

proposal (together “Midwest ISO Parties”) to continue Midwest ISO’s current rate design for recovery of costs for existing and new transmission facilities, pursuant to a Commission order requiring Midwest ISO to revisit its rate design at the end of a six-year transition period,² and to Commission direction that the Midwest ISO and its stakeholders assess the relationship between cost allocation for existing and new facilities.³ Also on August 1, 2007, the Midwest Stand-Alone Transmission Companies⁴ (MSAT) and Wolverine Power Supply Cooperative, Inc. (Wolverine) filed a superseding rate design proposal (together “MSAT Parties”) to increase cost sharing for new transmission facilities. For the reasons discussed below, we accept the Midwest ISO Parties’ proposal as just and reasonable. We also find that the MSAT Parties have not presented sufficient justification for a change from the current pricing structure for new facilities, and we thus deny the MSAT Parties’ proposal.

Background

2. By order issued on September 16, 1998, the Commission conditionally approved the formation of Midwest ISO. The Commission approved the use of license plate rates that recovered the costs of existing transmission facilities within each pricing zone from only those customers with transactions that sink in that zone. The Commission and stakeholders expressed concerns regarding license plate rates but the Commission concluded that the potential for substantial cost shifts if license plate rates were abandoned outweighed these concerns.⁵ Accordingly, the Commission approved the use of license plate rates during a transition period.

Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at 62,167 (Midwest ISO Formation Order), *order on reconsideration*, 85 FERC ¶ 61,250, *order on reh’g*, 85 FERC ¶ 61,372 (1998).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, at P 24 (2007) (requiring Midwest ISO to show that the post transition period rate design adopted for existing facilities does not produce overall transmission rates that are unjust and unreasonable or unduly discriminatory when viewed in relation to the cost allocation for new facilities).

⁴ American Transmission Company, LLC (ATC), International Transmission Company (ITC), and Michigan Electric Transmission Company, LLC (METC).

⁵ Midwest ISO Formation Order, 84 FERC at 62,167.

3. The Commission directed Midwest ISO to revisit its license plate pricing structure six months prior to the end of a six-year transition period. The Commission did not preclude a request to extend that initial rate method for more than six years but ordered that the issue be revisited formally. The initial six-year transition period ends January 31, 2008.

4. During the transition period, stakeholders in the Midwest ISO established the Regional Expansion Criteria and Benefits (RECB) Task Force. The Task Force, established in early 2004, was created to consider revisions to the Midwest ISO tariff to provide for regional cost sharing of certain network upgrades. This process resulted in the RECB I filing proposed by Midwest ISO in October 2005 to provide for cost sharing of certain reliability upgrades (Baseline Reliability Projects), generator interconnection upgrades, and transmission delivery service upgrades. The Commission accepted the RECB I filing with certain compliance directives on February 3, 2006.⁶ In November 2006, the Midwest ISO submitted the RECB II filing that provided for regional cost sharing of economic projects (Regionally Beneficial Projects). The Commission conditionally accepted this filing on March 15, 2007.⁷ Both the RECB I and RECB II proceedings accepted a rate methodology for new facilities where 20 percent of the project costs are allocated regionally using a postage stamp rate. The remaining 80 percent of project costs are allocated sub-regionally as further explained herein.

5. Also during the transition period, the Commission issued Opinion No. 494, which upheld the use of license plate rates for existing facilities within PJM.⁸ The Opinion overturned an initial decision that held that PJM's rate design was unjust and unreasonable under sections 205 and 206 of the Federal Power Act (FPA). The Commission reasoned that the sunk costs of investment in existing facilities should continue to be recovered from customers for whom these costs were originally incurred,

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on reh'g, technical conference and compliance*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007), *appeal pending sub nom. Pub. Serv. Comm'n of Wisconsin v. FERC*, Case No. 06-1408 (D.C. Cir., filed Dec. 13, 2006) (collectively, RECB I Orders) (Docket No. ER06-18).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (RECB II Order), *order on reh'g*, 120 FERC ¶ 61,080 (2007), *reh'g pending* (collectively, RECB II Orders) (Docket No. ER06-18).

⁸ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007) ("Opinion No. 494"). An order on rehearing is being issued concurrently in Docket No. EL05-121-003, *et al.*

and that a reallocation would produce unacceptable cost shifts. In Opinion No. 494 the Commission stated that for recovery of the costs of investment in new facilities that operate below a 500 kV threshold, the Commission endorsed the continued use of a beneficiary pays approach.⁹ For recovery of the cost of investment in new facilities that operate at or above 500 kV, the Commission established a regional rate design based on a postage-stamp allocation methodology.¹⁰

6. On August 1, 2007, two separate proposals were made in response to the requirement that Midwest ISO revisit its rate design for existing facilities and assess the relationship between cost allocation for existing and new facilities. The filing submitted by the Midwest ISO Parties in Docket No. ER07-1233-000 (Midwest ISO Parties Filing) represents the majority of the Midwest ISO TOs.¹¹ The MSAT Parties submitted a competing proposal in Docket No. ER07-1261-000 (MSAT Parties Filing).

Existing Rate Design

7. Currently, Midwest ISO recovers the cost of existing facilities (those facilities existing prior to the effective dates of the RECB proceedings) through license plate rates. Midwest ISO recovers the cost of new facilities through a form of regional cost sharing that includes postage stamp rates, as described below.

A. Existing Facilities

8. In the Midwest ISO Formation Order, the Commission approved a license plate rate design for existing facilities in Midwest ISO. License plate pricing is a zonal pricing structure, where prices are charged based on the zonal rate where the load is located. Midwest ISO charges license plate rates for “drive in” service (point-to-point transmission service from outside the Midwest ISO to inside the Midwest ISO), “drive out” service (point-to-point transmission service from inside the Midwest ISO to outside the Midwest ISO), and network service. License plate pricing differs from system-wide

⁹ Under a beneficiary pays approach, the costs of new facilities are allocated to load based on a computer modeling methodology, not zonal proximity.

¹⁰ Under a postage-stamp rate design, all transmission service customers in a region pay a uniform rate per unit-of-service, based on the aggregated costs of all transmission facilities in the region.

¹¹ According to Midwest ISO, the TOs submitting this filing represent 70 percent (based on gross transmission plant investment) of the transmission facilities in the Midwest ISO.

(or postage stamp) pricing, which charges identical rates for all transmission across the region, regardless of the zone where the load is located.

9. While the Commission noted in the Formation Order that postage stamp pricing may be appropriate for a new transmission grid, the Midwest ISO system did not involve a “clean slate,” given the substantial investment already put into the grid by stakeholders. Accordingly, the Commission approved license plate rates for existing facilities in Midwest ISO to avoid the potential for “abrupt cost-shifts that would discourage future regional restructurings.”¹²

B. New Facilities

10. As noted above, Midwest ISO’s pricing for new transmission facilities was determined in the RECB proceedings, where the Commission approved Midwest ISO tariffs in the RECB I and RECB II Orders. Under RECB I, to qualify for any regional cost sharing, a Baseline Reliability Project must cost \$5 million or more or the project must constitute five percent or more of the Transmission Owners’ net plant as established in Attachment O. For qualifying projects rated at or above 345 kV, 20 percent of the costs are allocated across the Midwest ISO footprint on a postage stamp basis, with the remaining 80 percent of costs being allocated sub-regionally to one or more zones based on a Line Outage Distribution Factor (LODF) analysis. For projects rated between 100 kV and 344 kV, 100 percent of costs are allocated sub-regionally, to one or more zones, based on a LODF analysis.

11. As accepted in the RECB II proceeding, to qualify for regional cost sharing, Regionally Beneficial Projects (i.e., economic projects) must satisfy two benefits tests. First, the sum of the present value of the production cost benefit¹³ and the Locational Marginal Pricing (LMP)-based energy cost benefit,¹⁴ determined in aggregate for all generation and load nodes under the tariff, must be greater than zero. Second, a proposed project must satisfy a variable Benefits/Costs Ratio threshold, defined as the total project

¹² Midwest ISO Formation Order, 84 FERC ¶ at 62,167.

¹³ The production cost benefit metric is the calculation of production cost savings (benefits) due to the transmission expansion, adjusted to reflect changes in sales and purchases that may occur as a result of the expansion.

¹⁴ The LMP energy cost benefit is calculated by multiplying the LMP by the load at each load bus within the sub-region for each period of the planning model simulation. The intent is to measure reductions in load energy payments resulting from LMP reductions associated with the expansion.

benefit¹⁵ divided by the project cost.¹⁶ If the project meets three additional criteria (i.e., the project costs more than \$5 million, involves facilities with voltages of 345 kV or higher, and is not a Baseline Reliability Project or New Transmission Access Project), then it is a Regionally Beneficial Project, and eligible for regional cost allocation.

12. Similar to Baseline Reliability Projects, 20 percent of costs for Regionally Beneficial Projects are allocated on a postage-stamp basis. The remaining 80 percent of costs are allocated among the three geographic sub-regions based on a beneficiary analysis. Once each sub-region is assigned its portion of the project cost, the cost allocation to each individual entity within each geographic sub-region will be on a load ratio share basis. The proposed methodology provides for a deviation from this cost allocation when the sum of the production cost benefit and the LMP energy cost benefit to any sub-region is negative. That is, a sub-region that receives a net negative benefit from an economic upgrade is not allocated a share of the 80 percent sub-regional component.

13. In accepting the Midwest ISO's cost allocation proposals for new facilities, the Commission recognized that it had approved different levels of transmission cost allocations for different regions of the country (e.g., 20 percent for Midwest ISO, 33 percent for Southwest Power Pool, Inc., and 100 percent for PJM) but explained that the unique electric topography of individual markets, as well as other factors, may warrant differing levels of regional transmission cost allocation. However, the Commission directed Midwest ISO and Midwest ISO TOs to revisit the 20 percent postage-stamp cost allocation for new facilities when they filed the required post-transition rate design for existing transmission facilities.¹⁷

Instant Filings

14. Both the Midwest ISO Parties Filing and the MSAT Parties Filing propose to retain the existing license plate rate structure for existing facilities. With regard to new facilities, the MSAT Parties also propose to revise the degree of cost sharing and the

¹⁵ The total project benefit is a weighted value defined as the sum of 70 percent of the production cost benefit and 30 percent of the load's LMP energy cost benefit.

¹⁶ The Benefits/Costs Ratio thresholds vary linearly from 1.2 for projects that have an in-service date within one year of MTEP approval to 3.0 for projects that have an in-service date of ten or more years after MTEP approval.

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241, at P 66 (2006).

application of qualifying criteria currently in effect pursuant to the recent RECB II Orders. The Midwest ISO Parties propose no changes to cost sharing or qualifying criteria for new facilities.

A. Midwest ISO Parties

15. The Midwest ISO Parties propose to retain license plate pricing for existing facilities. The Midwest ISO Parties propose no changes to the existing RECB rate methodology for new facilities.

16. The Midwest ISO Parties state that in order to meet the transition period filing requirement, Midwest ISO and its stakeholders began work in the fall of 2006 to reevaluate the pricing within Midwest ISO. As a result of these meetings, several pricing options were discussed. In particular, the Midwest ISO TOs discussed various highway/byway alternatives, an injection/withdrawal initiative, retaining the existing license plate rate methodology, as well as others.

