

134 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Pella, Iowa

v.

Docket No. EL10-77-000

Midwest Independent Transmission
System Operator, Inc. and
MidAmerican Energy Company

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINT AND
PETITION FOR DECLARATORY ORDER

(Issued February 2, 2011)

1. On July 2, 2010, the City of Pella, Iowa (Pella) filed a petition for declaratory order (Petition) and a complaint (Complaint) (collectively, Filing). Pella asks the Commission to reclassify Pella's 69 kV facilities as transmission facilities under the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff),¹ and to find that Midwest ISO and MidAmerican Energy Company (MidAmerican) (together, Respondents) violated sections 205, 206, 211, and 212 of the Federal Power Act (FPA)² and Commission policy by failing to recognize Pella's facilities as transmission facilities. Additionally, Pella requests that the Commission direct the Respondents to properly compensate Pella for its facilities.

2. In this order, we grant the Petition and find that Pella's 69 kV facilities constitute transmission facilities. However, we deny the Complaint to the extent that it argues that Respondents have improperly failed to compensate Pella for its 69 kV facilities.

¹ Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Fourth Revised Volume No. 1 (Jan. 6, 2009).

² 16 U.S.C. §§ 824d, 824e, 824j, 824k (2006).

I. Background

3. Pella owns and operates a municipal electric utility in Marion County, Iowa. Pella distributes electricity to residential, public, and industrial customers, and its retail boundaries are prescribed by the State of Iowa. Pella has been a market participant in Midwest ISO since 2004 and has been a network integration transmission service (network service) customer of Midwest ISO since September 1, 2009, when MidAmerican joined Midwest ISO. Before that time, Pella bought point-to-point transmission services from MidAmerican and others as needed.

4. Pella owns a number of 345 kV facilities associated with an ownership interest in the Walter Scott generating plant. Pella has assigned control over these facilities to the City of Cedar Falls, Iowa (Cedar Falls) through an assignment agreement and Cedar Falls, as a Midwest ISO Transmission Owner, has transferred control over these facilities to Midwest ISO through an Agency Agreement.³ As a result, these facilities are currently included within a Joint Pricing Zone Revenue Allocation Agreement (Joint Pricing Zone Agreement) between MidAmerican and Cedar Falls.⁴ In order to receive compensation for these facilities, Pella calculates its Annual Transmission Revenue Requirement (ATRR) for these facilities using Midwest ISO's *pro forma* Attachment O formula rate (Attachment O). Pella then submits its Attachment O to Midwest ISO for review and to receive cost recovery for these facilities through the Joint Pricing Zone Agreement.

5. Pella also owns a number of 69 kV facilities, which are at issue in this proceeding.

³ An Agency Agreement under the Midwest ISO Transmission Owners Agreement allows Midwest ISO to offer and provide transmission service over non-transferred Transmission Facilities under the Tariff and provides payment for the use of these facilities. *See* Midwest Independent Transmission System Operator, Inc., Rate Schedule No. 1, Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., App. G (Transmission Owners Agreement).

⁴ The Joint Pricing Zone Agreement provides for: (1) the allocation of transmission revenues collected by Midwest ISO for transmission services provided over transmission facilities in the MidAmerican Pricing Zone; and (2) each parties cost responsibilities for Network Service provided over each other's facilities within the MidAmerican Pricing Zone that is not billed by Midwest ISO. The Joint Pricing Zone Agreement is designated as MidAmerican Energy Company, FERC Rate Schedule No. 111. Revisions to the Joint Pricing Zone Agreement to include Pella's 345 kV facilities were accepted by delegated letter order on March 2, 2010. *MidAmerican Energy Co.*, Docket No. ER10-562-000 (Mar. 2, 2010) (unpublished letter order) (Letter Order Accepting Joint Pricing Zone Agreement).

These include: three substations (the Pella North Plant Substation, the Pella West Substation, and the Pella East Substation); three transmission lines (one from the Beacon Substation to the Pella West Substation, one from the Pella West Substation to the Pella North Plant Substation, and one from the Pella North Plant Substation to the Central Iowa Power Cooperative (CIPCO) Howell Tap); the 69 kV terminal equipment and breakers at the Beacon Substation; the 10.7 MVAR Bank at the Pella East Substation and the 7.8 MVAR Bank at the Pella West Substation; and the transmission portion of the SCADA System. Pella's lines interconnect with the systems of CIPCO, a non-jurisdictional entity that is not a Midwest ISO Transmission Owner, and the 69 kV distribution facilities of MidAmerican. Pella's 69 kV facilities are not currently recognized as transmission facilities and are not included in Pella's Attachment O.

6. In the late 1990s, MidAmerican proposed to reclassify some of its facilities from transmission facilities to local distribution facilities. In particular, MidAmerican proposed to classify all lines 69 kV and below as distribution, including the lines that interconnect with Pella's 69 kV facilities. The Iowa Utilities Board (Iowa Commission) accepted MidAmerican's proposed classification of its facilities.⁵ In 2000, the Commission issued an order adopting the Iowa Commission's determination regarding MidAmerican's facilities.⁶

7. In the Filing, Pella asks the Commission to find that certain of its 69 kV facilities are transmission facilities under the Commission's so-called seven-factor test identified in Order No. 888 for distinguishing between transmission facilities and local distribution facilities.⁷ Pella also asks the Commission to find that Respondents have violated Midwest ISO's Tariff, the FPA, and Commission policy by denying Pella compensation for its 69 kV facilities. In particular, Pella argues that Respondents have improperly refused to include Pella's facilities in MidAmerican's joint pricing zone and to provide credits under section 30.9 of the Tariff. Accordingly, Pella asks the Commission to issue an order confirming that Pella's 69 kV facilities are transmission and direct Respondents

⁵ *MidAmerican Energy Co.*, Docket No. SPU-98-12 (Iowa Utilities Board Apr. 30, 1999) (Decision of the Iowa Commission).

⁶ *MidAmerican Energy Co.*, 90 FERC ¶ 61,105 (2000) (*MidAmerican*).

⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,771 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

to provide appropriate compensation under the Tariff and other additional relief as may be just.⁸

II. Notice of Filing and Responsive Pleadings

8. Notice of the Filing was published in the *Federal Register*, 75 Fed. Reg. 40,817 (2010), with answers, interventions, and protests due on or before August 2, 2010.

9. On July 19, 2010, Midwest ISO filed a motion to extend the date for the submission of answers, motions to intervene, and protests to August 19, 2010. On July 22, 2010, the Commission issued a notice granting Midwest ISO's motion.

10. American Municipal Power, Inc., CIPCO, and the Midwest ISO Transmission Owners filed timely motions to intervene. Nelson Energy LLC (Nelson Energy) also submitted a timely motion to intervene and comments.

11. On August 19, 2010, Midwest ISO and MidAmerican each filed answers to the Filing. On September 3, 2010, Pella filed an answer to the answers of the Respondents (September 3 Answer), and MidAmerican filed an answer to the comments of Nelson Energy. On September 7, 2010, Pella filed an errata to its answer. On September 20, 2010, the Respondents each filed answers to Pella's September 3 Answer. Pella filed an answer to the answer of the Respondents to Pella's September 3 Answer on September 27, 2010 (September 27 Answer).

12. Pella filed amendments to the Filing on November 5, 2010 (November 5 Amendment) and November 15, 2010 (November 15 Amendment). Notices of the November 5 Amendment and the November 15 Amendment were published in the *Federal Register*, 75 Fed. Reg. 70,220 (2010) and 75 Fed. Reg. 73,075 (2010), with answers, interventions, and protests due on or before December 15, 2010. On December 3, 2010, MidAmerican filed an answer to Pella's amendments (December 3 Answer). On December 13, 2010, Pella filed an answer to MidAmerican's answer (December 13 Answer).

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

⁸ Filing at 8-15, 80.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of Pella and Respondents because they have provided us with information that assisted us in our decision-making process.

B. Substantive Matters

1. Seven-Factor Test and Zonal Pricing

a. Petition and Complaint

15. Pella asks that the Commission classify Pella's 69 kV facilities as transmission facilities. In support, Pella argues that its facilities are properly classified as transmission facilities under the so-called seven-factor test identified in Order No. 888 for distinguishing between transmission facilities and local distribution facilities.⁹ Pella also argues that Respondents have violated the FPA, Commission precedent, and Midwest ISO's Tariff by failing to honor the results of the seven-factor test, misclassifying Pella's 69 kV facilities, and improperly denying Pella compensation for its 69 kV facilities. Accordingly, Pella asks the Commission to issue an order directing Respondents to compensate Pella for its 69 kV facilities. In the alternative, Pella requests that the Commission direct Midwest ISO to review the classification of Pella's 69 kV facilities. Pella also requests that, to the extent that the Respondents raise credible factual issues, the Commission order a full hearing.¹⁰

16. Pella states that, in Order No. 888, the Commission identified seven factors that it would consider in determining whether facilities should be classified as local distribution or transmission facilities and that since Order No. 888 the Commission has consistently followed the seven-factor test when classifying facilities.¹¹ According to Pella, application of the seven-factor test demonstrates that its 69 kV facilities are transmission facilities.

17. Pella states that the Commission first considers that local distribution facilities are normally in close proximity to retail customers. According to Pella, interconnections at the Pella West and Pella East Substations support service to areas served by MidAmerican and CIPCO within a 30 mile radius of Pella. Pella also maintains that its

⁹ Filing at 2.

¹⁰ *Id.* at 24-25 (citing *Nev. Power Co.*, 88 FERC ¶ 61,234, at 61,768 and n.4 (1999)).

¹¹ *Id.* at 23 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,181-30,182; *Nev. Power Co.*, 88 FERC ¶ 61,234 at 61,768 and n.4).

69 kV facilities are essential to complete imports and exports of power across a wide region and that its facilities allow for transmission over a broad region.¹²

18. Pella asserts that the second factor is that local distribution facilities are primarily radial in character. Pella explains that its 69 kV facilities are looped and are interconnected with “other utility transmission” linking them with multiple sources of power and markets.¹³ Pella argues that each of its 69 kV lines serves a number of transmission functions. For example, Pella states that its lines from the Pella West Substation to the Pella North Substation and from the Pella North Substation to the CIPCO Howell Tap physically connect the systems of CIPCO and MidAmerican. Thus, Pella states that its facilities together allow power to flow from the facilities of Pella, MidAmerican, CIPCO, and ITC Midwest to the transmission facilities of these and other utilities. Pella further states that it is obligated to maintain synchronous operations of its 69 kV facilities in order to ensure that an integrated network is maintained between utilities.¹⁴

19. Pella avers that the third factor that the Commission considers is that power flows into local distribution systems but rarely, if ever, flows out. Pella maintains that power flows across its 69 kV facilities are bidirectional and that power flow data establish that power flows into, across, and out of these facilities on a regular basis. Specifically, Pella states that, between 2007 and 2009, an average of 30 percent of the energy flowing into the Pella interconnection points flowed out of Pella’s system to further destinations. Pella claims that many of the power flows that occur on its system on a daily basis are attributable to other utilities and require Pella to take responsibility for associated losses.¹⁵

20. Pella explains that the fourth factor is that when power enters a local distribution system, it is not reconsigned or transported on to some other market. Pella asserts that power flows across its 69 kV facilities to other markets, including CIPCO and Midwest ISO.¹⁶ Pella asserts that its facilities enable the sale and purchase of power as well as interchange transactions among Pella and other utility systems. In support, Pella points to an interconnection agreement between it and CIPCO, which explicitly states that the 69 kV interconnection between Pella and CIPCO is to continue “in order to enhance

¹² *Id.* at 27; Exhibit P-1, Testimony of Paul D. Reising at 15-16 (Reising Testimony); Ex. P-21, Testimony of Larry W. Peterson at 15 (Peterson Testimony).

