Determination

177. We deny the requests for clarification. As we explain in the order on initial decision being issued concurrently, utilizing an average rate is necessary because it is almost impossible to calculate directly the transmission charges paid to other transmission owners by a given load due to the increased number of transactions involving power marketers that do not have detailed bills showing the amount of transmission charges paid by the power marketers. Furthermore, a principal benefit of the elimination of through-and-out rates is increased trading and the resulting tendency to

[226] PJM/MISO Regional Group Request for Rehearing of November 2004 Order at 27-28.

equalize delivered prices at various locations. Merely holding reserved transmission capacity would not produce such benefits until energy is actually scheduled for delivery using a reservation. Therefore, delivered energy is a better indicator of the relative benefits of the elimination of through-and-out rates than reserved transmission capacity, and, thus, allocating lost revenues to parties based on their use of transmission reservations (i.e., to those parties with relatively high load factors) is just and reasonable.

6. <u>$1.00 per Kilowatt-Month Credit</u>

178. In their request for rehearing of the November 2004 Order, AEP, Exelon, and Ameron request that the Commission clarify its intention to accept four additional transactions that were inadvertently omitted from the lists of transactions qualifying for the effective $1.00 per kilowatt-month rate under paragraph 10 of the Going Forward Principles. AEP, Exelon, and Ameren argue that these additions were submitted in an unopposed motion filed by the PJM TOs and described in Paragraph 81 of the November 2004 Order, but which the Commission failed to address.[227]

179. The Commission inadvertently failed to address the PJM TOs' unopposed motion to add to the list of transactions that qualified for the $1.00 per kilowatt-month credit under Paragraph 10 of the Going Forward Principles. We grant the PJM TOs' motion to include the four additional transactions

7. <u>SECA Within Dominion Zone</u>

180. Dominion requests clarification, or in the alternative rehearing, of the November 2004 Order. Dominion argues that once it is integrated into PJM the SECA should not seek to recover lost intra-PJM revenues from Dominion.[228] Dominion states that any through-and-out rate revenue reductions, as the result of its integration into PJM, will be offset by the corresponding benefits of its integration, such as reductions in PJM administrative costs, the elimination of its own border rate, and additional border rate revenue from future external PJM transactions that exit PJM through Dominion into Carolina Power and Light Company. Dominion asks that any proceeding that addresses lost revenues from its integration into PJM should recognize these benefits.

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[227] AEP, Exelon and Ameren Request for Rehearing of November 2004 Order at 5.

[228] Dominion Request for Clarification and Rehearing of November 2004 Order at 8.

181. We are not persuaded that the SECA charges should not apply within Dominion's zone and will deny its requests for clarification and rehearing. The Commission previously denied Dominion's request. The Commission stated that it would be inappropriate to remove Dominion from the proceedings that were established to allow for the implementation of a single, long-term transmission pricing structure for all parties across the combined regions, and Dominion is one such party.[229] It would also be inappropriate in this instance to uniquely exempt Dominion, a PJM member, from the SECA charges in its zone (as compared to our treatment of the other PJM members and the charges that would apply to such other PJM members).

8. Network Service

182. Multiple TDUs ask in their request for clarification or rehearing of the November 2004 Order that the Commission clarify its intent regarding elimination of rate pancaking for network service.[230] They contend that Midwest ISO has made no tariff changes to implement the directive in the November 2004 Order, which reads: "rates for both point-to-point service and network service under one RTO's tariff to serve load in the other RTO are eliminated as of December 1, 2004."[231] They state that the Commission's language regarding what should be done to implement its intent was murky, resulting in Midwest ISO making no tariff changes related to this issue. Multiple TDUs state that either through rehearing, clarification, or on compliance, the Commission should make clear that Midwest ISO is directed to offer reciprocal, and de-pancaked, section 31.3 network service to PJM-area load-serving entities that currently take PJM network service or that do so in the future.

183. We will deny Multiple TDUs' requests for clarification or rehearing. As specified in the November 2004 Order, it is not the Commission's intention to perpetuate rate pancaking for inter-RTO service where network customers in one RTO use the other RTO's through-and-out network service to serve their load.[232] The Commission thus directed PJM to file tariff revisions to eliminate rate pancaking for network service. However, the Commission noted that section 31.3 of the Midwest ISO tariff does not

[229] *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,057, at P 12 (2005).

[230] Multiple TDUs Request for Clarification and Rehearing of November 2004 Order at 31.

[231] November 2004 Order, 109 FERC ¶ 61,168 at P 80.