17. The Midwest ISO Parties note that in the midst of the discussions, the Commission issued Opinion No. 494. The Midwest ISO Parties assert that the rationale offered by the Commission in Opinion No. 494 “signaled to the Midwest ISO TOs that the Commission would likely look favorably on a continued license plate rate for existing facilities in the Midwest ISO as well.”¹⁸

18. The Midwest ISO Parties state that on June 14, 2007, the transmission owners voted 21 to 4 to file in support of retaining license plate rates for existing facilities within Midwest ISO.¹⁹ They also rejected a separate motion from MSAT to change the pricing mechanism for new facilities by a 22 to 5 vote with one abstention.²⁰

19. The Midwest ISO Parties state that the Formation Order did not require Midwest ISO to change the rate structure for existing facilities, rather to reevaluate its rate structure. The Midwest ISO Parties have determined that license plate rates for transmission service within Midwest ISO remain appropriate.²¹ The Midwest ISO Parties assert that existing facilities were not developed under common ownership and planning, and were not designed to benefit the entirety of Midwest ISO. They also argue that replacing the existing license plate design following the transition period could lead

¹⁸ Midwest ISO Parties Filing at 9.

¹⁹ Midwest ISO Parties Filing, Testimony of John Precario, Ex. 2, Att. 8.

²⁰ *Id.*

²¹ Midwest ISO Parties Filing at 10.

to large cost shifts among the owners. Therefore, according to the Midwest ISO Parties, it is just and reasonable to maintain the existing rate schedule so that customers pay for the facilities constructed for their use.

20. With respect to new facilities, the Midwest ISO Parties assert that the existence of a distinct rate design for new facilities is appropriate given the history of development within the Midwest ISO, and that the current rate structure for new facilities is just and reasonable.²² According to the Midwest ISO Parties, existing facilities were planned to serve local load and primarily continue to serve that local load today. In contrast, with the establishment of the Midwest ISO, transmission owners in the Midwest ISO now participate in planning new transmission facilities on a regional basis. Midwest ISO Parties claim that the use of these two rate designs results in “overall transmission rates” that are just and reasonable given the different planning and use of the specific facilities.

B. MSAT Parties

21. The MSAT Parties do not propose to change the license plate rate structure applicable to existing transmission facilities that pre-date RECB.²³ According to the MSAT Parties, the Midwest ISO's license plate rate structure has eliminated rate pancaking and has facilitated greater coordination with respect to the operation of transmission facilities in the Midwest ISO region. As a result, the MSAT Parties aver, the Midwest ISO has facilitated one-stop shopping, provided greater independence in the operation of the transmission system and fostered the formation of a regional market.

22. With respect to new facilities, the MSAT Parties propose to increase the 20 percent postage stamp cost allocation of qualifying new facilities projects to 100 percent. Additionally, the MSAT Parties propose to modify the criteria used to

²² *Id.* at 13.

²³ The MSAT Parties also state that they do not propose changes regarding the cost allocation methodology applicable to transmission projects included in Attachment FF-1 of the Midwest ISO's Attachment FF (Excluded Projects List) or the cost allocation methodology applicable to “Planned Projects” identified in Appendix A of the Midwest ISO's MTEP prior to August 1, 2007. Consistent with the RECB I Order, projects that were listed in the MTEP 05 as “planned” or were sufficiently advanced in the planning process they were considered to be “planned” were permanently excluded from participating in regional cost sharing. Similarly, projects that were planned after MTEP 05 but before August 1, 2007 will be eligible for regional cost allocation based on the methodologies in effect at that time. Projects proposed or planned after August 1, 2007 will be allocated using the RECB methodology on a going forward basis.

identify Extra-High Voltage (EHV) transmission projects that are eligible for regional cost sharing under the 100 percent postage stamp allocation. As stated by the MSAT Parties, the 100 percent postage stamp rate will apply to all new projects that are eligible for regional cost sharing under the existing RECB methodology rated as 345 kV and above, subject to modifications made with respect to the regional cost recovery eligibility criteria applicable to projects rated at 500 kV and above.²⁴

23. The MSAT Parties describe their proposed revisions as “narrowly-focused enhancements intended to mitigate the disincentive to invest in regional EHV transmission infrastructure.”²⁵ The MSAT Parties go on to state that their proposal will “directly advance the transmission planning policy objectives set forth by the Commission in Order No. 890, as well as the Midwest ISO’s long-term vision for accomplishing those objectives.”²⁶

24. The MSAT Parties state that the Midwest ISO’s existing rate design for new facilities has created a disincentive to invest in the type of transmission facilities that are needed to fully achieve the regional benefits envisioned at the formation of the Midwest ISO. The MSAT Parties claim that the “greater the percentage of costs that are allocated on a local basis, the less likely it is that projects will be constructed based on the regional benefits they provide.”²⁷ The MSAT Parties further state that greater regional cost allocation is more conducive to transmission investment because it reduces the potential for projects with clear regional net benefits to be rejected based on local cost/benefit considerations.

Notice of the Filings and Responsive Pleadings

25. Notice of the Midwest ISO Parties Filing was published in the *Federal Register*, 72 Fed. Reg. 44,839 (Aug. 9, 2007), with interventions, comments, and protests due on or before September 17, 2007. The following parties filed timely motions to intervene: American Municipal Power-Ohio, Inc., Wisconsin Electric Power Company, and the

²⁴ The proposed language can be found in the Midwest ISO’s Transmission and Energy Markets Tariff (TEMT) at Attachment FF, Sections III.A.2.c, f, and h (Sheet Nos. 1843-44, 1849A-B, 1849C) and Schedule 26, Section 2(b) (Sheet Nos. 1879-1879A).

²⁵ MSAT Parties Filing at 3.

²⁶ *Id.* at 3.

²⁷ *Id.* at 35.

Coalition of Midwest Transmission Customers. The following parties filed timely motions to intervene and protest: the Midwest Transmission Dependent Utilities (Midwest TDUs),²⁸ Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Energy), Detroit Edison Company (Detroit Edison), and Wisconsin Utilities.²⁹ The following parties filed timely motions to intervene and comments: the Integrys Energy Group (Integrys), Wisconsin Power and Light Company (WPL), MSAT, and Exelon Corporation (Exelon). The following parties filed notices of intervention and comments: the Public Utilities Commission of Ohio (Ohio Commission), the Illinois Commerce Commission (Illinois Commission), the Public Service Commission of Wisconsin (Wisconsin Commission), the Organization of MISO States, Inc. (OMS).³⁰ Consumers Energy Company (Consumers Energy) filed an untimely motion to intervene, protest and comments. On November 2, 2007, the Midwest ISO TOs filed an answer to the protests under ER07-1233-000.

26. Notice of the MSAT Parties Filing was published in the *Federal Register*, 72 Fed. Reg. 46,988 (Aug. 26, 2007), with interventions, comments, and protests due on or before September 17, 2007. The following parties filed timely motions to intervene: Midwest ISO, Great River Energy, Xcel Energy Services, American Municipal Power-Ohio, Inc., FirstEnergy Service Company, Wisconsin Electric Power Company, and the Coalition of Midwest Transmission Customers. The following parties filed timely motions to intervene and protest: Midwest TDUs, Midwest ISO TOs, IPL, Hoosier Energy, Detroit Edison, and Wisconsin Utilities. The following parties filed timely motions to intervene and comments: the Michigan Public Power Agency (MPPA), Integrys, WPL, and Exelon. The following parties filed notices of intervention and comments: the Ohio Commission, the Illinois Commission, the Michigan Commission, the Wisconsin Commission, and the OMS. Consumers Energy filed an untimely motion to intervene, protest and comments. On November 2, 2007, the MSAT Parties filed an answer to the protests under ER07-1266-000. ATC also filed a supplemental answer on November 2, 2007.

²⁸ The Midwest TDUs include the following entities: Great Lakes Utilities; Madison Gas and Electric Company; Midwest Municipal Transmission Group; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; Upper Peninsula Transmission Dependent Utilities; and Wisconsin Public Power, Inc.

²⁹ The Wisconsin Utilities include the following entities: Madison Gas and Electric Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, Wisconsin Public Service Corporation, and Wisconsin Public Power Inc.

³⁰ The OMS is a non-profit, self-governing organization of representatives from each state with regulatory jurisdiction over entities participating in the Midwest ISO.

Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the motion for late intervention of Consumers Energy, given the early stage of this proceeding, and the absence of any undue delay, prejudice or burden to the parties.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO TOs, the MSAT Parties and ATC because they have provided information that assisted us in our decision-making process.

Discussion

A. Summary of Findings

29. Upon review of the proposals from the Midwest ISO Parties and the MSAT Parties, we find that the existing rate design for both new and existing facilities continues to be just and reasonable. Therefore, we will extend the license plate rate structure for existing facilities in the Midwest ISO. This outcome is consistent with our finding in the rehearing of Opinion No. 494 which is also being issued today.³¹ In Opinion No. 494, the Commission stated that the "owners in PJM built their existing infrastructure primarily to accommodate the needs of their own customers. The fact that the transmission system is used today in ways that differ from when the facilities were constructed does not, standing alone, provide a basis for finding that a license plate

³¹ In the concurrent order in Docket No. EL05-121-003, *et al.* (Opinion No. 494-A), the Commission denies requests for rehearing and/or clarification of Opinion No. 494 and accepts PJM's related compliance filing. The Commission is also issuing related orders in Docket No. ER05-6-044, *et al.* and Docket No. EL07-101-000, *et al.* In the concurrent order in Docket No. ER05-6-044, *et al.*, the Commission addresses competing cross-border cost allocation compliance filings and conditionally accepts Midwest ISO's proposal. In the concurrent order in Docket No. EL07-101-000, *et al.*, the Commission denies a complaint filed by American Electric Power Service Corporation against Midwest ISO and PJM challenging the justness and reasonableness of the rate designs underlying the Midwest ISO and PJM tariffs. The Commission also accepts a reevaluation of fixed cost recovery policies for pricing transmission service between Midwest ISO and PJM by the RTOs and their TOs and accepts their proposal to continue using the existing methodology to price transmission service between the RTOs after February 1, 2008.

design is no longer just and reasonable.”³² Allowing the license plate rate design to continue for existing facilities at this time is also consistent with an orders being issued in Docket No. ER05-6-100, *et al.* (Order on Compliance Filing and Denying Complaint) and Docket No. ER05-6-044, *et al.* (Order on Cross Border Facilities Cost Allocation).

30. At this time, we make no changes to the rate methodologies currently in place for new facilities. Here we find that the process already put in place in RECB I and RECB II to review the appropriateness of the cost recovery for new facilities continues to be just and reasonable. The MSAT Parties have not presented any new arguments to persuade us to abandon the RECB process at this time. The Midwest region has not yet had enough time and experience to assess the results of the new cost sharing methodology nor to revise the processes already in place for new facilities. We anticipate that Midwest ISO, OMS and stakeholders will gain experience with the cost recovery methodologies for new facilities that are already in place and will be able to rely on that actual experience to potentially revisit the appropriateness of those methodologies. This outcome is also overwhelmingly supported by the stakeholders, including the OMS, and the methodologies for cost recovery for new facilities were thoroughly vetted through the RECB I and RECB II processes.