¹³ Filing at 28; Reising Testimony at 10, 25-26; Ex. P-11.

¹⁴ Filing at 28-29; Reising Testimony at 17-18, 25-26; Ex. P-21, Peterson Testimony at 7.

¹⁵ Filing at 29-30; Reising Testimony at 19, 22; Peterson Testimony at 13.

¹⁶ Filing at 31.

existing service of CIPCO in the area.”¹⁷ Pella also points to an updated General Facilities Agreement between MidAmerican and CIPCO, which it believes demonstrates that MidAmerican and CIPCO rely on their interconnections with Pella’s 69 kV facilities to transfer power.¹⁸

21. Pella states that the fifth factor is that power entering a local distribution system is consumed in a comparatively restricted geographical area. Pella explains that the Beacon Substation extends 18 miles beyond its prescribed retail service boundaries and has been used to deliver energy from Muscatine Power and Water across the system of Alliant West. Pella states that, although power flows into its system to serve its load, power also flows through its system to loads connected to the MidAmerican, CIPCO, and Midwest ISO systems.¹⁹ Pella points to interconnection agreements with MidAmerican and CIPCO, which, according to Pella, recognize that power flows through Pella’s system.²⁰

22. According to Pella, the sixth factor is that meters are based at the transmission/local distribution interface to measure flows into the local distribution system. Pella explains that its meters are located at the Pella West, Pella East, Beacon, and Howell Substations. Pella states that each of these meters is configured to measure bilateral flows and is used for billing for transmission by the local balancing authority.²¹ Pella states that these meters are used to validate billing for wholesale transactions among utilities and to determine energy and ancillary services with Midwest ISO.²²

23. Pella states that the seventh factor that the Commission considers is that local distribution systems will be of reduced voltage. Pella explains that its local distribution systems operate at a reduced voltage (typically 12.47 kV) compared to Pella’s elevated 69 kV transmission facilities. It states that all of its retail customers are served by at least one level below 69 kV and that no retail customers are served by its 69 kV facilities. It explains that it reserves its 69 kV facilities for wholesale transactions across the three points of interconnection at the Pella East, the Pella West, and the Beacon Substations.²³ Pella argues that facilities operating at 69 kV serving a transmission function are not necessarily unique and points to testimony submitted in Docket No. ER09-823 which,

¹⁷ *Id.* at 32; Ex. P-3.

¹⁸ Filing at 31-33 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER10-1244-000, at 2 (May 13, 2010)); Reising Testimony at 19-21, 29; Peterson Testimony at 5.

¹⁹ Filing at 33; Reising Testimony at 26.

²⁰ Filing at 33-34; Reising Testimony at 19-20, 22, 26-27.

²¹ Filing at 35; Reising Testimony at 20; Peterson Testimony at 4-5.

²² Filing at 34-35.

²³ *Id.* at 35-36.

according to Pella, found that certain 69 kV facilities in the MidAmerican balancing authority area should be treated as transmission facilities.²⁴

24. Pella states that it has submitted evidence to Midwest ISO demonstrating that its 69 kV facilities are transmission facilities, but that Midwest ISO has refused to apply and abide by the seven-factor test, instead relying on Midwest ISO's interpretation of *MidAmerican Energy Co.*, which accepted the classification of MidAmerican's 69 kV facilities as local distribution facilities by the Iowa Commission.²⁵ Pella argues that Midwest ISO's reliance on *MidAmerican* is misplaced because that order provisionally ratified the Iowa Commission's analysis of MidAmerican's facilities and cannot control in the face of evidence demonstrating that Pella's facilities are transmission facilities. Pella further argues that the Commission could not have intended for *MidAmerican* to apply to Pella's facilities because it gave no such indication and that Pella falls outside of the jurisdiction of both the Iowa Commission and this Commission, at least with respect to direct rate regulation. Pella states that, even if *MidAmerican* were applicable, the Commission would still be required to apply the seven-factor test here because circumstances have changed since the Commission issued its order in *MidAmerican*.²⁶

25. Pella further argues that the Commission has acknowledged that *MidAmerican* does not preclude review of the classification of facilities. Pella specifically points to *Clipper Wind*, where MidAmerican claimed that *MidAmerican* was preclusive.²⁷ Pella notes that in *Clipper Wind* the Commission found that the record did not indicate whether or not the facilities could be considered integrated and set the matter for hearing. Additionally, Pella notes that a Staff witness stated that MidAmerican's assertion of preclusion was unfounded, because the Commission's decision in *MidAmerican* wholly relied on the recommendations of the Iowa Commission and had left open the possibility of future challenges to the classification of specific facilities.²⁸

²⁴ *Id.* at 36-38. In Docket No. ER09-823-000, MidAmerican filed an unexecuted Large Generator Interconnection Agreement between itself and Clipper Windpower Development Company. MidAmerican requested that the Commission determine that certain facility improvements, including certain 69 kV facilities, are not network upgrades eligible for revenue crediting pursuant to the interconnection agreement. In *MidAmerican Energy Co.*, the Commission accepted the interconnection agreement for filing, suspended it for a nominal period of time, and established hearing procedures. 128 FERC ¶ 61,110, at P 23 (2009) (*Clipper Wind*).

²⁵ Filing at 43 (citing *Mid American Energy Co.*, 90 FERC ¶ 61,105).

²⁶ *Id.* at 46-47.

²⁷ *Id.* at 44 (citing *Clipper Wind*, 128 FERC ¶ 61,110, at P 23).

²⁸ *Id.* at 44-45.

26. Pella argues that Respondents have improperly denied Pella compensation for its 69 kV facilities and asks that the Commission find that its 69 kV facilities are eligible for zonal revenue-sharing, consistent with existing revenue-sharing agreements through which Respondents already compensate Pella for its 345 kV facilities. Pella states that revenue-sharing is provided for in the Transmission Owners Agreement and should occur through MidAmerican's joint pricing zone. According to Pella, the Tariff and current agreements obligate Midwest ISO to provide shares of transmission revenues to MidAmerican as pricing zone administrator, which is obligated to distribute those revenues to Cedar Falls, which in turn passes the transmission revenues associated with Pella's 345 kV facilities through to Pella.²⁹

27. Pella also states that Midwest ISO has violated the Tariff, Order No. 888, and sections 205, 206, 211, and 212 of the FPA by improperly delegating authority over compensation to MidAmerican. Pella cites a letter from Midwest ISO from April 2010 (April Letter) that referred to the dispute over compensation as a matter between Pella and MidAmerican and, according to Pella, left Pella to negotiate with MidAmerican for compensation guaranteed by the Tariff.³⁰ Pella also states that Mr. Michael Gard, Principal Tariff Pricing Analyst for Midwest ISO, called Pella's Electric Director, Larry Peterson, to explain that Midwest ISO was planning on discussing Pella's request for compensation with MidAmerican, who, as the local balancing authority, would make the decision on classifying Pella's facilities.³¹ Pella states that Midwest ISO then asked Pella to submit an alternative version of Pella's Attachment O omitting Pella's 69 kV facilities, which could be used if MidAmerican objected to the inclusion of the facilities.³² Pella also notes that the April Letter concluded, without study or analysis, that Pella's facilities could not be classified as transmission facilities because they are integrated with the distribution facilities of MidAmerican and that that assertion and Midwest ISO's statements during December 2009 together suggest that Midwest ISO does not subscribe to the case-by-case analysis of facilities required by Order No. 888.³³

28. Pella maintains that, to the extent that Midwest ISO has delegated authority to MidAmerican, MidAmerican has failed to honor the seven-factor test and has improperly denied compensation for Pella's facilities. Pella explains that, after it submitted its Attachment O, Midwest ISO contacted MidAmerican to discuss the inclusion of Pella's 69 kV facilities. Pella asserts that this conversation prompted Mr. Dehn Stevens, MidAmerican Manager of Transmission Services, to call Mr. Peterson to explain that it

²⁹ *Id.* at 44-45.

³⁰ *Id.* at 48-49; Ex. P-24 at 2.

³¹ Filing at 49-50; Peterson Testimony at 25-27.

³² Filing at 49-50.

³³ *Id.* at 50-51.

did not support Pella's request for compensation of the 69 kV facilities because it would mean that other 69 kV facilities in the area would have to be classified as transmission facilities, creating undesirable repercussions. According to Pella, a few minutes later Midwest ISO contacted Pella to inform it that Midwest ISO would not permit the inclusion of the facilities in Pella's Attachment O because of MidAmerican's objection.³⁴ Pella notes that it submitted a formal letter of complaint to MidAmerican, along with supporting evidence, to no avail. Pella states that MidAmerican has failed to provide any evidence to rebut Pella's application of the seven-factor test and is instead applying a bright line test excluding facilities below 100 kV from consideration for compensation as transmission facilities.³⁵

29. Moreover, Pella argues that the conduct of the Respondents in denying Pella compensation is unjust and unreasonable, and unduly discriminatory and preferential. Pella states that Midwest ISO compensates other transmission owners for facilities that serve equivalent transmission functions and cites an order approving an agreement concerning credits between the Municipal Energy Agency of Nebraska (MEAN) and MidAmerican.³⁶ Pella states that MidAmerican and other users of the integrated transmission grid are receiving benefits from Pella's 69 kV facilities while it is denied compensation and it is forced to pay a full network service rate covering all integrated transmission facilities, including some of MidAmerican's facilities. Pella calculates that it loses approximately \$769,000 per year as a result of non-compensation for its 69 kV facilities, pays direct assignment facilities charges of \$169,000 per year for facilities that should be rolled into MidAmerican's annual transmission revenue requirement and zonal rates, and that it is not compensated for losses occurring on its system via the 69 kV facilities. Pella states that, by directing Pella to seek resolution from MidAmerican, Midwest ISO has put Pella at a competitive disadvantage relative to MidAmerican, who competes with Pella within the area at issue.³⁷

30. In light of the above, Pella argues that it meets the standards for relief under sections 205 and 206 of the FPA. Pella claims that section 205 is relevant here because the costs of Pella's 69 kV facilities have been improperly excluded from Pella's Attachment O under the Tariff's ATRR formulas. Pella explains that errors in the implementation of formula rates are reviewable under section 205 as well as under section 206. Accordingly, Pella requests that the Commission exercise its section 206 authority to direct the Respondents to classify Pella's 69 kV facilities as transmission facilities and incorporate Pella's 69 kV facilities into Pella's Attachment O. Pella states

³⁴ *Id.* at 52-53; Peterson Testimony at 25-26.

³⁵ Filing at 54-55; Ex. P-26.

³⁶ Filing at 12.

