

163 FERC ¶ 61,109  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Southwest Power Pool, Inc.

Docket No. ER16-204-001

OPINION NO. 562

ORDER ON INITIAL DECISION

(Issued May 17, 2018)

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1. This case is before the Commission on exceptions to the Initial Decision issued by the Presiding Administrative Law Judge John P. Dring (Presiding Judge) on February 23, 2017.<sup>1</sup> The Initial Decision addressed a dispute resulting from a proposal by Southwest Power Pool, Inc. (SPP) to incorporate certain transmission facilities of Tri-State Generation and Transmission Association, Inc. (Tri-State), along with the annual transmission revenue requirement (ATRR) for those facilities, into SPP's existing transmission pricing Zone 17 (Zone 17).<sup>2</sup> The dominant transmission owner in Zone 17, which is a multi-transmission owner zone, is Nebraska Public Power District (NPPD). At hearing, the parties<sup>3</sup> litigated whether the proposed placement of Tri-State in Zone 17 and the resulting rate were just and reasonable and, specifically, whether the proposal was unjust and unreasonable because it would shift some of the costs of Tri-State's existing transmission facilities to transmission owners and customers in Zone 17. The parties also litigated what refunds, if any, would be owed by Tri-State if the Commission determines that SPP's proposed zonal placement of Tri-State and the resulting rate are unjust and unreasonable.

2. The Presiding Judge determined that SPP's proposal to place the Tri-State transmission facilities in Zone 17 is just and reasonable and that it is not unjust and unreasonable because of the alleged cost shift. Based on this ruling, the Presiding Judge determined that Tri-State does not owe any refunds in connection with its zonal placement. As discussed below, we affirm both determinations.

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<sup>1</sup> *Sw. Power Pool, Inc.*, 158 FERC ¶ 63,004 (2017) (Initial Decision).

<sup>2</sup> The Commission issued an order on December 30, 2015 that established hearing and settlement judge procedures concerning whether SPP's proposal was just and reasonable. *See Sw. Power Pool, Inc.*, 153 FERC ¶ 61,366 (2015) (Hearing Order).

<sup>3</sup> The parties to this proceeding are Tri-State, SPP, NPPD, Commission Trial Staff (Trial Staff), Western Area Power Administration (Western), South Central MCN LLC (South Central), Sunflower Electric Power Corporation (Sunflower), Mid-Kansas Electric Company, LLC (Mid-Kansas), Basin Electric Power Cooperative (Basin Electric), Xcel Energy Services Inc. on behalf of its utility operating company affiliate Southwestern Public Service Company, City of Grand Island Nebraska, Corn Belt Power Cooperative, Inc. (Corn Belt), East River Electric Power Cooperative, Inc. (East River), Municipal Energy Agency of Nebraska (MEAN), City of Independence, Missouri, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, Northwest Iowa Power Cooperative (NIPCO), and Missouri River Energy Services (Missouri River).

## **I. Background**

3. Tri-State is a not-for-profit cooperative corporation headquartered in Westminster, Colorado. Tri-State's primary functions involve the generation, transmission, transformation, and sale of electricity at wholesale to its member-owner distribution cooperatives and public power districts within the states of Colorado, Nebraska, New Mexico, and Wyoming. Pursuant to section 201(f) of the Federal Power Act (FPA), Tri State is exempt from Commission jurisdiction as a public utility, and, accordingly, is not subject to FPA sections 205 and 206.<sup>4</sup> However, the Commission has jurisdiction over the rates for transmission service provided by SPP and when a non-jurisdictional transmission owner such as Tri-State voluntarily joins a regional transmission organization (RTO), the Commission may examine the non-jurisdictional utility's rates to ensure that the RTO's rates are just and reasonable.<sup>5</sup>

4. On October 30, 2015,<sup>6</sup> SPP submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to incorporate Tri-State's formula rate and formula rate protocols, and to make other modifications to accommodate Tri-State as a transmission owner under the SPP Tariff. SPP explained that Tri-State proposed to become an SPP transmission owner on January 1, 2016.<sup>7</sup> Specifically, Tri-State proposed to transfer functional control of certain of its transmission facilities in the Eastern Interconnection to SPP.<sup>8</sup> These transmission facilities are located primarily in Nebraska and are listed in

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<sup>4</sup> 16 U.S.C. §§ 824(e)-(f) (2012).

<sup>5</sup> See, e.g., *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1121 (D.C. Cir. 2002) ("while FERC has discretion in formulating its approach with respect to a nonjurisdictional utility, the choice it makes must ensure that the [RTO's] rates meet the just and reasonable standard of [section] 205.").

<sup>6</sup> Southwest Power Pool, Inc., Submission of Revenue Requirement, Formula Rate Template and Formula Rate Protocols for Tri-State Generation and Transmission Association, Inc., of Southwest Power Pool, Inc., Docket No. ER16-204-000 (filed Oct. 30, 2015) (October 2015 Filing).

<sup>7</sup> October 2015 Filing at 4.

<sup>8</sup> As explained in the October 2015 Filing, Tri-State placed some, but not all, of its transmission facilities in the Eastern Interconnection under SPP's functional control under the Tariff. See October 2015 Filing at 4. Accordingly, references in this order to Tri-State's transmission facilities refer to those facilities that are included in the SPP Tariff and placed under SPP's functional control.

Exhibit No. TS-07.<sup>9</sup> As part of the October 2015 Filing, SPP proposed to place the relevant Tri-State transmission facilities and the associated ATRR into Zone 17.

5. As relevant here, to establish rates for transmission service, SPP uses a license-plate rate design (i.e., zonal rate design) with its footprint being separated into a number of transmission pricing zones. Transmission service rates for load located within the SPP region are based, in part, on the sum of the ATRRs for each transmission owner within the zone in which the load is located.<sup>10</sup> The SPP Tariff specifies a zonal ATRR for each SPP transmission pricing zone. In addition, transmission service rates are based in part on the sum of the loads of each transmission owner located in a zone. When a new transmission owner is added to an existing zone, the ATRR for its transmission facilities in the zone and any of its load not already included in the zonal load are added to the existing zone's totals, resulting in a new total zonal ATRR and a new total load for the zone. Consequently, the transmission service rates for all transmission customers within the zone may change with the addition of a new transmission owner.

6. Tri-State, NIPCO, Basin Electric, and Western filed comments in support of SPP's October 2015 Filing and NPPD filed a protest requesting that the Commission either grant summary disposition of certain issues or set those issues for hearing.<sup>11</sup> NPPD argued that the proposed ATRR, including the proposed return on equity (ROE), had not been shown to be just and reasonable.<sup>12</sup> In addition, NPPD opposed SPP's placement of Tri-State's facilities in Zone 17. NPPD asserted that, because Tri-State's average per-MW cost of serving load was higher than the average cost of serving existing Zone 17 load, adding Tri-State to Zone 17 would shift more than half of the costs of Tri-State's existing transmission facilities to existing Zone 17 customers and increase the costs to serve Zone 17 customers, including NPPD's customers.<sup>13</sup> NPPD argued that

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<sup>9</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 1; Joint Statement of Stipulated Facts and Contested Facts, Docket No. ER16-204-001, at JSF-4-6 (Nov. 4, 2016).

<sup>10</sup> See October 2015 Filing at 2.

<sup>11</sup> Nebraska Public Power District, Motion to Intervene, Protest and Motion for Summary Disposition or, in the Alternative, Hearing of the Nebraska Public Power District, Docket No. ER16-204-000 (filed Nov. 20, 2015).

<sup>12</sup> *Id.* at 22.

<sup>13</sup> *Id.* at 3, 10-11.

Tri-State's facilities should be placed in their own pricing zone or, alternatively, in SPP pricing Zone 19.<sup>14</sup>

7. On December 30, 2015, the Commission issued an order accepting SPP's proposed Tariff revisions, subject to refund, and establishing hearing and settlement judge procedures concerning whether SPP's proposed Tariff revisions are just and reasonable.<sup>15</sup> The parties reached a settlement resolving all issues except for the proposed placement of Tri-State and the ATRR for its transmission facilities in SPP Zone 17.<sup>16</sup> Subsequently, a hearing was held before the Presiding Judge to address the following remaining issues:

- a. Whether SPP's proposed placement of Tri-State's facilities and ATRR in SPP Zone 17 is just and reasonable; and
- b. What are the appropriate refunds owed by Tri-State, if any, if the Commission determines that SPP's proposed zonal placement of Tri-State is unjust and unreasonable?

## **II. Summary of Dispute**

8. The dispute between the parties in this case focused on two overarching issues relating to SPP's proposed placement of Tri-State in Zone 17. First, the parties disputed whether it was just and reasonable to place Tri-State in Zone 17 based on the scope, configuration, and operational characteristics of Tri-State's transmission facilities. Second, they disputed whether the proposed zonal placement of Tri-State in Zone 17 was unjust and unreasonable because it would shift some costs of Tri-State's existing transmission facilities to transmission owners and customers in Zone 17, and thereby increase existing transmission rates in the zone.

9. NPPD argued that, given the scope, configuration, and operational characteristics of Tri-State's transmission facilities, SPP did not demonstrate that placing Tri-State in Zone 17 was just and reasonable. NPPD asserted that it would be appropriate to place

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<sup>14</sup> *Id.* at 14-22. Zone 19 consists of the following transmission owners: Western Area Power Administration – Upper Great Plains Region (Western-UGP), Basin Electric, Heartland Consumers Power District (Heartland), Missouri River, East River, Corn Belt, NorthWestern Corporation, NIPCO, Harlan Municipal Utilities, Central Power Electric Cooperative, and Mountrail-Williams Electric Power Cooperative.

<sup>15</sup> Hearing Order, 153 FERC ¶ 61,366 at PP 1, 43-44, ordering paras. (A) and (B).

<sup>16</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at PP 5-6; *Sw. Power Pool, Inc.*, 159 FERC ¶ 62,098 (2017).

Tri-State in its own, separate zone, because its ATRR and geographic size are large enough to warrant doing so.<sup>17</sup> NPPD disagreed with SPP's conclusion that Tri-State was more highly integrated with the transmission facilities in Zone 17 than with those in Zone 19, contending that SPP ignored Tri-State's significant interconnections with Zone 19 transmission facilities and Tri-State's history of operational and commercial integration with the transmission system that now comprises Zone 19.<sup>18</sup>

10. NPPD also alleged that SPP's proposed placement of Tri-State in Zone 17 was unjust and unreasonable because it would shift the costs of Tri-State's existing transmission facilities to existing Zone 17 customers, resulting in an increase in the annual per-MW cost of serving Zone 17 load by 8 percent, and a reduction in Tri-State's responsibility for paying its own costs by 60 percent. NPPD also argued that there was no evidence that Zone 17 customers would receive benefits from Tri-State's addition to Zone 17 that are commensurate with the cost increase they would bear and therefore, the cost increase is contrary to cost causation principles.<sup>19</sup>

11. Trial Staff largely agreed with NPPD, arguing that there was insufficient support for SPP's conclusion that Tri-State did not warrant its own separate zone or that Zone 17 was a more appropriate zone for Tri-State than Zone 19.<sup>20</sup> Trial Staff also echoed NPPD's contention that SPP's proposed placement of Tri-State in Zone 17 is unjust and unreasonable because it increases Zone 17's zonal rates by 8 percent, without demonstrable benefits for existing Zone 17 transmission owners and their customers.<sup>21</sup>

12. Conversely, Tri-State and SPP argued that SPP's proposed placement of Tri-State in Zone 17 was just and reasonable. They asserted that SPP properly determined that Tri-State did not warrant its own separate pricing zone given the small size of its ATRR and the fact that it was not a substantial expansion of the SPP footprint, but rather filled a gap in the SPP system.<sup>22</sup> Tri-State and SPP further contended that the evidence showed that Tri-State's facilities were highly integrated with and embedded in the facilities of

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<sup>17</sup> See, e.g., Initial Decision, 158 FERC ¶ 63,004 at PP 169-170, 211.

<sup>18</sup> See *id.* PP 174-183, 212-219.

<sup>19</sup> See *id.* PP 161, 203-204.

<sup>20</sup> See *id.* PP 227-228, 232-233.

<sup>21</sup> See *id.* PP 229, 234-244.

<sup>22</sup> See *id.* PP 19, 24, 75, 77-78, 82, 85, 97, 103-104.

Zone 17 because of, *inter alia*, Tri-State's greater number of interconnections with Zone 17 as compared to Zone 19 and Tri-State and NPPD's long history of joint coordination, planning, and operation of their respective transmission systems pursuant to the Western Nebraska Joint Transmission Agreement (NETS Agreement).<sup>23</sup>

13. With respect to the cost increase to existing Zone 17 customers, Tri-State and SPP argued that it is consistent with cost causation principles because the joint coordination, planning, and operation of Tri-State's and NPPD's transmission systems under the NETS Agreement has resulted in both entities using each other's transmission facilities to serve their respective loads. Therefore, Tri-State and SPP contended, allocating some of the costs of Tri-State transmission facilities to NPPD customers that use those facilities, and for whom those facilities were partially constructed, is consistent with cost causation principles.<sup>24</sup> Similarly, Tri-State contended that NPPD's customers receive benefits from Tri-State's transmission facilities that are roughly commensurate with the cost increase to Zone 17 customers because (1) Tri-State's facilities were planned and constructed under the NETS Agreement for both itself and NPPD with the expectation that both Tri-State's customers and NPPD's customers would pay for them; (2) the NETS Agreement allowed NPPD to avoid duplicative construction of transmission facilities; and (3) NPPD uses Tri-State's facilities to serve its load.<sup>25</sup> Tri-State further argued that the cost shift alleged by NPPD and Trial Staff is overstated because known and measurable future changes<sup>26</sup> will

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<sup>23</sup> See *id.* PP 20-22, 79-81, 108-116.

<sup>24</sup> See *id.* PP 66, 125.

<sup>25</sup> See *id.* PP 67, 281.

<sup>26</sup> As discussed below, Tri-State asserted that these known and measurable future changes include a \$1.4 million reduction in the cost shift incurred by Zone 17 customers because of a "baseline" cost shift that will occur regardless of Tri-State's zonal placement. Specifically, Tri-State explains that this "baseline" cost shift occurs because, first, if Tri-State is placed in a zone other than Zone 17, then non-Tri-State Zone 17 load (i.e., NPPD and MEAN load) that is served directly from Tri-State transmission facilities would be transferred to the different zone along with Tri-State and pay the higher rates applicable to the that zone, and second, because Zone 17 customers will receive the benefit of additional revenue to Zone 17 paid by Tri-State load in Zone 17 that is served by NPPD transmission facilities, regardless of the zonal placement of Tri-State's transmission facilities. Tri-State asserts that these known and measurable future changes also include (1) a \$1 million reduction in Tri-State's ATRR reflecting the elimination of Tri-State's \$1 million dollar payment to NPPD under the NETS Agreement that will occur with the termination of the NETS Agreement in November 2020 and (2) Tri-State's



reduce the impact of the cost shift, resulting in an approximately 1.8 percent increase to Zone 17 rates.<sup>27</sup>

14. Western argued that Zone 17 is the proper zone for Tri-State, asserting that the five direct interconnections between Tri-State's facilities and NPPD's facilities in Zone 17 have at least 2.7 times the capacity of the single interconnection between Tri-State's facilities and those in Zone 19.<sup>28</sup> Western also contended that NPPD's and Trial Staff's arguments that Tri-State is highly integrated with Zone 19 incorrectly rely on Tri-State's interconnections with transmission facilities that are not under SPP's functional control.<sup>29</sup>

15. South Central also supported SPP's proposed placement of Tri-State in Zone 17, arguing that Tri-State is highly integrated with NPPD's Zone 17 transmission facilities because Tri-State's and NPPD's facilities have been jointly planned and operated for more than 40 years under the NETS Agreement and neither NPPD nor Tri-State has a physical path to all of its loads without using the facilities of the other entity.<sup>30</sup> South Central argued that NPPD's existing Zone 17 customers would benefit from adding Tri-State's facilities to Zone 17 because those facilities are needed to serve NPPD's load. South Central asserted that this benefit, combined with the relatively small impact on Zone 17 rates, demonstrated that it is just and reasonable to place Tri-State in Zone 17.<sup>31</sup>

### **III. Initial Decision and Subsequent Pleadings**

16. On February 23, 2017, the Presiding Judge issued the Initial Decision, finding that SPP's proposal to include Tri-State's transmission facilities in Zone 17 was just and reasonable and, accordingly, that Tri-State owed no refunds in connection with its proposed zonal placement.<sup>32</sup>

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future responsibility for approximately \$700,000 of Balanced Portfolio and Regional Schedule 11 costs that would be allocated to Zone 17 and paid by Tri-State load if it is placed in Zone 17. *See infra* at P 149.

<sup>27</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at PP 25-30, 33-35, 48, 57-63.

<sup>28</sup> *See id.* PP 138-139.

<sup>29</sup> *See id.* P 141.

<sup>30</sup> *See id.* P 147.

<sup>31</sup> *See id.* PP 157-159.

<sup>32</sup> *See, e.g., id.* PP 378-379.

17. On March 27, 2017, NPPD and Trial Staff filed briefs on exceptions to the Initial Decision. Also on March 27, 2017, Sunflower and Mid-Kansas filed a pleading styled as a Statement in Lieu of Brief on Exceptions. On April 17, 2017, Tri-State, SPP, Western, and South Central filed briefs opposing exceptions. On December 27, 2017, NPPD filed a motion to reopen the record to recognize and admit new evidence and changed circumstances. On January 11, 2018, SPP, Tri-State, and Western filed answers to NPPD's motion. On January 19, 2018, NPPD filed an answer to SPP's answer. On February 5, 2018, SPP and Tri-State filed answers to NPPD's January 19, 2018 answer.

#### **IV. Discussion**

18. The Presiding Judge determined that SPP's proposed Tariff revisions and their placement of Tri-State's transmission facilities in Zone 17 were just and reasonable and, accordingly, that Tri-State owed no refunds in connection with its proposed zonal placement.<sup>33</sup> As discussed below, we affirm these determinations. Below, we address the Presiding Judge's specific findings and the exceptions to the Initial Decision.

##### **A. SPP's Zonal Placement Criteria as a Whole**

##### **1. Initial Decision**

19. The Presiding Judge's first specific finding was that the criteria that SPP applied to determine that Tri-State should be placed in Zone 17 "are appropriate for determining zonal placement."<sup>34</sup> Specifically, the Presiding Judge stated that "SPP's criteria as a whole are hereby determined to be appropriate for determining zonal placement in a RTO."<sup>35</sup> SPP explained that it applied the following criteria to determine the zonal placement of a new SPP transmission owner such as Tri-State:

- a. whether the new transmission owner's ATRR is less than the ATRR of the existing pricing zone with the smallest ATRR (ATRR Criterion);
- b. the extent to which a new transmission owner's transmission facilities substantively increase the SPP footprint (Geographic Expansion Criterion);

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<sup>33</sup> See, e.g., *id.*

<sup>34</sup> *Id.* P 253.

<sup>35</sup> *Id.* P 255.

- c. the extent to which a new transmission owner's transmission facilities are integrated (including the number of interconnections) with an existing transmission owner's transmission facilities (Integration Criterion); and
- d. the extent to which the new transmission owner's transmission facilities are embedded within an existing zone (Embeddedness Criterion).<sup>36</sup>

20. The Presiding Judge stated that SPP's criteria consider relevant factors that are necessary for carrying out an RTO's duties and responsibilities regarding the proper structure of a pricing zone. He explained that these relevant factors include: (1) the scope and configuration of the new transmission owner's transmission facilities; (2) whether the new facilities form a coherent system within SPP's existing system; (3) whether the new facilities are significantly integrated with the facilities of other transmission owners; and (4) the extent to which the new facilities can function independently of other transmission owners. The Presiding Judge stated that no party to the proceeding has argued that these factors are irrelevant in determining zonal placement.<sup>37</sup>

21. The Presiding Judge explained that the main arguments against SPP's zonal placement criteria are that SPP's criteria are not transparent and that SPP should exercise flexibility when applying the criteria. He noted NPPD's argument that SPP's criteria were developed internally without input from the SPP Board of Directors or vetting through the SPP stakeholder process, and were not filed with the Commission.<sup>38</sup> The Presiding Judge found this argument unavailing, explaining that, although having easier access to SPP's zonal placement criteria would be helpful in ascertaining the reasoning behind its zonal placement decisions, SPP is not obligated to publish its criteria or file them for Commission approval. The Presiding Judge stated that SPP presented and discussed the zonal placement criteria throughout the proceeding, and opposing parties were afforded sufficient time to criticize the criteria. He further noted that, "[w]hile the genesis of these criteria might be uncertain, what matters in this proceeding is whether the criteria render just and reasonable results."<sup>39</sup>

22. The Presiding Judge then stated that Trial Staff made contradicting arguments regarding SPP's criteria. He explained that Trial Staff argued that SPP should have filed

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<sup>36</sup> See *id.* PP 74, 251.

<sup>37</sup> *Id.* P 253.

<sup>38</sup> *Id.* P 255 (citing NPPD Initial Brief at 7-8).

<sup>39</sup> *Id.*

its criteria with the Commission and that SPP should apply its criteria with flexibility.<sup>40</sup> The Presiding Judge stated that if SPP were required to file its zonal placement criteria with the Commission as Trial Staff requested, then SPP would not be allowed to apply the criteria with the flexibility that Trial Staff also requested. Accordingly, the Presiding Judge dismissed NPPD's and Trial Staff's argument regarding the lack of transparency in SPP's zonal placement criteria, as well as their arguments regarding the lack of flexibility in applying such criteria.<sup>41</sup>

23. In addition, the Presiding Judge stated that "I will not comment on whether assessing potential cost shifts stemming from placing a prospective [transmission owner] in an existing zone is a responsibility that lies within an RTO's purview. That is for the Commission to decide."<sup>42</sup>

## **2. Briefs on Exceptions**

### **a. NPPD**

24. NPPD argues that the Presiding Judge erred by finding that (1) SPP's zonal placement criteria are appropriate to ensure that SPP's zonal placement decision is just and reasonable and (2) SPP is not obligated to publish its zonal placement criteria, or to file them with the Commission.<sup>43</sup> NPPD asserts that its witness Mr. Paul Malone explained that the failure to meet SPP's ATRR Criterion should never be relied upon as a strict rule where the evidence otherwise supports use of a separate pricing zone as a remedy to an unjust and unreasonable cost shift. In addition, NPPD argues that SPP's criteria place too much weight on the degree of integration when, as here, the new transmission owner is interconnected to two or more pricing zones.<sup>44</sup> NPPD also contends that Mr. Malone demonstrated that, where a prospective new transmission owner is interconnected with two or more existing SPP pricing zones, SPP should place the new transmission owner in the zone that would experience the smallest cost shift as a

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<sup>40</sup> *Id.* (citing Trial Staff Initial Brief at 18-19).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* P 329.

<sup>43</sup> NPPD Brief on Exceptions at 12, 17.