31. As the Supreme Court has found, “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.”³³ In application of these principles, the Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input. In this regard, we have stated our deference to regional preferences a number of times, for instance in Order No. 2000, and in *PJM Interconnection L.L.C.*,³⁴ as well as in our approval of rate designs for different regional markets.³⁵

³² See Opinion No. 494, 119 FERC ¶ 61,063 at P 51.

³³ *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945).

³⁴ 96 FERC ¶ 61,060, at 61,220 (2001).

³⁵ See *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at 61,397 (2004); *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at 61,653, *order on reh'g*, 112 FERC ¶ 61,319 (2005); *California Independent System Operator*, 109 FERC ¶ 61,301 (2004), *reh'g denied*, 111 FERC ¶ 61,337 (2005); *New England Power Pool and ISO New England, Inc.*, 109 FERC ¶ 61,252 (2004), *order on clarification*, 110 FERC ¶ 61,003 (2005).

32. While rate design principles may be easy to articulate in the abstract, applying them to a particular case and a point in time is not simple.³⁶ We find that unlike the situation addressed in Opinion No. 494, there is overwhelming support of states and stakeholders within Midwest ISO for permitting the current rate structure to move forward. We note that in the past, the Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input.³⁷

33. The Commission notes that there are significant regional differences between Midwest ISO and other Regional Transmission Organizations (RTOs) such as PJM that must be accounted for when analyzing rate structure, both for existing and new facilities.³⁸ These include both structural issues as well as the existence of the RECB process in Midwest ISO, which was only recently approved and provides for status reports in August 2008 and August 2009.

34. We now turn our attention to the issues raised in this proceeding, starting with pricing for existing transmission facilities, pricing for new facilities, and finally discussing whether any further transition period should be mandated.

B. Pricing for Transmission Services over Existing Facilities

35. As we note above, both the Midwest ISO Parties and the MSAT Parties propose to continue the license plate rate design for existing facilities in Midwest ISO. Midwest ISO Parties cite to a number of cases in which the Commission has indicated that a license plate rate design is reasonable.³⁹ Particularly, the Midwest ISO Parties point to Opinion No. 494 where the Commission initially accepted zonal or license plate rates and

³⁶ As the D.C. Circuit has stated: “there is no neutral or inherently fair allocation of fixed costs, as the history of rate design amply demonstrates.” *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1171 (D.C. Cir. 1996).

³⁷ See Opinion No. 494, 119 FERC ¶ 61,063 at P 39 (citing various orders where the Commission has considered regional differences in approving rate design).

³⁸ See RECB II Order, 118 FERC ¶ 61,209 at P 69 (“[T]he Midwest ISO serves an extremely large footprint that has not, to date, had a history of regional transmission planning or cost allocation. It is therefore neither surprising nor necessarily inappropriate that the Midwest ISO’s proposal for regional cost allocation would fail to allocate costs as broadly as regions with a smaller footprint and, in the case of New England, a long history of integrated and coordinated operations.”).

³⁹ Midwest ISO Parties Filing at 10.

then after extensive hearings found license plate rates for existing facilities within PJM were just and reasonable.

36. The Midwest ISO Parties cite two main reasons for the Commission's determination that the continuation of license plate rates was just and reasonable in the PJM proceeding: (1) the facilities were not developed under common ownership and planning, and were not designed to benefit the entire footprint of PJM and (2) replacing the existing license plate design could lead to large cost shifts among the owners. The Midwest ISO Parties add that the Commission found that the large cost shifts could cause adversely affected transmission owners to second guess their participation in PJM.

37. The Midwest ISO Parties state that similar to PJM, the existing facilities in Midwest ISO "were not developed under common ownership and planning, and were not designed to benefit the entire footprint of [Midwest ISO]."⁴⁰ The Midwest ISO Parties also point to a November 2004 order in which the Commission recognized that in Midwest ISO, "existing facilities have been largely constructed to serve the transmission owner's local load prior to the advent of regional transmission service."⁴¹

38. The Midwest ISO Parties note that the Commission stated in Opinion No. 494 that it is "consistent with the principles of cost causation to continue to allocate the costs of these facilities to the customers for whom they were constructed and whom they continue to serve to date."⁴²

39. The MSAT Parties also propose to retain the license plate rates for existing facilities. The MSAT Parties state that "the proposal to retain license plate rates is based largely on the guidance provided by the Commission in PJM's post-transition period proceeding."⁴³ The MSAT Parties also state that they "interpret Opinion No. 494 as representing the current state of Commission policy and a strong indication that parties seeking to modify the Midwest ISO's license plate rate structure, which is similar to PJM's, will face a high burden of persuasion."⁴⁴

⁴⁰ *Id.* at 11.

⁴¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60 (2004).

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

⁴³ MSAT Parties Filing at 46.

⁴⁴ *Id.* at 47.

1. Comments and Protests

40. A majority of commenters and Midwest ISO stakeholders favor retaining license plate pricing for existing facilities.

41. The OMS states that a majority of its members “support[] the position taken in the [Midwest ISO Parties] filing and recommend[] retention of the license plate rate design approach for existing transmission facilities at this time.”⁴⁵ The OMS states that it believes the Midwest ISO Parties have provided reasonable support for their proposal; however, the OMS also requests that the Commission consider another transition period of three or four years.

42. The Illinois Commission states that it supports the continued use of license plate rates for existing facilities at this time.⁴⁶ Consumers Energy also states that it “believes that the continuation of license plate rates for existing facilities is acceptable.”⁴⁷

43. Exelon states that it supports the Midwest ISO Parties filing. Exelon notes that “as the filing states, retention of license plate rates for existing facilities is consistent with cost causation principles and avoids inappropriate cost shifts.”⁴⁸

44. Three entities filed comments arguing against continuing license plate pricing for existing facilities. Integrys faults Midwest ISO’s assertion that license plate pricing is consistent with cost causation because it matches the pricing of the service with the transmission owners’ original intent when the facilities were planned and constructed. Integrys believes this assertion is inconsistent with the Commission’s long-standing rate design principles and therefore does not justify retention of license plate pricing on a long-term basis. Integrys also states that the Commission should require the allocation of the costs of Midwest ISO’s transmission grid to the customers who benefit from the grid,

⁴⁵ OMS Comments at 9. The Illinois Commission states that it did not support the adoption of a 20 percent Midwest ISO-wide postage stamp cost allocation component in the RECB II proceedings and does not support it now. The Kentucky Commission states that it continues to support a beneficiary pays rate design. The Missouri Commission, Indiana Commission and the Indiana Office of Utility Consumer Counselor do not support another transition period involving the costs of existing transmission facilities. In a separate filing, the Wisconsin Public Service Commission states that its position is set forth in the OMS Comments.

⁴⁶ Illinois Commission Comments at 3.

⁴⁷ Consumers Energy Comments at 3.

⁴⁸ Exelon Comments at 2.

regardless of the original intent of the owners of the facilities. Addressing potential cost shifting concerns, Integrys claims that because transmission service is only a small portion of the total cost of service to end-use customers, even a large percentage increase in the cost of transmission service would have a relatively minor impact on the total cost of service. Integrys states that the principal purpose of a transition period is to ease the rate shock that might accompany a switch to a new pricing methodology.

45. Hoosier Energy states that “the Commission should find that all Midwest ISO transmission facilities, new and existing, provide regional benefits to all Midwest ISO Customers, and that the costs of all such facilities should therefore be recovered on a postage stamp basis.”⁴⁹

46. The Ohio Commission states “that it supports rate designs that allocate transmission costs to those who are benefiting from and utilizing the transmission facilities at issue.”⁵⁰ The Ohio Commission further states that existing facility costs should be allocated under the same methodology as new facility costs. The Ohio Commission supports a beneficiary pays approach for both new and existing facilities, where participants pay only for the benefits they receive from investment in the grid.⁵¹

2. Answer

47. In their answer, the Midwest ISO TOs state that the continuation of license plate rates for existing facilities in the Midwest ISO is just and reasonable. The Midwest ISO TOs assert that since they are not proposing to change the rates for existing facilities, any change would have to be done under the section 206 standards. The Midwest ISO TOs state that opponents have not demonstrated that the continuation of license plate rate design is unjust and unreasonable as required under section 206.

48. Midwest ISO TOs also cite Opinion No. 494 in support of their position that the use of license plate rates is consistent with cost causation.⁵² Midwest ISO TOs further aver that the cost shifts caused by changing the rate design would be significant. The Midwest ISO TOs again cite Opinion No. 494 where the Commission explained that “replacing the existing license plate rate design for existing facilities would result in large

⁴⁹ Hoosier Energy Comments at 3.

⁵⁰ Ohio Commission Comments at 6.

⁵¹ The Ohio Commission believes that the DFAX approach which is used in PJM is a step in the right direction.

⁵² Midwest ISO TOs Answer at 6.

cost increases among transmission owners, thereby causing adversely affected transmission owners to second guess their participation in PJM.”⁵³

49. Midwest ISO TOs also state that contrary to the assertions of Integrys and Hoosier Energy, the Midwest ISO is not required to adopt a new rate design at the end of the transition period, but rather is simply required to reevaluate the zonal pricing structure at that time. Midwest ISO TOs also take issue with Integrys’ claim that cost increases are not significant because transmission is only a small component of end user’s costs. Midwest ISO TOs assert that potential cost increases for existing facilities range from up to an \$80.2 million increase to a \$103 million decrease for amounts to be collected from individual zones. Midwest ISO TOs state that these cost increases are indeed significant.

50. Midwest ISO TOs further state that contrary to the views of Integrys, the previous elimination of pancaked rates is irrelevant to the instant proceeding. Midwest ISO TOs also assert that new and existing facilities need not be treated the same.⁵⁴

3. Commission Determination

51. For the reasons discussed below, we find the continuation of license plate rates for intra-Midwest ISO transactions for existing facilities to be just and reasonable.

52. The Commission bases its decision on an objective review of the proposals offered. Although not the only deciding factor, the Commission considers the opinions of various stakeholders, states, and other affected parties in reaching its conclusions.⁵⁵ We are persuaded that the Midwest ISO and the transmission owners conducted an adequate stakeholder process to study the differing options.⁵⁶ While several options were

⁵³ Midwest ISO TOs cite to Opinion No. 494, 119 FERC ¶ 61,063 at P 43.

⁵⁴ Answer of Midwest ISO TOs at 14.

⁵⁵ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (discussing importance of stakeholder opinion in Commission determinations).

⁵⁶ See Midwest ISO Parties Filing, Testimony of John Precario.

studied,⁵⁷ the transmission owners overwhelmingly support the retention of license plate rates.⁵⁸ Most of the OMS is also supportive of retaining license plate rates.

53. Although some parties object to this approach, we reject their arguments for reasons similar to our findings on this issue in Opinion No. 494,⁵⁹ where the Commission concluded that PJM's continued use of license plate rates to recover the costs of existing facilities was not unjust, unreasonable or unduly discriminatory.⁶⁰ Specifically, the Commission stated that the current license plate design remains just and reasonable because it reflects the prior investment decisions of the individual transmission owners and the fact that these facilities were built principally to support load within the individual transmission owners' zones. In Opinion No. 494, the Commission also rejected alternative rate methodologies proposed. The Commission stated that existing facilities were constructed to serve the needs of individual transmission systems and were not part of a system-wide planning process.⁶¹ Further, the Commission stated that "existing facilities represent sunk costs that were built primarily by individual utilities to serve their own internal needs and were financed by those utilities."⁶² We find these same conditions exist in the Midwest ISO.