³⁷ *Id.* at 64-66.

that the Commission may order refunds, including retroactive refunds, where a seller has failed to comply with Tariff requirements and the filed rate.³⁸

31. Pella also claims that it is entitled to relief under sections 211 and 212 of the FPA. Pella states that section 211(a) is applicable here because Pella is forced to charge purchasers higher rates as a result of the exclusion of its 69 kV facilities by Respondents. Further, according to Pella, sections 211 and 212 mandate access to transmission under rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential. Pella contends that it is being denied transmission service on just and reasonable terms because it is being denied compensation for its 69 kV facilities. Pella states that it believes it has made a good faith effort to secure service on just and reasonable terms as required under section 211(a), by submitting a formal request to the Respondents including evidence detailing the application of the seven-factor test to Pella's 69 kV facilities in March 2010.³⁹ Pella also explains that it has sought to resolve the issue with Respondents since 2009.⁴⁰

32. Pella argues that it is also entitled to relief under section 309 of the FPA,⁴¹ which gives the Commission broad discretion to perform any and all acts and to issue such orders as are necessary or appropriate to carry out the provisions of the FPA. Pella contends that it is both necessary and appropriate to order recognition of Pella's 69 kV facilities as compensable transmission facilities in order to enforce the FPA's mandate of just and reasonable rates with respect to charges issued by the Respondents.⁴²

33. In summary, Pella asks that the Commission issue an order confirming that its 69 kV facilities are transmission facilities and directing Respondents to provide appropriate compensation in accordance with Pella's Attachment O ATRR for these facilities under the MidAmerican zonal revenue sharing agreements. Pella requests that the Commission order payment of amounts owed for this Midwest ISO calendar year beginning June 1, 2010, under the version of Attachment O that Pella recently submitted to Midwest ISO but was rejected. In the alternative, Pella asks that the Commission set the earliest possible refund effective date under section 206 of the FPA. Pella states that, if the Commission finds that it cannot issue an order for any reason, it should set the matter for hearing.⁴³

³⁸ *Id.* at 73 (citing *Ark. Elec. Coop. Ass'n v. Entergy Ark., Inc.*, 130 FERC ¶ 61,020 (2010)).

³⁹ *Id.* at 74-76.

⁴⁰ *Id.* at 77.

⁴¹ 16 U.S.C. § 825h (2006).

⁴² Filing at 78.

⁴³ *Id.* at 80.

b. Comments of Nelson Energy

34. Nelson Energy argues that Pella's 69 kV facilities should be classified as transmission facilities. Nelson Energy states that the current classification of Pella's 69 kV facilities has complicated its effort to interconnect a 36.4 MW hydroelectric project. Nelson Energy states that the most feasible interconnection options are to interconnect with Pella's West Substation or to interconnect with MidAmerican's Knoxville Industrial Substation, and that it has made a preliminary determination to interconnect with Pella's facility. Nelson Energy explains that it initially attempted to obtain an interconnection agreement for the project through Midwest ISO's generator interconnection process, but was informed that it would have to pursue interconnection for the project through MidAmerican because MidAmerican had retained control over its 69 kV facilities. Nelson Energy states that it subsequently learned that MidAmerican's interconnection procedures, which have been adopted by the Iowa Commission, would apply if it interconnected at Knoxville, but would not apply if it chose to interconnect at Pella's West Substation because the latter facility is not under MidAmerican's control.⁴⁴

35. Nelson Energy expresses concern that neither Midwest ISO's generator interconnection procedures nor MidAmerican's generator interconnection procedures will be applicable to its planned interconnection. It argues that coordination among utilities as well as the interconnection and associated costs can be more effectively managed through Midwest ISO. Nelson Energy contends that fair and non-discriminatory generation access cannot be assured where facilities that are functionally transmission facilities and necessary for transmission transactions are excluded from grid recognition and from the application of uniform rules.⁴⁵ Nelson Energy also states that it believes that, if the 69 kV facilities of Pella and MidAmerican are classified as transmission facilities, Nelson Energy would be entitled to repayments for amounts advanced for the construction of any required network upgrades under Attachments X and FF of the Tariff.⁴⁶

c. Answers of Respondents

36. The Respondents argue that the classification of MidAmerican's facilities in the area of Pella's facilities as local distribution precludes the inclusion of Pella's facilities in MidAmerican's joint pricing zone under the comparability principle, as articulated in a number of cases involving the inclusion of certain facilities of Wolverine Power Supply Cooperative, Inc. in a joint pricing zone involving Michigan Electric Transmission

⁴⁴ Nelson Energy Comments at 2-4.

⁴⁵ *Id.* at 6-8.

⁴⁶ *Id.* at 8.

Company, LLC (Michigan Electric), and Michigan Public Power Agency.⁴⁷ According to Respondents, in those cases, the Commission rejected an interpretation of the seven-factor test proposed by the filing parties for Wolverine's facilities and found that the determinations of the Commission and the Michigan Public Service Commission respecting the classification of Michigan Electric's transmission facilities controlled the issue of which of Wolverine's facilities should be deemed to have passed the seven-factor test. The Respondents state that there the Commission found that, while the alternative test proposed by Wolverine may have been acceptable in different circumstances, comparability of facilities was key because the relevant facilities were part of a joint pricing zone.⁴⁸ Midwest ISO maintains that the comparability principle requires that the determinations of the Commission and the Iowa Commission respecting which facilities of MidAmerican may be included in the joint pricing zone apply equally to Pella to the extent that it seeks to include its facilities in the joint pricing zone.⁴⁹ Midwest ISO states that, if Pella wants to challenge the orders classifying MidAmerican's facilities, it should present the issue to the Iowa Commission and/or this Commission instead of inventing specious "tariff violations" against Midwest ISO.⁵⁰

37. MidAmerican states that Pella is being treated comparably, and that, if Pella compared its analysis with the report that MidAmerican submitted when seeking classification of its own facilities (Technical Report), Pella would discover that it is applying the seven-factor test differently here. MidAmerican states that, for example, the report that MidAmerican submitted in support of its proposed classification acknowledged that much of its 69 kV system is looped but explained that closed loop local systems have limited functions with respect to power transport and are looped and normally closed for local reliability purposes; Pella, in contrast, relies on the looped nature of its facilities as a basis for its conclusion that they are transmission facilities. MidAmerican also notes that, while Pella cites a number of interconnection agreements as evidence of integration, these agreements were in place when the seven-factor test was applied to MidAmerican's facilities. Moreover, MidAmerican states that, while Pella appears to argue that its 69 kV capacitors are performing a transmission function based on the fact that MidAmerican requests that the capacitors be placed in service from time

⁴⁷ Midwest ISO Answer at 13-15; MidAmerican Answer at 15-17 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004 (2002) (*Wolverine I*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 (2004) (*Wolverine II*), order on reh'g, 112 FERC ¶ 61,351 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,053 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 63,029 (2006)).

⁴⁸ Midwest ISO Answer at 13-15; MidAmerican Answer at 17.

⁴⁹ Midwest ISO Answer at 16; MidAmerican Answer at 18.

⁵⁰ Midwest ISO Answer at 7.

to time to support system voltages in the surrounding area, the voltages being supported are area 69 kV voltages.⁵¹

38. In addition, MidAmerican contends that, while Pella argues that the analysis of MidAmerican's facilities should not apply to its facilities, both the Iowa Commission and this Commission reviewed the Technical Report, which addressed MidAmerican's interconnections with Pella.⁵² MidAmerican explains that the report concluded that power entering the system at voltages of 69 kV and below is consumed in a comparatively restricted geographical area and that the seven-factor analysis concluded that those of MidAmerican's facilities that interconnect with Pella performed distribution functions. MidAmerican thus asserts that, given the principle of comparability, the result of the Iowa Commission classification of Pella's facilities should be persuasive.⁵³ MidAmerican argues that Pella is seeking an undue preference that would be inequitable to all owners of comparable 69 kV facilities in the MidAmerican zone. Moreover, MidAmerican states that, while Pella suggests that the Technical Report was conducted prior to the completion of upgrades to its facilities, MidAmerican states that it is not aware of any changes to Pella's system that would materially impact the seven-factor analysis.⁵⁴

39. MidAmerican argues that Pella has failed to provide any factual support for its conclusions that its 69 kV facilities are not being treated comparably to other facilities. It states that Pella has failed to address the fact that utilities that own non-radial 69 kV facilities are not compensated in the MidAmerican zone and that Pella has failed to compare its facilities to other facilities classified as integrated transmission facilities. It states that Pella's own witness concedes that he has not analyzed whether MidAmerican's 69 kV facilities function as transmission facilities, and that, while Pella's witness suggests that MidAmerican's facilities should be classified as transmission facilities, these facilities are currently treated comparably to Pella's facilities.⁵⁵ While Pella claims that MidAmerican provides compensation to MEAN and other transmission owners for facilities that serve equivalent transmission functions, MidAmerican states that its agreement with MEAN defines transmission facilities as networked facilities above 100 kV and MidAmerican argues that Pella has failed to provide evidence that its facilities are otherwise comparable.⁵⁶

⁵¹ MidAmerican Answer at 24-26.

⁵² *Id.*

⁵³ *Id.* at 27.

⁵⁴ *Id.* at 28.

⁵⁵ *Id.* at 22-23.

⁵⁶ *Id.* at 21.

40. MidAmerican also states that Pella's reliance on the *Clipper Wind* proceeding is misplaced because the testimony that Pella cites is that of a Staff witness, which is not authoritative and should not be relied upon at the risk of pre-judging that proceeding. In addition, MidAmerican argues that, if Pella agrees that the 69 kV facilities at issue in that proceeding may be transmission facilities, it should be complaining that MidAmerican's filed rates are unjust and unreasonable in that they exclude the costs of 69 kV facilities that are properly classified as transmission facilities.⁵⁷

41. Midwest ISO argues that Pella's argument that it is entitled to compensation under MidAmerican's joint pricing zone is flawed because it assumes that Pella is a Transmission Owner under the Tariff. Midwest ISO states that the requirements of the Transmission Owners Agreement's regarding the collection and distribution of revenue are strictly between Midwest ISO and its Transmission Owners, which are defined as entities that signed the Transmission Owners Agreement and have transferred functional control of their facilities to Midwest ISO,⁵⁸ and Pella has done neither. Midwest ISO claims that the Transmission Owners Agreement bars Midwest ISO from distributing transmission revenue to entities that are not Transmission Owners and mandates a zonal pricing method, which requires that the applicable transmission rate in a zone be based on the combined revenue requirements of all Transmission Owners in that zone.⁵⁹

42. Midwest ISO maintains that Pella's argument that its 69 kV facilities should be treated like its high-voltage facilities is flawed because Pella's high-voltage facilities are subject to specific contractual arrangements that have been accepted by the Commission and that do not permit the addition of Pella's 69 kV facilities.⁶⁰ Specifically, Pella has entered into an assignment agreement with Cedar Falls that gives Cedar Falls control over these facilities to transfer control over these facilities to Midwest ISO. Midwest ISO notes that, while the assignment agreement has not been filed with the Commission, MidAmerican filed revisions to its Joint Pricing Zone Agreement with Cedar Falls to reflect the inclusion of Pella's high voltage lines, which were accepted in a letter order. Midwest ISO states that Pella failed to seek rehearing of that order and, accordingly, the Commission should reject Pella's arguments as a late rehearing request and an unwarranted collateral attack on the order accepting MidAmerican's revisions.⁶¹

⁵⁷ *Id.* at 29-30.