<sup>44</sup> *Id.* at 22-23.

result of the addition of the new transmission owner, and that SPP places too much weight on the degrees of integration in determining zonal placement.<sup>45</sup>

25. NPPD also asserts that the Presiding Judge erred by failing to decide the issue of whether an RTO is obligated to consider cost shifts when making zone placement decisions and similarly, by failing to include cost shifting as a factor that SPP must consider when determining zone placement.<sup>46</sup> NPPD notes that SPP did not include cost shifting as a factor in its zonal placement criteria and that the Presiding Judge stated that “I will not comment on whether assessing potential cost shifts stemming from placing a prospective [transmission owner] in an existing zone is a responsibility that lies within an RTO’s purview,” concluding “That is for the Commission to decide.”<sup>47</sup> NPPD argues that the Presiding Judge’s failure to rule on this issue “requires the Commission to analyze the record to determine whether an RTO has an obligation to consider cost shifts as a factor in its zone placement decision-making process.”<sup>48</sup> NPPD asserts that, under circumstances like those in this proceeding, an RTO is obligated, when determining the appropriate zone placement for a prospective new transmission owner, to analyze and minimize any cost shifts resulting from placement of such transmission owner. NPPD contends that “the obligation to analyze cost shifts must be included in SPP’s four criteria governing zone placement, and published in its Tariff.”<sup>49</sup> NPPD also contends that SPP’s position that it bears no responsibility to consider or mitigate cost shifts resulting from zone placement is contrary to *Illinois Commerce Comm’n v. FERC*,<sup>50</sup> which requires costs to be allocated in a manner that is “at least roughly commensurate with benefits.”<sup>51</sup>

**b. Trial Staff**

26. Trial Staff disagrees with the Presiding Judge’s finding that SPP’s zonal placement criteria are appropriate for determining zonal placement. Trial Staff contends

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<sup>45</sup> *Id.* at 22-23.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 16 (citing Initial Decision, 158 FERC ¶ 63,004 at P 329).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 17.

<sup>50</sup> 576 F.3d 470 (7th Cir. 2009) (*ICC v. FERC*).

<sup>51</sup> NPPD Brief on Exceptions at 17 (citing *ICC v. FERC*, 576 F.3d at 477).

that the Initial Decision does not provide substantive support for the use of the criteria.<sup>52</sup> Trial Staff also argues that, contrary to the findings in the Initial Decision, parties provided evidence to suggest that SPP's zonal placement criteria as a whole render unjust and unreasonable results.<sup>53</sup> Trial Staff asserts that SPP's criteria lack transparency, contending that it was not until SPP's pre-filed hearing testimony that the criteria appeared in a cohesive format.<sup>54</sup> Trial Staff notes that the criteria are not included in the SPP Tariff or any business practice manual.<sup>55</sup> Trial Staff also disagrees with the Presiding Judge's statement that Trial Staff put forth contradicting arguments in asserting that SPP should have filed its criteria with the Commission and that SPP should apply its criteria with flexibility. Trial Staff states that filed criteria need not be rigid because they can establish parameters within which SPP can make its decisions.<sup>56</sup>

27. Trial Staff also asserts that the Initial Decision erred by not accepting or acknowledging Trial Staff's demonstration that SPP's zonal placement criteria were not presented in the form found just and reasonable by the Initial Decision until the briefing stage of this proceeding, and thus could not have formed the basis for SPP's placement of Tri-State in Zone 17.<sup>57</sup> Trial Staff alleges that the Initial Decision conveys the notion that SPP engaged in a process of considering the first two listed criteria before moving on to the remaining two, but, according to Trial Staff, the pre-hearing testimony from SPP witness Mr. L. Patrick Bourne did not portray the process as a formal series of steps leading from one pair of criteria to the other and presented the criteria in a different order than that cited in the Initial Decision.<sup>58</sup>

**c. Sunflower and Mid-Kansas**

28. Sunflower and Mid-Kansas request that the Commission clarify that the Presiding Judge's ruling on the reasonableness of SPP's criteria for determining placement of Tri-State's transmission facilities and ATRR in Zone 17 is limited to this proceeding, and

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<sup>52</sup> Trial Staff Brief on Exceptions at 12, 23.

<sup>53</sup> *Id.* at 12, 27-31.

<sup>54</sup> *Id.* at 28.

<sup>55</sup> *Id.* at 30.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 12.

<sup>58</sup> *Id.* at 25-27.

direct that any generally applicable criteria for future zonal placements must be included in the SPP Tariff through a filing pursuant to section 205 of the FPA, with such filing being submitted after the conclusion of a stakeholder process.<sup>59</sup>

### **3. Briefs Opposing Exceptions**

#### **a. Tri-State**

29. Tri-State argues that the Initial Decision correctly found that SPP's zonal placement criteria as a whole are appropriate for determining zonal placement. Tri-State contends that, contrary to Trial Staff's assertion that the Initial Decision does not provide substantive support for SPP's criteria, the Initial Decision addresses the appropriateness of each criterion, with references to the record.<sup>60</sup> In response to Trial Staff's arguments that SPP could not have applied the criteria as it claims because the criteria were presented differently in SPP witness testimony, Tri-State asserts that the Initial Decision specifically addresses this issue, finding that the genesis of the criteria does not matter because instead, "what matters in this proceeding is whether the criteria render just and reasonable results."<sup>61</sup>

#### **b. SPP**

30. SPP argues that the Initial Decision properly concluded that SPP's zonal placement criteria are appropriate as a whole and that SPP is not obligated to publish these criteria or file them for Commission approval.<sup>62</sup> SPP disagrees with Trial Staff's claims that the Presiding Judge ignored Trial Staff's arguments regarding the transparency and flexibility of SPP's criteria. SPP asserts that these arguments do not undermine the Initial Decision's findings that the criteria are appropriate because, as the Presiding Judge noted, "what matters in this proceeding is whether the criteria rendered a just and reasonable result," and the Presiding Judge concluded that they did based on extensive record evidence.<sup>63</sup>

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<sup>59</sup> See Sunflower and Mid-Kansas Statement at 2.

<sup>60</sup> Tri-State Brief Opposing Exceptions at 9-10.

<sup>61</sup> *Id.* at 10-11 (citing Initial Decision, 158 FERC ¶ 63,004 at P 255).

<sup>62</sup> SPP Brief Opposing Exceptions at 5.

<sup>63</sup> *Id.* at 5, 9-10, 41 (citing Initial Decision, 158 FERC ¶ 63,004 at P 255).

31. SPP further contends that alleged faults regarding the criteria's lack of transparency and flexibility, as well as their development and presentation in testimony and briefs, fail to demonstrate how, in this case, SPP's application of its criteria rendered an unjust and unreasonable result.<sup>64</sup> SPP argues that the purpose of hearings is to further develop the record so that the Presiding Judge and the Commission can make an informed decision; therefore, the fact that the criteria did not appear until the briefing stage of the proceeding provides no basis for disregarding that evidence. In addition, SPP asserts that the fact that its witness Mr. Bourne laid out the criteria in a different order in his direct testimony than was presented in SPP's initial brief fails to demonstrate that "SPP has never applied the four criteria in the manner suggested in SPP's Initial Brief."<sup>65</sup> SPP contends that Mr. Bourne was clarifying how SPP applied its criteria to Tri-State in this proceeding and that SPP's initial brief and Mr. Bourne's testimony are consistent.<sup>66</sup>

#### **4. Commission Determination**

32. We agree that the criteria that SPP applied to determine that Tri-State should be placed in Zone 17 "are appropriate for determining zonal placement" in this proceeding.<sup>67</sup> In addition, we agree with the Presiding Judge that "what matters in this proceeding is whether the criteria render just and reasonable results,"<sup>68</sup> and, as discussed further below, we agree that, in this case, SPP's application of its zonal placement criteria rendered a just and reasonable result. However, because a broader determination of the "relevant factors that are necessary for the carrying out of an RTO's duties and responsibilities regarding the proper structure of a pricing zone"<sup>69</sup> were not before the Presiding Judge and because the record in this proceeding appropriately focuses on SPP's application of its criteria to the specific facts and circumstances of Tri-State's zonal placement within SPP, we find it unnecessary to determine whether SPP's zonal placement criteria are generally "appropriate for determining zonal placement in a RTO."<sup>70</sup> The issue in this case is whether SPP's specific proposed Tariff revisions, which included adding Tri-State

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<sup>64</sup> *Id.* at 41-42.

<sup>65</sup> *Id.* at 43 (quoting Trial Staff Brief on Exceptions at 27).

<sup>66</sup> *Id.* at 42-43.

<sup>67</sup> Initial Decision, 158 FERC ¶ 63,004 at P 253.

<sup>68</sup> *Id.* P 255.

<sup>69</sup> *Id.* P 253.

<sup>70</sup> *Id.* P 255.



to existing Zone 17, are just and reasonable. As discussed further below, the record demonstrates that SPP has shown that those proposed Tariff revisions are just and reasonable. SPP reached its decision to add Tri-State to Zone 17 by applying the zonal placement criteria that it presented and described in this proceeding, and the application of those criteria in this particular case produced a just and reasonable result.

33. NPPD asserts that SPP's zonal placement criteria were flawed because they did not include consideration of cost shifts as a criterion.<sup>71</sup> We do not believe that the fact that SPP's zonal placement criteria do not explicitly include the consideration of cost shifts or a specific cost shift criterion renders the proposed zonal placement of Tri-State in this case unjust and unreasonable. The parties to this proceeding addressed the issue of the cost shift at length, and the record contains extensive information regarding cost shift issues. Accordingly, the parties, the Presiding Judge, and now the Commission, can consider the cost shift in this proceeding even though SPP's zonal placement criteria do not explicitly reference cost shifts. Notably, the Presiding Judge had an extensive record addressing the cost shift<sup>72</sup> and, in light of all of the facts and circumstances of Tri-State's proposed zonal placement, including the cost shift, he determined that SPP's proposal was just and reasonable. Thus, although SPP's zonal placement criteria did not explicitly include consideration of cost shifts as a criterion, the Presiding Judge did consider the cost shift and the absence of an explicit cost shift criterion does not undermine the Presiding Judge's ultimate finding that SPP's proposed Tariff revisions were just and reasonable.

34. NPPD also contends that the ATRR Criterion should not be relied upon as a strict rule when the evidence shows that the use of a separate, stand-alone zone would remedy a cost shift.<sup>73</sup> In addition, NPPD argues that SPP's criteria place too much weight on the degree of integration when, as here, the new transmission owner is interconnected to two or more pricing zones.<sup>74</sup> NPPD's arguments on these points do not undermine the Presiding Judge's conclusion that SPP's proposed zonal placement of Tri-State is just and reasonable. The Presiding Judge did not find, as NPPD suggests, that the ATRR Criterion provided conclusive evidence that a separate Tri-State zone was inappropriate and that SPP's proposed zonal placement of Tri-State was appropriate. Similarly, although the Presiding Judge considered the degree of Tri-State's integration with existing SPP transmission facilities, this was only one of numerous factors that he

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<sup>71</sup> NPPD Brief on Exceptions at 22-23.

<sup>72</sup> See, e.g., Initial Decision, 158 FERC ¶ 63,004 at PP 336-360.

<sup>73</sup> NPPD Brief on Exceptions at 23.

<sup>74</sup> *Id.* at 22-23.

considered, and the record does not indicate that it was given too much weight relative to other factors. As discussed below, the Presiding Judge found that it is just and reasonable to include Tri-State in Zone 17 only after considering a variety of factors, including Tri-State's and NPPD's long history of jointly planning, coordinating, and operating transmission facilities in Zone 17, the significant integration of Tri-State's transmission facilities with Zone 17 transmission facilities,<sup>75</sup> the small size of Tri-State's ATRR,<sup>76</sup> the fact that the geographic scope of Tri-State's facilities filled a gap in SPP's geographic footprint rather than expanding that footprint,<sup>77</sup> and the magnitude of the cost shift resulting from placing Tri-State in Zone 17.<sup>78</sup> Accordingly, the record shows that the Presiding Judge considered many factors in reaching his decision, none of which operated as a strict rule or was given undue weight. We therefore dismiss NPPD's argument that SPP applied the ATRR Criterion as a strict rule and that SPP placed too much weight on the degree of Tri-State's integration with existing SPP transmission facilities.

35. Trial Staff contends that the Presiding Judge did not address its arguments regarding the lack of transparency in SPP's zonal placement criteria.<sup>79</sup> Trial Staff asserts that SPP's zonal placement criteria did not appear in a cohesive format until this proceeding and that the zonal placement criteria have not been approved by SPP's Board of Directors, nor are they included in the SPP Tariff or in any business practice manual.<sup>80</sup> Trial Staff argues that this lack of transparency makes it difficult for existing and new transmission owners to know what to expect regarding SPP's zonal placement decisions and could allow the criteria to be applied inconsistently.<sup>81</sup> NPPD similarly asserts that the "Presiding Judge erred by finding that SPP is not obligated to publish its zone placement criteria, or to file them with the Commission."<sup>82</sup> We find that these arguments do not demonstrate that SPP's application of the zonal placement criteria in this

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<sup>75</sup> Initial Decision, 158 FERC ¶ 63,004 at PP 290-296.

<sup>76</sup> *Id.* PP 261-262, 267, 269.

<sup>77</sup> *Id.* PP 263, 268.

<sup>78</sup> *Id.* PP 329-335, 342-347, 356-360.

<sup>79</sup> Trial Staff Brief on Exceptions at 12, 27-31.

<sup>80</sup> *Id.* at 28-30.

<sup>81</sup> *Id.* at 29.

<sup>82</sup> *Id.* at 12.

proceeding produced an unjust and unreasonable result. The parties to this proceeding had opportunity at hearing to challenge SPP's use of the criteria in this case and whether their use produced a just and reasonable result. As a result, the record contains substantial evidence regarding SPP's rationale for selecting its criteria and the analysis that SPP carried out as a result of applying the criteria. Accordingly, there was sufficient transparency with respect to SPP's use of the zonal placement criteria in this proceeding.

36. Trial Staff's arguments that the lack of transparency in SPP's zonal placement criteria generally will make it difficult for transmission owners to know what to expect regarding SPP's zonal placement decisions and could allow the criteria to be applied inconsistently are beyond the scope of this proceeding, which is limited to the issue of whether the criteria, as applied in this proceeding, produced a just and reasonable result. Trial Staff also contends that the Presiding Judge was incorrect in claiming that Trial Staff's proposal for SPP to file its zonal placement criteria with the Commission contradicts its argument in favor of flexibility. Trial Staff argues that filed criteria do not have to be rigid because they can establish parameters within which SPP can make decisions.<sup>83</sup> The issue in this proceeding is limited to whether SPP's application of the criteria to the specific facts and circumstances of this case produced a just and reasonable result. Therefore, Trial Staff's argument that SPP's criteria could be filed with the Commission and still remain flexible is outside the scope of this proceeding.

37. Trial Staff further argues that the Presiding Judge erred by accepting the way in which SPP presented its zonal placement criteria in the latter stages of the proceeding. Trial Staff asserts that the zonal placement criteria could not have been applied as suggested by SPP and the Presiding Judge because SPP described its application of the criteria differently in briefs and in testimony.<sup>84</sup> Specifically, Trial Staff claims that testimony shows that SPP did not apply the ATRR Criterion and the Geographic Expansion Criterion to first evaluate whether to place a new transmission owner in its own pricing zone, and then only apply the Integration Criterion and the Embeddedness Criterion if the facilities at issue failed to meet the thresholds in the ATRR Criterion and the Geographic Expansion Criterion. In support, Trial Staff points to Mr. Bourne's testimony that SPP does not give one criterion more weight than another and that it "evaluates the criteria together when determining zonal placement."<sup>85</sup> Trial Staff also notes that SPP's initial brief listed the criteria in a different order than Mr. Bourne's testimony.<sup>86</sup> We find that the order in which SPP applied its zonal placement criteria,

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<sup>83</sup> *Id.* at 30.

<sup>84</sup> *Id.* at 12, 24-27.

<sup>85</sup> *Id.* at 25-26 (citing Ex. No. SPP-001 at 7:19-21).

<sup>86</sup> *Id.* at 26-27.

and whether the criteria were applied in a formal two-step process, is not material to determining whether the application of those criteria produced a just and reasonable result under the circumstances of this case. Regardless of the order of the criteria or whether the application of the criteria was a formal two-step process or not, the record shows that SPP's application of the criteria in this case produced an analysis that considered factors relevant to an appropriate zonal placement and that sufficiently demonstrated that SPP's proposed placement of Tri-State in Zone 17 is just and reasonable. Accordingly, we find that the Presiding Judge's decision is not in error with respect to the way in which he framed SPP's application of its criteria.

38. NPPD also asserts that the Presiding Judge erred by failing to decide the issue of whether an RTO has an obligation to consider cost shifts when making zonal placement decisions.<sup>87</sup> We disagree. The generic question of whether an RTO has an obligation to consider cost shifts when making zonal placement decisions was not before the Presiding Judge in this proceeding and is a policy issue that, as the Presiding Judge explained, "is for the Commission to decide."<sup>88</sup> Proposed zonal placements of new transmission owners, and the resulting rates, must be just and reasonable, and there must be sufficient evidence in the record in order for the Commission to determine whether a specific zonal placement is just and reasonable. The evidence that is necessary for the Commission to make that determination will depend on the specific facts and circumstances of the case, and information regarding cost shifts is one of the many types of evidence that may be necessary in order for the Commission to determine whether a proposed zonal placement of a new transmission owner is just and reasonable. Because each proposed zonal placement of a new transmission owner presents unique facts and circumstances, we are not making a generic determination that an RTO must explicitly consider cost shifts in its Tariff or zonal placement criteria in all cases. However, information concerning cost shifts may be necessary, as it was in this case, to provide the Commission with a sufficient record on which to determine whether proposed rates resulting from a zonal placement are just and reasonable, and we discuss this cost shift information later in this order.

39. We also disagree with NPPD's assertion that SPP's position regarding the inclusion of cost shifts in its criteria is contrary to *ICC v. FERC*, which requires costs to be allocated in a manner that is "at least roughly commensurate with benefits."<sup>89</sup> Nothing in this order changes the fact that proposed zonal placements, and the resulting rates, must be just and reasonable. In order for the Commission to make this determination,

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<sup>87</sup> NPPD Brief on Exceptions at 15-18.

<sup>88</sup> Initial Decision, 158 FERC ¶ 63,004 at P 329.

<sup>89</sup> NPPD Brief on Exceptions at 17 (citing *ICC v. FERC*, 576 F.3d at 477).

there must be sufficient information in the record to determine that any allocation of costs is at least roughly commensurate with benefits.

40. Sunflower and Mid-Kansas argue that the Presiding Judge's ruling on the justness and reasonableness of the SPP zonal placement criteria should have been limited to the application and facts in this proceeding.<sup>90</sup> As discussed above, the issue in this case is whether SPP's proposed Tariff revisions, including the placement of Tri-State in Zone 17 and the resulting rates, are just and reasonable, and we make no findings about whether SPP's zonal placement criteria would lead to a just and reasonable result under different facts and circumstances. Sunflower and Mid-Kansas also argue that any generally applicable criteria for future zonal placements must be included in the SPP Tariff.<sup>91</sup> We dismiss this argument as beyond the scope of this proceeding because the issue in this proceeding is limited to whether SPP's proposed Tariff revisions, including the placement of Tri-State in Zone 17 and the resulting rates, are just and reasonable.

## **B. Findings Regarding the Appropriateness of Each Criterion**

### **1. Initial Decision**

41. The Presiding Judge found that each of SPP's four zonal placement criteria individually was "appropriate in ensuring a just and reasonable zonal placement."<sup>92</sup> In particular, he explained that the ATRR Criterion "is an appropriate measure to guarantee that transmission customers pay their fair share of the entire SPP transmission system."<sup>93</sup> The Presiding Judge stated that "while not necessarily determinative, a low ATRR could indicate the limited scope of transmission facilities which may require integration with other facilities to provide a reliable and efficient service to its customers."<sup>94</sup> The

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<sup>90</sup> Sunflower and Mid-Kansas Statement at 4.

<sup>91</sup> *Id.* at 4-5.

<sup>92</sup> Initial Decision, 158 FERC ¶ 63,004 at PP 263, 279.

<sup>93</sup> *Id.* P 261. SPP had explained that, because SPP's transmission service rates are based on the zonal ATRR where the load is located, but provide access to the entire transmission system, if a separate zone has an unreasonably small ATRR, it would pay a disproportionately low share of the costs of the full SPP transmission system. Therefore, the use of the ATRR Criterion to ensure that a separate pricing zone is sufficiently large is intended to ensure that such a separate zone would pay its "minimum fair cost" of the full SPP transmission system. *See* SPP Initial Brief at 11-12.

<sup>94</sup> Initial Decision, 158 FERC ¶ 63,004 at P 262.

Presiding Judge found that the Geographic Expansion Criterion is appropriate to limit the creation of pricing zones to situations in which it is warranted, i.e. when a new transmission owner's transmission facilities possess sufficient size and scope to constitute a significant expansion of the current SPP system.<sup>95</sup>

42. The Presiding Judge explained that SPP provided a sufficient explanation of how the ATRR Criterion and the Geographic Expansion Criterion are rooted in economic policy and reflect the "minimum fair cost" of establishing a new separate pricing zone, and seek to ensure that reliability issues and their solutions are localized to the extent possible.<sup>96</sup> The Presiding Judge found that these two criteria seek to ensure that the benefits associated with RTO participation, such as joint planning, efficiency, and increased reliability, are not hindered by the creation of small pricing zones, which may be unable to internalize reliability issues.<sup>97</sup>

43. The Presiding Judge also found that SPP had reasonably explained and justified the Integration Criterion and the Embeddedness Criterion. He explained that the number of interconnections is relevant in determining zonal placement because, if a new transmission owner is greatly interconnected with the transmission facilities in an existing pricing zone, it is logical to place the new transmission owner into that zone because both transmission owners' facilities are likely to be operated as an integrated whole to serve each transmission owner's load. The Presiding Judge further stated that such facilities could potentially be interdependent on each other to reliably and efficiently provide service to each transmission owner's customers. He also explained that, in a situation in which a new transmission owner's transmission facilities are embedded within the transmission facilities in an existing zone, there is the potential for a mismatch between cost causation and cost allocation if the new transmission owner is placed in a different zone.<sup>98</sup> The Presiding Judge noted SPP's statement that, in such a situation, the best solution to a reliability issue affecting one transmission owner's system may be to upgrade the other transmission owner's system. According to SPP, if the two transmission systems are placed in separate pricing zones, some or all of the upgrade costs could be allocated to customers in a zone in which the issue did not arise, and

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<sup>95</sup> *Id.* P 263.

<sup>96</sup> *Id.* P 261.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* P 279.

customers in the zone in which the issue arose could escape some or all of the costs of resolving the issue.<sup>99</sup>

## **2. Briefs on Exceptions**

### **a. NPPD**

44. NPPD argues that the Presiding Judge erred by finding that SPP's ATRR Criterion is an appropriate measure to guarantee that transmission customers pay their fair share of the costs of the entire transmission system. NPPD asserts that the end result in this proceeding did not ensure that Tri-State paid its fair share of the costs of the entire SPP transmission system but instead subsidized Tri-State by reducing its responsibility for the costs of its existing transmission facilities and shifting those costs to existing Zone 17 customers.<sup>100</sup>

45. NPPD also argues that the Integration Criterion is flawed because it relies on the extent to which a new transmission owner's transmission facilities are integrated with the facilities of existing transmission owners. NPPD asserts that the degree of integration should not dictate zonal placement in cases where a new transmission owner is interconnected to two or more zones, and placement of that new transmission owner into the zone with which it may be highly integrated would result in a significant cost shift to existing customers of that zone.<sup>101</sup>

### **b. Trial Staff**

46. Trial Staff argues that the Presiding Judge erred in finding that each criterion is appropriate in ensuring a just and reasonable zonal placement.<sup>102</sup> Trial Staff contends that the portions of the record that the Presiding Judge cites as support for the statement that SPP provided sufficient explanation of how its ATRR Criterion and Geographic Expansion Criterion are rooted in economic policy do not support the statement. Trial Staff also argues that there is no evidence in the record of how a transmission owner with an ATRR smaller than the lowest ATRR of any existing zone could cause a significant distortion of cost allocations. Trial Staff further asserts that the Presiding Judge's reliance on the ATRR of an incoming transmission owner as the basis for zonal

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<sup>99</sup> *Id.* P 278.