[232] *Id.*.

allow network service to be used to serve load that is not physically interconnected with a transmission owner within the geographic area in which facilities subject to the tariff are located. Since through-and-out network service is not available under the Midwest ISO tariff, Midwest ISO was not and is not required to file tariff revisions regarding network service.[233] While the Commission intended to eliminate through–and-out rates, to be replaced with a license plate rate design, and to allow a transitional lost revenue recovery mechanism, the Commission did not intend to more broadly change the services of, as relevant here, Midwest ISO and did not intend to direct Midwest ISO to offer the kind of reciprocal service that Multiple TDUs seek.

9. Scope of Hearing

184. AEP, Exelon, and Ameren ask that the Commission clarify that the issues set for hearing in the February 2005 Order do not include any matters previously decided by the Commission in its prior orders in these proceedings.[234] They also ask that the Commission clarify by explicitly directing all PJM TOs to comply with paragraphs 37 and 38 and to take all action necessary to implement intra-PJM SECA rates, including participation in future compliance filings and the development of evidentiary support for SECA rates to implement the Commission's directives.[235]

185. This request is, we believe, effectively moot at this time given the hearing, the Initial Decision, and our contemporaneous order on the Initial Decision.

The Commission orders:

The requests for rehearings are hereby denied, as discussed in the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[233] *Id.*P 80, n.48.

[234] AEP, Exelon, and Ameren Request for Rehearing of February 2005 Order at 6.

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

Appendix

Parties Seeking Rehearing, and/or Clarification, of the November 2003 Rehearing Order

American Municipal Power-Ohio, Inc.
Cinergy Services, Inc. on behalf of Cincinnati Gas & Electric Co., PSI Energy, Inc., Union Light, Heat and Power Co.
Certain Classic PJM Companies - West Penn Power Co., Monongahela Power Co., Potomac Edison Co., (collectively, Allegheny Power); Baltimore Gas and Electric Co., Pepco Holdings, Inc., Potomac Electric Power Co., Atlantic City Electric Co., Delmarva Power & Light Co., PPL Electric Utilities Corp., Public Service Electric and Gas Co., Rockland Electric Co.,
UGI Utilities, Inc.
Consumers Energy Co.
Coral Power
Detroit Edison Co.
Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC
Electric Power Supply Association
FirstEnergy Corp.
Joint Consumer Advocates
Michigan Public Power Agency
Michigan South Central Power Agency
Multiple TDUs including the Coalition of Municipal and Cooperative Users of New PJM Companies' Transmission, the Indiana Municipal Power Agency, Southeast Michigan Systems
Ormet Primary Aluminum Corp.
Virginia State Corporation Commission
Wisconsin Electric Power Co.
Wisconsin Public Service Corp. and Upper Peninsula Power Co.

Parties Seeking Rehearing of the December 2003 Clarification Order

Cinergy Services, Inc., on behalf of Cincinnati Gas & Electric Co., PSI Energy, Inc., Union Light, Heat and Power Co.

Parties Seeking Rehearing of the Going Forward Principles Order

Edison Mission Energy, Edison Mission Marketing & Trading., Inc., and Midwest Generation EME, LLC

Parties Seeking Rehearing of February 2004 Order

Edison Mission Energy, Edison Mission Marketing & Trading., Inc., and Midwest Generation EME, LLC

Parties Seeking Rehearing of the November 2004 Order

Allegheny Power

American Electric Power Service Corporation, on behalf of Appalachian Power Service Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co., and Wheeling Power Co.; Exelon Corp., on behalf of Commonwealth Edison Co., and Commonwealth Co., of Indiana, Inc.; and Ameren Services Co., on behalf of Union Electric Co., Central Illinois Public Service Co., Central Illinois Light Co., and Illinois Power Co..

Baltimore Gas and Electric Co.

Consumer Energy Co.

Detroit Edison

Hoosier Energy Rural Electric Coop., Inc.

Joint Consumer Advocates

Midwest ISO Transmission Owners, including Ameren Services Co., as agent for Central Illinois Public Service Co., Central Illinois Light and Illinois Power Co.; Alliant Energy Corporate Services, Inc. on behalf of Interstate Power and Light Co. and Interstate Power Co.; American Transmission Co., LLC, American Transmission Systems, Inc.; Cinergy Services Inc. for Cincinnati Gas & Electric Co., PSI Energy, Inc., Union Heat & Power Co.; City Water, Light & Power; Hoosier Energy Rural Electric Cooperative, Inc; Indianapolis Power & Light Co.; International Transmission Co., LG&E Energy LLC for Louisville Gas and Electric Co., and Kentucky Utilities Co.; Michigan Electric Transmission Co., LLC; Minnesota Power and Superior Water, L&P; Montana-Dakota Utilities Co.; Northern Indiana Public Service, Co., Northern States Power Co., Northern States Power Co. (Wisconsin); subsidiaries of Xcel Energy, Inc,; Otter Tail Corp.; Southern Illinois Power Coop.; Southern Indiana Gas & Electric Co.; and Wabash Valley Power Association, Inc.