⁵⁷ John Precario notes that the transmission owners studied postage stamp rates, highway/byway proposals based on voltages, a subregional allocation and an injection/withdrawal scenario. *See* Midwest ISO Parties Ex. 2 at 3.

⁵⁸ According to the testimony of Mr. Precario, twenty-one out of twenty-five transmission owners favored the retention of license plate rates. *See* Midwest ISO Parties Exhibit 2 at 14.

⁵⁹ The Commission's decision to maintain license plate rates for existing facilities in Midwest ISO is not based solely on our decision in Opinion No. 494. As we discuss below, there are regional differences between PJM and Midwest ISO that warrant a separate review of each region's pricing policies, whether for existing or new facilities. However, our review for each is guided by the principles we outlined in Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

⁶⁰ *See* Opinion No. 494, 119 FERC ¶ 61,063 at P 3 (*reh'g denied in relevant part*, Opinion No. 494-A, 112 FERC ¶ 61,082, at P 40).

⁶¹ *See id.* P 42.

⁶² *Id.* P 50.

54. As we discussed in Opinion No. 494, an abrupt shift away from license plate rates could result in inequities. The Commission has stated that the introduction of RTOs was not intended to abandon basic cost of service principles.⁶³ “[S]hifting of cost responsibility for existing transmission facilities also would do nothing to promote economic efficiency – a primary goal of our transmission pricing policy.”⁶⁴ Accordingly, the Commission finds that a shift away from license plate rates for existing facilities in Midwest ISO is not warranted at this time, and could create the inequities and cost shifts discussed in our previous orders.⁶⁵ The Midwest ISO Parties state that the largest cost shifts would result from the implementation of a postage stamp rate design. They state that these cost shifts range from a 394 percent increase to a 54 percent decrease.⁶⁶ These cost shifts could result in up to an \$80 million increase for some zones while other zones could see up to a \$103 million decrease.⁶⁷ We find this data very persuasive as these are significant cost shifts. Therefore, we find that license plate rates for existing facilities in the Midwest ISO continue to be just and reasonable at this time.

C. Pricing for New Facilities

1. Collateral Estoppel

55. As discussed above, the MSAT Parties’ proposal follows the conclusion of the RECB process, which determined cost sharing for new facilities in Midwest ISO. The MSAT Parties state that their proposal and corresponding revisions to the TEMT are filed pursuant to section 205 of the FPA,⁶⁸ and should be accepted if found just, reasonable,

⁶³ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at n. 613 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁶⁴ *See* Opinion No. 494, 119 FERC ¶ 61,063 at P 57.

⁶⁵ *See Id.* P 58 and Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,177.

⁶⁶ Midwest ISO Parties Filing at 12.

⁶⁷ *See* Midwest ISO TOs Answer at 11.

⁶⁸ The MSAT Parties state that pursuant to Appendix K of the “Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation” (Transmission Owners Agreement) they have the right to make section 205 filings related to “allocation of costs associated with transmission upgrades and new transmission facilities affecting” multiple

(continued)

and not unduly discriminatory. They note that the Commission has recognized previously that a range of just and reasonable alternatives exist for cost allocation. Thus, even if there are other just and reasonable proposals, the MSAT Parties' proposal should be found superior and accepted.⁶⁹

a. Comments and Protests

56. In their protest to Docket No. ER07-1261-000, Midwest ISO TOs argue that the Commission should reject the MSAT Parties Filing on the grounds of collateral estoppel.⁷⁰ The Midwest ISO TOs assert that the MSAT Parties' proposal is an impermissible attempt to relitigate issues upon which the Commission has already ruled, namely the decision in the RECB orders on pricing for new facilities.

57. The Midwest ISO TOs claim that the MSAT Parties have failed to show changed circumstances to warrant relitigation of the appropriate postage stamp percentage and eligibility issues. Additionally, the Midwest ISO TOs state that the Commission has already prescribed a process to change RECB via progress reports due in August 2008 and 2009.

b. Answer

58. The MSAT Parties give several reasons in their Answer why the collateral estoppel theory raised by the Midwest ISO TOs should not apply. First, they argue that this theory is directly contradicted by the Commission's own guidance in the RECB

pricing zones. Transmission Owners Agreement, Appendix K § II.D. (Sheet No. 226). The MSAT Parties state that section 205 filing rights may be exercised by a minimum of three (3) Transmission Owners that "either own or have been delegated authority to exercise section 205 rights concerning combined gross transmission plant of at least \$2,500,000,000." *Id.* at Appendix K § III.A. (Sheet No. 231). The MSAT Parties state that they meet these qualifications. MSAT Parties Filing at 8.

⁶⁹ MSAT Parties Filing at 45.

⁷⁰ The Midwest ISO TOs argue that collateral estoppel provides that once an issue of fact or law necessary to its judgment in a given case has been decided, a party to that case is precluded from relitigating that issue in another proceeding, provided said party had a "full and fair opportunity to litigate" the issue in the first case. Midwest ISO TOs Filing at 15 (*citing Allen v. McCurry*, 449 U.S. 90, 95 (1980); *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 797 (1986); *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107 (1991)).

proceeding. There, the MSAT Parties state, the Commission expressly advised that its rulings -- specifically, its “acceptance of the 20 percent postage-stamp” rate -- would “not pre-judge any future cost-allocation proceedings, including the upcoming proceeding to address post-transition rate design.”⁷¹

59. Second, the MSAT Parties state that for the doctrine of collateral estoppel to apply, there must be identical issues that were actually litigated in a prior proceeding, with the resolution of such issues necessary to the judgment in that proceeding. The issue in the RECB proceeding was whether the cost allocation mechanism proposed there (i.e., 20 percent postage stamp rate and RECB regional cost sharing eligibility criteria) met the just, reasonable, and not unduly preferential standard of section 205.

60. The MSAT Parties state that the filings in the RECB proceeding were not intended to comply with the post transition period filing obligation established by the Commission, which is the purpose of the August 1st Filing. They also argue that the doctrine of collateral estoppel does not apply if there is a change in circumstance, and there have been many such changes that were not considered in the RECB proceeding. These include the issuance of Order No. 890, as well as changes in local, state and federal policies on renewable resources. The MSAT Parties state the Commission has recognized that it is not precluded from reconsidering the justness and reasonableness of rates when new evidence is presented. The August 1st Filing relied on evidence that was neither considered nor available during the RECB process.

61. Finally, the MSAT Parties contend that the Midwest ISO TOs are incorrect that any changes to the RECB methodology must be considered in the context of the annual RECB reporting process. The MSAT Parties assert that nothing in the RECB proceeding supports that conclusion.

c. Commission Determination

62. The Commission finds that the MSAT Parties’ proposal is not barred by collateral estoppel.

63. As the MSAT Parties note, the Commission stated in our order on rehearing of RECB I that the RECB Proceedings did “not prejudice any future cost-allocation proceedings, including the upcoming proceeding to address post-transition rate design.”⁷²

⁷¹ MSAT Parties Answer at 5, citing *Midwest Indep. Transmission Sys. Operator*, 118 FERC ¶ 61,208 at P 23 (2007).

⁷² *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,208, at P 23 (2007).

The Commission also stated that the RECB Proceedings did not place any burdens on applicants “beyond what is required by section 205 of the [FPA] in seeking to establish a new rate design or cost-allocation methodology.”⁷³ The Commission did not intend the RECB I or RECB II Orders to be a final determination on pricing for new facilities in Midwest ISO, and we fully intended that parties would address the issue in this proceeding. Therefore, we reject the Midwest ISO TOs’ argument that collateral estoppel precludes consideration of the issue here.

64. However, we agree with the Midwest ISO TOs that we do not write on a clean slate in this proceeding. As explained in detail *infra*, the RECB II Order addressed very similar arguments regarding whether to adopt a postage-stamp rate for high voltage facilities. In that decision, we approved the Midwest ISO’s proposal as a “first step” in regional cost allocation. We rejected proposals for a 100 percent roll-in of high voltage facilities, but did not foreclose the possibility of changes to the existing methodology *if* they are merited based on actual experience with RECB I and II.⁷⁴ To provide an adequate record to assess such experience, we required the Midwest ISO to submit reports in August 2008 and 2009 on the “effectiveness of all of the transmission expansion cost allocation methodologies.”⁷⁵ We held that this information would be “used to review . . . the effectiveness” of those methodologies.⁷⁶ If this actual experience merits a change to the existing methodology, we can so modify the existing approach at that time. However, we have no basis to revisit our findings in RECB II now – given that we have no evidence regarding actual experience on which to base such a change.

2. **Burden of Proof**

65. The MSAT Parties state that their proposal to modify the RECB methodology applicable to new facilities is filed pursuant to section 205 of the FPA. As such, they state, the proposed revisions should be accepted if they are found to be just, reasonable, and not unduly discriminatory, even if there are other just and reasonable methods to allocate transmission costs. They further state that, in this regard, the Commission has recognized that there may be a “range of possible just and reasonable proposals” relating to cost allocation. The MSAT Parties submit that their proposal falls within this range, is

⁷³ *Id.*

⁷⁴ RECB II Order, 118 FERC ¶ 61,209 at PP 70, 75, 77-78.

⁷⁵ *Id.* P 78.

⁷⁶ *Id.*

fully supported as the superior "just and reasonable" proposal, and should be accepted accordingly.

a. Comments

66. IPL argues that the Commission should consider the MSAT Parties' proposal as a section 206 complaint and not approve it unless the Commission concludes that the existing RECB rate design is determined to produce unjust and unreasonable rates. IPL asserts that Midwest ISO and the majority of transmission owners have filed to maintain the existing RECB structure. IPL states that it has filed data demonstrating that the existing 20 percent grid-wide allocation already produces discriminatory results, and there is no basis to find that a higher percentage would be reasonable. According to IPL, the traditional section 205 standard of review would only invite an endless series of filings as the Midwest ISO and a majority of transmission owners also have section 205 rights to file at any time to institute or re-institute the current RECB methodology.

b. Answer

67. The MSAT Parties respond that there is no basis for the Commission to adopt a section 206 standard of review as IPL suggests. The MSAT Parties assert that their proposal was submitted pursuant to section 205 in compliance with the Commission's directives. Therefore, according to the MSAT Parties, the standard of review and procedural burden imposed by section 206 are inapplicable to their filing. Moreover, argue the MSAT Parties, IPL failed to cite any legal precedent supporting its suggestion that a section 206 standard be adopted, and there is nothing in the FPA that permits the Commission to shift the burden of proof with respect to the justness and reasonableness of either continuing status quo pricing or adopting the MSAT Parties' proposed cost allocation.