⁵⁸ Midwest ISO Answer at 10-11 (citing Transmission Owners Agreement, Art. 1, section I.P.; Transmission Owners Agreement, App. C; Tariff, section 1.671).

⁵⁹ *Id.* at 11 (citing Transmission Owners Agreement, App. C, sections II and III).

⁶⁰ *Id.* at 12.

⁶¹ *Id.* (citing *MidAmerican Energy Co.*, Docket No. ER10-562-000 (filed Jan. 7, 2010); Letter Order Accepting Joint Pricing Zone Agreement, Docket No. ER10-562-000).

43. Like Midwest ISO, MidAmerican explains that it is the Transmission Owners Agreement and the Tariff that govern which facilities are entitled to compensation through a joint pricing zone and that the relief sought by Pella is barred by the filed rate doctrine.⁶² According to MidAmerican, under the Transmission Owners Agreement, Midwest ISO determines whether an entity can qualify as an Owner, which is defined as a utility or other entity with facilities that Midwest ISO has determined to be transmission facilities by applying the seven-factor test.⁶³ Once an entity becomes classified as an owner and signs the Transmission Owners Agreement, the following assets of the owner may be placed under Midwest ISO's control: all network transmission facilities above 100 kV, and other facilities that Midwest ISO directs the Owner to assign to it. Under the Tariff, in addition to the facilities listed in the Transmission Owners Agreement, the transmission system includes other facilities booked to transmission accounts that are not controlled or operated by the Transmission Provider but that the Transmission Owners, by way of an Agency Agreement, have allowed the Transmission Provider to use in providing service under the Tariff (non-transferred facilities). MidAmerican explains that, under Article 3 of the Transmission Owners Agreement, Midwest ISO must distribute transmission revenues in accordance with Appendix C, which provides that the zonal rates for each zone shall be based on the costs of the booked transmission facilities within the zone. In other words, non-transferred facilities must be booked transmission by definition in order to obtain compensation.⁶⁴

44. MidAmerican states that, since Pella is not currently an owner and its facilities do not qualify to be transferred to Midwest ISO, Pella seeks to qualify its 69 kV facilities for zonal compensation on the grounds that they are eligible to be non-transferred facilities. MidAmerican explains that non-transferred facilities are those facilities booked to transmission accounts that are not controlled or operated by Midwest ISO but that Midwest ISO may use pursuant to an Agency Agreement. Midwest ISO further explains that Appendix C of the Transmission Owners Agreement states that the zonal rates for each zone shall be based on the costs of the booked transmission facilities within the Zone. In other words, non-transferred facilities must be "booked transmission" by definition and to obtain compensation. Therefore, according to MidAmerican, facilities must be classified as transmission facilities under the seven-factor test in order to be included in a Midwest ISO zonal rate.⁶⁵

45. With respect to Pella's request for relief under sections 211 and 212 of the FPA, Midwest ISO argues that the Commission should reject this claim because access to transmission is not at issue here. Midwest ISO states that Pella already has access to

⁶² MidAmerican Answer at 11, 35.

⁶³ *Id.* at 11 (citing Transmission Owners Agreement, Art. I, section M, section P).

⁶⁴ *Id.* at 12-13 (citing Tariff, section 1.677).

⁶⁵ *Id.* at 13-14.

transmission service at just and reasonable rates under the Tariff and that this case turns not on transmission access but on the proper application of the Tariff. Further, Midwest ISO states that it does not believe that it has received a good faith request for transmission services from Pella, as required under section 211.⁶⁶

46. In its answer to Nelson Energy, MidAmerican states that Nelson Energy is incorrect in assuming that interconnection under the Midwest ISO generator interconnection procedures will lead to substantially different results and cost obligations than interconnection under the procedures approved by the Iowa Commission. MidAmerican explains that under both processes the cost of 69 kV upgrades required to accommodate its generation project will be directly assigned to the generator with no provision for repayments or credits.⁶⁷ MidAmerican further states that, while Nelson Energy suggests that Midwest ISO's study processes are more efficient and less expensive than those established by the Iowa Commission, these study processes are substantially similar and, in fact, some aspects of the Iowa Commission process may expedite and reduce the costs associated with Nelson Energy's application.⁶⁸ Finally, MidAmerican states that the fact that the facilities that Nelson Energy plans to interconnect with are not under Midwest ISO's functional control will not hinder its ability to participate in Midwest ISO's energy markets and that there are many distribution-level connected generators that participate in Midwest ISO's energy markets.⁶⁹

d. Pella's September 3 Answer

47. Pella reiterates that its 69 kV facilities meet the seven-factor test and argues that Respondents have failed to make any showing to the contrary.⁷⁰ It states that the failure of the Respondents to provide contrary evidence belies any assertion that specific contrary factual analyses exists and should trigger an adverse inference.⁷¹

48. Pella says that the principle of comparability does not eliminate Midwest ISO's duty to apply the seven-factor test on a case-by-case basis.⁷² Pella maintains that the arguments of the Respondents regarding comparability improperly assume that voltage is the determinative factor when considering whether facilities are transmission facilities,

⁶⁶ Midwest ISO Answer at 24-27.

⁶⁷ MidAmerican Answer to Nelson Energy at 3-6.

⁶⁸ *Id.* at 6-9.

⁶⁹ *Id.* at 10.

⁷⁰ Pella September 3 Answer at 3-9.

⁷¹ *Id.* at 5.

⁷² *Id.* at 9.

which the Commission expressly rejected in Order No. 888. Pella argues that the fact that its 69 kV facilities meet the seven-factor test demonstrates that its facilities are comparable to other grid owners' facilities and should be compensated in the same way as those facilities, regardless of voltage.⁷³

49. Pella argues that the proceedings involving the incorporation of Wolverine's facilities into a joint pricing zone actually support Pella because in those cases the seven-factor test was applied to each utility's facilities individually, but in a similar manner. Pella also argues that, in the precedent that the Respondents rely upon, the Commission found that as a general matter any utility not subject to the jurisdiction of a state commission should ask Midwest ISO to apply the seven-factor test to its facilities to determine as an initial matter whether those facilities meet the definition of transmission facilities or local distribution facilities.⁷⁴

50. Pella maintains that the Iowa Commission decision explicitly held that no other utility's facilities could be classified on the basis of its findings in that order, that it was not applying a bright line test, and that it was not ruling on the future treatment of MidAmerican's facilities.⁷⁵ Pella further maintains that the issues raised here were not considered in the earlier order classifying MidAmerican's facilities and the factors underlying the earlier orders have changed; at the time, Pella was not a network customer and would not have been entitled to credits or revenue sharing.⁷⁶

51. Pella also clarifies that it is not claiming that *Clipper Wind* is determinative of whether Pella's facilities should be compensated. On the contrary, Pella believes that the Commission's decision to initiate a hearing in that case does demonstrate that the order classifying MidAmerican's facilities was not preclusive.

52. Pella states that, while the Respondents argue that Pella should challenge the classification of the MidAmerican facilities, Pella maintains that recognizing Pella's facilities cannot violate comparability if Pella's 69 kV facilities meet the seven-factor test. Pella argues that the implication of accepting the arguments of the Respondents would be that no party could ever contest its treatment by an independent system operator without first seeking zone-wide redeterminations affecting all facilities.⁷⁷ Pella states that it is not its responsibility to assess MidAmerican's facilities, but that it has already indicated that the facilities that connect to Pella's 69 kV facilities serve a transmission

⁷³ *Id.* at 11-12.

⁷⁴ *Id.* at 13-15 (citing *Wolverine II*, 106 FERC ¶ 61,219 at P 53-56; Decision of the Iowa Commission at 5-6).

⁷⁵ *Id.* at 16-19.

⁷⁶ *Id.* at 30.

⁷⁷ *Id.* at 29.

function and, under well-established law, the Commission should recognize these facilities as transmission facilities.⁷⁸ Moreover, Pella states that the filed rate doctrine does not prevent the Commission from making regulatory decisions in response to complaints and petitions for declaratory relief as here.⁷⁹

53. Pella contends that it has already attempted to negotiate with both MidAmerican and Midwest ISO, but that they have consistently denied Pella's requests. Pella states that, if the Commission finds that its facilities are transmission facilities, it will sign a joint pricing zone agreement or, if necessary, become a Midwest ISO Transmission Owner and turn over functional control of its facilities to Midwest ISO. Pella also states that it has been authorized by Cedar Falls to represent that Cedar Falls will include Pella's 69 kV facilities in its Joint Pricing Zone Agreement if the Commission agrees that the facilities are transmission facilities.⁸⁰ Pella argues that, even if one were to credit the Respondents' arguments that Pella would need to sign the Transmission Owners Agreement or a joint pricing zone agreement covering its facilities, Pella meets the standards for declaratory and other relief.⁸¹

54. Pella rejects the notion that it has somehow waived its rights by failing to challenge approval of the order approving the Joint Pricing Zone Agreement with Cedar Falls or other orders. It states that it never waived its rights and instead raised its concerns with the Respondents. Pella states that a utility can never waive its right to seek classification of its facilities and notes that the Commission has invited utilities to seek reclassification as needed.⁸²

55. Finally, with respect to sections 211 and 212 of the FPA, Pella reiterates that it believes that it made a good faith request for transmission services and the fact that Pella's request respecting its higher voltages facilities was granted indicates that Pella had provided sufficient information in its request. Pella also states that its claims fall within the zone of interest protected by these sections because Pella has shown that it is requesting nondiscriminatory access to transmission. Pella also states that the comments of Nelson Energy demonstrate the harm suffered by Pella in terms of the ability to compete.⁸³

⁷⁸ *Id.* at 35.

⁷⁹ *Id.* at 27-28.

⁸⁰ *Id.* at 32.

⁸¹ *Id.* at 29.

⁸² *Id.* at 36-38.

⁸³ *Id.* at 52-54.

e. Answers to Pella's Answer

56. Midwest ISO states that Pella's claim that it is entitled to be included in the joint pricing zone fails regardless of the application of the seven-factor test because Pella's 69 kV facilities are not part of the "Transmission System" under either the Tariff or the Transmission Owners Agreement and Midwest ISO does not provide transmission service over these facilities.⁸⁴ Midwest ISO explains that Pella's facilities are not within the joint pricing zone because they only interconnect with MidAmerican's distribution facilities, which are not included in MidAmerican's pricing zone and are not under Midwest ISO's functional control or subject to an Agency Agreement. Midwest ISO maintains that, even if Pella's facilities were within the joint pricing zone, the comparability principle requires that their eligibility for inclusion in that zone must be governed by the same application of the seven factor test that was used by the Commission and the Iowa Commission. Midwest ISO states that, while Pella suggests that MidAmerican's facilities may indeed function as transmission facilities, the Transmission Owners Agreement requires Midwest ISO to accept the determinations of the Iowa Commission and this Commission as valid and conclusive. Further, while Pella claims that Midwest ISO is required to perform a seven-factor test for non-jurisdictional entities, the requirement that Pella refers to applies only to non-jurisdictional Transmission Owners or applicants for Transmission Owner status.⁸⁵ Midwest ISO states that, while Pella attempts to avoid the issue by stating that it will sign a joint pricing zone agreement or become a Transmission Owner if necessary, Pella cannot sign any joint pricing zone agreement until it becomes a Transmission Owner, which requires that it initiate a formal application process.⁸⁶

57. MidAmerican maintains that given the fact that the Transmission Owners Agreement does not permit the transfer of control of 69 kV facilities, such facilities can only be included in a joint pricing zone agreement as a result of an Owner entering into an Agency Agreement under the Transmission Owners Agreement. As Pella is not presently an Owner under the Transmission Owners Agreement, MidAmerican states that it must take one of two steps for the issue of the classification of its 69 kV facilities to be ripe: (1) terminate its agreement with Cedar Falls and become an Owner itself; or (2) transfer its 69 kV facilities to Cedar Falls and ask Cedar Falls to enter into an Agency Agreement covering Pella's 69 kV facilities. MidAmerican states that Pella has not taken

⁸⁴ Midwest ISO Answer to Pella's September 3 Answer at 3 (citing Transmission Owners Agreement, Art. 1, sections I.T. & I.O.; Tariff at section 1.679).