<sup>100</sup> NPPD Brief on Exceptions at 24-25.

<sup>101</sup> *Id.* at 27-29.

<sup>102</sup> Trial Staff Brief on Exceptions at 12-13.

placement overlooks the dynamic nature of such a measurement, noting that Tri-State's ATRR might increase in the future, rendering this criterion immaterial.<sup>103</sup>

47. In addition, Trial Staff contends that, although SPP's witness Mr. Bourne testified that the ATRR Criterion and the Geographic Expansion Criterion are intended to create a big enough zone so that reliability problems are internalized and that SPP does not unintentionally transfer cost to other zones when solving those problems, SPP has transferred costs to other zones by placing Tri-State in Zone 17. Trial Staff further asserts that the Presiding Judge's findings on the Geographic Expansion Criterion are not supported because the Presiding Judge does not define a "system of sufficient size and scope" that would constitute a "significant expansion."<sup>104</sup>

48. Trial Staff contends that the Initial Decision accepted SPP's arguments in support of the Integration Criterion and the Embeddedness Criterion without consideration of any counterarguments.<sup>105</sup> Trial Staff also asserts that the Presiding Judge erred in finding that the Integration Criterion is appropriate because the criterion incorrectly considers the degree to which a new transmission owner's transmission facilities are integrated with existing transmission facilities. Trial Staff argues that there are no degrees of integration – facilities are either integrated or not.<sup>106</sup>

### **3. Briefs Opposing Exceptions**

#### **a. Tri-State**

49. Tri-State asserts that NPPD's argument that the ATRR Criterion did not achieve its purpose in this case conflates two issues – sharing the costs of the SPP transmission system by all SPP transmission owners and the cost shifting that results when a new transmission owner joins an existing pricing zone. Tri-State also argues that SPP provided sufficient support for the Geographic Expansion Criterion, the Integration Criterion, and the Embeddedness Criterion.<sup>107</sup> Tri-State asserts that Trial Staff's claim

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<sup>103</sup> *Id.* at 34.

<sup>104</sup> *Id.* at 31-35.

<sup>105</sup> *Id.* at 35-37.

<sup>106</sup> *Id.* at 37-42.

<sup>107</sup> Tri-State Brief Opposing Exceptions at 14-20.



that there are no degrees of integration is incorrect on its face and misunderstands the purpose of SPP's zonal placement criteria.<sup>108</sup>

**b. SPP**

50. SPP asserts that the Presiding Judge correctly found that there was sufficient evidence to support that each of SPP's criteria are appropriate to ensure a just and reasonable zonal placement. SPP argues that Trial Staff's claim that there is no evidence in the record of how a transmission owner with an ATRR smaller than the lowest ATRR of any existing zone could cause a significant distortion of cost allocations is incorrect because SPP explained how the creation of a zone with a relatively small ATRR would result in customers in that zone paying a disproportionately low share of the costs of accessing the entire SPP transmission system.<sup>109</sup> SPP also disagrees with Trial Staff's argument that SPP's use of the ATRR Criterion and the Geographic Expansion Criterion unintentionally transferred costs to other zones, contrary to what Mr. Bourne explained was the purpose of those criteria. SPP contends that Mr. Bourne's testimony referred to the potential transfer of costs associated with the need to construct transmission upgrades in the future to resolve reliability issues, not to the cost shift associated with legacy facilities, which is what is at issue in this proceeding.<sup>110</sup>

51. SPP agrees with the Presiding Judge's findings that the Integration Criterion and the Embeddedness Criterion were supported. SPP asserts that the purpose of considering the number of interconnections under the Integration Criterion is to determine if the new transmission owner's facilities are significantly interconnected or interdependent with those of an existing transmission owner, such that the two transmission owners' systems constitute a cohesive whole. SPP argues that a greater number of interconnections is a strong indicator that this is the case.<sup>111</sup>

**c. Western**

52. Western opposes NPPD's and Trial Staff's exceptions to the extent that they argue that the Integration Criterion and the Embeddedness Criterion are not appropriate considerations for zonal placement. Western notes that NPPD witness Mr. Malone testified that "the criteria identified by SPP are factors that should be considered in

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<sup>108</sup> *Id.* at 20.

<sup>109</sup> SPP Brief Opposing Exceptions at 12-13.

<sup>110</sup> *Id.* at 13-14.

<sup>111</sup> *Id.* at 19.

determining whether a new Transmission Owner should be integrated into SPP as a separate pricing zone or as part of an existing pricing zone.”<sup>112</sup> Western asserts that the Presiding Judge gave extensive consideration to the parties’ arguments on these criteria.<sup>113</sup>

#### **4. Commission Determination**

53. The Presiding Judge found that each of SPP’s four zonal placement criteria individually was “appropriate in ensuring a just and reasonable zonal placement.”<sup>114</sup> As discussed above, “what matters in this proceeding is whether the criteria render just and reasonable results.”<sup>115</sup> In order to determine whether the Tariff revisions and resulting rates that SPP proposed in this proceeding are just and reasonable, we need not determine whether each SPP zonal placement criterion is “appropriate in ensuring just and reasonable zonal placement” generally.<sup>116</sup> Rather, what is before the Commission is whether the criteria as applied to the particular facts of this case result in rates that are just and reasonable. Based on the record in this proceeding, which appropriately focuses on SPP’s application of its criteria to the specific facts and circumstances of Tri-State’s zonal placement within SPP, we find that SPP’s zonal placement criteria produced just and reasonable results for the incorporation of Tri-State’s facilities and associated ATRR into SPP.

54. Specifically, the record shows that the size of Tri-State’s ATRR and the geographic scope of its transmission system are important considerations in determining its zonal placement. As SPP explained, these considerations are intended to ensure that a zone is large enough to ensure that “reliability problems are internalized and, in the solution to those problems [SPP does not] unintentionally transfer costs to other zones.”<sup>117</sup> For example, if SPP were to place Tri-State in its own zone, but that zone was not sufficiently large, then it is possible that an issue caused by the transmission facilities in Tri-State’s zone might necessitate upgrades in Zone 17 or another zone and

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<sup>112</sup> Western Brief Opposing Exceptions at 18.

<sup>113</sup> *Id.* at 19.

<sup>114</sup> Initial Decision, 158 FERC ¶ 63,004 at P 253.

<sup>115</sup> *Id.* P 255.

<sup>116</sup> *See id.* PP 263, 279.

<sup>117</sup> *See* SPP Brief Opposing Exceptions at 13-14 (citing Tr. at 300:13-16 (Bourne)).

the Tri-State zone would not have to pay for the costs of those upgrades.<sup>118</sup> Accordingly, the use of the ATRR Criterion and the Geographic Expansion Criterion in this proceeding led to the consideration of important facts that support a finding that the rate resulting from the placement of Tri-State in Zone 17 is just and reasonable.

55. Similarly, the record shows that the extent to which Tri-State's facilities are integrated with and embedded within the transmission facilities of existing SPP transmission owners are important considerations in determining Tri-State's zonal placement. As the Presiding Judge explained, "[i]f a new [transmission owner] is greatly interconnected with the facilities in an existing pricing zone, it is logical that the new [transmission owner] is placed into that zone as both facilities are likely to be operated as an integrated whole to serve each facility's load."<sup>119</sup> In addition, the Presiding Judge stated that "such facilities could potentially be interdependent upon each other to reliably and efficiently provide service to its customers."<sup>120</sup> Thus, the Integration Criterion and the Embeddedness Criterion examined whether the relationship of Tri-State's transmission facilities with existing SPP transmission facilities indicated that Tri-State's facilities should be included in an existing zone in order to reflect the way that the facilities function to provide reliable and efficient service. In addition, these criteria considered whether Tri-State's facilities and any existing SPP facilities operate as an integrated whole when serving their loads, and thus should be placed in the same zone. We believe that these are important considerations in this proceeding given the historical joint planning and development of Tri-State's facilities and NPPD's Zone 17 facilities and the entities' reliance on each other's facilities to serve their respective loads. Accordingly, we find that the use of the Integration Criterion and the Embeddedness Criterion in this proceeding led to the consideration of important facts that support a finding that the rate resulting from the placement of Tri-State in Zone 17 is just and reasonable.

56. Trial Staff alleges that the Presiding Judge's reliance on the ATRR Criterion as a consideration in determining Tri-State's zonal placement overlooks the dynamic nature of such a measurement.<sup>121</sup> Although Trial Staff is correct that Tri-State's ATRR is subject to change if, for example, Tri-State upgrades and expands its transmission system, it is still a useful consideration in determining Tri-State's proper zonal placement. As the Presiding Judge noted, "a low ATRR could indicate the limited scope of transmission

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<sup>118</sup> See, e.g., Tri-State Brief Opposing Exceptions at 5; Tr. 166:2-4 (Bourne).

<sup>119</sup> Initial Decision, 158 FERC ¶ 63,004 at P 279.

<sup>120</sup> *Id.*

<sup>121</sup> Trial Staff Brief on Exceptions at 34.

facilities which may require integration with other facilities to provide a reliable and efficient service to its customers.”<sup>122</sup> Considering the size of Tri-State’s ATRR as such a potential indicator, along with the extent to which Tri-State’s transmission facilities were in fact integrated with other facilities, is appropriate in determining Tri-State’s zonal placement.

**C. SPP’s Application of its Zonal Placement Criteria**

**1. Initial Decision**

57. In assessing the application of SPP’s zonal placement criteria, the Presiding Judge found that Tri-State’s ATRR is less than the ATRR for the existing single-transmission owner pricing zone in SPP with the smallest ATRR and, thus, satisfied the ATRR Criterion.<sup>123</sup> With respect to the Geographic Expansion Criterion, the Presiding Judge disagreed with NPPD’s argument that incorporating Tri-State into SPP substantially increases SPP’s footprint. He noted that it is important to consider Tri-State’s addition to SPP in the context of the current status of the SPP footprint and explained that, although the addition of Tri-State’s facilities into SPP brings more than 300 miles of transmission lines and 22,000 square miles to SPP’s geographic footprint, it does not expand the SPP footprint beyond its previous borders. Instead, the Presiding Judge stated that the addition only fills in gaps in the existing system.<sup>124</sup>

58. The Presiding Judge found unpersuasive NPPD’s argument that placing Tri-State in Zone 17 was arbitrary in light of SPP’s prior determination to place Lincoln Electric System’s 300 miles of transmission line in its own separate zone.<sup>125</sup> The Presiding Judge explained that, at the time Lincoln Electric System joined SPP, it had a higher ATRR than Tri-State, had its own tariff, was a North American Electric Reliability Corporation (NERC) balancing authority, had a cohesive system that did not pose any concern to SPP, and served a significantly larger load than Tri-State serves today.<sup>126</sup> The Presiding Judge stated that, conversely, before becoming part of the SPP balancing authority, Tri-State has been historically located in the NPPD balancing authority and dependent on NPPD facilities to serve its load. Accordingly, the Presiding Judge explained that SPP’s

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<sup>122</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 261.

<sup>123</sup> *Id.* P 267.

<sup>124</sup> *Id.* P 268.

<sup>125</sup> *Id.* PP 196, 269.

<sup>126</sup> *Id.* P 269 (citing Tr. 168:12–16 (Bourne); Ex. SPP-003 at 16:19-17:9).

placement of Tri-State in Zone 17 satisfied SPP's ATRR Criterion and Geographic Expansion Criterion.<sup>127</sup>

59. With respect to the Integration Criterion and the Embeddedness Criterion, the Presiding Judge found that Tri-State's transmission facilities are integrated with, and embedded within, the transmission facilities of Zone 17.<sup>128</sup> He found that the long history of joint planning and operation of Tri-State's and NPPD's facilities as a single, cohesive whole pursuant to the NETS Agreement demonstrates substantial integration between their two transmission systems. The Presiding Judge stated that it is undisputed that the NETS Agreement provided for the joint planning, design, construction, operation, and maintenance of both Tri-State's and NPPD's transmission facilities in which their systems were treated as though they were owned by only one party.<sup>129</sup>

60. In response to NPPD's argument that the NETS Agreement is not unique and NPPD's proffer of four interconnection and interchange agreements to support its argument, the Presiding Judge found that none of those agreements included important provisions that existed in the NETS Agreement, such as the Single-Entity Concept, in which both systems are treated as one, or the annual equalization payments provision, which equalizes the parties' investment in and benefit from a combined system. The Presiding Judge explained that these provisions of the NETS Agreement demonstrate a unique level of integration between the transmission facilities of Tri-State and NPPD. He stated that these provisions showed a level beyond mere collaboration because they demonstrate the need for each party's facilities to efficiently serve their aggregate customers in a reliable fashion. The Presiding Judge found that although the other agreements provided by NPPD showed joint coordination and planning between NPPD and other parties, those agreements did not establish a level of integration similar to the one presented in the NETS Agreement.<sup>130</sup>

61. The Presiding Judge explained that the NETS Agreement facilities were developed to benefit NPPD, Tri-State, and their customers and that the distinctive provisions of the agreement demonstrate a high degree of integration.<sup>131</sup> He also found that the NETS Agreement's 40 year duration demonstrated that there was a mutual benefit from the joint

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* P 296.

<sup>129</sup> *Id.* P 290.

<sup>130</sup> *Id.* PP 290-292

<sup>131</sup> *Id.* P 292.

coordination and operation efforts.<sup>132</sup> The Presiding Judge also found that the record showed that managing their transmission facilities as a single system under the NETS Agreement allowed Tri-State and NPPD to avoid duplicative construction. He further explained that the record showed that neither NPPD nor Tri-State has a physical path to all of its loads without using the transmission facilities of the other entity, which demonstrates that Tri-State's facilities are embedded with NPPD Zone 17 facilities.<sup>133</sup>

62. The Presiding Judge explained that it is undisputed that both Tri-State's and NPPD's transmission facilities have at least five points of interconnection<sup>134</sup> and that Tri-State's interconnections with Zone 17 have more than twice the capacity than its single interconnection with Zone 19.<sup>135</sup> He found that NPPD's argument that SPP overemphasizes the relative "degree" of integration between Tri-State and existing SPP zones was unavailing. The Presiding Judge afforded no weight to Trial Staff witness Ms. An Jou Jo Hsiung's testimony, in which she argued that a showing of any integration is sufficient to demonstrate integration, i.e. any integration between Tri-State's facilities and Zone 19 facilities was sufficient to show integration with Zone 19, and that integration is not measured in terms of degrees, i.e., there is no more or less integration between Tri-State and Zone 17 or Zone 19. He therefore found that NPPD's reliance on this testimony to assert that there are no degrees of integration to be misplaced. Accordingly, he explained that SPP rightfully analyzed Tri-State's interconnections with both Zone 17 and Zone 19 in reaching its zonal placement decision.<sup>136</sup>

63. The Presiding Judge also found that it is inappropriate to consider Tri-State's interconnections with transmission facilities outside of the SPP system in determining Tri-State's zonal placement.<sup>137</sup> NPPD argued that SPP should have considered Tri-State's contractual rights on two non-SPP transmission lines owned by the Western Area Power Administration – Rocky Mountain Region (Western-RMR) that connect Zone 19 transmission facilities to Tri-State's load-serving facilities. NPPD asserted that these

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<sup>132</sup> *Id.* P 293.

<sup>133</sup> *Id.* P 296.

<sup>134</sup> *Id.* P 290.

<sup>135</sup> *Id.* P 295.

<sup>136</sup> *Id.* PP 279, 294-295.

<sup>137</sup> *Id.* PP 305, 307.

contract rights provided support for finding that Tri-State is integrated with Zone 19.<sup>138</sup> The Presiding Judge explained that, because these contract rights that Tri-State currently possesses have not been transferred to SPP's functional control, SPP cannot flow power through those facilities and thus they should not be considered in determining Tri-State's zonal placement within SPP.<sup>139</sup>

64. The Presiding Judge found that NPPD's reliance on *PJM Interconnection L.L.C.*<sup>140</sup> to support its argument that SPP should have considered Tri-State's contractual rights on Western-RMR's two transmission lines to be misplaced. He explained that *ComEd* was not analogous for several reasons. First, he stated that, in *ComEd*, the Commission allowed the integration of Commonwealth Edison Company (ComEd) into the PJM Interconnection, L.L.C. (PJM) RTO despite ComEd's lack of a direct interconnection to the other PJM transmission owners. The Presiding Judge explained that ComEd needed American Electric Power Service Corporation's (AEP) transmission facilities to integrate with other PJM transmission owners. He noted that in *ComEd* the Commission stated that although "there cannot be a complete integration of the markets of ComEd and PJM if AEP is not also part of PJM,"<sup>141</sup> ComEd could nonetheless join PJM because ComEd was assigning 500 MW of firm transmission reservations across AEP's transmission system to PJM with a receipt/delivery point on the ComEd transmission system and a receipt/delivery point on the PJM transmission system.<sup>142</sup> The Presiding Judge stated that, although the Commission considered the assignment of contract rights in granting ComEd's entrance into PJM, this proceeding does not involve whether Tri-State's contract rights are needed for Tri-State to join SPP. He explained that, unlike in *ComEd*, Tri-State's transmission facilities are significantly integrated with Zone 17; thus, Tri-State's contract rights governing the usage of facilities outside of the SPP system are irrelevant in the present case.<sup>143</sup>

65. In addition, the Presiding Judge found that it is speculative to assume that SPP will obtain functional control of the Western-RMR facilities either through Tri-State's contract rights or by Western-RMR joining SPP. He noted that these contract rights have

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<sup>138</sup> See *id.* PP 213-219; 298-300.

<sup>139</sup> *Id.* P 307.

<sup>140</sup> 106 FERC ¶ 61,253 (2004) (*ComEd*).

<sup>141</sup> *Id.* P 305 (citing *ComEd*, 106 FERC ¶ 61,253 at PP 22-23).

<sup>142</sup> *Id.* P 306 (citing *ComEd*, 106 FERC ¶ 61,253 at PP 5, 9, 27-29).

<sup>143</sup> *Id.*

not been transferred to SPP's functional control and that there is no evidence in the record that Western-RMR is pursuing SPP membership and plans to place its facilities under SPP's functional control, nor evidence of acceptance by the Commission of a proposed transfer of control.<sup>144</sup>

## **2. Briefs on Exceptions**

### **a. NPPD**

66. NPPD argues that strict application of the ATRR Criterion produces arbitrary results and that, in this case, SPP should not have relied upon the ATRR Criterion to summarily reject the option of creating a separate pricing zone without first analyzing the financial impacts on transmission customers in existing pricing zones and evaluating how best to avoid, or at least mitigate, any significant and unreasonable cost shift.<sup>145</sup> NPPD asserts that its witness Mr. Malone explained that the failure to meet SPP's ATRR Criterion should never be relied upon as a strict rule where the evidence otherwise supports use of a separate pricing zone as a remedy to an unjust and unreasonable cost shift.<sup>146</sup>

67. NPPD also contends that SPP did not consider Tri-State's larger than average geographic scope. NPPD argues that the record makes it clear that SPP never analyzed whether the 22,000 square-mile size of Tri-State's footprint is large enough to address SPP's concern about situations where a reliability issue in one inordinately small zone causes the need for an upgrade in another zone.<sup>147</sup> NPPD asserts that SPP witness Mr. Bourne admitted that if the new transmission owner fails the ATRR Criterion, SPP does not analyze geographic size, and instead proceeds to the third and fourth criteria to determine the existing zone into which to place the new transmission owner.<sup>148</sup> NPPD further asserts that the Presiding Judge erred by finding that the addition of Tri-State's transmission facilities does not significantly increase SPP's footprint. NPPD argues that, although Tri-State's facilities fill a gap in the SPP system, this gap represents a large,

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<sup>144</sup> *Id.* P 307.

<sup>145</sup> NPPD Brief on Exceptions at 25-26.

<sup>146</sup> *Id.* at 23.

<sup>147</sup> *Id.* at 26.

<sup>148</sup> *Id.* at 26-27 (citing Tr. 243:5-15 (Bourne)).



22,000 square mile area in western Nebraska that would make a separate Tri-State-only zone the seventh largest of SPP's 19 zones.<sup>149</sup>

68. NPPD asserts that the Presiding Judge's reliance on the history of joint planning and operation between Tri-State and NPPD pursuant to the NETS Agreement and the fact that Tri-State has more direct interconnections with Zone 17 than Zone 19 as evidence of substantial integration with Zone 17 places too much emphasis on the degree to which a new transmission owner's transmission facilities are integrated with existing transmission facilities.<sup>150</sup> NPPD argues that, even assuming Tri-State is more integrated with Zone 17 than with Zone 19, the degree of integration should not dictate zonal placement in cases, as here, where a new transmission owner is interconnected to two or more zones and placement of that new transmission owner into the zone with which it may be more highly integrated would result in a significant cost shift to existing customers of that zone. NPPD asserts that, in such cases, the new transmission owner should be placed in the zone that results in minimal cost shifting. NPPD contends that, if significant cost shifts result from placement in either zone, the new transmission owner should be placed in a separate zone.<sup>151</sup>

69. NPPD also contends that the Presiding Judge erred by ignoring the long history of Tri-State's reliance upon the Integrated System transmission facilities (Integrated System)<sup>152</sup> that are now part of Zone 19.<sup>153</sup> NPPD asserts that Tri-State has historically been a member of Basin Electric and, as a result, has had a wholesale power contract obligating Tri-State to purchase its full requirements, with one exception, from Basin Electric. NPPD claims that, prior to the Integrated System joining SPP, Basin Electric

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<sup>149</sup> *Id.* at 27.

<sup>150</sup> *Id.* at 27-30.

<sup>151</sup> *Id.* at 28-29.

<sup>152</sup> The Integrated System consisted of the transmission facilities of Western-UGP, Basin Electric and Heartland, as well as certain facilities included in what is referred to as the Missouri Basin Power Project, which is jointly owned by several entities, including Basin Electric, Heartland, Missouri River, and Tri-State. *See* Ex. No. WES-001 at 9:13-18 (describing the ownership of the Missouri Basin Power Project); Tr. 54:16-21 (Steinbach) (describing same); Tr. 309:4-9 (Sanders) (explaining that portions of the Missouri Basin Power Project related to 345-kV lines in the Eastern Interconnection were included in the Integrated System).

<sup>153</sup> As noted above, Zone 19 currently consists of the former Integrated System and certain other transmission owners. *See supra* at n.13.

used network service on the Integrated System facilities to deliver power to interconnections with Tri-State, and that such interconnections include two substations that provide direct connections to Zone 19 transmission facilities. According to NPPD, from those points of receipt, Tri-State used service under the Tri-State Open Access Transmission Tariff, Western-RMR network service, and capacity rights from NPPD under the NETS Agreement to deliver those resources over its own system to Tri-State load. NPPD explains that, after the Integrated System joined SPP, network service over the Integrated System was replaced with SPP network service and Basin Electric utilized Zone 19 network service to deliver power to Tri-State delivery points. NPPD argues that this is substantial evidence of Tri-State's integration with Zone 19 that the Presiding Judge ignored.<sup>154</sup>

70. NPPD also argues that the Presiding Judge erred by concluding that the Western-RMR facilities are irrelevant to the integration analysis because the contract rights that Tri-State possesses on the Western-RMR facilities have not been transferred to SPP's functional control, such that SPP cannot flow power through those facilities. NPPD asserts that Basin Electric, as Tri-State's supplier, has access to Tri-State's contractual rights on the Western-RMR facilities and therefore, it can be reasonably inferred that such assignment would be available to others, including SPP, on a nondiscriminatory basis.<sup>155</sup> Specifically, NPPD asserts that, because SPP is providing SPP network service to make deliveries of Basin Electric's network resources to Tri-State load via the Western-RMR facilities, Basin Electric, as Tri-State's supplier, has access to Tri-State's contractual rights on the Western-RMR facilities. NPPD argues that this is evidence that Tri-State's capacity rights on those facilities have been assigned to Basin Electric and, therefore, that they also can be assigned to SPP.<sup>156</sup>

71. NPPD argues that the Presiding Judge erroneously concluded that the *ComEd* precedent is distinguishable because it involved the assignment of contract rights in connection with ComEd's entrance into PJM, whereas the situation here does not involve whether Tri-State's contract rights are needed for Tri-State to join SPP. NPPD asserts that *ComEd* is analogous because it involved whether contract rights could establish the necessary connection needed for a prospective transmission owner to join an RTO, whereas this case involves the issue of whether contract rights can establish the necessary

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<sup>154</sup> NPPD Brief on Exceptions at 30-32.