68. The MSAT Parties further assert that there is absolutely no requirement under the FPA that they demonstrate that the existing rate is unjust and unreasonable; rather, the MSAT Parties simply must show that their proposed cost allocation methodology is just and reasonable. Moreover, the MSAT Parties note, the Commission already rejected IPL's standard of review argument in the RECB proceeding, advising that the Commission would not establish a more stringent standard of review when considering modifications to the RECB methodology. The MSAT Parties argue that IPL's suggested section 206 standard would effectively preclude them from exercising section 205 rights allocated to them pursuant to a settlement among transmission owners within the Midwest ISO, a settlement to which IPL is a party.

c. Commission Determination

69. As we noted above, the Commission stated in the RECB I order on rehearing that the RECB proceeding was not intended to place any burdens on applicants "beyond what

is required by section 205 of the [FPA] in seeking to establish a new rate design or cost-allocation methodology.”⁷⁷ As the MSAT Parties have filed their proposal under section 205 in exercise of their rights under the Transmission Owners Agreement, the MSAT Parties only have the burden to show that their proposal is just, reasonable, and not unduly discriminatory. However, as discussed below, we find that the MSAT Parties have not met their burden with respect to their rate design proposal for new facilities, and we therefore reject their proposal.

3. 100 Percent Postage Stamp Rates for New Facilities

70. The MSAT Parties argue that allowing a change in pricing for new facilities from 20 percent to 100 percent postage stamp rates will facilitate the consideration of regional benefits when evaluating the need for proposed transmission projects. That is, under the current RECB methodology, the fact that 80 percent of the costs for qualifying projects continue to be allocated on a primarily local basis means that new transmission facilities will continue to be evaluated based primarily on an analysis of local costs and benefits. The MSAT Parties aver that a 100 percent postage stamp rate will enable considerations at both the local and regional level when determining the need for a proposed project; and therefore, projects that have clear net benefits on a regional basis will be less likely to be rejected based purely on local considerations.

71. The MSAT Parties also state that their proposal better aligns cost allocation with the dispersion of benefits. Specifically, the MSAT Parties state that the load flow study submitted to the Commission in the RECB proceedings that showed only a 20 percent to 30 percent reliance on regional transmission facilities fails to provide an accurate picture of the interconnected nature of the Midwest ISO controlled transmission grid. The MSAT Parties state that a subsequent analysis indicated that, when generation is dispatched economically on a regional basis within the Midwest ISO, the external flow rates relative to individual Balancing Areas increases to approximately 75 percent⁷⁸ and therefore, a higher postage stamp rate is appropriate.

72. While the MSAT Parties stipulate to the fact that benefits provided by individual EHV transmission projects are unlikely to be evenly dispersed throughout the Midwest

⁷⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,208, at P 23 (2007).

⁷⁸ The data was provided in a presentation distributed during an April 27, 2006 meeting of the RECB Task Force and is available on the Midwest ISO’s website at: http://www.midwestmarket.org/publish/Document/469a41_10a26fa6cle_-741e0a48324a?rev=1.

ISO region, they state that the benefits are nevertheless sufficient to justify a 100 percent postage stamp rate. Additionally, the MSAT Parties state that consistent with Opinion No. 494, the adoption of a 100 percent postage stamp rate does not require the Commission “to find that every customer will benefit equally from every project. Rather, we need to find and we do find only that the benefits of such facilities are ... sufficiently broad that they support a postage stamp allocation.”⁷⁹

73. The MSAT Parties also point to instances in which they state that the Commission has recognized a single, integrated nature of the Midwest ISO’s energy market for purposes of: 1) market-based rate authorizations or when determining whether qualifying facilities within a transmission owner’s service territory have access to Midwest ISO’s energy market,⁸⁰ 2) providing guidance on the Midwest ISO’s proposed ancillary services market,⁸¹ and 3) acting on the Midwest ISO’s proposed Contingency Reserve Sharing Agreement.⁸² The MSAT Parties argue that the platform for such a single, integrated market is the EHV transmission system and that it is reasonable and fair for the costs of those facilities to be shared equally throughout the Midwest ISO region.

74. In addition to their other arguments, the MSAT Parties state that in light of the Commission’s traditionally favored policy of rolled-in pricing for integrated transmission facilities and the integrated nature of the Midwest ISO, it follows that a 100 percent postage stamp rate is appropriate for new transmission projects that qualify for regional cost sharing. Additionally, the MSAT Parties note that the 345 kV transmission facilities perform a similar function to the 500 kV transmission facilities found in PJM and thus, in light of Opinion No. 494 it also makes sense to assign a 100 percent postage stamp rate to the Midwest ISO. The MSAT Parties also point to the Commission’s Guidance Order regarding the Midwest ISO’s Ancillary Service Market proposal as well as the Order

⁷⁹ Opinion No. 494, 119 FERC ¶ 61,063 at P 81 (citations omitted).

⁸⁰ See MSAT Parties Filing at 51, citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 231 (2007); *Wisc. Elec. Power Co.*, 110 FERC ¶ 61,340, at PP 19-20 (2005), *reh’g*, 111 FERC ¶ 61,361, at P 13-15 (2005); and 3) *Duke Energy Shared Services, Inc.*, 119 FERC ¶ 61,146, at P 10 (2007).

⁸¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,311, at P 106, (Guidance Order), *reh’g denied*, 120 FERC ¶ 61,202 (2007).

⁸² *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,092, at P 31 (2006) (Order Conditionally Accepting Contingency Reserve Sharing Group Agreement).

Conditionally Accepting Contingency Reserve Sharing Group Agreement for additional support.⁸³

75. The Midwest ISO Parties state that they do not propose any change to the existing RECB rate methodology.⁸⁴

a. Comments and Protests

76. Consumers Energy supports an increase of the postage stamp rate for new 345 kV facilities to 100 percent postage stamp rates. It states that it agrees with the MSAT Parties that the proposed increase better aligns cost allocation with the dispersion of the benefits.⁸⁵

77. Integrys, Midwest TDUs and Hoosier Energy offered qualified support for the MSAT Parties' proposal. Integrys states that the Commission should not adopt the MSAT Parties' proposal unless the Commission modifies the proposal to provide for automatic qualification for 100 percent postage stamp pricing for all facilities 345 kV and above. Additionally, 100 percent postage stamp pricing projects should be available to all projects included in the Midwest ISO's Transmission Enhancement Plan (MTEP) Attachment A prior to August 1, 2007. Further postage stamp pricing should be available to all projects 100 kV and above that were planned after the Midwest ISO commenced operations. Finally, says Integrys, the distinction between Baseline Reliability Projects and Regionally Beneficial Projects recently accepted in the RECB orders should be eliminated.⁸⁶

78. The Midwest TDUs state that they support 100 percent postage stamp pricing for all new, high-voltage backbone facilities in Midwest ISO. They argue that this is the best way to ensure that new transmission is built. However, they support a modified version of the MSAT Parties' proposal, with 100 percent postage stamp pricing applying to all new facilities over 345 kV, including unconstructed upgrades included in the MTEP as of August 1, 2007.

⁸³ See MSAT Parties Filing at 52, *citing* Guidance Order, 119 FERC ¶ 61,311 at P 106 and Order Conditionally Accepting Contingency Reserve Sharing Group Agreement, 117 FERC ¶ 61,092 at P 31.

⁸⁴ Midwest ISO Parties Filing at 3.

⁸⁵ Consumers Energy Comments at 4.

⁸⁶ Integrys Comments at 4.

79. Hoosier Energy states that it only supports postage stamp pricing for new facilities if the postage stamp pricing is also extended to existing facilities. Hoosier Energy states that arguments that implementing postage stamp rates for existing facilities would result in unacceptable cost increases ignore the fact that these cost increases have, in effect, been phased in over a six year period, and that the strong possibility that postage stamp pricing would be implemented at the end of the transition period was accepted by all of the Midwest ISO TOs.⁸⁷ However, if the Commission declines to require postage stamp pricing for existing facilities, it should not require any greater degree of postage stamp pricing for new facilities.⁸⁸

80. A majority of commenters disagree with the MSAT Parties' proposal for 100 percent postage stamp rates for new facilities. For instance, Wisconsin Utilities state that if faced with a choice between the Midwest ISO Parties' proposal and the MSAT Parties' proposal, the Commission should accept the Midwest ISO Parties' proposal. The MSAT Parties' proposal is not just and reasonable in the view of the Wisconsin Utilities.

81. The Ohio Commission states in its comments that it is opposed to any postage stamp rate design. The Ohio Commission continues arguments it has put forth in previous RECB proceedings challenging the existing RECB rate design. In this proceeding, the Ohio Commission also faults the MSAT Parties' proposal for its failure to quantify project benefits or to evaluate regional or sub-regional impacts before requesting the region-wide postage stamp rate be raised to 100 percent.

82. IPL states that the MSAT Parties' proposal would create unwarranted cost increases and cost incurrence without actual benefits and would lead lower cost providers to exit RTOs and thus create unnecessary gaps in the regional structure of the Midwest ISO. IPL further states that the MSAT Parties Filing does not present specific evidence that transmission construction is being impeded under the current methodology and that there are better ways to integrate wind generation and other new resources without modifying the cost allocation for new high voltage facilities.⁸⁹ IPL also claims that the MSAT Parties' proposal does not meet the objectives of Order No. 890 because it is a minority proposal and is not generally supported by state authorities and participants across the region.⁹⁰

⁸⁷ Hoosier Energy Comments at 4.

⁸⁸ *Id.* at 5.

⁸⁹ IPL Comments at 2, 17 and 19.

⁹⁰ *Id.* at 25.

83. The Midwest ISO TOs state that members of the Midwest ISO would experience significant cost increases (in the order of hundreds of millions of dollars of revenue requirements) under the MSAT Parties' proposal. Additionally, the Midwest ISO TOs argue that because of its expansive geographic footprint, the system-wide impact of a transmission project in the Midwest ISO region is not likely to be as great as the system-wide impact of a project in regions such as PJM. Finally, the Midwest ISO TOs state that because the MSAT Parties' proposal has failed to garner state commission support, it is not clear that states would allow entities to pass through the costs for projects that cannot be shown to benefit state customers.

84. The OMS disputes the MSAT Parties' claim that the RECB approach makes facility-siting more difficult than the MSAT Parties' proposal.⁹¹ Instead, says the OMS, the MSAT Parties' proposal to increase the region-wide cost allocation proposal could create practically unlimited opponents to siting transmission facilities. Indeed any person that is allocated costs for transmission projects that provide no offsetting benefits would be a potential opponent of siting the transmission facility. Thus, because costs must be allocated to the correct cost payers, the RECB cost allocation methodology is less likely to lead to such negative outcomes (i.e., failing to garner siting authority) than would the MSAT Parties' proposal.⁹²

85. MPPA argues that the Commission should not overturn the RECB process, after it denied a similar filing from MSAT in its recent RECB order. MPPA notes that a shift to 100 percent postage stamp rates would not comport with cost-causation principles, and would give excessive benefits to the transmission-only entities making the proposal. It also notes that new transmission facilities are mostly needed in Wisconsin and Upper Michigan, and that the customers in those regions should have to pay the majority of the costs for these upgrades.

86. Detroit Edison states that the MSAT Parties "failed to present any evidence demonstrating why 100 percent postage stamp pricing should 'begin' with transmission voltages of 345 kV and higher, and not some other voltage level (e.g., 500 kV, 765 kV)."

87. The Illinois Commission states that it believes that the 20 percent postage stamp allocation found just and reasonable in the RECB orders was unsupported and should be removed. While the Illinois Commission does not specifically discuss the MSAT Parties'

⁹¹ The Wisconsin Commission states that its position is set forth in the OMS Comments.