Multiple TDUs including the Coalition of Municipal and Cooperative Users of New PJM Companies' Transmission, the Indiana Municipal Power Agency, Southeast Michigan Systems

Northern Indiana Public Service Co.

Ormet Primary Aluminum Corp.

PJM Interconnection, LLC

PJM and MISO Regional Group, including Allegheny Electric Cooperative, Inc.; Baltimore Gas and Electric Co.; Blue Ridge Power Agency; Borough of Chambersburg, Pennsylvania; Central Virginia electric Cooperative; City of Bay city, Michigan; City of Dowagiac, Michigan' City of Sturgis, Michigan; Coalition of Midwest Transmission Customers' Consumers Energy Co., Craig-Botetourt Electric Cooperative; Delaware Municipal Electric Corporation, Inc.; Detroit Edison Co.; ElectriCities of North Carolina, Inc., Hoosier Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Madison Gas and Electric Co.; Maryland Office of People's Counsel; Michigan Public Power Agency; Michigan Public Power Rate Payers Association; Michigan South Central Power Agency; Missouri Joint Municipal Electric Utility Commission; Nordic Marketing, LLC; Old Dominion

Electric Cooperative; Pennsylvania Office of Consumer Advocate; Pennsylvania Public Utility Commission; Pepco Holdings, Inc. on behalf of Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic city Electric Co.; PJM Industrial Customer Coalition; PPL Electric Utilities Corporation; Public Service Electric and Gas Co.; Rockland Electric Co.; Southern Maryland Electric Cooperative, Inc.; Soyland Power Cooperative, Inc,; Thumb Electric Cooperative; Virginia Municipal Electric Association No. 1; UGI Utilities, Inc.; Wisconsin Public Power Inc.; Wisconsin Public Service Corporation and Upper Peninsula Power Company; and Wolverine Power Supply Cooperative, Inc.

Southwestern Electric Cooperative, Inc.

Unified Plan Proponents including Allegheny Electric Cooperative, Inc.; Blue Ridge Power Agency; Borough of Chambersburg, Pennsylvania; Central Virginia Electric Cooperative; City of Bay City, Michigan; City of Dowagiac, Michigan; City of Sturgis, Michigan; Coalition of Midwest Transmission Customers; Consumers Energy Co.; Craig-Botetourt Electric Cooperative; Delaware Municipal Electric Corp., Inc,; Detroit Edison Co.; Edison Mission Energy; Edison Mission, Marketing & Trading Inc. and Midwest Generation ELE, LLC; ElectriCities of North Carolina, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Madison Gas and Electric Co.; Maryland Office of People's Counsel; Michigan Public Power Agency, Michigan Public Power Rate Payers Association; Michigan South Central Power Agency; Missouri Joint Municipal Electric Utility Commission; Nordic Marketing, LLC; Old Dominion Electric Cooperative; Pennsylvania Office of Consumer Advocate; Pennsylvania Public Utility Commission; PJM Industrial Customer Coalition' Pepco Holdings, Inc. on behalf of Potomac Electric Power Co., Delmarva Power & Light Co., and Atlantic City Electric Co., PPL Electric Utilities Corp.; Public Service Electric and Gas Co.; Rockland Electric Co.; Southern Illinois Power Coop.; Southern Maryland Electric Coop., Inc.; Soyland Power Coop., Inc.; Thumb Electric Coop.; UGI Utilities, Inc.; Virginia Municipal Electric Association No. 1; Wisconsin Electric Power Co. and Edison Sault Electric Co.; Wisconsin Public Service Corp. and Upper Peninsula Power Co.; and Wolverine Power Supply Coop. Inc.

Virginia Electric and Power Co.

Wisconsin Electric Power Co.

Wisconsin Public Service Corp. and Upper Peninsula Power Co.

Parties Seeking Rehearing of November 2004 Clarification Order

Wabash Valley Power Association, Inc.

Parties Seeking Rehearing of February 2005 Order

Detroit Edison Co., and Detroit Energy Trading, Inc.

Parties Seeking Rehearing June 2005 Order

Detroit Edison Co., and Detroit Energy Trading, Inc.

Quest Energy, LLC and WPS Energy Services, Inc.

Strategic Energy, LLC