<sup>155</sup> *Id.* at 32-33.

<sup>156</sup> *Id.*

connection needed for a new transmission owner to be sufficiently integrated with two pricing zones so as to justify consideration of both zones as an option for zonal placement.<sup>157</sup>

72. In addition, NPPD asserts that the Presiding Judge erred by concluding that the evidence that neither Tri-State nor NPPD has a physical path to its entire load without using the transmission facilities of the other entity, and that managing the facilities as a single system under the NETS Agreement, demonstrates that Tri-State's facilities are embedded within Zone 17. NPPD argues that there is no support for such conclusion because embedded means "surrounded," and Tri-State is not surrounded by NPPD's transmission system. NPPD contends that Tri-State witness Mr. Ronald W. Steinbach's admission that Tri-State did not become surrounded by SPP facilities until the Integrated System transferred functional control of its facilities to SPP makes it clear that Tri-State is not embedded with Zone 17, but is integrated with both Zone 17 and Zone 19. NPPD further asserts that Exhibit No. NPP-035, which is a map outlining all of the Tri-State delivery points that are served by the Western-RMR network service purchased by Tri-State, indicates that Tri-State delivery points are served by Western-RMR network service entering from the west side of Tri-State's service territory. NPPD argues that this is clear evidence that Tri-State's load is not surrounded by NPPD load.<sup>158</sup> NPPD asserts that the Presiding Judge failed to address NPPD's arguments and despite the Presiding Judge's failure to discuss those matters, he nonetheless determined those arguments "to be irrelevant, immaterial, or meritless."<sup>159</sup> NPPD contends that there is no basis for such a conclusion.<sup>160</sup>

**b. Trial Staff**

73. Trial Staff argues that the Presiding Judge and SPP incorrectly assume a direct relationship between the magnitude of Tri-State's ATRR and the scope of its transmission facilities. Trial Staff asserts that, depending on the age of the transmission facilities, the magnitude of the ATRR can be small relative to the mileage span of transmission facilities.<sup>161</sup>

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<sup>157</sup> *Id.* at 33-35.

<sup>158</sup> *Id.* at 35-36.

<sup>159</sup> *Id.* at 36 (citing Initial Decision, 158 FERC ¶ 63,004 at P 380).

<sup>160</sup> *Id.*

<sup>161</sup> Trial Staff Brief on Exceptions at 35.

74. Trial Staff argues that the Presiding Judge erred in finding that the fact that more points of interconnection exist between Tri-State and Zone 17 means that there is a higher degree of integration between Tri-State and Zone 17 than between Tri-State and Zone 19.<sup>162</sup> Trial Staff also notes that the Initial Decision places no weight on the testimony of Trial Staff witness Ms. Hsiung demonstrating that the Commission does not consider more interconnections to equate to a higher degree of integration and argues that this portion of the Initial Decision cannot be sustained.<sup>163</sup>

75. Trial Staff states that Ms. Hsiung testified as follows:

When a facility is integrated with other facilities, the facilities become one integrated system—there is no degree. Either they are integrated or they are not. Of course, one can identify different individual interconnections and perhaps conclude that a facility has more individual interconnections with one particular system than another; nevertheless, the existence of more interconnections does not suggest “more integrated.” In other words, if the facilities are integrated to any degree, then they are integrated.<sup>[164]</sup>

76. Trial Staff asserts that Ms. Hsiung demonstrated that her testimony follows Commission precedent in Opinion No. 474.<sup>165</sup> Trial Staff explains that, in that opinion, the Commission addressed the question of how to determine whether a facility is a network facility and determined that “a showing of any degree of integration is sufficient” to show that a facility is a network facility.<sup>166</sup> Trial Staff states that the Commission further concluded that when “any” degree of integration has been shown, the costs of the facility should be rolled in.<sup>167</sup>

77. Trial Staff argues that, therefore, the fact that there is only a single interconnection point between Tri-State and Zone 19 is of no significance when determining whether the

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<sup>162</sup> *Id.* at 37.

<sup>163</sup> *Id.* at 37-38 (citing Initial Decision, 158 FERC ¶ 63,004 at PP 279, 295).

<sup>164</sup> *Id.* at 40 (citing Ex. No. S-014 at 16:17-23).

<sup>165</sup> *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474, 108 FERC ¶ 61,084 (2004).

<sup>166</sup> Trial Staff Brief on Exceptions at 40-41 (citing Opinion No. 474, 108 FERC ¶ 61,084 at P 48).

<sup>167</sup> *Id.* (citing Opinion No. 474, 108 FERC ¶ 61,084 at P 51).

facilities are integrated from an engineering standpoint. Trial Staff also asserts that the Presiding Judge's decision to give no weight to Ms. Hsiung's interpretation of Opinion No. 474 for the reasons asserted in SPP's initial brief is not supported because the Initial Decision does not engage in any analysis of SPP's reasoning or address or refute the analysis in Ms. Hsiung's testimony. Trial Staff also argues that the reasoning in SPP's initial brief on this point is invalid. Trial Staff states that SPP argued that the Commission's finding in Opinion No. 474 that "any degree of integration is sufficient" to render a facility a network facility contradicts Ms. Hsiung's argument that "there is no 'more' integrated or 'less' integrated."<sup>168</sup> Trial Staff then states that SPP asserted that "when the Commission used the words 'any degree of integration,' it explicitly demonstrated the existence of degrees of integration."<sup>169</sup> Trial Staff asserts that this reasoning is incorrect because if any degree of integration is sufficient, then there is no degree of integration that is insufficient.<sup>170</sup>

### **3. Briefs Opposing Exceptions**

#### **a. Tri-State**

78. Tri-State notes that NPPD does not dispute that Tri-State's ATRR is smaller than the ATRR of any existing SPP zone. Tri-State disagrees with NPPD's argument that strict application of the ATRR Criterion produces arbitrary results. Tri-State states that SPP has explained that the ATRR Criterion is designed to ensure that a new transmission owner is not placed in a pricing zone with a relatively small ATRR that allows that transmission owner to "pay a disproportionately low share of the costs of the SPP Transmission System."<sup>171</sup> Tri-State states that the Initial Decision, in referencing SPP witness Mr. Bourne's cross-examination testimony to explain how the ATRR Criterion ensures that transmission customers pay their fair share of the costs of the entire SPP transmission system, is referring to costs associated with, for example, reliability-related upgrades.<sup>172</sup> Tri-State asserts that, in other words, if SPP creates a pricing zone that is too small, an issue caused by the transmission facilities in that small pricing zone might necessitate the upgrade or construction of facilities in another pricing zone, and the small

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<sup>168</sup> *Id.* at 42 (citing Initial Decision, 158 FERC ¶ 63,004 at P 276).

<sup>169</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 276).

<sup>170</sup> *Id.*

<sup>171</sup> Tri-State Brief Opposing Exceptions at 14 (citing SPP Initial Brief at 12).

<sup>172</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 261).

pricing zone would not have to pay for the costs of such upgrades or construction. Tri-State asserts that NPPD's and Trial Staff's response to this explanation addresses a different issue, i.e. the cost shifting that results when a new transmission owner joins an existing pricing zone.<sup>173</sup>

79. With respect to the geographic scope of its transmission system, Tri-State notes that the addition of its facilities to Zone 17 does not change the geographic footprint of the zone.<sup>174</sup> In addition, Tri-State asserts that its 300 miles of transmission facilities are a *de minimis* addition to the 60,944 miles of existing facilities in SPP's footprint.<sup>175</sup> Tri-State further argues that NPPD's assertion "SPP never even analyzed whether the 22,000 square-mile size of Tri-State's footprint is large enough to address SPP's concerns about reliability issues with solutions that are localized to the extent possible" is unsupported by the record.<sup>176</sup> Tri-State contends that, although SPP witness Mr. Bourne acknowledged in his cross-examination testimony that, if a prospective transmission owner's ATRR is lower than the ATRR of the existing pricing zone with the smallest ATRR, SPP "would not normally look at the second test,"<sup>177</sup> he does not state that they did not review the Geographic Expansion Criterion in this particular case. According to Tri-State, Mr. Bourne addresses the Geographic Expansion Criterion in both his direct and rebuttal testimony.<sup>178</sup>

80. Tri-State states that NPPD does not dispute the Presiding Judge's findings concerning the number of interconnections between Tri-State's facilities and the Zone 17 and Zone 19 transmission facilities or the long history of joint planning and operation between the Tri-State and NPPD pursuant to the NETS Agreement.<sup>179</sup> In addition, Tri-State contends that the Commission should disregard Trial Staff's argument that the Presiding Judge erred in affording no weight to the testimony of its witness Ms. Hsiung claiming that there are no degrees of integration. Tri-State asserts that this claim is incorrect on its face and misunderstands the purpose of SPP's zonal placement criteria.

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<sup>173</sup> *Id.* at 14-15.

<sup>174</sup> *Id.* at 15 (citing Initial Decision, 158 FERC ¶ 63,004 at P 268).

<sup>175</sup> *Id.* at 15-16.

<sup>176</sup> *Id.* at 16 (citing NPPD Brief on Exceptions at 26).

<sup>177</sup> *Id.* (citing Tr. 243:5-15 (Bourne)).

<sup>178</sup> *Id.* (citing Ex. SPP-001 at 16:17-21; Ex. SPP-003 at 16:4-17:9).

<sup>179</sup> *Id.* at 19-20.

Tri-State argues that, moreover, Ms. Hsiung relied on NPPD witness Mr. Randy Lindstrom's interconnection analysis, which was flawed in part because it considered Tri-State interconnections with non-SPP facilities.<sup>180</sup>

81. Tri-State asserts that the Commission should reject NPPD's arguments that the Presiding Judge's analysis of Tri-State's integration with existing transmission facilities is incomplete because it failed to consider Tri-State's power supply arrangements, the location of Tri-State's load, and interconnection with non-SPP transmission owners in assessing whether Tri-State is interconnected or interdependent with existing SPP transmission owners' facilities.<sup>181</sup> Tri-State argues that the Presiding Judge was correct to disregard NPPD's argument that Tri-State's membership in and partial requirements contract<sup>182</sup> with Basin Electric is proof of Tri-State's integration with Zone 19 because the issue in this proceeding is the proper placement of Tri-State's *transmission* facilities within the SPP transmission system.<sup>183</sup> Tri-State contends that, in determining the appropriate zonal placement of Tri-State's transmission facilities, SPP correctly considered the integration of those transmission facilities with other transmission facilities that are under its functional control. Tri-State explains that, although Tri-State receives a portion of its power supply from resources located in Zone 19, as both SPP and NPPD have noted, this is not an uncommon practice. Tri-State asserts that, moreover, since SPP dispatches all generation resources on a least-cost basis, loads throughout SPP receive their energy supply from generators located throughout SPP; thus, the power supply contract between Tri-State and Basin Electric is immaterial to the zone in which Tri-State's transmission facilities should be placed.<sup>184</sup>

82. Tri-State also argues that NPPD's description of Tri-State's reliance on the Integrated System is misleading. First, Tri-State explains that NPPD incorrectly implies that there are two direct connections between Tri-State's Eastern Interconnection facilities and Zone 19, but there is only one. Tri-State asserts that this single point of interconnection is isolated from the remainder of Tri-State's Eastern Interconnection transmission system and no Tri-State load is served using that facility. In addition, Tri-

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<sup>180</sup> *Id.* at 20 (citing Ex. TS-027 at 5:17-10:11; 16:9-17:17).

<sup>181</sup> *Id.* at 19 (citing NPPD Brief on Exceptions at 28, 30-36).

<sup>182</sup> Tri-State is allocated power from Western and has a wholesale power contract that obligates Tri-State to purchase all of its power supply, in excess of its Western allocation, from Basin Electric. *See* Ex. No. NPP-008 at 18:1-10; Ex. No. NPP-017 at 2.

<sup>183</sup> Tri-State Brief Opposing Exceptions at 20-21 (emphasis added by Tri-State).

<sup>184</sup> *Id.* at 21.

State contends that its transmission system was not planned and operated jointly with Zone 19 transmission facilities; thus, even if it receives its power supply from resources that predominantly are located in Zone 19, Tri-State cannot serve its load without using transmission facilities located in Zone 17.<sup>185</sup>

83. Tri-State contends that, contrary to NPPD's arguments, the Presiding Judge properly found that the consideration of facilities outside of the SPP system in the integration analysis is inappropriate because SPP cannot provide transmission service over facilities that are not under its Tariff. Tri-State further argues that NPPD's assertion that "Basin Electric, as Tri-State's supplier, has access to Tri-State's contractual rights on the Western-RMR facilities" is without support.<sup>186</sup> Tri-State contends that these are contractual rights that Western-RMR granted to Tri-State, and they do not accrue to Basin Electric. Tri-State asserts that, therefore, NPPD's argument that "[i]t can be reasonably inferred that such assignment would be available to others, including SPP, on a non-discriminatory basis" is illogical and should be dismissed.<sup>187</sup>

84. Tri-State further argues that the Presiding Judge also appropriately found that NPPD's reliance on *ComEd* is misplaced. Tri-State asserts that the question in that case was whether ComEd could reach the PJM markets without AEP joining PJM at the same time because AEP's facilities formed the connection between ComEd and the other PJM transmission owners. Tri-State states that the Commission concluded that ComEd could join PJM without AEP joining at the same time because ComEd was assigning 500 MW of firm transmission reservations across AEP's transmission system to PJM with a receipt/delivery point on the ComEd transmission system and a receipt/delivery point on the PJM transmission system. Tri-State states that, without this path, ComEd, the transmission owner joining the RTO, would not have had access to its RTO's marketplace. Tri-State asserts that, by contrast, here Tri-State's transmission facilities are not isolated from the remainder of the SPP transmission system. Tri-State notes that all parties agree that Tri-State's facilities are interconnected with NPPD's facilities in Zone 17 at numerous points and that there is a single point of interconnection between Tri-State's facilities and Zone 19. Tri-State contends that, as a result, there is no need to assess contract rights between Tri-State and non-SPP transmission owners to determine whether the transmission facilities that Tri-State transferred to SPP's functional control

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<sup>185</sup> *Id.* at 22-23.

<sup>186</sup> *Id.* at 25-26 (citing NPPD Brief on Exceptions at 32).

<sup>187</sup> *Id.* (citing NPPD Brief on Exceptions at 32-33).



are sufficiently integrated with the SPP transmission system for Tri-State's load to participate in the SPP market, as was the case in *ComEd*.<sup>188</sup>

85. Tri-State contends that the record here is clear that Tri-State has such access even without its contractual rights over the Western-RMR facilities. Moreover, Tri-State asserts that, even if the Commission considered NPPD's argument on this point, this argument fails on a second front. According to Tri-State, the Commission in *ComEd* explained that the relevant firm transmission reservations could be assigned to PJM, but here there is no evidence that Tri-State's contractual rights to service over the Western-RMR facilities are assignable.<sup>189</sup>

86. Tri-State also argues that the Presiding Judge was correct to ignore NPPD's speculation concerning the possibility that Western-RMR might join SPP as a transmission owner and place its Eastern Interconnection facilities in SPP. Tri-State states that NPPD itself calls this a "possibility"<sup>190</sup> and has acknowledged that there is no evidence that Western-RMR will actually join SPP.<sup>191</sup> Tri-State asserts that the Presiding Judge correctly found that it was "speculative to assume that SPP will obtain functional control of these facilities . . . by Western-RMR joining SPP" and ruled that "facilities outside of the SPP system will not be considered in deciding Tri-State's zonal placement within SPP."<sup>192</sup> Accordingly, Tri-State states that the Presiding Judge properly struck NPPD's extra-record presentation relating to the Mountain West Transmission Group. Tri-State states that NPPD has once again included this presentation as an appendix to its Brief on Exceptions,<sup>193</sup> as well as "a *non-binding* letter of understanding to hold detailed discussions with SPP about the *possibility* of membership in SPP."<sup>194</sup> Tri-State argues that therefore, as was the case at the time the Presiding Judge made his ruling, there is no evidence that Western-RMR is pursuing SPP membership with plans to place its

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<sup>188</sup> *Id.* at 26-28.

<sup>189</sup> *Id.* at 28-29.

<sup>190</sup> *Id.* at 48 (citing NPPD Initial Brief at 28).

<sup>191</sup> *Id.* (citing NPPD Initial Brief at 28).

<sup>192</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 307).

<sup>193</sup> *Id.* at 49 (citing NPPD Brief on Exceptions at 52, App. C).

<sup>194</sup> *Id.* (citing NPPD Brief on Exceptions at 55, App. D) (emphasis added by Tri-State).

transmission facilities under SPP's functional control or that the Commission would approve such a proposal.<sup>195</sup>

87. Tri-State also argues that the Presiding Judge correctly determined that Tri-State is embedded in Zone 17. Tri-State notes that the Presiding Judge explained that "neither NPPD nor Tri-State has a physical path to all of its loads without using the facilities of the other entity, and managing the facilities as a single system under the NETS Agreement has allowed Tri-State and NPPD to avoid duplicative construction."<sup>196</sup> Tri-State asserts that the record supports the Presiding Judge's conclusion on this point.<sup>197</sup>

88. Tri-State also asserts that NPPD's argument that Tri-State's transmission facilities cannot be considered embedded in Zone 17 if they are not "surrounded" by NPPD's facilities disregards another commonly used definition of the term "embed," which is "to make something an integral part of."<sup>198</sup> Tri-State further contends that NPPD's argument also disregards the Initial Decision's conclusion that facilities outside of the SPP system should not be considered in the analysis of embeddedness.<sup>199</sup> Accordingly, Tri-State asserts that the Commission should reject NPPD's argument that Tri-State's facilities are not embedded in Zone 17 because they are not surrounded by only NPPD facilities.<sup>200</sup>

**b. SPP**

89. SPP argues that the Presiding Judge properly concluded that Tri-State's ATRR was less than the ATRR of the existing pricing zone with the smallest ATRR and that this

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<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 29 (citing Initial Decision, 158 FERC ¶ 63,004 at P 296).

<sup>197</sup> *Id.* (citing Ex. TS-001 at 17:12-13, 20:1-2; Ex. TS-027 at 13:18-22; Ex. TS-032 (NPPD response to TS-NPPD 1.15 acknowledging that NPPD does not have the ability, solely through use of its own facilities, to serve its entire load in Zone 17 without the use of Tri-State's facilities in that zone); Ex. TS-013 at 5 (affidavit of NPPD's Contracts Manager Mr. Rod Rinne acknowledging that "neither party has the ability, solely through the use of its own facilities, to serve all of its load in Western Nebraska.")).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 296).

<sup>200</sup> *Id.* at 30.

supported SPP's proposed placement of Tri-State in Zone 17.<sup>201</sup> SPP asserts that analyzing the size of a new transmission owner's ATRR helps to ensure that zones are large enough to internalize reliability problems and that transmission customers pay an appropriate share for access to the entire SPP transmission system. SPP notes that Trial Staff takes issue with SPP witness Mr. Bourne's statement that the ATRR Criterion is intended to "create a big enough zone so that reliability problems are internalized and in the solution to those problems, we don't *unintentionally transfer cost to other zones*."<sup>202</sup> SPP explains that Trial Staff contends that, by putting Tri-State in Zone 17, SPP has unintentionally transferred costs to other zones. SPP asserts that this argument misconstrues the point of Mr. Bourne's testimony, which clearly refers to the potential need to construct transmission upgrades in the future to resolve reliability issues, not to the "cost shift" of legacy transmission facilities, as argued by NPPD and Trial Staff in this proceeding.<sup>203</sup>

90. SPP asserts that the Presiding Judge's findings regarding the geographic scope of Tri-State's transmission system are supported by the record. SPP notes that the Presiding Judge explained that the addition of Tri-State's system does not expand the SPP footprint beyond its previous borders, but instead only fills gaps in the system. SPP asserts that the record shows that the area into which Tri-State's transmission facilities extend lies entirely within the existing boundaries of the SPP system. SPP contends that NPPD's claim that the Presiding Judge ignored Tri-State's larger-than-average geographic scope does not stand up to scrutiny. Specifically, SPP states that SPP's witness Mr. Bourne provided testimony explaining that the addition of 300 miles of Tri-State transmission lines to SPP's transmission system results in an increase to the SPP footprint of only one-half of one percent and that Tri-State's service territory of approximately 22,000 square miles across sparsely populated areas also represents only three percent of SPP's 575,000 square-mile footprint.<sup>204</sup> SPP asserts that NPPD's comparison of Tri-State to the size of existing transmission pricing zones<sup>205</sup> misses the point because there are other factors not

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<sup>201</sup> SPP Brief Opposing Exceptions at 11-15.

<sup>202</sup> *Id.* at 13-14 (citing Trial Staff Brief on Exceptions at 33) (emphasis in original).

<sup>203</sup> *Id.* at 14.

<sup>204</sup> *Id.* at 15-16 (citing Ex. No. SPP-001 at 16:11-17).

<sup>205</sup> *See* NPPD Brief on Exceptions at 26-27.

present with Tri-State that demonstrate that those existing zones each formed separate, coherent systems such that creation of a separate zone was logical.<sup>206</sup>

91. SPP also disagrees with NPPD's assertion that "[t]he record makes it clear that SPP never even analyzed whether the 22,000 square-mile size of Tri-State's footprint is large enough to address SPP's concern about reliability issues with solutions that are localized to the extent possible."<sup>207</sup> SPP asserts that the record demonstrates that SPP's concern is valid because Tri-State's and NPPD's transmission facilities are significantly intermingled, including forming a transmission loop, making it nearly impossible to localize reliability issues within a Tri-State-only zone.<sup>208</sup>

92. SPP also argues that Trial Staff's and NPPD's contention that the Presiding Judge erred in finding that more points of interconnection equals a higher degree of integration misses the mark. SPP asserts that, throughout the course of this proceeding, SPP has explained that the purpose of applying its zonal placement criteria is to determine whether the new transmission owner's transmission facilities are significantly interconnected or interdependent with those of an existing transmission owner, such that the two transmission owners' systems constitute a cohesive whole. SPP contends that examining the number of interconnections between a new transmission owner's facilities and the facilities of an existing transmission owner is a strong indicator of integration; thus, the greater the number of interconnections between a new transmission owner's facilities and the facilities in an existing pricing zone, the greater the likelihood that the facilities are interdependent upon each other and operated as an integrated whole.<sup>209</sup>

93. SPP argues that the Presiding Judge's conclusion that the NETS Agreement demonstrates substantial integration between Tri-State's and NPPD's western Nebraska transmission facilities is well-reasoned and supported by substantial evidence. SPP explains that the Presiding Judge listed many features of the NETS Agreement to

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<sup>206</sup> SPP Brief Opposing Exceptions at 16 (citing, e.g., Tr. at 168:12-16 (Bourne) (explaining that Lincoln Electric System was placed in its own pricing zone because it had a substantially larger ATRR than other existing zones, it previously operated under its own tariff, it previously operated as its own NERC Balancing Authority, and it had a cohesive transmission system); Ex. No. SPP-003 at 16:15-17:9 (noting the same factors for Lincoln Electric System plus the fact that Lincoln Electric System served considerably more load than does Tri-State)).