⁸⁵ *Id.* at 5-6 (citing Transmission Owners Agreement, App. C, section II.C.2).

⁸⁶ *Id.* at 7.

either of these steps and that only at that point would Pella's facilities need to be analyzed, which would be the responsibility of Midwest ISO.⁸⁷

58. Midwest ISO also reiterates that it believes that Pella's petition and complaint constitute a collateral attack on the order accepting the revisions to the Joint Pricing Zone Agreement between Midwest ISO and Cedar Falls. Midwest ISO states that, while Pella argues that it had no reason to contest the filing that implemented inclusion of Pella's 345 kV facilities, Pella's communications with the Respondents clearly demonstrate that Pella perceived that the exclusion of its 69 kV facilities rendered the Joint Pricing Zone Agreement unlawful.⁸⁸ Thus, Midwest ISO maintains that Pella's claims are barred by Commission precedent and by the requirement of section 313(a) of the FPA⁸⁹ to seek rehearing of the order within 30 days.⁹⁰

59. MidAmerican further states that Pella can only receive the relief it requests through a zone-wide reclassification because otherwise Pella is seeking an undue preference. In contrast, MidAmerican states that, if all of MidAmerican's similarly-situated 69 kV facilities were classified as transmission facilities and Midwest ISO refused to provide compensation, Pella could meet its initial burden by presenting a factual example showing the disparate treatment; here, however, Pella has made no showing of disparate treatment of similar facilities.⁹¹ MidAmerican maintains that the key issue is whether similarly-situated facilities whose costs are recovered through MidAmerican zonal rates are classified as distribution or transmission facilities. MidAmerican states that Pella ignores the fact that MidAmerican's facilities that interconnect with Pella's 69 kV facilities and serve the very same function were analyzed by both the Commission and applicable state regulatory authority and classified as distribution.⁹²

60. MidAmerican states that Pella is attempting to hijack the clear processes set forth in the Midwest ISO Tariff and Transmission Owners Agreement, as such processes would allow for all parties to have the same time to review and comment on an independent, Midwest ISO delineation. Rather, MidAmerican states that it appears Pella has spent months preparing and refining its own delineation, using its own approach. MidAmerican states that the Transmission Owners Agreement simply does not permit the transfer of facilities to the control of Midwest ISO that are under 100 kV, and that Pella is

⁸⁷ MidAmerican Answer to Pella's September 3 Answer at 4-6.

⁸⁸ Midwest ISO Answer to Pella's September 3 Answer at 11-12.

⁸⁹ 16 U.S.C. § 8251(a) (2006).

⁹⁰ Midwest ISO Answer to Pella's September 3 Answer at 12.

⁹¹ MidAmerican Answer to Pella's September 3 Answer at 11-12.

⁹² *Id.* at 4.

off-handedly asking the Commission, without filing an appropriate complaint challenging the Transmission Owners Agreement provision, to unilaterally alter this Transmission Owners Agreement restriction.⁹³

61. MidAmerican states that the fact that it has not presented a seven-factor analysis in this docket should not be construed to mean that MidAmerican agrees with Pella's analysis, which, according to MidAmerican, is without merit.⁹⁴ In addition, MidAmerican states that Pella has not made a prima facie case of discrimination and that Pella's seven-factor analysis is irrelevant because Pella has failed to identify similar facilities that are being treated differently. In fact, MidAmerican states, Pella's analysis was not performed in the same manner as the state commissions', therefore rendering the analysis immaterial. MidAmerican notes that Pella alleges that MidAmerican's facilities between Pella and the current Midwest ISO Transmission System are transmission facilities under its approach; however, MidAmerican also notes that the Commission and the states reached the opposite conclusion.⁹⁵

62. MidAmerican states that, contrary to Pella's claim, the prior delineation of MidAmerican facilities as distribution is not out of date.⁹⁶ In addition, MidAmerican states that Pella presents no evidence that there have been any significant changes in power flows anywhere on the MidAmerican transmission system since it joined Midwest ISO, let alone on the 69 kV facilities at issue here. MidAmerican claims that the only change significantly affecting Pella-area power flows since the Technical Report was conducted is the addition of Pella's ownership interest in the Walter Scott Unit No. 4 generation station, which further localizes power flows in the region by reducing the need for local generation.⁹⁷ Further, MidAmerican states that the delineation is not outdated as the Commission has used the delineation repeatedly in the past few years as a tool for determining whether or not facilities are integrated transmission facilities.⁹⁸

63. MidAmerican states that it is not applying a bright-line voltage test; rather each and every high voltage (69 kV and above) facility of MidAmerican was studied under the seven-factor analysis. MidAmerican states that all of the 69 kV facilities were determined through rigorous analysis to serve distribution functions. MidAmerican states

⁹³ *Id.* at 5-6.

⁹⁴ *Id.* at 3.

⁹⁵ *Id.* at 6-7.

⁹⁶ *Id.* at 9.

⁹⁷ *Id.* at 10.

⁹⁸ *Id.* at 10-11 (stating that the Commission has accepted several MidAmerican filings of network service agreements that directly assign the costs of MidAmerican facilities classified as distribution to wholesale network loads).

that the Transmission Owners Agreement does indeed provide a voltage “bright line” in defining the Transmission System, as Midwest ISO only assumes functional control of facilities over 100 kV and above. However, MidAmerican states, this “bright line” does not prevent Midwest ISO from providing service over non-transferred lower-voltage facilities and asserting over them what could be described as “functional control-lite.”⁹⁹

f. Pella’s September 27 Answer

64. Pella argues that, while the Respondents seem to argue that a party must already be a Transmission Owner or already have a joint pricing zone agreement before seeking relief before the Commission, this is impossible where Midwest ISO and the dominant zonal transmission owner exclude customer facilities from the grid. Pella argues that Midwest ISO’s and MidAmerican’s arguments respecting comparability are only correct if, contrary to Commission precedent, the only test of whether facilities are transmission facilities is voltage and not function. Pella maintains that Midwest ISO’s discriminatory treatment is proven by the flows across Pella’s system. Pella states that its testimony demonstrates that its facilities are necessary to support the Midwest ISO market and other transactions and to maintain the reliability of multiple transmission systems.¹⁰⁰

g. Pella’s Amendments

65. In the November 5 Amendment and November 15 Amendment, Pella provides additional evidence, which it claims demonstrates that Pella’s facilities meet the seven-factor test. Specifically, in the November 5 Amendment, Pella provides documentation of a request by MidAmerican to use Pella’s facilities to provide service to MidAmerican’s customers while certain MidAmerican facilities were out of service for reliability upgrades. In the November 15 Amendment, Pella provides an outage report detailing the use of Pella’s 69 kV facilities to serve MidAmerican and CIPCO loads for approximately five hours after the outage of a MidAmerican facility.

h. MidAmerican’s December 3 Answer to Pella’s Amendments

66. According to MidAmerican, both the November 5 Amendment and November 15 Amendment describe a short-lived emergency situation where Pella’s 69 kV facilities were used by certain utilities to distribute power to serve local area retail load when outages of the utilities’ own facilities were required for reliability purposes.

⁹⁹ *Id.* at 12-13.

¹⁰⁰ Pella’s September 27 Answer at 4 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 30,341-42, 31,771; *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,242, at P 8 (2006); *Nev. Power Co.*, 88 FERC ¶ 61,234 (1999); *Northeast Utils. Serv. Co.*, 107 FERC ¶ 61,246 (2004); *Kan. City Power & Light Co.*, 125 FERC ¶ 61,352 (2008)).

MidAmerican argues that the information submitted by Pella is irrelevant and merely demonstrates that Pella, MidAmerican, and other utilities are living up to the terms of their interconnection agreements, which contemplate the use of each others' distribution facilities in such circumstances. MidAmerican further argues that the Commission should find that the temporary use of Pella's 69 kV facilities by other utilities should not have any bearing on the delineation of Pella's 69 kV facilities as transmission, based on *California Pacific Electric Co., L.L.C.*¹⁰¹

i. Pella's December 13 Answer

67. Pella responds that the information provided in its amendments supports a finding that utilities, including MidAmerican, rely on Pella's facilities without compensating Pella for that use. Pella argues that MidAmerican incorrectly implies that the incidents described in the November 5 Amendment and the November 15 Amendment represent isolated incidents when Pella has already provided extensive evidence demonstrating that other utilities, including MidAmerican, rely on Pella's facilities. Pella further states that, while MidAmerican argues that Pella's facilities are used to maintain service to MidAmerican load served at low voltage or served off radial lines, the test is whether Pella's facilities are necessary to allow service to continue over MidAmerican's connecting facilities and ultimately to serve MidAmerican's retail load at a stepped-down voltage, which, according to Pella, they are. Pella maintains that the Commission's decision in *California Pacific* supports Pella's position that an individualized application of the seven-factor test is determinative and shows that the exchange of transmission service for reliability purposes is Commission-jurisdictional service. Pella further states that its facilities are distinguishable from the facilities that were at issue in *California Pacific* because Pella's 69 kV facilities are used to transmit power to multiple utilities (with power flowing in and through its system) and not merely to serve local, retail load.¹⁰²

j. Commission Determination

68. As an initial matter, we disagree with the arguments of the Respondents that Pella's Petition is not yet ripe. Even if we were to accept its argument that Midwest ISO would only be required to assess Pella's 69 kV facilities if Pella became a Transmission Owner or requested an Assignment Agreement with Cedar Falls covering its 69 kV facilities, this does not preclude Pella from filing a complaint under section 206 of the FPA or petitioning the Commission for a declaratory order as to the status of its facilities. We also disagree with Midwest ISO's argument that the Petition constitutes a collateral attack on the letter order approving MidAmerican's revisions to its Joint Pricing Zone

¹⁰¹ MidAmerican December 3 Answer at 2-5 (citing *Cal. Pac. Elec. Co., L.L.C.*, 133 FERC ¶ 61,018, at P 20, 45, 48 (2010) (*California Pacific*)).

¹⁰² Pella December 13 Answer at 2-9.

Agreement with Cedar Falls. That proceeding concerned whether MidAmerican's proposed revisions to the Joint Pricing Zone Agreement with Cedar Falls were just and reasonable and did not concern Pella's 69 kV facilities.¹⁰³

69. Turning to the merits of Pella's Petition, we find that Pella's 69 kV facilities are transmission facilities under the Commission's seven-factor test. Accordingly, we will grant Pella's petition for a declaratory order with respect to the classification of its 69 kV facilities.