⁹² OMS Comments at 22-23.

proposal, it states that the cost of new transmission projects should be allocated “solely on the basis of quantitative benefits and beneficiaries’ metrics.”⁹³

88. MSATs state in their comments that they interpret the Midwest ISO filing as taking no position with respect to potential rate design modifications for new facilities.

b. Answers

89. In response to parties that argue that the MSAT Parties’ proposal failed to provide an empirical quantification, the MSAT Parties state that while flow-based analyses can be useful, they are not capable of providing a complete and accurate accounting of the benefits provided by EHV transmission infrastructure over the long term. Such changes are not easily quantified when flow patterns are analyzed at specific points in time. A comprehensive empirical qualification is “simply not possible” with the tools available at present.⁹⁴

90. Regarding arguments that an increase in a postage stamp rate from 20 percent to 100 percent will garner “unlimited opponents to siting new transmission facilities,” the MSAT Parties state that such comments fail to recognize that there is already the possibility of regional opposition to projects eligible for a 20 percent postage stamp rate. Additionally, the Commission should consider other factors beyond the popularity of a proposal, including alignment of costs and benefits, net savings and benefits to consumers over time, etc.

91. Several commenters argue that the 100 percent postage stamp rate fails to reflect the geographic size of the Midwest ISO or the fact that transmission systems within the Midwest ISO may not be strongly interconnected. In response, the MSAT Parties say that the Midwest ISO functions as a single energy market and charges non-pancaked rates for transmission service throughout its footprint. The transmission rates charged by the Midwest ISO are not dependent upon the size of the region or the degree of electrical connectivity. Instead these factors are reflected in congestion costs, as size and connectivity bear a direct relationship to the occurrence of congestion.

92. The MSAT Parties also reject the claim that their proposal is seeking to shift costs for facilities constructed in Michigan and Wisconsin. The MSAT Parties point out that comments and protests fail to reflect that transmission investments tend to be cyclical. While transmission owners in Michigan and Wisconsin have made significant

⁹³ Illinois Commission Comments at 9.

⁹⁴ MSAT Parties Answer at 12.

investments in recent years while other transmission owners have not, this trend is unlikely to continue for an extended period.

93. Finally, the MSAT Parties take issue with Detroit Edison's claim that 100 percent postage stamp rates should begin at a level higher than 345 kV. They note that they have provided significant evidence that 345 kV and above facilities provide backbone transmission functions within the Midwest ISO, and this justifies increased cost sharing.

c. Commission Determination

94. We find that the MSAT Parties have not shown their proposal for 100 percent postage stamp rates to be just and reasonable in the Midwest ISO at this time. In Order No. 890, we allowed for regional flexibility in cost allocation and when considering a dispute over cost allocation, stated that we would exercise our judgment by weighing the following factors:

First, we consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we consider whether the proposal is generally supported by state authorities and participants across the region.⁹⁵

95. An analysis of the MSAT Parties' proposal under the three factors set forth in Order No. 890 requires us to reject this proposal as explained below.

96. Under the first factor, the Commission notes that a 100 percent postage stamp rate may indeed be a fair allocation method, as we have found in other regions.⁹⁶ However, the Commission is concerned that the MSAT Parties have offered no new information or data⁹⁷ to support their proposal for a 100 percent postage stamp rate for the Midwest ISO.

⁹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

⁹⁶ Opinion No. 494, 119 FERC ¶ 61,063 at P 83 (discussing use of postage stamp rates in different regions).

⁹⁷ The MSAT Parties argument that the load flow studies submitted in the RECB proceedings failed to provide an accurate picture of the interconnected nature of the Midwest ISO controlled transmission grid was considered in that proceeding. *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,208, at P 12, 16 (2007).

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In the RECB II Order, we found that the 20 percent postage stamp component for new facilities had been supported based on load flow studies.⁹⁸ These subject studies demonstrated how the 20 percent postage stamp rate was supported through the “current use of external transmission facilities in the Midwest ISO Region.”⁹⁹ The MSAT Parties have presented no information warranting a new approach so soon after adoption of the 20 percent allocation.

97. We are therefore faced with a similar issue, on a similar record, to that decided in RECB II. In the RECB II Order, we did not foreclose the possibility that a greater level of cost sharing could be just and reasonable, but concluded that it was not appropriate at that time. Addressing similar arguments from MSAT and others, we held that “we do not imply that the Midwest ISO could not justify, on a different record, a greater percentage

Additionally, the MSAT Parties point to a subsequent analysis suggesting that when generation is dispatched economically on a regional basis within the Midwest ISO, the external flow rates relative to individual Balancing Areas increase to approximately 75 percent. This analysis was also known and considered in the RECB proceedings. *Id.*

⁹⁸ See RECB II Order, 118 FERC ¶ 61,208 at P 16. The Commission based its findings in part on an analysis of load flows within various parts of Midwest ISO:

[O]ur review of the Midwest ISO’s study indicates that Mid-America Interconnected Network, Inc. (analogous to the proposed Central sub-region) represents 57 percent of Midwest ISO’s load, but only relies 19 percent on external transmission. Similarly, East Central Area Reliability Council (analogous to the proposed East sub-region) represents 27 percent of Midwest ISO’s load, but only relies 21 percent on external transmission. In contrast, MAPP (analogous to the West sub-region) represents only 16 percent of Midwest ISO’s load, but relies 63 percent on transmission that is external to it. Our conclusion is that 84 percent of Midwest ISO’s load relies approximately on 20 percent external transmission facilities and that the 34 percent average is heavily skewed by the sparse topography of the MAPP region. Thus, the Commission is satisfied that the 20 percent postage stamp rate is a reasonable starting point because it represents a reasonable facsimile of the current use of external transmission facilities in the Midwest ISO Region.

⁹⁹ *Id.*

postage-stamp allocation. As the region gains experience with the implementation of the RECB II proposal, the Midwest ISO should re-evaluate the appropriateness of the 20 percent/80 percent split in consultation with the affected states and market participants.”¹⁰⁰ As this finding makes clear, we envisioned that changes would be made only after “the region gains experience with the implementation of the RECB II proposal.”

98. We do not yet have any such experience and therefore decline to revisit the existing approach approved in RECB I and RECB II. Instead, we expect the region to continue evaluating its approach to cost allocation and that any future proposed changes will be based on the actual experience with the implementation of RECB II. As we indicated in that order, we “direct[ed] the Midwest ISO to make subsequent reports by August 2008 and August 2009 that analyze the effectiveness of all of the transmission expansion cost allocation methodologies. This report will provide the detail that market participants, the Commission, the OMS and the Midwest ISO can use to review, among other things, the effectiveness of the postage-stamp rates for both Baseline Reliability Projects and Regionally Beneficial Projects.”¹⁰¹

99. The Commission plans to closely review these reports, and will take appropriate action as necessary to ensure that the Midwest ISO’s methodology results in proper cost allocation and adequately encourages investment. Depending on the extent to which the existing regional cost sharing yields transmission investment, these reports may serve as the basis for a section 205 filing, a section 206 complaint or a section 206 proceeding instituted by the Commission. Although the Supporting Midwest ISO Transmission Owners¹⁰² in the August 2007 informational report said that, “as of the date of this first of the required annual reports, it simply is too early to assess [the cost allocation percentages] effectiveness,”¹⁰³ we expect the next reports to contain as much detailed information as possible.

¹⁰⁰ RECB II Order, 118 FERC ¶ 61,209 at P 70.

¹⁰¹ *Id.* P 78.

¹⁰² The Supporting Midwest ISO Transmission Owners consist of Hoosier Energy Rural Electric Cooperative, Inc. and the Midwest ISO TOs, minus the following parties: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Indianapolis Power & Light Company; and Manitoba Hydro.

¹⁰³ Midwest ISO Information Filing at 8.

100. Our approach here is consistent with our approach in RECB II when we discussed the relationship between reliability and economic projects. We held that “the instant proposal represents an improvement over the status quo and a reasonable *first step* toward regional pricing for transmission upgrades. If further modifications are required, those modifications should be based on the information that is required by the reporting requirements we have placed on the Midwest ISO.”¹⁰⁴

101. For similar reasons, the MSAT Parties also err in relying on Opinion No. 494 to support a 100 percent postage stamp allocation in Midwest ISO. In Opinion No. 494 the Commission adopted a 100 percent postage-stamp rate for new facilities 500 kV and above in PJM; however, we did not suggest that each region must adopt the same cost allocation method. Rather, as we held in RECB II when addressing a similar argument:

The Commission accepts regional differences in cost allocation and does not mandate a one-size-fits-all approach. The states in the Midwest ISO region do not support the higher allocations proposed by the Midwest TDUs or adopted in other regions. Further, there are important differences between the regions. For example, the Midwest ISO serves an extremely large footprint that has not, to date, had a history of regional transmission planning or cost allocation. It is therefore neither surprising nor necessarily inappropriate that the Midwest ISO's proposal for regional cost allocation would fail to allocate costs as broadly as regions with a smaller footprint and, in the case of New England, a long history of integrated and coordinated operations.¹⁰⁵

102. The MSAT Parties also fail to recognize that the facts in Opinion No. 494 differ substantially from those here. First, there is a difference in the level of state commission support for postage stamp rates. In the Midwest ISO region the state commissions oppose postage stamp rates, whereas in PJM the state commissions were split on this issue. As we held in Order No. 890, state commission support for regional cost allocation is critical in supporting the construction of new facilities.¹⁰⁶ Second, there is a difference in the history of coordination and cost allocation between Midwest ISO and PJM. Prior to becoming an RTO, PJM operated as a highly coordinated, tight power pool and,

¹⁰⁴ RECB II Order, 118 FERC ¶ 61,209 at P 182.

¹⁰⁵ *Id.* P 69

¹⁰⁶ Order 890, FERC Stats. & Regs. ¶ 31,241 at P 560.

throughout much of its history, had a practice of sharing the costs of 500 kV transmission facilities. There is no such history of tight pool operations or regional cost sharing in Midwest ISO. Finally, as we made clear in RECB II, our approval of a 20/80 split for Midwest ISO was only a “first step” for the region. By contrast, when we issued Opinion No. 494, PJM had already gained substantial experience with its original approach to cost allocation and we found, on the basis of the record of that proceeding, that such approach was no longer just and reasonable. To the extent that actual experience in Midwest ISO with RECB II suggests that changes should be made, we will, as indicated above, evaluate the need for changes at that time.

103. With regard to incentives for investment, this issue was considered in detail in the RECB proceedings, and the results of the RECB cost sharing on transmission investment have not yet been determined. Without data available on the impact of the RECB I and RECB II orders, the Commission declines to change course at this time.

104. Moreover, we held in Order No. 890 that “a cost allocation proposal that has broad support across a region is more likely to provide adequate incentives to construct new infrastructure than one that does not. The states, which have primary transmission siting authority, may be reluctant to site regional transmission projects if they believe the costs are not being allocated fairly.”¹⁰⁷ Consistent with that statement, we agree with the OMS that, if the states in a region oppose postage stamp rates, those rates are likely to increase opposition to the siting of new facilities, rather than increase the support for them. The Commission therefore gives strong consideration to the substantial opposition by stakeholders and the OMS to increasing the postage stamp rate. The failure to gain support from stakeholders, particularly state authorities, especially where there is a lack of experience with regional cost sharing, persuades us not to adopt this approach in Midwest ISO at this time.