<sup>207</sup> *Id.* (citing NPPD Brief on Exceptions at 26).

<sup>208</sup> *Id.* at 16-17.

<sup>209</sup> *Id.* at 19-20 (citing Ex. No. SPP-001 at 12:19-22; 12:1-4).

demonstrate that the facilities that were developed under it form an integrated whole such that placing them in the same zone is just and reasonable. Specifically, SPP states that the Initial Decision notes the undisputed evidence that the NETS Agreement provides “for the joint planning, designing, constructing, operating, and maintaining of both Tri-State’s and NPPD’s transmission facilities in which their systems were treated as though they were owned by only one party.”<sup>210</sup> SPP asserts that this is an arrangement that is wholly unique to NPPD and Tri-State.<sup>211</sup> In addition, SPP explains that the Presiding Judge also stated that the NETS Agreement provides for a level of interconnectedness and interdependence “beyond mere collaboration” that “demonstrate[s] the need of each party’s facilities to efficiently serve their aggregate customers in a reliable fashion.”<sup>212</sup> SPP then notes that the Presiding Judge explained that the NETS Agreement represents an agreement “with distinctive provisions that demonstrate a high degree of integration” that resulted in the development of “facilities that were developed to benefit NPPD, Tri-State, and their customers.”<sup>213</sup>

94. SPP contends that these findings are supported by the language of the NETS Agreement. SPP asserts that the express purpose of the NETS Agreement is to “establish a joint transmission system for the Parties’ mutual benefit and joint use.”<sup>214</sup> SPP states that the NETS Agreement establishes and details a joint transmission system consisting of portions of Tri-State’s and NPPD’s individual systems, called the “NPPD/Tri-State Electric Transmission System” or “NETS.”<sup>215</sup> SPP explains that Exhibit B to the NETS Agreement lists in detail all of the facilities that Tri-State and NPPD have committed to the NETS Agreement transmission system, which Tri-State and NPPD “agree are of

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<sup>210</sup> *Id.* at 20 (citing Initial Decision, 158 FERC ¶ 63,004 at P 290).

<sup>211</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at PP 290-91 (finding that the NETS Agreement is unlike any of the agreements that NPPD has with other neighboring entities); *see also* Ex. No. SPP-022 (containing NPPD’s response to SPP-NPPD 2.13, indicating that NPPD does not have any agreements with any other entities involving joint planning and operation of NPPD facilities with such entities under a “Single-Entity Concept”)).

<sup>212</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 291).

<sup>213</sup> *Id.* at 20-21 (citing Initial Decision, 158 FERC ¶ 63,004 at P 292).

<sup>214</sup> *Id.* at 21 (citing Ex. No. TS-003 at 6).

<sup>215</sup> *Id.* (citing Ex. No. TS-003 at 9 § 2.01).

mutual benefit to both and [therefore] constitute NETS [transmission facilities].”<sup>216</sup> SPP then states that, under the NETS Agreement, additions of high-voltage transmission facilities are planned using the “Single-Entity Concept,” which is defined as “a concept used in planning, designing, constructing, operating, and maintaining a transmission system *where the system is treated as though it were owned by only one Party.*”<sup>217</sup> SPP explains that the concept is applied to avoid duplication of facilities and ensure a reliable joint transmission system at the least cost, which results in a single integrated transmission system that is owned by, and provides reliable transmission service to, both Tri-State and NPPD to serve their respective loads.<sup>218</sup>

95. SPP also contends that the Presiding Judge correctly found that Tri-State’s facilities are embedded within the facilities of Zone 17. SPP states that, although NPPD asserts that “embedded” means “surrounded,” NPPD does not cite to anything to show that this is the only interpretation of the term and, in fact, “embed” also means “to make something an integral part.”<sup>219</sup> SPP argues that, here, Tri-State’s transmission facilities form an integral part of the NETS transmission system along with NPPD’s NETS Agreement facilities, as is demonstrated by the number of interconnections, the intermingling of NPPD’s and Tri-State’s transmission facilities (including the transmission loop of intermingled NPPD and Tri-State facilities), and the fact that neither Tri-State nor NPPD could serve all of their respective loads without relying on the other’s facilities.<sup>220</sup>

96. SPP asserts that NPPD’s arguments ignore or downplay the significantly larger number of direct interconnections that Tri-State has with NPPD’s transmission facilities (i.e., six) than with any other SPP Zone (i.e., one),<sup>221</sup> the substantial transfer capacity at Tri-State’s and NPPD’s interfaces as compared to other interfaces,<sup>222</sup> and the substantial

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<sup>216</sup> *Id.* (citing Ex. No. TS-003 at 9 § 2.02).

<sup>217</sup> *Id.* (citing Ex. No. TS-003 at 12 § 3.09) (emphasis added by SPP).

<sup>218</sup> *Id.* at 21-22 (citing Ex. No. TS-003 at 12 § 3.09).

<sup>219</sup> *Id.* at 22-23.

<sup>220</sup> *Id.* at 23.

<sup>221</sup> *Id.* at 24 (citing Initial Decision, 158 FERC ¶ 63,004 at P 295).

<sup>222</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 295).

intermingling of Tri-State's and NPPD's transmission facilities.<sup>223</sup> SPP argues that NPPD also gives short shrift to the fact that, were it not for Tri-State's NETS facilities, NPPD could not have served all of its loads over the past forty years without undertaking considerable additional investment.<sup>224</sup>

97. SPP also contends that the record does not support NPPD's arguments that there is "commercial integration" between Tri-State and Zone 19.<sup>225</sup> SPP argues that Tri-State's arrangement to receive supply to serve its load from resources that required transmission service across different zones is not unique and that NPPD also receives supply from Zone 19 resources to serve its load. SPP states that such arrangements are consistent with one of the Commission's primary goals in establishing RTOs and requiring open access transmission, which was to foster competitive energy markets to provide load connected to one transmission owner's system the ability to access alternative generation supply on other transmission systems.<sup>226</sup>

98. Moreover, SPP argues that NPPD's discussion of Basin Electric's arrangements to deliver to Tri-State's loads actually undermines, rather than underscores, NPPD's claim of significant integration between Tri-State and Zone 19. SPP asserts that this is because the discussion shows that Basin Electric took Integrated System network integration transmission service to deliver Basin Electric network resources to interconnections with the Tri-State system, and from there Tri-State used its own arrangements on its own system, on NPPD's system, and on Western-RMR facilities to deliver the output the rest of the way. SPP contends that, in other words, the Integrated System interface served as a hand off point after which additional transmission service was needed to reach Tri-State loads. SPP asserts that this shows the independence of Tri-State's transmission system from the Integrated System.<sup>227</sup>

99. SPP also states that the Presiding Judge was correct in rejecting NPPD's arguments that Tri-State's interconnections with non-SPP Western-RMR transmission facilities should be considered. SPP contends that, contrary to NPPD's argument, there is

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<sup>223</sup> *Id.* (citing SPP Initial Brief at 22; *see also* Ex. No. TS-001 at 16:20-17:1 (summarizing Mr. Steinbach's testimony regarding the comingling of Tri-State's and NPPD's facilities to form a 345 kV/115 kV loop in western Nebraska).

<sup>224</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at PP 293, 296).

<sup>225</sup> *Id.* at 27 (citing NPPD Brief on Exceptions at 26).

<sup>226</sup> *Id.* at 27-28.

<sup>227</sup> *Id.* at 29-30.

no evidence in the record to conclude that SPP has any right to use Tri-State's purported contract rights over the Western-RMR facilities, nor that SPP is able unilaterally to use the rights that any of its members possess over facilities that are not under SPP's functional control. SPP argues that NPPD's claim that "it can be reasonably inferred that such assignment would be available to others, including SPP"<sup>228</sup> is unsupported because there is no evidence that any such assignment is actually permitted. SPP contends that the only evidence in the record is that the relevant Western-RMR transmission facilities have not been transferred to SPP's functional control.<sup>229</sup>

100. SPP further asserts that the Presiding Judge correctly found that NPPD's reliance on *ComEd* to support its argument regarding contract rights on the Western-RMR transmission facilities is inapposite. SPP argues that the Presiding Judge correctly found that *ComEd* was distinguishable from this case because *ComEd* was not already connected to PJM like Tri-State is to SPP, and because in that case PJM had already been assigned the relevant contract rights, which has not occurred in this case. Moreover, SPP states that, in *ComEd*, the Commission had already accepted AEP's proposal to transfer functional control of its facilities to PJM, which is not the case here.<sup>230</sup>

101. In addition, SPP argues that the Presiding Judge properly rejected NPPD's argument that the potential entry of Western-RMR into SPP should be considered. SPP asserts that Western-RMR has not, in fact, joined SPP, and NPPD's alleged evidence of Western-RMR's potential membership is speculative and only shows a non-binding intention to discuss the possibility of joining SPP.<sup>231</sup> SPP contends that NPPD's argument asks the Commission to determine the cost shift that might occur if: (1) the Mountain West Transmission Group successfully integrates into or otherwise forms a new RTO; (2) then, as a result, Western-RMR decides that it is problematic to continue to leave its two remaining transmission lines located in the Eastern Interconnection outside of an RTO; (3) then, on that basis, Western-RMR transfers functional control of the two lines to SPP; and (4) then SPP determines, based on its independent zonal placement analysis, that Western-RMR's lines should be placed in

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<sup>228</sup> *Id.* at 31 (citing NPPD Brief on Exceptions at 32-33).

<sup>229</sup> *Id.* at 31-32.

<sup>230</sup> *Id.* at 33-34.

<sup>231</sup> *Id.* at 34-36.



Zone 17. SPP argues that the Presiding Judge was correct in disregarding an argument based on this level of conjecture.<sup>232</sup>

102. SPP also asserts that the Presiding Judge properly accorded Trial Staff witness Ms. Hsiung's testimony no weight. SPP argues that Opinion No. 474 does not support Ms. Hsiung's testimony because, in Opinion No. 474, the Commission recognized only that, for purposes of determining whether to roll-in the costs of certain transmission facilities into the transmission provider's rates, any degree of integration is sufficient. SPP asserts that its zonal placement analysis requires a consideration not of *whether* to integrate transmission facilities into the existing system's rates, but *where* within the system it makes the most sense to do so. Accordingly, SPP asserts that its analysis is for a different purpose than the Commission's analysis in Opinion No. 474.<sup>233</sup>

**c. Western**

103. Western argues that the Commission should deny NPPD's argument that the Western-RMR transmission facilities are relevant to SPP's zonal placement determination. Western states that the relevant Western-RMR facilities have not been placed under the SPP Tariff and that SPP thus cannot provide transmission service over them. Western asserts that neither SPP nor Western-RMR have decided that Western-RMR assets will be placed under the SPP Tariff, or that any of these assets will be placed in a particular zone on particular terms. Western further explains that, in any event, such a proposal would require a new and separate tariff filing under section 205 of the FPA, at which time NPPD and others would have the opportunity to intervene and protest the terms of such filing. Accordingly, Western contends that the Presiding Judge correctly determined that, in this proceeding, it was speculative to assume that SPP will obtain functional control of the Western-RMR facilities.<sup>234</sup>

104. Western also argues that the Commission should disregard NPPD's alleged evidence regarding the prospect of Western-RMR joining SPP. Western asserts that the letter attached as an appendix to NPPD's Brief on Exceptions merely indicates that the Mountain West Transmission Group is holding discussions with SPP about membership. Western states that the letter does not suggest that the Mountain West Transmission Group, Western-RMR, or SPP have reached a decision on membership or specific terms

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<sup>232</sup> *Id.* at 35-37.

<sup>233</sup> *Id.* at 37-41.

<sup>234</sup> Western Brief Opposing Exceptions at 9-11.

of membership, including which assets will be transferred, zonal placement of such assets, and ATRR issues.<sup>235</sup>

105. Western argues that, contrary to NPPD's assertions, the Presiding Judge did not ignore arguments about Tri-State's commercial integration with the Integrated System and now, Zone 19. Western asserts that, in fact, the Presiding Judge explicitly and thoroughly addressed these arguments in the Initial Decision.<sup>236</sup> Western asserts that, in any event, NPPD's commercial integration argument is meritless. Western argues that the evidence at hearing demonstrated that zonal placement determinations in SPP depend upon a determination of where new transmission facilities fit within the existing SPP system, and the location of power resources is not relevant to this analysis. Accordingly, Western contends that, in analyzing the propriety of SPP's zonal placement of Tri-State's transmission facilities, the Presiding Judge correctly placed little weight on Tri-State's commercial relationships and the location of Tri-State's supply resources.<sup>237</sup>

#### **4. Commission Determination**

106. We affirm the Presiding Judge's finding that the operational characteristics of the Tri-State transmission facilities under SPP's functional control, including their integration and interdependence with existing SPP transmission facilities, support SPP's proposed placement of Tri-State in Zone 17. In particular, the NETS Agreement demonstrates substantial integration and interdependence between Tri-State's facilities and NPPD's Zone 17 facilities because the Tri-State and NPPD facilities under the NETS Agreement were developed and operated as an integrated whole. Moreover, it is undisputed that Tri-State has more interconnections with Zone 17 than with any other SPP zone, and that Tri-State's interconnections with Zone 17 have more than twice the transfer capacity than Tri-State's interconnections with other SPP zones. In addition, we agree with the Presiding Judge that it is not appropriate to consider Tri-State's interconnections with non-SPP transmission facilities when determining an appropriate zonal placement for Tri-State within SPP.<sup>238</sup> Accordingly, as discussed further below, we find that the record demonstrates that the operational characteristics of the Tri-State transmission facilities under SPP's functional control support SPP's proposed placement of Tri-State in Zone 17.

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<sup>235</sup> *Id.* at 11-13.

<sup>236</sup> *Id.* at 14 (citing Initial Decision, 158 FERC ¶ 63,004 at PP 115, 171, 212, 362).

<sup>237</sup> *Id.* at 14-15.

<sup>238</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at P 305.

107. The record shows that SPP considered a range of factors when determining Tri-State's zonal placement. SPP explained that such factors included: (1) the scope and configuration of the new transmission owner's transmission facilities; (2) whether the new facilities form a coherent system within SPP's existing system; (3) whether the new facilities are significantly integrated with the facilities of other transmission owners; and (4) the extent to which the new facilities can function independently of other transmission owners.<sup>239</sup> In particular, SPP considered the size of Tri-State's existing transmission facilities, in terms of ATRR and geography, and the extent to which Tri-State's facilities were integrated with or embedded in an existing SPP zone.<sup>240</sup> In considering all of these factors, SPP produced an analysis of Tri-State's transmission facilities and their relation to the existing SPP transmission system that supports SPP's placement of Tri-State in Zone 17. We find that the size of Tri-State's ATRR, its geographic scope (which fills a gap in SPP's footprint rather than expanding it), and the substantial evidence of integration with the existing transmission facilities in Zone 17 support the Presiding Judge's finding that SPP's proposed placement of Tri-State in Zone 17 is just and reasonable.

108. Trial Staff argues that placing Tri-State in Zone 17 shifts costs to existing Zone 17 customers.<sup>241</sup> Trial Staff asserts that this contradicts Mr. Bourne's testimony that the ATRR Criterion and Geographic Expansion Criterion are intended to avoid unintentionally transferring costs to other zones.<sup>242</sup> We agree with SPP that this argument misinterprets Mr. Bourne's testimony, which refers to the possibility of unintentionally shifting the costs of future transmission upgrades needed to resolve reliability issues on the new transmission owner's system to other zones, not the shifting of costs of existing transmission facilities.<sup>243</sup> Trial Staff argues that shifting the costs of Tri-State's existing transmission facilities contradicts the purpose of the ATRR Criterion and Geographic Expansion Criterion, but Mr. Bourne's testimony explains that the purpose is to avoid unintentionally shifting the costs of future transmission upgrades. Thus, we disagree with assertions that SPP's analysis of Tri-State's ATRR and geographic scope produced a result that was contrary to its purpose, which is to avoid

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<sup>239</sup> See *id.* P 101 (citing Ex. SPP-001 at 7:1-6).

<sup>240</sup> See *id.* PP 267-269; 290-296.

<sup>241</sup> See Trial Staff Brief on Exceptions at 33.

<sup>242</sup> See *id.*

<sup>243</sup> See SPP Brief Opposing Exceptions at 13-14.

unintentionally transferring costs of future transmission upgrades needed to resolve reliability issues on the new transmission owner's system to other zones.

109. With respect to NPPD's argument that the ATRR Criterion should not be relied upon as a strict rule,<sup>244</sup> we find that this criterion did not operate as a strict rule here that overruled other record evidence supporting the use of a separate price zone. Instead, the record demonstrates that SPP considered multiple factors in making its determination, including the ATRR Criterion. As discussed above, the record shows that it is just and reasonable to include Tri-State in Zone 17 because of the long history of the joint planning, coordination, and operation of Tri-State's and NPPD's transmission facilities in Zone 17, Tri-State's significant integration with Zone 17, the small size of Tri-State's ATRR, and the fact that the geographic scope of Tri-State's facilities filled a gap in SPP's geographic footprint, rather than expanding that footprint. Although not determinative by itself, Tri-State's relatively low ATRR compared to the ATRRs of other existing SPP zones indicated that it may not be appropriate to place Tri-State in its own separate zone. This is one factor supporting SPP's ultimate decision to place Tri-State in Zone 17. For these and the other reasons discussed below, the Presiding Judge found that SPP had demonstrated that it was just and reasonable to place Tri-State in Zone 17. We agree, and therefore dismiss NPPD's argument that SPP applied the ATRR Criterion as a strict rule that overruled other evidence supporting the use of a separate pricing zone.

110. We also find NPPD's argument that SPP did not consider Tri-State's geographic size<sup>245</sup> to be unpersuasive. As Tri-State notes, although Mr. Bourne acknowledged in his cross-examination testimony that if a prospective transmission owner's ATRR is below the threshold in the ATRR Criterion then SPP "would not normally look at the second test,"<sup>246</sup> he does not state that SPP did not review the Geographic Expansion Criterion in this case. Contrary to his statement about what SPP would do in the abstract, the record shows that Mr. Bourne did address the Geographic Expansion Criterion in both his direct and rebuttal testimony.<sup>247</sup> Moreover, regardless of NPPD's allegations about whether SPP considered Tri-State's geographic size, the record contains significant evidence regarding the geographic scope of Tri-State's transmission system, the location of that system in relation to the existing SPP system, and the implications of creating a separate

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<sup>244</sup> See NPPD Brief on Exceptions at 23, 25-26.

<sup>245</sup> See *id.* at 26-27 (citing Tr. 243:5-15 (Bourne)).

<sup>246</sup> See Tr. 243:5-15 (Bourne).

<sup>247</sup> See Tri-State Brief Opposing Exceptions at 16 (citing Ex. SPP-001 at 16:17-21; Ex. SPP-003 at 16:4-17:9).

zone with a geographic scope that is too small to internalize reliability problems.<sup>248</sup> We find this evidence to be sufficient to support the Presiding Judge's finding that, along with other facts and circumstances, including the size of NPPD's ATRR and the evidence of Tri-State's integration and interdependence with Zone 17, Tri-State's geographic size supported a finding that it is just and reasonable for SPP to place Tri-State in Zone 17. The fact that Tri-State's service territory represents a relatively large geographic area does not show that it is inappropriate to place Tri-State in Zone 17 given that Tri-State has a long history of integration, joint planning, and interdependence with the facilities in Zone 17 and it is only adding approximately 300 miles of transmission lines to the 60,944 miles of existing transmission facilities in SPP's footprint.

111. Trial Staff argues that the Presiding Judge and SPP assume a direct relationship between the magnitude of Tri-State's ATRR and the scope of its transmission facilities.<sup>249</sup> We disagree. The Presiding Judge's reasoning and SPP's analysis did not assume a direct relationship between the magnitude of Tri-State's ATRR and the scope of its transmission facilities, but rather looked at both factors precisely because, as Trial Staff notes, the magnitude of a new transmission owner's ATRR and its geographic size are not necessarily correlated. If the Presiding Judge and SPP assumed that the two criteria were directly related, then there would have been no need to consider both - they could have considered ATRR and assumed geographic scope, or considered geographic scope and assumed ATRR. By considering both the ATRR Criterion and the Geographic Expansion Criterion, the Presiding Judge and SPP made it possible to identify whether one but not both of the factors indicated that a separate zone was appropriate, for example if Tri-State's geographic scope significantly expanded SPP's footprint despite a small ATRR, or if Tri-State had a large ATRR despite a small geographic scope. Accordingly, we disagree that the Presiding Judge and SPP's analysis assumed a direct relationship between the magnitude of Tri-State's ATRR and the scope of its facilities.

112. We agree with the Presiding Judge that the long history of joint planning and operation of the Tri-State and the NPPD transmission facilities as a single, cohesive whole pursuant to the NETS Agreement demonstrates substantial integration of their transmission systems.<sup>250</sup> The express purpose of the NETS Agreement is to "establish a joint transmission system for the Parties' mutual benefit and joint use."<sup>251</sup> The NETS Agreement goes on to provide that "[t]he objective of this Agreement is to provide for

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<sup>248</sup> See, e.g., Initial Decision, 158 FERC ¶ 63,004 at PP 261-263; 267-269.

<sup>249</sup> Trial Staff Brief on Exceptions at 35.

<sup>250</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 290.

<sup>251</sup> Ex. No. TS-003 at 6.

planning, constructing, operating, and maintaining an *integrated, interconnected*, adequate, and reliable *joint* electric power transmission system to serve the Parties' customers in Western Nebraska."<sup>252</sup> Similarly, the NETS Agreement provides that "[t]he Parties hereby establish a *joint transmission system* made up of portions of their respective electric systems."<sup>253</sup> The agreement further provides that plans for the addition of high voltage transmission facilities to the NETS Agreement facilities will be developed using the "Single-Entity Concept," which is a "concept used in planning, designing, constructing, operating, and maintaining a transmission system where the system is treated as though it were owned by only one Party."<sup>254</sup> In addition, the NETS Agreement provides for an "Annual Equalization Payment" to be made "from one Party to the other to make the benefits of each Party commensurate with its costs."<sup>255</sup>

113. These provisions of the NETS Agreement demonstrate that Tri-State's transmission facilities and NPPD's transmission facilities are highly integrated and interconnected, intended to serve the customers of both parties, and treated as a joint transmission system that is owned by a single party. As the Presiding Judge explained, "the NETS Agreement provided for the joint planning, designing, constructing, operating, and maintaining of both Tri-State's and NPPD's transmission facilities in which their systems were treated as though they were owned by only one party."<sup>256</sup> The level of integration and joint planning, development, and operation contemplated in the NETS Agreement demonstrates that Tri-State's facilities and NPPD's facilities are integrated to a significant extent. Moreover, the NETS Agreement itself has been in place for over 30 years,<sup>257</sup> indicating that the transmission systems of Tri-State and NPPD in western Nebraska have been planned and operated as a joint transmission system for, and become further integrated over, decades.

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<sup>252</sup> *Id.* at 7 (emphasis added).

<sup>253</sup> *Id.* at 9 (emphasis added).

<sup>254</sup> *Id.* at 12.

<sup>255</sup> *Id.* at 11.

<sup>256</sup> Initial Decision, 158 FERC ¶ 63,004 at P 290.

<sup>257</sup> See Ex. No. TS-003 at 5 (showing execution date of June 8, 1984). In addition, a predecessor agreement indicates that the coordinated planning and operation has occurred for over 40 years. See Ex. No. TS-012 (including a Memorandum of Agreement between Tri-State and NPPD dated March 7, 1975).