70. The Commission has jurisdiction over the "transmission of electric energy in interstate commerce" and "the sale of electric energy at wholesale in interstate commerce."¹⁰⁴ The Commission does not, however, have jurisdiction over facilities used in local distribution.¹⁰⁵ In Order No. 888, the Commission articulated a so-called seven-factor test to determine what facilities would be subject to the Commission's jurisdiction.

71. To reiterate, the Commission examines the following seven factors that indicate facilities are local distribution rather than transmission facilities: (1) local distribution facilities are normally in close proximity to retail customers; (2) local distribution facilities are primarily radial in character; (3) power flows into local distribution systems; it rarely, if ever, flows out; (4) when power enters a local distribution system, it is not reconsigned or transported on to some other market; (5) power entering a local distribution system is consumed in a comparatively restricted geographical area; (6) meters are based at the transmission/local interface to measure flows into the local distribution system; and (7) local distribution systems will be of reduced voltage.¹⁰⁶

72. The Commission has previously acknowledged that, where an owner of facilities seeks to include its facilities within a joint pricing zone containing other facilities that have been classified as transmission facilities using the seven-factor test, the owner's facilities must also be classified as transmission facilities under the seven-factor test. In particular, we have stated that the company's facilities must be "classified as transmission facilities with [a] similar application of the seven-factor test" in order to be included within the joint pricing zone.¹⁰⁷ In this case, Pella seeks to have its 69 kV facilities included within MidAmerican's joint pricing zone, and MidAmerican's

¹⁰³ See Letter Order Accepting Joint Pricing Zone Agreement, Docket No. ER10-562-000.

¹⁰⁴ 16 U.S.C. § 824(b)(1) (2006).

¹⁰⁵ *Id.*

¹⁰⁶ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771.

¹⁰⁷ *Wolverine I*, 101 FERC ¶ 61,004 at P 21; *Wolverine II*, 106 FERC ¶ 61,219 at P 53.

facilities have been classified as transmission facilities under the seven-factor test. Therefore, the seven-factor test is the starting point for our analysis here.

73. We have reviewed Pella's seven-factor analysis and Pella's arguments for why its 69 kV facilities should be classified as transmission facilities. Based upon the record developed in this proceeding, we find that its 69 kV facilities are transmission facilities. First, the evidence presented indicates that Pella's 69 kV facilities are not in close proximity to retail customers, but are used to support service to communities across a wide region. For example, Pella's 69 kV facilities are used to support service to communities and rural areas up to 30 miles from Pella.¹⁰⁸ In addition, Pella's 69 kV facilities are not primarily radial in character, as they are required to ensure that an integrated network is maintained by surrounding utilities and that power flows may continue across the facilities to and from the facilities of MidAmerican, CIPCO, and ITC Midwest.¹⁰⁹ With respect to the third factor, the evidence indicates that an average of 30 percent of the energy flowing into Pella's interconnection points between 2007 and 2009 flowed out of Pella's facilities.¹¹⁰ The evidence also indicates that power that enters Pella's 69 kV facilities is transported across its system to other markets, including to CIPCO and MidAmerican; in fact, the evidence indicates that power from MidAmerican and CIPCO flow over Pella's 69 kV facilities.¹¹¹ The additional evidence provided by Pella in the November 5 Amendment and the November 15 Amendment further demonstrates that power that flows into Pella's 69 kV facilities, flows out of its system and is transported on to other markets.¹¹² The evidence provided also shows that the power that enters Pella's system is not consumed in a comparatively restricted geographical area. For example, the Beacon Substation is located approximately 18 miles beyond Pella's retail boundary.¹¹³ With respect to the sixth and seventh factors, the evidence indicates that Pella's meters are designed to measure bilateral flows and that Pella's 69 kV facilities operate at a higher voltage than those facilities that Pella uses to serve retail load. Therefore, we find that Pella's 69 kV facilities constitute transmission facilities.

¹⁰⁸ Filing at 27-28; Ex. P-11 at 3; Reising Testimony at 24.

¹⁰⁹ Filing at 28-29; Ex. P-4; Ex. P-7.

¹¹⁰ Filing at 29-30; Reising Testimony at 18-19.

¹¹¹ Filing at 31-33; Reising Testimony at 19-21, 28-29.

¹¹² While MidAmerican is correct in asserting that evidence concerning the temporary use of facilities in the case of an outage is not determinative based on *California Pacific*, that case also acknowledges that such evidence is relevant for the purpose of the application of the seven-factor test and can be considered as part of the totality of the circumstances. See *California Pacific*, 133 FERC ¶ 61,018 at P 47-48.

¹¹³ Filing at 33-34; Reising Testimony at 22.

74. We believe that the Respondents' arguments respecting the comparability principle are flawed. After comparing MidAmerican's Technical Report with Pella's application of the seven-factor test, we believe that Pella has applied the seven-factor test to its facilities in a manner that is similar to the way that the test was applied by the Iowa Commission when classifying MidAmerican's facilities as required by the principle of comparability. In other words, Pella has applied the seven-factor test to its facilities in a manner that is similar to the way that MidAmerican applied the seven-factor test to MidAmerican's facilities, although the application of that test to Pella's facilities leads to the conclusion that Pella's facilities function as transmission facilities despite the current classification of MidAmerican's facilities. For instance, both MidAmerican's Technical Report and Pella's analysis examined the power flowing out of their 69 kV facilities. MidAmerican's Technical Report concluded that power rarely flowed out of MidAmerican's 69 kV facilities; in contrast, the evidence provided by Pella indicates that power does flow out of its 69 kV facilities. Similarly, both MidAmerican and Pella looked at whether power flows across a local distribution interconnection to serve local area end-use customer requirements and not to transport power on to some other market to be reconsigned or sold for resale. Here, the evidence presented for Pella's 69 kV facilities simply leads to a different conclusion about Pella's 69 kV facilities than was the case for MidAmerican's 69 kV facilities—that power flowing into Pella's 69 kV facilities is exported to other markets.

75. In addition, we disagree with the Respondents that the Iowa Commission's order and the Commission's determination in *MidAmerican* should govern the classification of Pella's 69 kV facilities. We agree with Pella that the Iowa Commission's order accepting MidAmerican's proposed classification was not intended to control the classification of Pella's facilities or other entities' facilities. In its decision, the Iowa Commission noted that each utility's transmission system has "unique characteristics and is used and operated based on different criteria" and that it did "not believe a 'one size fits all' transmission/distribution facility and line delineation can be devised for Iowa utilities,"¹¹⁴ and also explicitly stated that its order was "based on the evidence presented" in that particular proceeding, which concerned MidAmerican's proposal to classify all of its lines operating at 69 kV and below as distribution.¹¹⁵ Thus, the Iowa Commission expressly limited its decision to the classification of MidAmerican's facilities and recognized that it would be inappropriate to necessarily treat other 69 kV facilities similarly. Likewise, in *MidAmerican*, the Commission accepted the Iowa Commission's decision respecting the classification of MidAmerican's facilities and did not concern the proper classification of Pella's facilities.¹¹⁶

¹¹⁴ Decision of the Iowa Commission at 5.

¹¹⁵ *Id.*

¹¹⁶ See generally *MidAmerican*, 90 FERC ¶ 61,105.

76. While MidAmerican suggests that the Iowa Commission's order and the Commission's decision in *MidAmerican* should be applied to Pella's facilities because the Technical Report that MidAmerican submitted when classifying its own facilities studied the facilities that interconnect with Pella and the power flows across Pella's system, we disagree. While the Iowa Commission may have concluded that the MidAmerican facilities that interconnect with Pella's facilities are distribution facilities and examined MidAmerican's Technical Report to come to this conclusion, there is simply no persuasive reason to find that the Iowa Commission made any definitive finding about the proper classification of Pella's 69 kV facilities.¹¹⁷ Similarly, there is nothing in the Commission's order in *MidAmerican* that suggests that its decision applied to Pella's facilities or that the Commission had relied upon MidAmerican's statements respecting Pella's facilities.¹¹⁸

77. While we find that Pella's facilities are properly classified as transmission facilities and that their inclusion within the joint pricing zone is not precluded by the previous classification of MidAmerican's facilities, we will deny Pella's Complaint to the extent that Pella argues that Midwest ISO and MidAmerican have improperly denied Pella compensation through inclusion in the MidAmerican joint pricing zone.

78. As an initial matter, we disagree with Pella's claim that Midwest ISO improperly delegated authority to MidAmerican. Based on the record developed in this proceeding, it appears that Midwest ISO did perform, contrary to Pella's assertions to the contrary, an independent review of Pella's 69 kV facilities.¹¹⁹ Even though the Respondents may have agreed about whether Pella's 69 kV facilities met the requirements for inclusion within the joint pricing zone, that does not mean that Midwest ISO improperly delegated any authority to MidAmerican.

79. We believe that the Respondents have abided by the Tariff's mechanisms concerning the inclusion of facilities below 100 kV in a joint pricing zone. The Tariff provides several mechanisms for an entity's facilities to be included within a joint pricing zone when a facility at issue operates at below 100 kV. First, under the Tariff, facilities below 100 kV may be included in a joint pricing zone agreement if an Owner enters into an Agency Agreement under the Transmission Owners Agreement. The facilities of a non-transmission owner may also become eligible for inclusion within a joint pricing zone if the non-transmission owner transfers its facilities to a Transmission Owner, as

¹¹⁷ See generally Decision of the Iowa Commission.

¹¹⁸ See generally *MidAmerican*, 90 FERC ¶ 61,105.

¹¹⁹ The fact that Midwest ISO may have characterized the dispute as one between MidAmerican and Pella is unsurprising, given the fact that inclusion of Pella's facilities would probably require revisions to the agreement between Cedar Falls and MidAmerican.

Pella has done with its 345 kV facilities, and asks the Transmission Owner to enter into an Agency Agreement with Midwest ISO.¹²⁰ Once the Transmission Owner enters into the Agency Agreement with Midwest ISO, the facilities may be included within the relevant joint pricing zone agreement, such as the Joint Pricing Zone Agreement between MidAmerican and Cedar Falls.

80. Here Pella is not an “Owner” as it has not signed the Transmission Owners Agreement. Therefore, Pella’s options are to either become a Transmission Owner and enter into an Agency Agreement with Midwest ISO or transfer its facilities to a Transmission Owner, such as Cedar Falls, and ask Cedar Falls to request an Agency Agreement dealing with Pella’s facilities. The evidence indicates that Pella’s 69 kV facilities have not been assigned to Cedar Falls or any other Transmission Owner and are not currently subject to an Agency Agreement.¹²¹ Thus, when Midwest ISO rejected Pella’s attempt to include its 69 kV facilities within its Attachment O, its action was proper; Pella’s 69 kV facilities were simply not eligible for inclusion within MidAmerican’s joint pricing zone.