105. The Commission also considers the unique circumstances for the filings at issue here. As the MSAT Parties note, the Midwest ISO Transmission Owners Agreement gives section 205 filing rights for matters involving cost allocation over multiple pricing zones to both the ISO and a qualifying minority group of transmission owners.¹⁰⁸ Even if we were to find the MSAT Parties’ proposal to be just and reasonable, the Midwest ISO could immediately file a new proposal to return to the RECB procedure, which we have already accepted as just and reasonable. This could create a lengthy process of back-and-forth filings that would benefit no one, and unnecessarily consume Commission resources. The Commission has already established a procedure for ordered review of

¹⁰⁷ *Id.*

¹⁰⁸ *See supra* note 68.

the RECB determinations, and given the absence of new evidence or necessity for immediate change presented here by the MSAT Parties, we find no reason to abandon this procedure.

106. Our findings here are specific to the Midwest ISO at this time and the proposal before us. We make no findings as to the appropriateness of cost recovery for new facilities in other regions or in this region in the future.

4. Eligibility Requirements for Facilities Rated 500 kV and Above

107. The MSAT Parties propose to eliminate the application of RECB criteria when determining eligibility for regional cost sharing for projects rated at 500 kV and above. Under their proposal, all such projects that are included in the MTEP will see regional cost sharing through a 100 percent postage stamp rate. Thus, these projects would be screened for cost sharing using the criteria from the MTEP.¹⁰⁹ Projects rated at less than 500 kV will continue to be evaluated under the current RECB criteria in order to determine eligibility for regional cost sharing. MSAT Parties assert that this approach

¹⁰⁹ MSAT Parties Filing at 61. The MSAT Parties reference the following factors from Appendix B:

- (i) the transmission needs identified from Facilities Studies carried out in connection with specific transmission service requests;
- (ii) the transmission needs identified by the [transmission owners] in connection with their planning analyses to provide reliable power supply to their connected load customers and to expand trading opportunities, better integrate the grid and alleviate congestion;
- (iii) the transmission planning obligations of [the transmission owner], imposed by federal or state law(s) or regulatory authorities, which can no longer be performed solely by the [transmission owner] following transfer of functional control of its transmission facilities to the Midwest ISO;
- (iv) the inputs provided by the Planning Advisory Committee; and
- (v) the inputs, if any, provided by the state regulatory authorities having jurisdiction over any of the [transmission owners].

recognizes that the need for a conservative test to identify and quantify regional benefits is less pronounced with respect to higher voltage projects than with respect to lower voltage projects.

108. The MSAT Parties assert that revising the application of the eligibility requirements will facilitate the consideration of regional benefits when evaluating the need for proposed transmission projects. That is, their proposal expands the types of benefits that may be considered when evaluating the benefits of, and the need for, proposed transmission projects rated at 500 kV and above as contemplated by Appendix B of the TO Agreement. Additionally, the MSAT Parties state that eliminating the RECB criteria for projects rated at 500 kV and above will ensure that the benefits of such projects will not be mischaracterized or underestimated based on the more conservative criteria set forth in the RECB methodology.

109. The MSAT Parties state that certain stakeholder concerns that Appendix B of the TO Agreement does not contain a formula for identifying and quantifying the benefits of a proposed project, similar to the Weighted Gain No Loss formula set forth in the RECB II methodology (for economic projects) are misplaced. The MSAT Parties state that such arguments suggesting that reliance on Appendix B of the TO Agreement will make investing in transmission infrastructure too easy are unsupported and directly contrary to Commission policy. In fact, the MSAT Parties argue that the implementation of Order No. 890 mitigates any such concerns.

110. The MSAT Parties fault the RECB methodology for drawing an artificial distinction between economic and reliability projects. They argue that this artificial distinction adversely influences how the need for proposed projects is perceived and how such projects are included in the MTEP. Thus, the current RECB methodology does not comport with what they characterize as a “value-based approach” to transmission planning.¹¹⁰

a. Comments and Protests

111. A number of parties filed comments and protests regarding the MSAT Parties’ proposal to eliminate any and all qualifying criteria for regional cost sharing for transmission projects rated at 500 kV and above.

112. Integrys states that the 500 kV cut-off should be reduced to 345 kV such that all new transmission projects rated 345 kV and above are eligible for regional cost allocation. Integrys states that the basis for its argument is the MSAT Parties’ data that

¹¹⁰ *Id.* at 39.

show that 345 kV facilities perform regional backbone transmission functions within the Midwest ISO. ATC in a separate filing indicates that it would accept this reduction to 345 kV for eligibility requirements.

113. The OMS argues strongly against the MSAT Parties' proposal for regional cost sharing. Specifically, the OMS states that imperfect as they may be, the current benefit metrics make "a concerted attempt to measure project benefits and determine likely beneficiaries"¹¹¹ and that the Commission has already put in place a requirement for the Midwest ISO to evaluate and suggest improvements for calculating benefits and beneficiaries. The OMS states that the MSAT Parties "arbitrary voltage cut-off" has no chance of measuring project benefits or beneficiaries. OMS states that the MSAT Parties claim that the Midwest ISO system is fully integrated is contradicted by the evidence, pointing to the weak interconnectedness of the system as found in the testimony of Mr. Procaro in Docket No. ER07-1233-000.

114. The OMS states that it expects the Midwest ISO to devote serious and substantial attention and resources to the requirements in the TEMT to continue to evaluate and explore any additional transmission infrastructure drivers to ensure that projects which are effective in facilitating market efficiency are supported and pursued.¹¹² Furthermore, the OMS expects the Midwest ISO to give serious attention to the reports it is required to give the Commission.¹¹³

115. The OMS also contends that the MSAT Parties' assertion of inherent bias within the RECB process is not supported. The RECB methodology, asserts the OMS, measures project benefits and allocates costs to zones or sub-regions based on cost causation metrics, whereas the MSAT Parties' proposal does not attempt to quantify project benefits or to evaluate their regional or sub-regional distribution.¹¹⁴ While the RECB approach is not perfect, asserts the OMS, it is much more likely to achieve that goal than an arbitrary voltage cut-off decision method as proposed by the MSAT Parties.¹¹⁵ OMS also takes issue with the MSAT Parties assertion that the RECB methodology is based on a snapshot, noting that the production cost savings and LMP savings metrics in RECB II

¹¹¹ OMS Comments at 19.

¹¹² *Id.* at 10.

¹¹³ *Id.*

¹¹⁴ *Id.* at 23.

¹¹⁵ *Id.* at 20.

are assessed over a ten-to-fifteen year forward looking timeframe.¹¹⁶ Finally, the OMS claims that the MSAT Parties' assertion that the RECB methodology biases outcomes in favor of small, incremental transmission expansion projects does not have a factual basis.¹¹⁷

116. Detroit Edison argues that the Commission should summarily reject the MSAT Parties' proposal to eliminate benefit cost criteria for new facilities 500 kV and higher.¹¹⁸ Detroit Edison asserts that the MSAT Parties' have presented no evidence that supports eliminating the critical customer safeguards embedded in the RECB process. Detroit Edison claims that the Commission has already confirmed the necessity of applying discrete benefit/cost evaluation criteria to all proposed economic transmission facilities rated 345 kV and above.¹¹⁹ These decisions were based on a need for heightened customer safeguards for large scale projects, which usually involve long lead times. Detroit Edison contends that the Appendix B standards in the Transmission Owners Agreement are not preferable to the RECB processes' more precise criteria. They argue that under Appendix B, every transmission project rated at 500 kV or above would pass muster, which would lead to bad results. Detroit Edison also argues that the regional differences in size, configuration, and governing business practice between PJM and Midwest ISO mean that a reliance on Opinion No. 494 is not warranted.

117. IPL objects to the proposed elimination of eligibility criteria. It notes that the approval of construction by state authorities will require a clear description of the benefits of the project, meaning that it is important to maintain the RECB criteria as a means of ensuring future production.

118. Consumers Energy also opposes the elimination of the RECB cost benefit eligibility criteria for new facilities 500 kV and above.¹²⁰ Consumers Energy states that: 1) ignoring costs of projects does not facilitate reasonable development; 2) the proposal is not consistent with Opinion No. 494; and 3) the formulaic criteria are essential to

¹¹⁶ *Id.* at 24.

¹¹⁷ *Id.* at 21.

¹¹⁸ Detroit Edison Comments at 5.

¹¹⁹ Specifically, Detroit Edison cites *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (2007) and *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (2006).

¹²⁰ Consumers Energy Comments at 4.

determine if a project will justify its expense. Consumers Energy argues that properly sited generation and incremental expansion may be all that is needed in some cases to improve the transmission system, and that the MSAT Parties' proposal makes the incorrect assumption that all transmission is good.

119. The Michigan Commission argues that rather than revert to only the Appendix B criteria, the RECB methodology for new transmission projects that are 500 kV and above should be reviewed and an appropriate replacement should be considered. It argues that the Benefits/Costs Ratio may be difficult for larger projects to meet due to the sharp increase in the sliding scale threshold for projects that take more time to construct. However, the Michigan Commission asserts that the threshold was put in place to protect customers from the additional risks associated with larger and lengthier projects. It also notes that PJM has its own review process for new facilities that is more rigorous than the one found in Midwest ISO's Appendix B.

b. Answer

120. The MSAT Parties state that none of the protestors contradicted the MSAT Parties' arguments against the current RECB criteria, especially as it relates to the unnecessary distinction made between economic and reliability projects. The MSAT Parties argue that contrary to protests, there are no reasons to defer to the RECB criteria, given these shortcomings.

121. The MSAT Parties state the Commission did not sanction the existing bias against large projects with long lead times as Detroit Edison suggests. The MSAT Parties explain that the current RECB regional cost sharing eligibility criteria discriminate in favor of small, incremental projects, and against larger projects with long lead times. While the Commission did acknowledge the potential for the RECB criteria to disproportionately exclude larger projects from regional cost sharing, it did not find that such exclusion was appropriate. Instead, the Commission described such potentiality as an "unintended consequence" that the Midwest ISO should monitor and safeguard against.

122. The MSAT Parties argue that the RECB metrics do not accurately identify and quantify all of the economic benefits provided by long-term transmission projects. Specifically, the MSAT Parties state that the RECB metrics do not account for the benefits such as those associated with the integration of wind generation, enhanced market competitiveness, increased market liquidity, reliability benefits, and capacity benefits to name a few. Finally, the MSAT Parties argue that the benefit-to-cost thresholds for determining when Regionally Beneficial Projects qualify for regional cost allocation are unattainable in the vast majority of instances.

c. Commission Determination

123. We will permit the recently-accepted eligibility metrics to remain in place for the region. These metrics were designed to measure project benefits and allocate costs accordingly, and have been found to be just and reasonable. We note that we have required reports of the newly-instituted RECB processes in August of 2008 and August of 2009 which will allow participants to determine, among other things, if there have been unintended consequences arising from application of the RECB criteria.¹²¹ We find that the proposal to eliminate all the RECB cost sharing eligibility criteria for projects rated at 500 kV in the Midwest ISO has not been shown to be just and reasonable.