114. The high level of integration evidenced in the NETS Agreement is corroborated by other record evidence regarding the physical transmission facilities of Tri-State and NPPD. As the Presiding Judge noted, it is undisputed that Tri-State's transmission facilities have at least five points of interconnection with Zone 17,<sup>258</sup> as compared to Tri-State's single point of interconnection with Zone 19.<sup>259</sup> We also agree with the Presiding Judge that it is undisputed that Tri-State's interconnections with Zone 17 have more than twice the capacity of Tri-State's single interconnection with Zone 19.<sup>260</sup> As discussed below, we find that under the facts and circumstances of this case, Tri-State's greater number of interconnections to Zone 17, with more than twice the capacity of Tri-State's single interconnection with Zone 19, are indicative of Tri-State's facilities being more highly integrated with Zone 17 and are relevant for determining whether SPP's proposed placement of Tri-State in Zone 17 is just and reasonable.

115. Moreover, the record shows that some of Tri-State's transmission facilities and NPPD's Zone 17 transmission facilities combine to form a 345 kV/115 kV loop of interconnected transmission facilities.<sup>261</sup> In addition, the record shows that neither NPPD nor Tri-State has a physical path to all of its loads without using the transmission facilities of the other entity, meaning that the two entities are dependent on each other's facilities to serve their respective loads.<sup>262</sup>

116. We agree with the Presiding Judge that NPPD failed to demonstrate that the NETS Agreement is not unique.<sup>263</sup> As the Presiding Judge noted, the four other agreements that NPPD asserted are similar to the NETS Agreement do not include provisions such as the Single-Entity Concept (which explicitly contemplates that the parties would develop a system that would serve both parties' customers) or the Annual Equalization Payment provision (which equalizes the parties' investment in the system as if the parties' transmission facilities were one combined system owned by a single entity). We agree

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<sup>258</sup> Initial Decision, 158 FERC ¶ 63,004 at P 290.

<sup>259</sup> *See id.* PP 294-295.

<sup>260</sup> *Id.* P 295.

<sup>261</sup> *See id.* P 108; SPP Brief Opposing Exceptions at 17, 23, 24 n.103; *see also* Ex. No. TS-001 at 18:20-19:1 (Tri-State witness Mr. Steinbach's testimony regarding Tri-State's and NPPD's facilities to form a 345 kV/115 kV loop in western Nebraska).

<sup>262</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at P 296; Ex. Nos. TS-001 at 17:12-15; TS-031; TS-032.

<sup>263</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at P 290.

with the Presiding Judge that, although the other agreements that NPPD proffered show joint coordination and planning between NPPD and other parties, in order to establish a level of integration similar to that for which the NETS Agreement provides, those agreements would need to demonstrate other, deeper levels of integration and mutual reliance on the parties' respective transmission facilities.<sup>264</sup> For example, the other agreements do not demonstrate that NPPD and the other parties rely on each other's facilities to serve their respective customers, that their respective systems were treated as a joint system owned by a single entity, or that the costs and benefits of joint operations were equalized as if a single entity owned the jointly operated facilities.

117. NPPD asserts that the Presiding Judge erred by concluding that the evidence that neither Tri-State nor NPPD has a physical path to its entire load without using the transmission facilities of the other entity, and that the management of the facilities as a single system under the NETS Agreement, demonstrates that Tri-State's facilities are embedded within Zone 17. NPPD bases this argument on its assertion that embedded means "surrounded," and Tri-State is not surrounded by NPPD's transmission system. However, "surrounded" is not the only common dictionary definition of "embedded." As SPP and Tri-State note, embed also means "to make something an integral part."<sup>265</sup> The record evidence shows that Tri-State's facilities are an "integral part" of Zone 17 because NPPD relies on Tri-State's facilities in order to serve its load and because NPPD's Zone 17 facilities and Tri-State's facilities have been jointly planned and operated as if they were a single transmission system owned by a single entity.

118. Moreover, NPPD puts undue emphasis on the fact that Tri-State's facilities are not completely surrounded geographically by NPPD's transmission system. SPP has explained that its zonal placement criteria include examining whether a new transmission owner's transmission facilities are embedded within the transmission facilities of existing transmission owners as a means of looking at a variety of factors. These factors include the scope and configuration of the new transmission owner's transmission facilities, whether the new facilities form a coherent system within SPP's existing system, whether the new facilities are significantly integrated with the facilities of other transmission owners, and the extent to which the new facilities can function independently of other transmission owners.<sup>266</sup> The record shows that SPP considered the extent to which Tri-State's facilities were embedded within the facilities of existing SPP transmission owners along with a variety of other factors in order to determine if Tri-State's facilities were a coherent, separate, independently functioning set of facilities or if they were a set of

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<sup>264</sup> See *id.* P 291.

<sup>265</sup> See SPP Brief Opposing Exceptions at 23; Tri-State Brief Opposing Exceptions at 29.

<sup>266</sup> See, e.g., SPP Brief Opposing Exceptions at 8.



facilities that was integrated and interdependent with the facilities of existing SPP transmission owners. The record demonstrates that Tri-State's facilities were interdependent with NPPD's Zone 17 facilities and did not form a separate, coherent system, which demonstrates that Tri-State's facilities are properly placed in Zone 17. The fact that Tri-State's facilities were not completely surrounded by NPPD's facilities does not change this fact.

119. Furthermore, we are not persuaded by NPPD's and Trial Staff's arguments that the Presiding Judge placed too much emphasis on the degree to which Tri-State's transmission facilities are integrated with existing transmission facilities in determining the proper zonal placement for Tri-State, or that he erred by finding that the greater number of points of interconnection between Tri-State and Zone 17 than between Tri-State and Zone 19 indicates that there is a higher degree of integration between Tri-State and Zone 17 than between Tri-State and Zone 19.<sup>267</sup> The extent to which Tri-State was integrated with existing transmission facilities, including the number of interconnections serving as evidence of that integration, were relevant considerations in determining the proper zonal placement for Tri-State. We agree with the Presiding Judge that if a new transmission owner like Tri-State is interconnected with facilities in an existing pricing zone, then both sets of facilities are likely to be operated as an integrated whole and the respective transmission owners are potentially interdependent upon each other to reliably and efficiently provide service to their customers.<sup>268</sup> Accordingly, the number of interconnections Tri-State had with existing SPP transmission facilities was relevant to determining whether Tri-State's facilities were interdependent upon and integrated with existing transmission facilities such that Tri-State's facilities should be placed in an existing zone, or if they were a separate independently functioning system that was more appropriately placed in a separate zone. Accordingly, we agree with the Presiding Judge that the degree to which Tri-State's transmission facilities are integrated with existing transmission facilities is relevant in determining zonal placement and that the greater number of interconnections between Tri-State and Zone 17 than between Tri-State and Zone 19 indicates that there is a higher degree of integration between Tri-State and Zone 17 than between Tri-State and Zone 19.<sup>269</sup>

120. NPPD also argues that the Presiding Judge erred by concluding that the degree of integration and operation of the new transmission owner's transmission facilities and existing SPP zones takes precedence over any cost shifts associated with zonal placement

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<sup>267</sup> See NPPD Brief on Exceptions at 27-30; Trial Staff Brief on Exceptions at 37-41.

<sup>268</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 279.

<sup>269</sup> *Id.*

decisions.<sup>270</sup> We disagree with NPPD's interpretation of the Initial Decision. The Presiding Judge did not find that the degree of integration of Tri-State's facilities with existing SPP facilities or the operation of Tri-State's facilities took precedence over the alleged cost shift. On the contrary, he considered the proffered evidence of Tri-State's integration with existing transmission facilities and the operation of Tri-State's facilities along with evidence related to cost shift issues as one of numerous facts and circumstances relevant to determining whether SPP's proposal was just and reasonable. In fact, the Presiding Judge acknowledged that the integration and operation of a new transmission owner's facilities may not always take precedence over cost shifts. He explained that "such a cost shift *may be* appropriate in light of the operational characteristics of the transmission facilities involved" and that although "the shifting cost responsibility for some degree of legacy cost is not *per se* unjust and unreasonable in the present case, there may be situations that warrant such a finding."<sup>271</sup> Accordingly, we reject NPPD's argument because the Presiding Judge did not conclude that integration takes precedence over cost shifting.

121. With regard to Trial Staff's assertion that the Presiding Judge erred by affording no weight to the testimony of Trial Staff witness Ms. Hsiung regarding degrees of integration, we find no error in the Presiding Judge's determination. Trial Staff alleges that Ms. Hsiung's testimony demonstrated that the Commission does not consider more interconnections to equate to a higher degree of integration.<sup>272</sup> Trial Staff states that Ms. Hsiung's testimony asserted that there are no degrees of integration and that the existence of more interconnections does not suggest more integration. Trial Staff further states that Ms. Hsiung explained that "once there is a finding of *any* degree of integration, there is no longer an issue of *whether* the facilities are integrated. There is no 'more' integrated or 'less' integrated."<sup>273</sup> However, we agree with SPP that Ms. Hsiung's position that there are no degrees of integration is distinguishable from the purpose of SPP's analysis of a new transmission owner's integration with existing transmission facilities.<sup>274</sup> The purpose of SPP's analysis is not to determine *whether* a new transmission owner's facilities are integrated with SPP's transmission system, but to determine *where* it makes the most sense to place those facilities (i.e., in their own zone or in an existing zone)

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<sup>270</sup> NPPD Brief on Exceptions at 8, 13, 27-30.

<sup>271</sup> Initial Decision, 158 FERC ¶ 63,004 at P 335.

<sup>272</sup> See Trial Staff Brief on Exceptions at 37-38.

<sup>273</sup> See *id.* at 40-41 (citing Ex. No. S-014 at 17:7-11) (emphasis added by Trial Staff).

<sup>274</sup> See SPP Brief Opposing Exceptions at 39-40.

when integrating a new transmission owner into the SPP transmission system. In other words, even if there is no “more” integrated or “less” integrated for purposes of determining *whether* facilities are integrated in a transmission system, that does not mean that there is no “more” or “less” integrated when determining *where* to best place those facilities for the purpose of integrating them into the SPP transmission system and rate design.

122. In addition, we find that the Presiding Judge did not err in affording no weight to Ms. Hsiung’s interpretation of Opinion No. 474. In Opinion No. 474, the Commission found that, for purposes of determining whether a transmission facility is a network facility whose costs should be rolled into the transmission provider’s rates, a showing of any degree of integration is sufficient.<sup>275</sup> The question in this case is distinguishable. The question is not whether Tri-State’s transmission facilities are integrated with SPP’s transmission system such that the costs of those facilities should be included in SPP’s rates, but where Tri-State’s facilities that are integrated with the SPP system are most appropriately placed within SPP’s system and rate design structure. Accordingly, whether any degree of integration is sufficient to demonstrate that a facility is a network facility for purposes of rolled in rate treatment is a different inquiry than whether degrees of integration and number of interconnections are relevant for determining where within an RTO’s system it is best to integrate a new transmission owner’s transmission facilities.

123. We also affirm the Presiding Judge’s finding that it is inappropriate to consider Tri-State’s interconnections with transmission facilities outside of the SPP system in determining Tri-State’s zonal placement.<sup>276</sup> The record evidence shows that the Western-RMR facilities with which Tri-State interconnects and which NPPD asserts demonstrate that Tri-State is integrated with Zone 19, are not under SPP’s functional control and that no rights over those facilities have been transferred to SPP’s functional control.<sup>277</sup> Accordingly, SPP cannot flow power over those facilities. Because the issue in this proceeding is where to integrate Tri-State into the SPP transmission system given the characteristics of Tri-State’s transmission facilities and SPP’s existing transmission system, and because the Western-RMR facilities are not part of SPP’s transmission system, we agree with the Presiding Judge that it is not appropriate to consider the Western-RMR facilities.

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<sup>275</sup> See Opinion No. 474, 108 FERC ¶ 61,084 at P 48.

<sup>276</sup> See Initial Decision, 158 FERC ¶ 63,004 at PP 305, 307.

<sup>277</sup> See, e.g., *id.* P 307.

124. NPPD argues that the Presiding Judge erred by not considering Tri-State's interconnections with the Western-RMR transmission facilities because it can be inferred that Tri-State's capacity rights on the Western-RMR facilities are assignable to SPP.<sup>278</sup> We find that NPPD's argument does not demonstrate that SPP can be assigned capacity rights on the Western-RMR facilities. NPPD does not provide any evidence that such an assignment to SPP is permitted by Tri-State's agreement with Western-RMR. We find it speculative to assume that such an assignment is possible without any evidence that the relevant agreement permits such assignment. Moreover, regardless of whether any such assignment of rights is possible, the record evidence shows that no such assignment has, in fact, occurred. Therefore, we find NPPD's argument that Tri-State's interconnections with Western-RMR facilities should be considered because of the alleged assignability of Tri-State's capacity rights to be unpersuasive.

125. We also find that NPPD fails to demonstrate that *ComEd* supports its position that Tri-State's interconnections with the Western-RMR transmission facilities should be considered and that the Presiding Judge erroneously concluded that *ComEd* is distinguishable.<sup>279</sup> We agree with the Presiding Judge that *ComEd* is distinguishable from this case. First, in *ComEd*, the new transmission owner, ComEd, was not directly connected to PJM and needed AEP's facilities to access PJM's markets.<sup>280</sup> Here, Tri-State is directly connected to SPP's existing transmission system; thus, there is no need to consider the Western-RMR facilities, which are not under SPP's functional control, to determine whether Tri-State can integrate into SPP and access its markets.<sup>281</sup> Second, in *ComEd*, PJM had been assigned contract rights that allowed it access to transmission capacity over AEP's transmission system. Here, SPP has not been assigned any rights to capacity on the Western-RMR facilities. Accordingly, we find that *ComEd* does not demonstrate that the Western-RMR facilities should be considered in evaluating SPP's proposed zonal placement of Tri-State.

126. We also disagree with NPPD's assertion that the Presiding Judge should have considered the possibility of Western-RMR joining SPP and that he erred by striking the presentation that NPPD submitted relating to the Mountain West Transmission Group and its intentions to potentially join an RTO.<sup>282</sup> It was reasonable for the Presiding Judge to not consider the possibility of Western-RMR joining SPP in evaluating SPP's

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<sup>278</sup> NPPD Initial Brief at 32-33.

<sup>279</sup> *Id.* at 34-35.

<sup>280</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at P 305.

<sup>281</sup> *See id.* P 306.

<sup>282</sup> NPPD Brief on Exceptions at 52-55.

proposed zonal placement of Tri-State and the resulting rate because, at the time the record closed in this proceeding, Western-RMR was not a member of SPP and the record did not contain evidence of the specific terms and conditions that would be applicable to the integration of Western-RMR and its transmission facilities into SPP such as which specific Western-RMR transmission facilities would be integrated into SPP, and in which zone they would be placed. In order for the Presiding Judge to have accurately considered the effect of Western-RMR's SPP membership on SPP's specific proposal in this proceeding, he would have needed additional certainty regarding whether Western-RMR would become a member of SPP and the specific terms and conditions that would be applicable to the integration of Western-RMR and its transmission facilities into SPP.

127. NPPD asserts that the Presiding Judge erred by "by ignoring the long history of Tri-State's commercial and physical integration with the Integrated System,"<sup>283</sup> which was "substantial evidence of Tri-State's integration with Zone 19."<sup>284</sup> However, contrary to NPPD's assertions, we find that the Presiding Judge did not disregard NPPD's arguments on this point. The Presiding Judge addressed these commercial integration arguments explicitly in the Initial Decision.<sup>285</sup>

128. Moreover, regardless of the exact language in the Initial Decision, the record shows that these arguments regarding commercial integration do not demonstrate that placing Tri-State in Zone 17 is unjust and unreasonable. The fact that Tri-State's loads are served by Basin Electric generating facilities, and that Basin Electric used transmission service on facilities outside of Zone 17 to deliver the output of those resources partway to those loads, does not provide any evidence of how Tri-State's physical transmission facilities integrate with the existing SPP physical transmission system. It is the answer to this question - how the new transmission owner's transmission facilities fit within the existing SPP transmission system, and not the location of generation resources used by the new transmission owner to serve its load - that SPP uses, among other considerations, to determine zonal placement for a new transmission owner. In any case, it is not uncommon for transmission owners to obtain power from generation resources that are located in areas remote from their transmission systems. Indeed, NPPD also receives supply from Zone 19 resources to serve its load.<sup>286</sup>

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<sup>283</sup> See *id.* at 13, 30.

<sup>284</sup> *Id.* at 32.

<sup>285</sup> See Initial Decision, 158 FERC ¶ 63,004 at PP 115, 171, 212, 362, 367-368.

<sup>286</sup> See *id.* P 115; SPP Reply Brief at 15 (citing Exhibit No. TS-034 (affidavit of Todd Swartz on behalf of NPPD), Docket Nos. ER14-2850-000, et al., ¶¶ 8-11 (Oct. 2, 2014)) (discussing NPPD's receipt of federal preference power from resources located in

129. In addition, as SPP explains, NPPD's discussion of the transmission service arrangements used to deliver power from Basin Electric's generation resources to Tri-State loads actually undermines, rather than underscores, NPPD's claim of significant integration between Tri-State and Zone 19.<sup>287</sup> As SPP notes, NPPD's explanation of these arrangements shows the interdependent nature of NPPD's and Tri-State's transmission systems because Tri-State required the use of NPPD's transmission facilities to deliver power from the interface with the Integrated System to Tri-State loads.<sup>288</sup>

**D. Consideration of Alternative Zonal Placements**

**1. Initial Decision**

130. In assessing SPP's proposed placement of Tri-State in Zone 17, the Presiding Judge also considered the alternative zonal placements that parties proposed. Specifically, NPPD alleged that it would be just and reasonable for SPP to place Tri-State in Zone 19 or in its own, separate, pricing zone.<sup>289</sup> Trial Staff took the position that the creation of a separate zone for Tri-State is the best option.<sup>290</sup>

131. The Presiding Judge found that NPPD's proposal to place Tri-State in Zone 19 was unjust and unreasonable.<sup>291</sup> He explained that, compared to the high degree of integration between Tri-State's transmission facilities and Zone 17, Tri-State has only one interconnection with Zone 19 with limited capacity. The Presiding Judge further stated that NPPD provided no evidence to support the assertion that the Integrated System was planned or operated jointly in a coordinated and integrated fashion with Tri-State's transmission facilities for the mutual benefit of Tri-State and Integrated System transmission owners and their loads. He found that Zone 19 had its own "Integrated System" before the components joined SPP, just as the Tri-State and NPPD transmission facilities under the NETS Agreement were an integrated system before NPPD - and now

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Zone 19 to serve NPPD customers in Zone 17); Tr. At 304:3-5 (Bourne) (noting that NPPD receives approximately 475 MW from generation resources located in Zone 19); SPP Initial Brief at 44-45.

<sup>287</sup> See SPP Brief Opposing Exceptions at 29-30.

<sup>288</sup> See *id.*

<sup>289</sup> See, e.g., Initial Decision, 158 FERC ¶ 63,004 at PP 361-362; 369, 374-375.

<sup>290</sup> See *id.* P 248; Trial Staff Brief on Exceptions at 67.

<sup>291</sup> Initial Decision, 158 FERC ¶ 63,004 at P 368.

Tri-State - joined SPP in Zone 17. He explained that, accordingly, the Integrated System and the Tri-State and NPPD NETS Agreement transmission system were planned and have operated separately from each other. The Presiding Judge further explained that the evidence in the record demonstrates that Tri-State's transmission facilities developed under the NETS Agreement were developed explicitly to serve both Tri-State loads and NPPD western Nebraska loads in Zone 17.<sup>292</sup>

132. The Presiding Judge also found that NPPD's and Trial Staff's proposal to place Tri-State in its own zone was unjust and unreasonable.<sup>293</sup> He adopted the arguments in South Central's briefs as his rationale for his finding. He noted that South Central was arguing against the creation of multiple small pricing zones within an RTO because the proliferation of small pricing zones may impede the achievement of the benefits RTOs are intended to provide, such as joint planning and development, efficiency, and increased reliability.<sup>294</sup> He further explained that the record does not have a detailed comparative cost analysis that would show the benefits, if any, or detriment of placing Tri-State in its own zone vis-à-vis Zone 17 and that there is no detailed description of the cost and reliability impact or benefit of placing Tri-State in its own zone.<sup>295</sup>

## **2. Briefs on Exceptions**

### **a. NPPD**

133. NPPD argues that the Presiding Judge erred by finding that it is unjust and unreasonable to place Tri-State in Zone 19. NPPD argues that it has demonstrated that Tri-State is highly integrated with the Integrated System.<sup>296</sup> NPPD argues that SPP made it clear that it would not change the way it operates its system regardless of whether Tri-State is placed in Zone 17, Zone 19, or its own separate pricing zone.<sup>297</sup> NPPD asserts that, however, the Presiding Judge failed to consider or to even describe NPPD's position

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<sup>292</sup> *Id.* PP 367-368.

<sup>293</sup> *Id.* PP 376-377.

<sup>294</sup> *Id.* P 376.

<sup>295</sup> *Id.* P 377.

<sup>296</sup> NPPD Brief on Exceptions at 59.

<sup>297</sup> *Id.* at 58, 60-61.

that zone placement will have no impact on how SPP operates its system.<sup>298</sup> NPPD also asserted that the Presiding Judge's overemphasis on degrees of integration supports its argument that Zone 19 was a more appropriate zonal placement for Tri-State.<sup>299</sup> NPPD argues that the Presiding Judge ignored Tri-State's history of commercial integration with Zone 19 and Tri-State's integration with the Western-RMR transmission facilities, both of which, according to NPPD, demonstrate Tri-State's integration with Zone 19.<sup>300</sup>

134. NPPD also argues that the requisite degree of connectivity required for zonal placement should be no different than that required for a new transmission owner to join SPP under circumstances where it is connected to only one existing transmission owner. NPPD then states that there is no dispute that Tri-State is sufficiently integrated to Zone 19 to support placement in that zone if it was the only point of interconnection between Tri-State and SPP. Accordingly, NPPD argues that the Commission should find that placement of Tri-State in Zone 19 would be a just and reasonable alternative to placing Tri-State in Zone 17.<sup>301</sup>

135. NPPD further contends that the Presiding Judge erred by rejecting placement of Tri-State in its own zone. NPPD states that the Presiding Judge found that the proposal to place Tri-State in its own zone "fail[ed] to account for any other potential consequence of such placement."<sup>302</sup> NPPD asserts that this finding ignores the fact that SPP would not change the way it operates its system if Tri-State were placed in a separate zone, such that placing Tri-State in its own zone would not be detrimental from an operational standpoint.<sup>303</sup>

136. NPPD also argues that the Presiding Judge rejected NPPD's position because it failed to provide a detailed comparative cost analysis that would show the benefits, or detriment, of placing Tri-State in its own zone vis-à-vis Zone 17.<sup>304</sup> NPPD argues that

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<sup>298</sup> *Id.* at 60.

<sup>299</sup> *See id.* at 28.

<sup>300</sup> *Id.* at 30-35.

<sup>301</sup> *Id.* at 59-60.

<sup>302</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 377).

<sup>303</sup> *Id.* (citing Ex. No. NPP-008, 16:9-11; Ex. No. NPP-014; Tr. 196:23 – 197:5 (Bourne)).