81. Furthermore, even if Pella had assigned its facilities to Cedar Falls and Cedar Falls had entered into an Agency Agreement with Midwest ISO, the inclusion of Pella’s 69 kV facilities would be barred by the Joint Pricing Zone Agreement between MidAmerican and Cedar Falls. Specifically, the currently effective Joint Pricing Zone Agreement defines transmission facilities as networked facilities above 100 kV.¹²² The Joint Pricing Zone Agreement has previously been accepted by the Commission and the Commission is not persuaded to revisit that determination at this time.¹²³

82. Accordingly, we deny the Complaint to the extent that Pella argues that the Respondents improperly excluded Pella from compensation through the joint pricing zone. While the Respondents have not acted improperly, we note that Pella is free to pursue integration within Midwest ISO and work with the Respondents and Cedar Falls to make appropriate contractual arrangements regarding its 69 kV facilities in light of our determination above.

83. We also find that Pella’s reliance on sections 211 and 212 of the FPA is misplaced. Section 211 provides a vehicle for obtaining transmission service, not a

¹²⁰ Transmission Owners Agreement, App. G.

¹²¹ Pella September 3 Answer at 31-32, 50 n.31; MidAmerican Answer to Pella’s September 3 Answer at 4.

¹²² Joint Pricing Zone Agreement, Art. I (defining Transmission Facilities).

¹²³ Letter Order Accepting Joint Pricing Zone Agreement, Docket No. ER10-562-000.

vehicle to challenge rates for existing transmission service.¹²⁴ Here, Pella is not being denied access to transmission service; Pella receives network service from Midwest ISO. While section 212 does require the Commission to set the rates, charges, terms, and conditions for transmission service when issuing an order under section 211, section 212 only applies when the Commission first issues an order under section 211, and section 211, as noted, is not implicated here. Accordingly, we find that sections 211 and 212 of the FPA are inapplicable.

2. Section 30.9 Credits

a. Petition and Complaint

84. Pella also contends that the Respondents have violated section 30.9 of the Tariff, which provides for credits for transmission facilities that are integrated and provide benefits to the grid.¹²⁵ Pella argues that its 69 kV facilities provide benefits to the grid on the basis that it must maintain synchronous operations of its 69 kV facilities to maintain an integrated network between utilities and to ensure that its facilities contribute to electrical stability and reliability. Pella also claims that its facilities meet the five-factor integration standard that the Commission adopted in *Mansfield Municipal Electric Department v. New England Power Co.*¹²⁶ According to Pella, taking the results of the seven-factor test and the *Mansfield* test together, Pella's 69 kV facilities serve broad transmission functions of allowing wholesale power transfers among multiple systems, protecting grid reliability and maintaining service to load centers.¹²⁷

b. Answers of Respondents

85. Midwest ISO contends that Pella is not entitled to credits for its 69 kV facilities under section 30.9 of the Tariff. According to Midwest ISO, in Order No. 888-A, the Commission stated that in order for a customer to be eligible for credits, its facilities must both be integrated with the transmission provider's system and provide additional benefits to the grid in terms of capability and reliability and be relied on for the

¹²⁴ 16 U.S.C. § 824j(a) (stating that any person generating electric energy for sale for resale may apply for an order "requiring a transmitting utility *to provide transmission services* to the applicant (emphasis added)); *see also* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,646 (acknowledging that section 211 is a mechanism for obtaining transmission service).

¹²⁵ Filing at 56 (citing Tariff, section 30.9; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,271).

¹²⁶ *Id.* at 57-62 (citing 97 FERC ¶ 61,134, at 61,613-14 (2005) (*Mansfield*)); November 5 Amendment at 2.

¹²⁷ Filing at 63.

coordinated operation of the grid. Midwest ISO argues that the “integration standard” is even more rigid when applied to “existing” facilities such as those at issue here than the one used by transmission providers to determine whether their own network upgrades qualify for rolled-in pricing, such as the *Mansfield* test.¹²⁸ Midwest ISO claims, however, that, regardless of which standard applies, Pella is not eligible for credits because its facilities are not directly interconnected with MidAmerican’s transmission facilities and, as a result, are not integrated with the transmission system.¹²⁹ Midwest ISO further contends that, given the fact that MidAmerican’s distribution facilities that are interconnected with Pella are not included in Midwest ISO’s rates, it is consistent with the principle of comparability to not provide credits for Pella’s 69 kV facilities.¹³⁰

86. Similarly, MidAmerican claims that under section 30.9, as interpreted in Order No. 890-B, Pella’s 69 kV facilities would have to be comparable to MidAmerican’s facilities that are compensated. MidAmerican explains that section 30.9 of the Tariff provides that a network customer must demonstrate that its facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers. According to MidAmerican, in Order No. 890, the Commission clarified that only those facilities that are integrated with the transmission grid and used by the transmission provider to serve customers would be subject to rolled-in rates. Moreover, MidAmerican argues that Pella’s facilities are not integrated with Midwest ISO’s transmission facilities and are instead integrated with the 69 kV distribution systems of MidAmerican and others.¹³¹

c. Pella’s September 3 Answer

87. While Pella acknowledges that the specific circumstances at issue in *Mansfield* differed from the circumstances at issue here, it states that that does not mean that the *Mansfield* test cannot also be used to demonstrate the higher degree of integration required in customer-owned facility cases.¹³² Pella maintains that even if the Commission finds that the *Mansfield* test is inapplicable here, the evidence provided clearly demonstrates the requisite degree of integration with and benefits to the system and satisfies the factors mentioned in customer-owned credit cases, such as

¹²⁸ Midwest ISO Answer at 17 (citing *Ne. Texas Elec. Coop., Inc.*, 111 FERC ¶ 61,189, at P 16 (2005)).

¹²⁹ *Id.* at 18.

¹³⁰ *Id.* at 18-19 (citing *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 364 (D.C. Cir. 2003); Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,743 n.452).

¹³¹ MidAmerican Answer at 19-20, 30-31.

¹³² Pella’s September 3 Answer at 20-21.

Consumers.¹³³ Pella asserts that it has provided ample evidence of the fact that its facilities are relied upon for reliability purposes and are used to provide service to itself and other transmission customers.¹³⁴

88. With respect to Midwest ISO's argument that Pella's facilities are not integrated with the transmission system because they are not directly interconnected with MidAmerican's transmission facilities included in Midwest ISO, Pella states that this essentially raises the issue of whether the facilities in question are transmission facilities, which depends upon the application of the seven-factor test and not upon how one refers to these facilities. Pella maintains that it has satisfied all four prongs of the test articulated in *Consumers* and neither Midwest ISO nor MidAmerican have made a showing to the contrary.¹³⁵

d. Answers to Pella's Answer

89. Midwest ISO states that Pella's facilities are not integrated because they do not directly connect to Midwest ISO's transmission system as required by Commission precedent.¹³⁶ Midwest ISO asserts that Pella has failed to provide any evidence that Midwest ISO can use or has used Pella's 69 kV facilities to provide service to itself or other transmission customers, or that Pella's facilities are integrated into the plans or operations of Midwest ISO to serve its transmission customers, as required by Order No. 888 and *Consumers*.¹³⁷ Midwest ISO notes that while Pella attempts to rely on the fact that Pella provides transmission service to itself or other transmission customers over its facilities, a customer cannot secure credit for facilities that are not used by the transmission provider to provide service.¹³⁸ Moreover, Midwest ISO states that while there may be loop flows over Pella's 69 kV facilities such flows do not establish integration.¹³⁹

90. MidAmerican states that given that its facilities that interconnect with Pella's facilities were classified by MidAmerican as directly assignable (i.e., non-integrated) merely a year ago in a Commission filing, and no one disputed this result, that these

¹³³ *Id.* at 21 (citing *Consumers Energy Co.*, 86 FERC ¶ 63,004 (1999)).

¹³⁴ *Id.* at 22.

¹³⁵ *Id.* at 23-24.

¹³⁶ Midwest ISO Answer to Pella's September 3 Answer at 7-8 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,271; *E. Tex. Elec. Coop., Inc. v. Cent. & Sw. Servs., Inc.*, 114 FERC ¶ 61,027, at P 23 (2006)).

¹³⁷ *Id.* at 8-9 (citing *Consumers*, 86 FERC ¶ 63,004 at 65,013).

¹³⁸ *Id.* at 9-10.

¹³⁹ *Id.* at 11.

facilities' costs are booked to Commission distribution accounts, and that these facilities were never made part of the Midwest ISO transmission system as non-transferred facilities, MidAmerican is justified in calling these facilities non-integrated. Given these facts, MidAmerican maintains, if those facilities which stand between Pella and Midwest ISO are non-integrated, the Midwest ISO claim that the Pella facilities are likewise non-integrated is well founded.¹⁴⁰

e. Pella's September 27 Answer

91. Pella further argues that it has documented the need for its facilities and has provided data showing that an average of roughly one third of the power that flows into Pella's 69 kV facilities also flows out. Pella states that despite this evidence Midwest ISO continues to assume that its 69 kV facilities cannot be recognized as integrated into the grid because the Respondents work together to keep that voltage off of the grid. Pella claims that its unrebutted testimony precludes such a finding and, at a minimum, has raised issues for hearing procedures.¹⁴¹

f. Commission Determination

92. Under section 30.9 of the Tariff, a network customer, such as Pella, that owns existing transmission facilities is eligible to receive a credit if it demonstrates that its facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers.¹⁴² In Order No. 888-A, the Commission explained that in order for a "customer to be eligible for a credit, its facilities must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid."¹⁴³

93. We find that Pella's 69 kV facilities are not integrated with the transmission system of Midwest ISO and, as a result, Pella is not eligible to receive credits for its 69 kV facilities. While we believe that Pella's facilities are transmission facilities based upon its application of the seven-factor test, we do not believe that its 69 kV facilities are integrated with the transmission system of Midwest ISO as required by section 30.9 of the Tariff.

94. We observe, as an initial matter, that Pella's reliance on *Mansfield* is misplaced. As we have explained in previous cases, the *Mansfield* test is used by transmission

¹⁴⁰ MidAmerican Answer to Pella's September 3 Answer at 13-14.

¹⁴¹ Pella's September 27 Answer at 2-3.

¹⁴² Tariff, section 30.9.

¹⁴³ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,271.

providers to determine whether their own network upgrades qualify for rolled-in pricing; specifically, whether special circumstances exist such that a facility is not a network facility.¹⁴⁴ The Commission has distinguished between the standard for integration used in customer credit cases, such as *Consumers*, and the standard used when assessing whether a network upgrade qualifies for rolled-in pricing.¹⁴⁵

95. With respect to Pella's claim that it meets the requirements for customer credits regardless of which standard is used, we disagree. In *East Texas Elec. Coop. Inc. v. Central & South West Servs. Inc.*, the Commission affirmed an earlier order denying credits to a network customer where the customer's facilities were not interconnected with the transmission system of the transmission provider and, therefore, were not integrated.¹⁴⁶ Similarly, here, Pella's 69 kV facilities are not directly interconnected to Midwest ISO's transmission system. On the contrary, Pella's 69 kV facilities are directly connected to MidAmerican's 69 kV distribution facilities, which are not part of Midwest ISO's transmission system, as well as to the system of CIPCO, which is not a Midwest ISO Transmission Owner.