124. The MSAT Parties fault the existing RECB criteria for the following reasons: (1) it draws an artificial and counterproductive distinction between economic and reliability benefits; (2) it captures only a select few economic benefits (production costs and LMP reductions); and (3) it relies upon benefits-to-cost thresholds that will be virtually impossible to attain in most instances. We find that these concerns fail to justify the MSAT Parties' proposal.

125. First, the MSAT Parties do not explain why the distinction between economic and reliability projects described above cannot be remedied through the application of one set of criteria to measure benefits for both economic and reliability projects; that is, why removal of all RECB criteria is required, rather than removing the inconsistencies or refining the existing criteria to capture additional benefits. Finally, we find that the third argument is speculative; while we have noted that the Benefits/Cost Ratio thresholds may have unintended consequences, the MSAT Parties provide no evidence of any actual consequences that have occurred.

126. The MSAT Parties also argue that as a consequence of removing the RECB cost sharing eligibility criteria, the remaining criteria in Appendix B is both: 1) consistent with what exists in PJM (and thus permitted to continue by Opinion No. 494); and 2) sufficient for purposes of cost allocation. We disagree with the first argument. Section 6 of PJM's Operating Agreement, for example, contains provisions that provide for a more rigorous analysis of economic projects than those found in Midwest ISO's

¹²¹ As explained further below, we are declining to further extend the transition period for license plate pricing. We also are not requiring reporting of the effects of license plate pricing – pricing under which the region has experience. By contrast, we require reporting in 2008 and 2009 for RECB in part because of the lack of experience with cost sharing in this region.

Appendix B.¹²² Thus PJM has safeguards in place to ensure the appropriateness of certain costs that would not exist under the MSAT Parties' proposal. As to the second argument, while the MSAT Parties concede that their proposal drew "significant criticism,"¹²³ they do not address the criticism by parties that the Appendix B criteria are insufficient to measure project benefits for purposes of cost allocation.

5. Other Issues

a. Comments and Protests

127. Finally, some parties filed comments regarding issues that are tangentially related to Midwest ISO cost allocation methodology but that are not specifically tied to the

¹²² See Schedule 6 to the PJM Operating Agreement (Regional Transmission Expansion Planning Protocol). Subsection 1.5.6 provides that the "recommended plan shall identify enhancements and expansions that relieve transmission constraints and which, in the judgment of the Office of the Interconnection, are economically justified. Such economic expansions and enhancements shall be developed in accordance with the procedures, criteria and analyses described in Section 1.5.7..."

Subsection 1.5.7 provides that following PJM Board approval of assumptions, PJM:

shall perform a market efficiency analysis to compare the costs and benefits of (i) accelerating reliability-based enhancements or expansions already included in the Regional Transmission Plan that if accelerated also could relieve one or more economic constraints . . . and (iii) new enhancements or expansions that could relieve one or more economic constraints, but for which no reliability-based need has been identified.

To determine the economic benefits, PJM must perform and compare market simulations with and without the proposed expansions and determine whether to include the expansion in the Regional Transmission Expansion Plan (RTEP) "based on its consideration of the totality of factors" identified in 1.5.7(e) (i.e., total production costs, total load payments, total generator revenue, zonal load payments, zonal financial transmission rights credits, total transmission system losses and total capacity payments).

¹²³ MSAT Parties Answer at 19.

region-wide postage stamp rate or voltage threshold eligibility requirements discussed above.

128. In its pleading, WPL states that the MSAT Parties' proposal uses an arbitrary temporal line to determine which of the high voltage transmission projects included in the Midwest ISO planning process are new and therefore may qualify for 100 percent postage stamp treatment. In this vein, WPL claims that the excluded projects list, which was part of the RECB filings, imposes inequitable costs on WPL and other Wisconsin load serving entities.¹²⁴ The Wisconsin Utilities, Midwest TDUs, Integrys, and ATC made similar comments.

129. Detroit Edison states that if the Commission elects to eliminate Midwest ISO's RECB cost recovery mechanisms, owners proposing new transmission should be precluded from recovering any associated project costs from jurisdictional customers until they demonstrate the justness and reasonableness of the project's costs under a section 205 proceeding. Section 205 filings should also be required from new transmission facilities that fail the RECB criteria if maintained, and from all facilities over 345 kV if the MSAT Parties 100 percent postage stamp rates are approved.

130. In response, the MSAT Parties contend that requiring individual section 205 filings would result in the type of endless cycle of litigation the Commission seeks to avoid and undermine the certainty investors require to invest in needed transmission projects. Moreover, transmission owners within the Midwest ISO are already authorized to recover the costs of transmission facilities in rates, without the submission of individual section 205 filings, pursuant to Attachment O of the Midwest ISO's tariff.¹²⁵

131. Finally, Exelon indicates that it is concerned that the MSAT Parties' proposal may spill over to PJM facilities, in that the record may be used to justify further cost socialization for new facilities in PJM. Exelon asks the Commission to make clear that this proceeding is limited solely to rate design within the Midwest ISO, and that no part of the proceeding can be used to justify modification of PJM or PJM-Midwest ISO rates.

b. Commission Determination

132. In this order, the Commission declines to accept the MSAT Parties' proposal to implement a 100 percent postage stamp rate for new facilities within Midwest ISO. Comments related to revisiting what projects will and will not receive 100 percent

¹²⁴ WPL Comments at 2.

¹²⁵ MSAT Parties Answer at 22.

postage stamp rate treatment or requirements for individual section 205 filings are therefore moot. In response to Exelon, the Commission notes that we are concurrently issuing separate rulings on rate design within PJM and between PJM and Midwest ISO.¹²⁶ The order in this proceeding only addresses rate design within the Midwest ISO.

D. Transition Period

133. As we noted above, the Commission directed Midwest ISO to revisit its transmission pricing structure six months prior to the end of a six-year transition period which began on February 1, 2002.¹²⁷ Therefore, the initial six-year transition period ends January 31, 2008. The Commission did not preclude an extension of the initial rate method for more than six years – instead it insisted that license plate rates be revisited formally. The Commission now considers whether to extend any such transition period following our acceptance of license plate rates for existing facilities.

1. Comments

134. Integrys asks the Commission to direct the Midwest ISO to continue the current license plate rates and have the Midwest ISO submit another transmission pricing filing in three years or August 2010, but only if the Commission does not adopt its suggestions for modifications to the MSAT Parties' proposal in ER07-1261-000.

135. The Midwest TDUs request that at a minimum the Midwest ISO be directed to submit new cost allocation filings in August 2009, consistent with the RECB directives to submit a report that analyzes the effectiveness of the RECB measures. In the August 2009 filing, the Midwest TDUs request that any new cost allocation proposals apply to any facilities with in-service dates after February 1, 2008.

136. The OMS states that it supports the continued use of license plate rates, but the OMS recommends a re-examination of the appropriateness of license plate rates in three or four more years. The OMS asserts that further time would allow for the development of methods to quantify and measure the cross-zonal benefits of existing transmission facilities.¹²⁸

¹²⁶ See *supra* note 31.

¹²⁷ Midwest ISO Formation Order, 84 FERC ¶ 61,231 at 62,167.

¹²⁸ The OMS notes that the following members do not support a further transition period: the Missouri Public Service Commission, the Indiana Utilities Regulatory Commission, and the Indiana Office of Utility Consumer Counselor, because existing

2. Answer

137. The Midwest ISO TOs state that no new transition period for existing facilities is needed. Consistent with Opinion No. 494, the Midwest ISO TOs note that existing facilities are still being used in the manner in which they were originally constructed, are still serving the same customers, and will still be doing so in three or four years time if another transition period is required. Also, the Midwest ISO TOs assert that any further transition period required will create rate instability and uncertainty. Instead, stakeholders' efforts should be focused on regional planning and construction of new facilities.

3. Commission Determination

138. The Commission will not require a further transition period for existing transmission facilities. In the Midwest ISO Formation Order, we stated that our imposition of a transition period did not preclude the possible continuation of license plate rates following the end of the six-year period.¹²⁹ At that time, we required the Midwest ISO to revisit formally the issue of whether to continue license plate rates or move to a different pricing structure, and they have done so in this proceeding. The Commission has found in this order that license plate rates remain viable for existing facilities, and we see no reason to require the Midwest ISO to continually revisit this issue. The Commission notes that parties may exercise their rights under section 205 and section 206 of the FPA if they believe that a change in rates is warranted at a future time. Our ruling in today's proceeding is not intended to preclude our revisiting the appropriateness of license plate rates or of another rate structure in the future.

The Commission orders:

(A) The Midwest ISO Parties Filing to continue the license plate rate structure for existing facilities within the Midwest ISO footprint is accepted.

facilities were built and funded to deliver power from the utilities' generation to their loads, and allocating the costs of these facilities to those ratepayers for whom the facilities were built satisfies the basic cost causation principle. *See* OMS Comments at 9.

¹²⁹ Midwest ISO Formation Order, 84 FERC ¶ 61,231 at 62,167-168 (“We shall not preclude, at this time, a request to extend that initial rate method for more than six years, but we will insist that this issue be revisited formally at that time.”).

(B) The MSAT Parties' superseding rate design proposal for new facilities is denied.

By the Commission. Commissioner Moeller concurring in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.
Midwest Stand-Alone Transmission Companies and
Wolverine Power Supply Cooperative, Inc.

Docket Nos. ER07-1233-000
ER07-1261-000

(Issued January 31, 2008)

MOELLER, Commissioner *concurring in part*:

I support today's order because it recognizes that the existing cost allocation methodology will not continue indefinitely without scrutiny. As it relates to the construction of new 345 kV and above transmission in the Midwest ISO, I will closely review the August 2008 report on the success of 20 percent postage-stamp pricing. I have not yet been convinced that a policy of 20 percent roll-in of costs for new assets rated at 345 kV and above has produced adequate investment in the transmission infrastructure that is needed by this nation.

No party to this proceeding declares that it will not build needed transmission. Yet many of the parties opposing the 100 percent roll-in of transmission costs assert that they cannot readily recover their transmission costs in retail rates. (See, Protest of the Midwest ISO Transmission Owners at 36-37; Detroit Edison at 5, n. 3.) This suggests that many utilities are reluctant to build needed transmission because of regulatory lag at the state level. If that is the case, I respectfully suggest that the states should consider adopting transmission cost trackers, similar to fuel cost trackers, to ensure the recovery of needed transmission investment.

By its very name, the Eastern Interconnection is an interconnected system. The depth of this interconnection is illustrated by the recent efforts of several Midwestern states to drastically increase their use of wind and other renewable energy resources. Some of the best sources of wind energy are in the Great Plains, and transmission will be needed to bring that energy to the Midwest. Without that needed transmission, wind resources will be more expensive in the Midwest.

By design, the 100 percent roll-in of new transmission costs distributes the costs of new investment across the entire grid more broadly than 20 percent. 100 percent recognizes that the interconnected grid is truly interconnected. Perhaps the ATC and ITC/METC proposal would have had more success if it had involved a transition to full

100 percent pricing, or perhaps another set of stakeholder compromises. And as stated above, if retail-level cost recovery is inhibiting investment in needed transmission, then the states may want to consider adopting retail rate recovery mechanisms that track the transmission costs of their public utilities.

Philip D. Moeller
Commissioner