<sup>304</sup> *Id.* at 63 (citing Initial Decision, 158 FERC ¶ 63,004 at P 377).



this finding improperly shifts the burden to NPPD to perform a cost/benefit analysis when SPP is the party with the burden of proof.<sup>305</sup>

137. In addition, NPPD argues that the Presiding Judge erred by adopting the arguments contained in South Central's brief as a basis for rejecting the proposal to place Tri-State in its own zone. NPPD states that these arguments contended that placing Tri-State in a separate zone in this case would encourage a proliferation of small pricing zones, which would impede the achievement of benefits that RTOs are intended to provide. NPPD contends that this finding is misplaced because the only support the Presiding Judge cites is SPP witness Mr. Bourne's testimony concerning SPP's first two zonal placement criteria, and as NPPD argued previously, that testimony asserts that the purpose of those criteria is to ensure that new customers pay their fair share of the costs of the entire SPP transmission system, but here the criteria subsidized the new transmission owner, Tri-State.<sup>306</sup>

**b. Trial Staff**

138. Trial Staff argues that the Presiding Judge "completely ignored" Trial Staff's arguments in support of a stand-alone zone for Tri-State and instead adopted, with no analysis, the arguments in South Central's briefs as the rationale for rejecting that proposal.<sup>307</sup> Trial Staff asserts that South Central's brief in this proceeding "came out of the blue" because, before filing its brief, South Central did not serve any discovery, file any testimony, or enter an appearance at any pre-hearing conference or at the hearing.<sup>308</sup> In addition, Trial Staff contends that South Central's arguments about the potential harms of creating multiple small pricing zones is unsupported by record evidence or legal precedent.<sup>309</sup>

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<sup>305</sup> *Id.* at 63-64.

<sup>306</sup> *Id.* at 64-66.

<sup>307</sup> Trial Staff Brief on Exceptions at 59.

<sup>308</sup> *Id.* at 59-60.

<sup>309</sup> *Id.* at 61-64.

### **3. Briefs Opposing Exceptions**

#### **a. Tri-State**

139. Tri-State argues that an increase in single transmission owner zones, like the stand-alone Tri-State zone proposed by NPPD and Trial Staff, would be inconsistent with the Commission's policy of encouraging the expansion of RTOs, greater coordination of transmission planning, and greater investment in transmission infrastructure. Tri-State also asserts that, because the costs of lower voltage transmission facilities in a zone are allocated to that zone regardless of which loads benefit from the facilities, small zones would be required to bear the cost of constructing new transmission facilities even though those facilities may benefit transmission customers outside their zones.<sup>310</sup>

#### **b. SPP**

140. SPP contends that, because it demonstrated that its proposal under section 205 of the FPA to place Tri-State in Zone 17 was just and reasonable, it was unnecessary for the Presiding Judge to consider NPPD's and Trial Staff's alternative proposals. SPP argues that, regardless, the Presiding Judge explained that neither Trial Staff nor NPPD provided sufficient information to support their proposals to place Tri-State's transmission facilities in a separate zone or in Zone 19.<sup>311</sup> SPP disputes NPPD's argument that "placement of Tri-State in Zone 19 or its own separate pricing zone would not cause SPP to change the way it operates its system,"<sup>312</sup> asserting that SPP witness Mr. Bourne explained how creating an insufficiently sized zone may inadvertently allow a new transmission owner to avoid its minimum fair cost of the entire SPP transmission system or result in a discrepancy between cost causation and cost allocation if a reliability issue on one system necessitates an upgrade to another system.<sup>313</sup> SPP further argues that Messrs. Bourne, Steinbach, and Sanders also testified extensively regarding why the

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<sup>310</sup> Tri-State Brief Opposing Exceptions at 55-56.

<sup>311</sup> SPP Brief Opposing Exceptions at 69-71.

<sup>312</sup> *Id.* at 72 (citing NPPD Brief on Exceptions at 60-61).

<sup>313</sup> *Id.*

proposal to place Tri-State's facilities in Zone 17 is just and reasonable, and placement in Zone 19 or a separate zone is not.<sup>314</sup>

**c. South Central**

141. South Central argues that Trial Staff and NPPD attack the Presiding Judge's rejection of the proposal to place Tri-State in its own separate zone, but do not directly refute the rationale the Presiding Judge cited supporting the decision. South Central contends that, contrary to Trial Staff's and NPPD's arguments regarding the lack of record evidence for policy-driven conclusions about the impact of small pricing zones, the negative consequences of multiple small zones that are described in the South Central briefs, and acknowledged in the Initial Decision, are based on the adverse consequences likely to occur in response to a reversal of existing SPP practice and Commission policy as set forth in *PJM Interconnection, LLC*,<sup>315</sup> and the Commission's orders underpinning the development and growth of RTOs.<sup>316</sup>

142. South Central argues that it is irrefutable that bringing all transmission facilities in a region under RTO or ISO control is a long-standing policy goal of the Commission.<sup>317</sup> South Central asserts that placing the Tri-State facilities in a new pricing zone solely to insulate existing Zone 17 ratepayers from the small rate impact that would result from Tri-State's placement in Zone 17 would set the stage for the same treatment of any transmission owner joining SPP, thus causing a profusion of small pricing zones. South Central contends that such a result would pose barriers to achieving the benefits that RTOs are intended to provide, namely joint planning and development, efficiency, sharing of cost among all parties that benefit, and increased reliability. South Central argues that this is the case because if integrated transmission facilities are placed in separate zones, SPP likely would be faced with the continuous problem of local reliability solutions for one zone being best solved by new lines or upgrades in another zone, a

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<sup>314</sup> *Id.* at 73 (citing Ex. No. SPP-001 at 12:4-7, 13:11-16, 17:6-18; Ex. No. SPP-003 at 7:7-15, 7:21-8:3; Ex. No. TS-001 at 16:11-18:2, 24:17-21; Ex. No. WES-001 at 14:16-20, 16:12-16, 17:14-18:4).

<sup>315</sup> 94 FERC ¶ 61,295 (2001) (*Allegheny*).

<sup>316</sup> South Central Brief Opposing Exceptions at 7-8.

<sup>317</sup> *Id.* at 8 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,200-01 ("Our objective is for all transmission-owning entities in the Nation, including non-public utility entities, to place their transmission facilities under the control of appropriate RTOs in a timely manner."))).

result in which both the costs and benefits of a reliability solution are not fully assignable to a single zone.<sup>318</sup>

143. South Central notes that the record shows that “[n]either NPPD nor Tri-State has the ability, solely through its own facilities, to serve its entire load in western Nebraska”<sup>319</sup> and that “[t]he Tri-State and NPPD systems are so highly integrated that changes in the load characteristics of one party may have a direct impact on the facilities of the other party.”<sup>320</sup> Accordingly, South Central argues that placing Tri-State in its own separate zone would mean that any proposed facility expansion or modification would have to be evaluated across both systems and, given the different pricing zones, the cost-benefit analysis of any proposed project will be skewed against construction and result in inefficient transmission planning. South Central contends that this would prevent SPP from achieving its primary RTO function of efficient regional planning, infrastructure development, and operation of the grid. South Central further asserts that this would likely drive SPP towards more expensive, less optimal local upgrades.<sup>321</sup>

144. South Central also argues that Trial Staff’s criticism of South Central’s failure to submit testimony deserves no weight. South Central asserts that Trial Staff does not cite any precedent for this criticism and that South Central is not aware of any Commission rules or precedent that require a party to submit testimony or participate in a trial-type proceeding. Moreover, South Central states, the Commission does not condition intervention as a party on such a commitment.<sup>322</sup>

#### **4. Commission Determination**

145. We deny exceptions concerning alternative zonal placement. The question before the Commission is whether SPP has shown that its proposal to place Tri-State in Zone 17, and the resulting rate, is just and reasonable.<sup>323</sup> Accordingly, we need not determine

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<sup>318</sup> *Id.* at 8-10.

<sup>319</sup> *Id.* at 10 (citing Ex. No. TS-01 at 21:23-22:3).

<sup>320</sup> *Id.* (citing Ex. No. TS-01 at 18:5-9).

<sup>321</sup> *Id.* at 10-11.

<sup>322</sup> *Id.* at 18.

<sup>323</sup> *See, e.g., Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,072, at P 27 (2009) (“[T]he proponent of a rate change has the burden of demonstrating that the proposal is just and reasonable and not unduly discriminatory or preferential.”).

whether NPPD's and Trial Staff's proposed alternatives are also just and reasonable or whether SPP's proposal is more or less reasonable than alternatives.<sup>324</sup> As discussed herein, the record demonstrates that SPP's proposal is just and reasonable; therefore it is unnecessary to also determine whether the alternative proposals are themselves just and reasonable.<sup>325</sup>

146. As discussed above, NPPD's arguments that the Presiding Judge overemphasized degrees of integration, that he ignored Tri-State's history of commercial integration with Zone 19, and that he ignored Tri-State's interconnections with Western-RMR transmission facilities as evidence of Tri-State's integration with Zone 19 are unavailing.<sup>326</sup> There is sufficient evidence to demonstrate that SPP's proposal to place Tri-State in Zone 17 is just and reasonable despite these arguments.

147. NPPD argues that the Presiding Judge ignored NPPD's argument that placement of Tri-State in Zone 19 or its own separate pricing zone would not cause SPP to change the way it operates its system.<sup>327</sup> Although the Presiding Judge may not have explicitly addressed this specific argument, the fact that the Initial Decision does not address every piece of evidence or every argument advanced throughout the proceeding does not necessarily mean the Initial Decision is unreasoned or unsupported.<sup>328</sup>

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<sup>324</sup> See, e.g., *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) ("FERC has interpreted its authority to review rates under the FPA as limited to an inquiry into whether the rates proposed by a utility are reasonable - and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."), *cert denied*, 469 U.S. 917 (1984); *Oxy USA v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that proposed revisions "need not be the only reasonable methodology, or even the most accurate.").

<sup>325</sup> See, e.g., *S. Cal. Edison Co.*, 73 FERC ¶ 61,219, at 61,608 & n.73 (1995) ("Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.").

<sup>326</sup> See *supra* PP 121-132.

<sup>327</sup> See NPPD Brief on Exceptions at 60.

<sup>328</sup> See, e.g., *Cajun Elec. Power Coop., Inc. v. Gulf States Utils. Co.*, Opinion No. 388, 66 FERC ¶ 61,325, at 62,050 & n.92 (1994) ("There is no requirement that the presiding judge address every piece of evidence, one by one, in a voluminous record such as this one.")

148. Trial Staff takes issue with South Central filing an initial brief without filing testimony or attending the hearing,<sup>329</sup> but as South Central notes, Trial Staff does not cite any Commission rules or precedent that require a party that has properly intervened to serve discovery, submit testimony, or attend hearing in order to submit a brief. Accordingly, we do not agree with Trial Staff's argument on this point.<sup>330</sup> We also disagree that the Presiding Judge "completely ignored"<sup>331</sup> Trial Staff's arguments in support of a stand-alone zone for Tri-State. The Presiding Judge explained that in zones with relatively small ATRRs, customers would pay a disproportionately low share of the costs of accessing the entire SPP system, and that small zones would not permit the internalization of reliability issues.<sup>332</sup> In addition, he addressed the specific size of a Tri-State only zone, explaining that Tri-State had an ATRR that was less than the existing SPP zone with the smallest ATRR and that the addition of Tri-State only filled a gap in SPP's geographic footprint and did not expand it.<sup>333</sup> Moreover, we disagree that the Presiding Judge accepted South Central's arguments "unquestioningly and without analysis."<sup>334</sup> The record shows that he analyzed South Central's arguments. For example, he explained the potential detriments of creating a zone that is not sufficiently large,<sup>335</sup> that the proliferation of small pricing zones may impede the achievement of the benefits RTOs are intended to provide,<sup>336</sup> and that there is no detailed description of the cost and reliability impact or benefit of placing Tri-State in its own zone.<sup>337</sup> Accordingly, we find that the arguments by NPPD and Trial Staff do not support a finding that SPP's proposal is unjust and unreasonable, and we deny exceptions concerning alternative zonal placement.

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<sup>329</sup> Trial Staff Brief on Exceptions at 59-64.

<sup>330</sup> *See, e.g.*, Initial Decision 158 FERC ¶ 63,004, at PP 107, 278; SPP Brief on Exceptions at 18-19; Ex. No. SPP-003 at 17:20-25, 17:26-18:5; SPP Initial Brief at 47.

<sup>331</sup> Trial Staff Brief on Exceptions at 59.

<sup>332</sup> Initial Decision 158 FERC ¶ 63,004, at PP 261-263, 269.

<sup>333</sup> *Id.* PP 267-269.

<sup>334</sup> Trial Staff Brief on Exceptions at 62.

<sup>335</sup> Initial Decision 158 FERC ¶ 63,004, at PP 261-263, 269.

<sup>336</sup> *Id.* P 376.

<sup>337</sup> *Id.* P 377.

**E. Should Future Adjustments to the Alleged Cost Shift be Considered**

**1. Initial Decision**

149. As a part of the Presiding Judge's analysis of whether SPP's proposed Tariff revisions were just and reasonable in light of the alleged \$4.3 million cost shift from Tri-State's transmission customers to the existing transmission customers in Zone 17, he noted that the full amount of the cost shift would not remain static since there would be several factors that would increase or decrease this amount. The Presiding Judge explained that it was uncontested that each year Tri-State and NPPD's transmission formula rates will generate new ATRRs, and each year loading on the SPP transmission system will be different, which will alter the amount of the cost shift.<sup>338</sup> The Presiding Judge then found that "any adjustment to the alleged cost shift to Zone 17 customers that is known and measurable should be considered in the calculation of the alleged cost shift stemming from Tri-State's zonal placement."<sup>339</sup> The Presiding Judge then found that it was appropriate to consider factors that increase or reduce the alleged cost shift occurring five-to-seven years in the future.<sup>340</sup> In its initial brief, Tri-State had asserted three adjustments that would reduce the cost shift to NPPD from Tri-State's placement in Zone 17. First, Tri-State contended that there is a \$1.4 million reduction in the cost shift incurred by Zone 17 customers because of a "baseline" cost shift that will occur as a result of Tri-State joining SPP, regardless of Tri-State's zonal placement. Tri-State argued that this "baseline" cost shift will occur because, first, if Tri-State is placed in a zone other than Zone 17, then non-Tri-State Zone 17 load (i.e., NPPD and MEAN load) that is served directly from Tri-State transmission facilities would be transferred to the different zone along with Tri-State and pay \$1.2 million in higher rates applicable to that zone, and second, because Zone 17 customers will receive the benefit of \$200,000 in additional revenue to Zone 17 paid by Tri-State load in Zone 17 that is served by NPPD transmission facilities, regardless of the zonal placement of Tri-State's transmission facilities.<sup>341</sup> Second, Tri-State stated that there will be a \$1 million adjustment to Tri-State's ATRR reflecting elimination of Tri-State's \$1 million dollar payment to NPPD under the NETS Agreement that will occur with the termination of the NETS Agreement in November 2020.<sup>342</sup> Finally, Tri-State argued that the cost shift to NPPD

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<sup>338</sup> *Id.* P 357.

<sup>339</sup> *Id.* P 359.

<sup>340</sup> *Id.* P 356.

<sup>341</sup> *See id.* P 349; Tri-State Initial Brief at 17-18.

<sup>342</sup> Tri-State Initial Brief at 22.

from Tri-State's placement in Zone 17 will be reduced because future responsibility for approximately \$700,000 of Balanced Portfolio and regional costs under Schedule 11 of the SPP Tariff will be allocated to Zone 17 by 2023 and paid by Tri-State load if it is placed in Zone 17.<sup>343</sup> The Presiding Judge stated that the elimination of the \$1 million payment from the NETS Agreement, and the share of Zone 17's Balanced Portfolio and regional Schedule 11 costs that would be allocated to Tri-State, should be considered when assessing the cost-shift.<sup>344</sup> The Presiding Judge also dismissed NPPD's arguments against considering the \$1.4 million baseline cost shift.<sup>345</sup>

150. The Presiding Judge did not state the exact amount of total adjustments or cost shift that he ultimately considered, but explained that "[b]ased on the findings that the cost shift at issue here is not *per se* unjust and unreasonable, does not violate cost causation principles, and its impact on Zone 17 customers will be reduced over the next five to seven years, I find that the cost shift at issue here does not render Tri-State's proposed placement into Zone 17 unjust and unreasonable."<sup>346</sup>

## **2. Briefs on Exceptions**

### **a. NPPD**

151. NPPD disagrees that the amount of the cost shift should be adjusted for the future changes cited by Tri-State. According to NPPD, the Presiding Judge concluded that the initial \$4.3 million cost shift should be reduced to \$2.6 million to recognize known and measurable changes.<sup>347</sup> NPPD asserts that "[s]uch reduction consists of the scheduled termination of the NETS Agreement and elimination of the related \$1 million Annual Equalization Payment in November 2020, and Tri-State's estimated contribution of \$700,000 to the Balanced Portfolio costs scheduled to be allocated to Zone 17's

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<sup>343</sup> See *id.* at 20-21.

<sup>344</sup> Initial Decision, 158 FERC ¶ 63,004 at P 357.

<sup>345</sup> *Id.* PP 357-358. See also NPPD Initial Br. at 22 (citing Tr. 62:3-9 (Steinbach)) (arguing against Tri-State's assertion that the first-year cost shift resulting from Tri-State's placement in Zone 17 is reduced from \$4.3 million to \$2.9 million by the \$1.4 million baseline cost shift).

<sup>346</sup> *Id.* P 360.

<sup>347</sup> NPPD Brief on Exceptions at 47 (citing Initial Decision, 158 FERC ¶ 63,004 at PP 356-59).



Schedule 11 costs in 2023.”<sup>348</sup> NPPD argues that these amounts should not be viewed as a reduction in the annual cost shift to Zone 17 customers from \$4.3 million to \$2.6 million because the cost shift over the 10 year period from 2016 to 2026, even as adjusted by Tri-State, would be \$35 million, which constitutes an annual cost shift of \$3.5 million per year.<sup>349</sup>

152. Separately, NPPD argues that concern about theoretical reliability events and speculation that a remedy may create a misallocation of costs should not be the basis for imposing a known and significant \$4.3 million annual cost shift on Zone 17 customers that could be mitigated by placing Tri-State’s transmission facilities in their own zone or in Zone 19.<sup>350</sup>

153. In addition, NPPD contends that the Presiding Judge erred by failing to recognize that the cost shift to Zone 17 customers could increase if Western-RMR joins SPP in the future and is placed in Zone 17. NPPD asserts that, if Western-RMR’s facilities in the Western Interconnection become part of an RTO, then the two non-SPP Western-RMR transmission lines in western Nebraska would be the only Western-RMR lines not under the functional control of an RTO. NPPD argues that such isolation would more than likely lead to those last two lines being transferred to SPP’s functional control. NPPD contends that the Western-RMR facilities are highly integrated with Tri-State’s facilities and therefore “more than likely would be placed in the same zone as Tri-State.”<sup>351</sup> NPPD asserts that the transfer of those Western-RMR lines to SPP’s functional control would not be accompanied by any load and would cause the cost shift to Zone 17 customers to increase by an additional \$2 million per year. NPPD argues that this potential additional cost shift should be considered as a risk to existing Zone 17 customers.<sup>352</sup>

**b. Trial Staff**

154. According to Trial Staff, the Presiding Judge erroneously found that all of the mitigating factors, i.e., potential adjustments, should be considered in the cost shift

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<sup>348</sup> *Id.* at 51.

<sup>349</sup> *Id.* at 51-52 (citing NPPD Initial Brief at 26, n.95: \$4.3 million for 4.8 years until 2020=20.6 million; \$3.3 million for 2.2 years until 2023=7.3 million; \$2.6 million for 3.0 years=7.8 million; Total 35.7 million).

<sup>350</sup> *Id.* at 61.

<sup>351</sup> *Id.* at 53.

<sup>352</sup> *Id.* at 52-56.

calculation.<sup>353</sup> Trial Staff urges the Commission to reverse the findings of the Presiding Judge on this issue and determine that the mitigating factors that Tri-State espoused should not be considered in the cost shift calculation.<sup>354</sup> Trial Staff argues that the Presiding Judge erred in finding that offsetting reductions to the cost shift, which will not occur for several years, should be considered in the cost shift calculation. Trial Staff takes exception to the Presiding Judge's pronouncement that *any* adjustment to the cost shift that is known and measurable, no matter how long it may take to come into effect, should be considered because it elevates the interests of the incoming transmission owner above those of the existing transmission owners without justification.<sup>355</sup>

### 3. Briefs Opposing Exceptions

#### a. Tri-State

155. Tri-State contends that the Presiding Judge correctly considered Tri-State's proposed adjustments to the cost shift that NPPD alleged. Tri-State argues that the Presiding Judge correctly found that the five-to-seven year window of the known and measurable changes identified by Tri-State was "short enough . . . to foresee, with a reasonable degree of certainty, factors that may impact Tri-State's ATRR."<sup>356</sup> Contrary to NPPD's and Trial Staff's allegations, Tri-State argues it would be unreasonable to ignore short-to-long-term known and measurable cost impacts in evaluating the cost shift that results from a zonal placement.<sup>357</sup> Tri-State asserts that by taking into account the known and measurable changes, as well as the baseline cost shift that Zone 17 will experience regardless of the zone in which Tri-State is placed, the cost shift alleged by NPPD and Trial Staff is actually 1.8 percent to Zone 17, rather than the 8 percent cost shift that NPPD and Trial Staff have argued.<sup>358</sup>

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<sup>353</sup> Trial Staff Brief on Exceptions at 57 (citing Initial Decision, 158 FERC ¶ 63,004 at P 357).

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> Tri-State Brief Opposing Exceptions at 43-44 (citing Initial Decision, 158 FERC ¶ 63,004 at P 356).

<sup>357</sup> *Id.* at 47 (citing Initial Decision, 158 FERC ¶ 63,004 at P 356).

<sup>358</sup> *Id.* at 3, 39 (citing Tri-State Initial Brief at 23-24; Tri-State Reply Brief at 33-34).

**b. SPP**

156. SPP argues that the Presiding Judge was correct in considering known and measurable adjustments when considering the alleged cost shift. SPP asserts that the Presiding Judge's adoption of a seven year period for inclusion of known and measurable changes strikes a reasonable balance between focusing too narrowly on a single test year (as NPPD requests) and looking too far into the distant future for possible changes that cannot presently be known with any degree of certainty. SPP further contends that Trial Staff mischaracterizes the Presiding Judge's findings in alleging that he permitted adjustments based on any known and measurable change "no matter how long it may take to come into effect."<sup>359</sup> SPP asserts that, on the contrary, the Presiding Judge chose a reasonable test period of seven years for determining which changes to consider in assessing the cost shift and fully explained the basis for his decision.<sup>360</sup>

**4. Commission Determination**

157. We affirm the Presiding Judge's finding that any adjustment to the alleged cost shift to Zone 17 customers that is known and measurable within a five-to-seven year period in the future should be considered in calculating the cost shift in this case.<sup>361</sup> We find that, under the specific facts and circumstances of this case, the Presiding Judge's decision to consider the elimination of the \$1 million payment from the NETS Agreement, and the Balanced Portfolio and regional Schedule 11 costs that would be allocated to Zone 17, was reasonable and supported by the record. It was known that these changes would occur within a reasonable period in the future and the changes were measurable. Accordingly, we find that it was reasonable to consider these changes in calculating the alleged cost shift at issue in this case.

158. NPPD argues that these reductions should not be viewed as a reduction in the annual cost shift to Zone 17 customers from \$4.3 million to \$2.6 million because the cost shift, as adjusted by Tri-State, would be \$35 million over the 10-year period from 2016 through 2026, which constitutes an annual cost shift of \$3.5 million per year. NPPD asserts that the fact that the cost shift might be reduced by scheduled events in 2020 and 2023 does not mean the higher costs incurred during the first seven years of Tri-State's placement in Zone 17 can be ignored.<sup>362</sup> We are not persuaded by this argument because

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<sup>359</sup> SPP Brief Opposing Exceptions at 68 (citing Trial Staff Brief on Exceptions at 57).