3. Antitrust Principles

a. Petition and Complaint

96. Pella claims that, even if Order No. 888 did not require the Respondents to honor the seven-factor test, the Commission would be required to grant Pella's requested remedies because the FPA requires that the Commission act consistently with antitrust policy.¹⁴⁷ Pella argues that the communications between the Respondents as well as Midwest ISO's deference to MidAmerican on the issue of the proper classification of Pella's 69 kV facilities both indicate that the Respondents have combined and contracted in restraint of trade within the meaning of sections one and two of the Sherman Antitrust Act by excluding Pella from the transmission market.¹⁴⁸ According to Pella, this restraint of trade artificially increases Pella's costs, which directly injures Pella and its ratepayers, and, because it limits competition to buy, sell, and transmit power, increases costs to the public.¹⁴⁹

¹⁴⁴ *Ne. Tex. Elec. Coop.*, 108 FERC ¶ 61,084, at P 51 (2004), *order on reh'g*, 111 FERC ¶ 61,189, at P 6, 16 (2005) (*Northeast Texas*).

¹⁴⁵ *Northeast Texas*, 111 FERC ¶ 61,189 at P 16.

¹⁴⁶ 114 FERC ¶ 61,027, at P 23 (2006).

¹⁴⁷ Filing at 67, 70-71.

¹⁴⁸ *Id.* (citing 15 U.S.C. § 1 (2006); *Am. Tobacco Co. v. U.S.*, 328 U.S. 781 (1946)).

¹⁴⁹ *Id.* at 68-69; Peterson Testimony at 21.

97. Pella states that, as long as Midwest ISO continues to accept the full participation of other owners of transmission facilities that benefit the grid, the Respondents must compensate Pella to the same degree they compensate other similarly-situated entities. Pella notes that the Supreme Court has held that an association such as an independent system operator may not act with its members to constrain trade and injure competition, and that excluding similarly situated market participants from the same market impermissibly restrains trade. Therefore, according to Pella, Pella's facilities must be included in the transmission market.¹⁵⁰

b. Answers of Respondents

98. Midwest ISO argues that Pella's antitrust arguments are baseless. Midwest ISO states that the Commission is merely required to consider relevant antitrust policies in its decision making and is not strictly bound to the dictates of these laws. Further, it maintains that it has not violated antitrust policies because its interactions with its customers, including Pella, are governed by the Tariff and the Commission's regulations, with which it has fully complied. Midwest ISO states that the courts have recognized that suits by a customer against a utility based on rates that were filed with the applicable federal agency are barred by the filed rate doctrine.¹⁵¹ In addition, it states that, even if the Commission were to find that Midwest ISO had incorrectly applied the Tariff, there is no factual basis for Pella's claims.¹⁵²

99. MidAmerican argues that, even assuming that Pella's assertion that Midwest ISO denied Pella's request after receiving MidAmerican's recommendation to do so are factually accurate, they are not evidence of any agreement to deny compensation.¹⁵³ MidAmerican states that, to the extent it offered any conclusions about MidAmerican's facilities, it was merely an opinion and it is ultimately Midwest ISO's responsibility to apply the relevant test upon submission of an entity's application to be an Owner. MidAmerican also states that Pella's antitrust allegations ignore the fact that Midwest ISO has no motive to conspire with one of its members against another as it does not compete with MidAmerican or Pella in providing transmission service or in owning transmission facilities. Further, MidAmerican maintains that Pella's argument that the Respondents conspired to avoid compensating Pella to the extent they compensate others

¹⁵⁰ Filing at 69-70 (citing *Am. Needle Inc. v. NFL*, 130 S. Ct. 2201 (2010)).

¹⁵¹ Midwest ISO Answer at 19-21 (citing *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156, 162-163 (1922); *Town of Norwood v. Ne Power Co.*, 202 F.3d 408 (1st Cir. 2000); *Ultimax.com, Inc. v. PPL Energy Plus, LLC*, 378 F.3d 303 (3rd Cir. 2004); *Tex. Commercial Energy v. TXU Energy*, 413 F.3d 503 (5th Cir. 2005)).

¹⁵² *Id.* at 21-24.

¹⁵³ MidAmerican Answer at 31-32.

ignores that MidAmerican and Pella receive the same compensation for their 69 kV facilities.¹⁵⁴

c. Pella's September 3 Answer

100. Pella argues that most of the Respondents' arguments amount to technical antitrust arguments, which are inapplicable here because the Commission need only consider the policies of the antitrust laws to promote fair competition. Pella states, for example, that, while the Respondents seem to assert that Pella falls outside the zone of interest that antitrust courts will protect, the Commission is not bound by such technical antitrust rules and must consider antitrust policy and anticompetitive effects nonetheless.¹⁵⁵

101. Pella argues that the April Letter confirms that Midwest ISO gave MidAmerican a disproportionate role in the decision to exclude Pella's facilities from the market and that Midwest ISO admits as much in its answer when it states it "takes no position with respect to [Pella's] reclassification request" and that Pella is "free to discuss the matter with MidAmerican."¹⁵⁶ Pella states that, while it appears the Respondents dispute the details of their conversations regarding Pella's facilities, the combined evidence overwhelmingly suggests that Midwest ISO treated MidAmerican as in control.¹⁵⁷

102. Pella further maintains that, if the Respondents did work to restrain trade by excluding Pella's facilities from the grid, they did not need to do so by contract to be liable; excluding its facilities from the grid clearly amounts to restraining trade, as the exclusion of its facilities weakens its ability to compete to invest in zonal transmission and makes it more expensive to buy and sell power using the grid and Midwest ISO's markets. Moreover, it states that the comments of Nelson Energy show that such exclusion also has the effect of making it more difficult to integrate new generation into the grid. Pella maintains that Midwest ISO has an interest in favoring MidAmerican because Midwest ISO has an interest in expanding the grid to include MidAmerican's transmission and markets and that, by supporting MidAmerican, Midwest ISO gives MidAmerican a competitive advantage.¹⁵⁸ Pella states that the notion that MidAmerican does not compete with Pella because Midwest ISO is in control of dispatching transmission service is false; the petition as well as Nelson Energy's comments

¹⁵⁴ *Id.* at 33-34.

¹⁵⁵ Pella's September 3 Answer at 46.

¹⁵⁶ *Id.* at 41-42.

¹⁵⁷ *Id.* at 43-44.

¹⁵⁸ *Id.* at 44-45.

demonstrate that they compete in the market for transmission service and that MidAmerican is arbitrarily excluding lower voltage facilities from the market.¹⁵⁹

103. Finally, Pella states that the argument that the filed rate doctrine moots antitrust law is incorrect, as the filed rate doctrine is not relevant where Pella is merely invoking the jurisdiction of the Commission. Pella maintains that it is not challenging the underlying rates or methods of calculating those rates, but is merely requesting that the Commission take the steps necessary to enable the inclusion of Pella's remaining transmission costs in the relevant rates. Pella states that there is no existing classification of Pella's facilities and, even if there were, Commission precedent indicates that such classification must be subject to change prospectively.¹⁶⁰

d. Answers to Pella's Answer

104. Midwest ISO argues that Pella has failed to provide any evidence of anticompetitive behavior and that it has submitted detailed testimony documenting the extensive and independent review process undertaken by Midwest ISO.¹⁶¹ Midwest ISO further points to the April Letter from Midwest ISO to Pella's counsel, which clearly states that there was no delegation of Midwest ISO's decision-making to MidAmerican. Midwest ISO contends that MidAmerican was entitled to present its views to Midwest ISO, as MidAmerican's Attachment O clearly contemplates MidAmerican's involvement in the section 30.9 process and the Transmission Owners Agreement gives every Transmission Owner the exclusive authority over its transmission revenue requirements. Midwest ISO states that the evidence cited by Pella in support of its arguments actually leads to the exact opposite conclusion, and that the testimony of Midwest ISO's witnesses directly refutes the notion that its decision turned on MidAmerican's wishes.¹⁶²

105. MidAmerican argues that Pella's assertions that Midwest ISO's incentive to expand the grid through MidAmerican's participation as a Transmission Owner is illogical. MidAmerican maintains that it had been a Midwest ISO Transmission Owner for several months before Pella sought compensation for its 69 kV facilities. In addition, MidAmerican maintains that Pella is overstating the impact of the refusal of Midwest ISO to treat its facilities as transmission facilities. MidAmerican states that Pella's claim that the lack of cost recovery makes it more expensive for Pella to buy and sell power using the grid in Midwest ISO markets and that Pella and MidAmerican are competing to provide transmission service for Nelson Energy's project both lack any basis. MidAmerican states that it is compelled by federal and state law to interconnect all

¹⁵⁹ *Id.* at 48.

¹⁶⁰ *Id.* at 50-51.

¹⁶¹ Midwest ISO Answer to Pella's September 3 Answer at 13.

¹⁶² *Id.* at 15-14 (citing Transmission Owners Agreement, App. K, section II.A).

generation and it does not seek out interconnection customers or compete to sell interconnection service.¹⁶³

106. Most importantly, according to MidAmerican, no one is refusing to allow Pella to own 69 kV transmission in the MidAmerican Pricing Zone. Many entities, MidAmerican states, own 69 kV facilities in that zone and collect revenue for the use of such facilities. MidAmerican states that what is being refused is cost recovery under the Midwest ISO Tariff, as Pella may build any facilities it wants to build and can collect all the revenues that the market will bear for service over its facilities. Indeed, MidAmerican states, it collects no compensation under the Midwest ISO Tariff's zonal rates for its own 69 kV facilities, yet it continues to build new 69 kV facilities and upgrade existing ones. MidAmerican maintains that Pella is only seeking access to the "market" for cost-recovery from FERC-jurisdictional customers, which market is exclusively under the control of the Commission. MidAmerican states that the filed rate doctrine protects the Respondents from liability for damages because the filed rate is what actually controls access to transmission cost recovery.¹⁶⁴

107. In addition, MidAmerican maintains that antitrust laws permit competitors to join forces to persuade the Commission to provide access to FERC-regulated cost allocation. MidAmerican states that, under Pella's position, MidAmerican's expression of an opinion to Midwest ISO and the Midwest ISO's concurrence with such an opinion create an illegal conspiracy under the antitrust laws. The logical extension of such argument is that every ISO/RTO stakeholder process would create wholly unacceptable antitrust risks.¹⁶⁵

e. Commission Determination

108. As the parties acknowledge,¹⁶⁶ the Commission does not have jurisdiction to determine violations of the antitrust laws and is not strictly bound to the dictates of these laws.¹⁶⁷ Thus, Pella's claims in this regard are more appropriately addressed in other forums. Moreover, while we do "have a responsibility to consider, in appropriate circumstances, anticompetitive effects" when reviewing matters under the FPA,¹⁶⁸ as discussed above, we find that Midwest ISO and MidAmerican have acted in accordance with the provisions of the Tariff and the Transmission Owners Agreement, which we

¹⁶³ MidAmerican Answer to Pella's September 3 Answer at 15.

¹⁶⁴ *Id.* at 15-17.

¹⁶⁵ *Id.* at 18-19.

¹⁶⁶ Filing at 71; Midwest ISO Answer at 19.

¹⁶⁷ *Entergy Servs., Inc.*, 64 FERC ¶ 61,326, at 63,404-05 (1993).

¹⁶⁸ *Pacific Gas & Elec. Co.*, 77 FERC ¶ 61,265, at 62,088 (1996).

have determined to be just and reasonable. Therefore, we will deny Pella's complaint in this respect.

The Commission orders:

Pella's petition for a declaratory order and complaint is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.