<sup>360</sup> *Id.*

<sup>361</sup> See Initial Decision, 158 FERC ¶ 63,004 at PP 356, 359.

<sup>362</sup> NPPD Brief on Exceptions at 51-52.

we do not interpret the Presiding Judge's finding as ignoring the fact that the future events would not change the cost shift in the first seven years of Tri-State's zonal placement. The Presiding Judge found that these future changes should be considered, but he did not find that they should reduce the cost shift every year, even before they occur, nor did he explicitly find that the cost shift would be \$2.6 million per year, as NPPD suggests. Accordingly, NPPD's argument on this point misunderstands the Presiding Judge's findings and does not provide a basis on which to reverse them.

159. NPPD also asserts that the Presiding Judge erred by failing to recognize that the cost shift to Zone 17 customers could increase if Western-RMR joins SPP in the future and is placed in Zone 17.<sup>363</sup> As discussed above, it was reasonable for the Presiding Judge to not consider the possibility of Western-RMR joining SPP in evaluating SPP's proposed zonal placement of Tri-State and the resulting rate.<sup>364</sup> At the time the record closed in this proceeding, the record did not contain evidence of the specific terms and conditions that would be applicable to the future integration of Western-RMR into SPP, such as which specific Western-RMR transmission facilities would be integrated into SPP, and in which zone they would be placed. Therefore, the Presiding Judge did not have sufficient information to accurately consider the effect of Western-RMR's SPP membership on the cost shift alleged in this proceeding. Accordingly, we dismiss NPPD's argument that the Presiding Judge erred by not considering the effect of Western-RMR's possible future SPP membership on the cost shift.

160. Moreover, even if we do not consider the future adjustments to the alleged cost shift that the Presiding Judge considered, and we accept the value of the cost shift alleged by NPPD and Trial Staff, i.e. an 8 percent increase to existing Zone 17 rates, we still find that SPP's proposed Tariff revisions are just and reasonable in light of all of the facts and circumstances of the case. Among other factors, Tri-State's and NPPD's long history of jointly planning, coordinating, and operating transmission facilities in Zone 17, the significant integration of Tri-State's facilities with Zone 17, the size of Tri-State's ATRR, the fact that the geographic scope of Tri-State's facilities filled a gap in SPP's geographic footprint rather than expanding that footprint, and the benefits that Zone 17 customers have derived and continue to derive from Tri-State's transmission facilities demonstrate that SPP's proposed Tariff revisions are just and reasonable even if they resulted in an 8 percent increase to existing Zone 17 rates.

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<sup>363</sup> *Id.* at 52-56.

<sup>364</sup> *See supra* P 126.

**F. Is SPP's Proposed Placement of Tri-State Unjust and Unreasonable Because of the Alleged Cost Shift**

**1. Initial Decision**

161. The Presiding Judge ruled separately on (1) whether SPP's proposed zonal placement was unjust and unreasonable because of the alleged cost shift and (2) whether the alleged cost shift is consistent with cost causation principles.<sup>365</sup>

162. The Presiding Judge found that, "in the context of bringing additional assets into an RTO, shifting cost responsibility for some degree of legacy costs is not *per se* unjust and reasonable."<sup>366</sup> He also found that "such a cost shift may be appropriate in light of the operational characteristics of the transmission facilities involved here and other factors."<sup>367</sup> The Presiding Judge explained that "[w]hile I agree that cost shifts that may cause a significant rate increase for customers must be given fair consideration . . . I find that NPPD's and Trial Staff's argument asserting that the Commission would find unjust and unreasonable the resulting rate increase stemming from Tri-State's placement in Zone 17, is unsupported by the record evidence."<sup>368</sup>

163. The Presiding Judge further explained that, although he agreed that shifting cost responsibility for some degree of legacy cost is not *per se* unjust and unreasonable in the present case, there may be situations that warrant such a finding.<sup>369</sup> The Presiding Judge noted that cost shifts that result in significant rate increases to customers, but are unaccompanied by commensurate benefits, are unjust and unreasonable. He further explained that the Commission has not defined the term "significant," and he declined to define it as well. The Presiding Judge then stated that "[p]erhaps the Commission would do well in this instance to adopt Justice Potter Stewart's use of that colloquial expression: 'I know it when I see it' in determining 'significant' cost shifts."<sup>370</sup>

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<sup>365</sup> See Initial Decision, 158 FERC ¶ 63,004 at PP 329-335; 342-347.

<sup>366</sup> *Id.* P 335.

<sup>367</sup> *Id.*

<sup>368</sup> *Id.* P 329.

<sup>369</sup> *Id.* P 335.

<sup>370</sup> *Id.* P 332.

164. The Presiding Judge noted that Opinion No. 494<sup>371</sup> provided a “demonstration of when cost shifts may warrant Commission intervention.”<sup>372</sup> The Presiding Judge explained that, in that case, the Commission considered cost shifts as the rationale for rejecting challenges to PJM’s license plate rate design. He stated that, in Opinion No. 494, the Commission stated that “significant cost shifts would occur under any of the proposal[s], with some zones experiencing increases to their transmission cost responsibility in excess of 70 [percent].”<sup>373</sup> The Presiding Judge explained that, among the rejected proposals, the resulting cost shifts ranged from a 26.1 percent to a 73.2 percent increase in transmission cost responsibility. The Presiding Judge noted that the Commission explained that “cost shifts of this magnitude” supported rejection of the proposals.<sup>374</sup> He explained that, although Opinion No. 494 is not analogous, it provides a demonstration of when cost shifts may warrant Commission intervention.<sup>375</sup>

165. The Presiding Judge also stated that he found Tri-State’s reliance on *Allegheny* persuasive in its argument that the operation and integration of transmission facilities take precedence over cost shifts in zonal placement decisions. Specifically, the Presiding Judge noted that, although the resulting rate increase in this case may be higher than in *Allegheny*, the uncontroverted evidence regarding Tri-State’s facilities’ operation and integration with Zone 17 strongly supports Tri-State’s placement into Zone 17 because no other SPP pricing zone offers a comparable alternative.<sup>376</sup>

166. The Presiding Judge found that the alleged cost shift in this case was consistent with cost causation principles because the record indicated that the development and construction of Tri-State’s transmission facilities benefitted and continued to benefit Zone 17 customers, particularly NPPD customers. The Presiding Judge stated that, without Tri-State’s facilities, NPPD might have had to make considerable investments in transmission infrastructure to efficiently and reliably serve its customers.<sup>377</sup> He explained that the transmission facilities that were constructed under the NETS Agreement were

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<sup>371</sup> *PJM Interconnection, LLC*, Opinion No. 494, 119 FERC ¶ 61,063 (2007).

<sup>372</sup> Initial Decision, 158 FERC ¶ 63,004 at P 334.

<sup>373</sup> *Id.* (citing Opinion No. 494, 119 FERC ¶ 61,063 at P 59).

<sup>374</sup> *Id.* (citing Opinion No. 494, 119 FERC ¶ 61,063 at P 59).

<sup>375</sup> *Id.*

<sup>376</sup> *Id.* P 333 (citing *Allegheny*, 94 FERC at 62,078).

<sup>377</sup> *Id.* P 343.

built for the joint use and benefit of NPPD and Tri-State and their customers. Therefore, the Presiding Judge stated, it is reasonable to infer that NPPD and its customers in Zone 17 served by the NETS Agreement facilities may have caused a portion of the costs of those facilities, including the NETS Agreement facilities built by Tri-State.<sup>378</sup> Accordingly, the Presiding Judge found that the alleged cost shift resulting from Tri-State's placement in Zone 17 was consistent with the cost causation principle's requirement that the costs of transmission facilities be allocated "to the customers for whom they were constructed and whom they continue to serve."<sup>379</sup>

167. The Presiding Judge also noted that, because of the highly integrated nature of Tri-State's transmission facilities with NPPD's transmission facilities in Zone 17, allowing Tri-State to be placed in Zone 17 could potentially lessen cost causation concerns. He explained that, when two transmission owners' systems are highly integrated, the optimal solution to a reliability issue affecting one transmission owner's facilities may be to construct an upgrade to the other transmission owner's system. The Presiding Judge stated that, if the two systems are located in separate pricing zones, a potential disparity between cost causation and cost allocation may occur because some or all of the costs of an upgrade in one pricing zone to resolve a problem in another pricing zone could be allocated to customers in the zone in which the issue did not arise, and could allow customers in the zone in which the issue arose to escape some or all of the costs.<sup>380</sup>

## **2. Briefs on Exceptions**

### **a. NPPD**

168. NPPD argues that the Presiding Judge erred by not finding that Tri-State's placement in Zone 17 is unjust and unreasonable. Specifically, NPPD argues that the Seventh Circuit Court of Appeals has made it clear that the justness and reasonableness of an allocation of costs depends on whether it is accompanied by a demonstration of "at least roughly commensurate benefits."<sup>381</sup> NPPD asserts that there is no cost/benefit analysis or any other evidence demonstrating that the allocation of \$4.3 million of costs of Tri-State's transmission facilities to Zone 17 is roughly commensurate with any

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<sup>378</sup> *Id.* P 344.

<sup>379</sup> *Id.* P 346.

<sup>380</sup> *Id.* P 347.

<sup>381</sup> NPPD Brief on Exceptions at 8 (citing *ICC v. FERC*, 576 F.3d at 477).

alleged benefits that these facilities provide to Zone 17 customers.<sup>382</sup> Instead, according to NPPD, SPP's placement of Tri-State in SPP's Zone 17 results in an immediate 8 percent increase in costs to Zone 17 customers and a six percent increase over a 10-year period,<sup>383</sup> and Tri-State would reduce its responsibility for paying its own costs by 60 percent.<sup>384</sup>

169. NPPD argues that the only evidence in the record of any quantitative analysis of the benefits provided to NPPD's Zone 17 customers from the joint use of Tri-State's transmission facilities is the equalization payment formula in the NETS Agreement. According to NPPD, the formula demonstrates that Tri-State benefits more from using NPPD facilities than vice versa because Tri-State makes a \$1 million equalization payment to NPPD to equalize the costs and benefits of each party. NPPD argues it is ironic that the existence of the NETS Agreement is now being relied upon to support a conclusion that termination of the \$1 million Annual Equalization Payment, and shifting an additional \$4.3 million to NPPD and Zone 17 customers, is commensurate with the benefits received by these customers. NPPD notes that Tri-State notified its Board in April 2015 that Zone 17 was the most favorable zone placement for Tri-State and that it would produce a cost shift to NPPD that probably would need to be mitigated.<sup>385</sup>

170. In comparison, NPPD argues that placing Tri-State in Zone 19 instead "would result in an increase of only two tenths of one percent to customers in that zone,"<sup>386</sup> an amount NPPD claims "would be totally offset by additional revenue associated with existing Zone 17 load served from Tri-State facilities that would be transferred to Zone 19."<sup>387</sup> NPPD asserts it has also demonstrated that by placing Tri-State in its own separate zone, Tri-State would benefit from the inclusion of a \$1.2 million baseline cost shift of additional revenue attributable to 21.5 MW of existing Zone 17 load served off of Tri-State facilities that would be transferred to the new Tri-State pricing zone.<sup>388</sup>

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<sup>382</sup> *Id.* at 45.

<sup>383</sup> *Id.* at 8.

<sup>384</sup> *Id.* at 7, 9, 19, 21, 41, 65-66.

<sup>385</sup> *Id.* at 3 (citing Ex. No. NPP-013 at 22).

<sup>386</sup> *Id.* at 7.

<sup>387</sup> *Id.* at 56 (citing NPPD Initial Brief at 30).

<sup>388</sup> *Id.* at 10. According to NPPD, this 21.5 MW of load that would be transferred to the new Tri-State zone consists of 12.3 MW of NPPD load and 9.5 MW of MEAN load. *Id.* at 50 (citing Tr. 66:13-20). NPPD asserts the Presiding Judge erred in finding



According to NPPD, such additional revenue would reduce the revenue responsibility of Tri-State's existing load from \$7.2 million to \$6 million. Regardless of which zone Tri-State is placed in, NPPD argues that Tri-State has saved \$7.2 million per year in costs as a result of joining SPP.<sup>389</sup>

171. NPPD argues that the Presiding Judge erred in finding that "NPPD failed to proffer any evidence that the costs of the Tri-State facilities at issue here did not provide any quantifiable benefits to Zone 17 customers over the 40-year existence of the NETS Agreement."<sup>390</sup> NPPD contends that this finding "unlawfully shifts the burden to NPPD to prove that Zone 17 customers receive *no* quantifiable benefits from Tri-State facilities" and ignores NPPD's and Trial Staff's testimony demonstrating that the \$4.3 million cost shift to Zone 17 was not accompanied by commensurate benefits to Zone 17 customers.<sup>391</sup>

172. According to NPPD, SPP first argued in its reply brief that, because the NETS transmission facilities were constructed under the NETS Agreement for the joint use and benefit of NPPD and Tri-State and their customers, NPPD and its customers in Zone 17 served by the NETS facilities can be said to have caused some of the cost of those facilities (including those NETS facilities built by Tri-State) such that including those facilities in Zone 17 is consistent with cost causation principles. NPPD argues, however, that because this argument was raised for the first time in SPP's reply brief, NPPD filed a motion for leave to file a limited supplemental reply brief to address this new claim, which the Presiding Judge denied. NPPD requests that the Commission consider the arguments in its limited supplemental reply brief and includes the brief as a supplement to its Brief on Exception.<sup>392</sup>

173. NPPD further contends the Presiding Judge erroneously rejected evidence of cost-shift mitigation based on his findings that the creation of multiple small pricing zones may impede RTO benefits and that NPPD failed to provide a cost/benefit analysis. As to the first of these findings, NPPD argues that the Presiding Judge's finding was based on

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that this \$1.2 million baseline cost shift would be socialized by all load in Zone 17. *Id.* at 49 (citing Initial Decision, 158 FERC ¶ 63,004 at P 358).

<sup>389</sup> *Id.* at 62 (citing Tr. 83:14-25; Ex. No. NPP-28 (response to data request NPPD-TS 4.2(b))).

<sup>390</sup> *Id.* at 8.

<sup>391</sup> *Id.*

<sup>392</sup> *See Id.* at 44-45; App. A.

no record evidence or precedential support. Furthermore, NPPD asserts that the Presiding Judge failed to recognize the testimony of SPP witness Mr. Bourne that placement of Tri-State in its own pricing zone would neither change how SPP operates its system nor create any significant administrative burdens.<sup>393</sup> As to the Presiding Judge's latter finding, NPPD contends that it demonstrated that a separate Tri-State zone would benefit from the inclusion of \$1.2 million of additional revenue attributable to 21.5 MW of existing Zone 17 load served off of Tri-State facilities that would be transferred to the new Tri-State pricing zone. NPPD contends that such additional revenue would reduce the revenue responsibility of Tri-State's existing load from \$7.2 million to \$6 million. Under these circumstances, NPPD argues, the Presiding Judge's faulting NPPD for failing to account for "any other potential consequences" shifts to NPPD an impossible burden of proof.<sup>394</sup>

174. NPPD states that the Presiding Judge, to support his finding that the cost shift is not unjust and unreasonable, "relied upon the fact that the Commission has approved each of the nine multi-Transmission Owner zones in SPP without rejecting any zonal placements on the basis of unjust and unreasonable cost shifts, and without requiring mitigation of any cost shifts caused by a new Transmission Owner joining an existing zone."<sup>395</sup> NPPD argues that his reliance on this point is misplaced because cost shifting was not an issue presented to the Commission for resolution in any of those nine cases.<sup>396</sup>

175. NPPD also asserts that there is no basis for the Presiding Judge's reliance on Opinion No. 494's rejection of proposals with cost shifts ranging from 26.1 percent to 73.2 percent range as "a demonstration of when cost shifts may warrant Commission intervention."<sup>397</sup> NPPD argues that, in Opinion No. 494, the Commission cited examples of cost shifts ranging from 26.1 percent to 73.2 percent that would occur in the context of several rejected proposals to move away from a license plate rate design. NPPD contends that citing these cost shifts as examples of what the rejected proposals would

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<sup>393</sup> *Id.* at 10. (citing NPPD Initial Brief at 30; Tr. 196:23 – 197:5 (Bourne); Ex. No. NPP-008 at 13:3-10; Tr. 270:20 – 271:2 (Bourne)).

<sup>394</sup> *Id.*

<sup>395</sup> *See id.* at 36-37 (citing Initial Decision, 158 FERC ¶ 63,004 at P 332).

<sup>396</sup> *Id.* at 37.

<sup>397</sup> *Id.* at 38 (citing Initial Decision, 158 FERC ¶ 63,004 at P 334).

produce provides no basis for the Presiding Judge's suggestion that a cost shift of less than 26.1 percent can occur without evidence of commensurate benefits.<sup>398</sup>

176. NPPD alleges that the Presiding Judge's finding concludes that integration takes precedence over cost shifting, and that the Presiding Judge's reliance on *Allegheny* to support this proposition is misplaced. NPPD asserts that, in that case, the Commission did not find that operation and integration of transmission facilities takes precedence over cost shift concerns, but instead concluded that customers in the PPL Zone that were concerned about a cost shift received benefits from the Allegheny facilities that justified the zonal placement and the related rate increase at issue in that case. NPPD further states that the Commission noted that the Allegheny facilities "only interconnect with PPL."<sup>399</sup> NPPD asserts that this demonstrates that the relative degrees of integration between two zones and placement in another existing PJM zone were not issues in the *Allegheny* case. NPPD states that, although it may be appropriate to consider integration in assessing zonal placement of a new transmission owner, SPP overemphasizes the relative degree of integration as a driver for determining placement in an existing zone. Accordingly, NPPD asserts that the application of SPP's zonal placement criteria in this case "ignored all evidence of cost shifting" and did not produce a just and reasonable result.<sup>400</sup>

**b. Trial Staff**

177. Trial Staff argues that the Initial Decision has not supported its finding that the placement of Tri-State in Zone 17 satisfies the cost causation principle.<sup>401</sup> Trial Staff argues that there is no indication, apart from surmise of SPP, Tri-State, and the Presiding Judge, that the Tri-State transmission facilities at issue here have ever provided, or will ever provide, a benefit to Zone 17 customers. Trial Staff asserts that the record is devoid of any benefits analysis regarding the Tri-State legacy facilities.<sup>402</sup> Trial Staff asserts there is no indication that the other transmission owners in Zone 17 derive sufficient benefit to justify shifting 60 percent of Tri-State's legacy transmission costs to them.<sup>403</sup>

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<sup>398</sup> *Id.*

<sup>399</sup> *Id.* at 29 (citing *Allegheny*, 94 FERC at 62,078).

<sup>400</sup> *Id.* at 29-30.

<sup>401</sup> Trial Staff Brief on Exceptions at 56.

<sup>402</sup> *Id.* at 55.

<sup>403</sup> *Id.*

Trial Staff submits that NPPD witness Mr. Todd Swartz testified that, “by joining Zone 17, Tri-State will reduce its responsibility for paying its own costs by 60 [percent] by shifting \$4.3 million of its \$7.2 million ATRR to NPPD and other Zone 17 customers.”<sup>404</sup>

178. Trial Staff proposes five alternatives to prevent the cost shift that occurs by placing Tri-State in Zone 17. Trial Staff’s alternatives include: (1) direct SPP to place Tri-State in its own stand-alone pricing zone; (2) direct SPP to place Tri-State in Zone 19; (3) leave Tri-State in Zone 17, but mitigate the impact of the cost shifting by holding NPPD harmless of Tri-State’s legacy transmission costs; (4) leave Tri-State in Zone 17, but phase in the rates over the space of five to 10 years to alleviate the impact of the cost shifting, as contemplated by the Commission in Order No. 2000;<sup>405</sup> and (5) direct SPP to create a sub-zone within Zone 17 that would allocate the costs of Tri-State’s existing transmission facilities to the customers who benefit from the use of those facilities.<sup>406</sup> Trial Staff states that it believes creation of a Tri-State-only zone is the best option to resolve the issue, in order to prevent excessive and unwarranted cost shifting and provide benefits to all parties.<sup>407</sup>

179. Trial Staff asserts that the record in this proceeding shows that establishing a stand-alone Tri-State zone would result in a cost shift to other customers of \$1.04 million, or 14 percent of Tri-State’s ATRR.<sup>408</sup> Trial Staff contends that Tri-State would still be able to shed some of the costs of its legacy transmission facilities, and the increase in the Zone 17 ATRR would be much lower than is the case with Tri-State being placed in Zone 17.<sup>409</sup>

180. According to Trial Staff, in Order No. 2000 the Commission concluded that where it is possible to calculate costs and benefits, it is desirable to eliminate cost shifting by

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<sup>404</sup> *Id.* at 43 (citing Ex. No. NPP-001 at 3:17-18).

<sup>405</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>406</sup> Trial Staff Brief on Exceptions at 67.

<sup>407</sup> *Id.* at 63, 67.

<sup>408</sup> *Id.* at 63 (citing Ex. No. S-015 at 6:14-16 (citing Ex. No. S-017)).

<sup>409</sup> *Id.*

using cost-causality principles instead.<sup>410</sup> Additionally, Trial Staff cites the Commission’s finding in Opinion No. 494-A “that the sunk costs of investment in existing facilities should continue to be recovered from customers for whom these costs were originally incurred, and that reallocation would produce unacceptable cost shifts.”<sup>411</sup> Trial Staff notes, in particular, that, in Opinion No. 494, the Commission reaffirmed that the introduction of RTOs was not intended to abandon basic cost-of-service principles, and “[s]hifting cost responsibility for existing transmission facilities also would do nothing to promote economic efficiency—a primary goal of our transmission pricing policy.”<sup>412</sup> Trial Staff further notes that the Commission reiterated that “the effect of transmission pricing on participation in RTOs, including the effect of cost shifts, has been among the Commission’s central concerns since introducing RTOs.”<sup>413</sup> Trial Staff additionally asserts that in upholding the Commission’s determination in Opinion No. 494, the court held that the Commission “is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members” ...but that that “all approved rates must reflect to some degree the costs actually caused by the customer who must pay for them.”<sup>414</sup> Trial Staff asserts that SPP has made a point in this proceeding of stating explicitly that it does not take into consideration benefits, cost shifting, or rates when determining zonal placement.<sup>415</sup> According to Trial Staff, SPP’s testimony is silent on the issue of cost shifting.

181. Trial Staff states that “[t]he Initial Decision makes much of the fact that the Commission approved each of SPP’s nine multi-[transmission owner] zones.”<sup>416</sup> Trial Staff asserts that the Commission was not confronted with cost shift arguments in those

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<sup>410</sup> *Id.* at 46 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,219 and n.738).

<sup>411</sup> *Id.* at 49 (citing *PJM Interconnection, L.L.C.*, Opinion 494-A, 122 FERC ¶ 61,082, at P 1 (2008)).

<sup>412</sup> *Id.* at 48 (citing Opinion 494, 119 FERC ¶ 61,063 at P 57).

<sup>413</sup> *Id.* (citing Opinion 494, 119 FERC ¶ 61,063 at P 58).

<sup>414</sup> *Id.* at 50 (citing *ICC v. FERC*, 576 F.3d at 476).

<sup>415</sup> *Id.* at 58 (citing Tr. 184:19-185:14 (Bourne); 191:11-192:6 (Bourne); 194:3-12 (Bourne); 241:21-242:10 (Bourne); 248:15-249:2 (Bourne)).

<sup>416</sup> *Id.* at 51.

cases because no party protested the creation of zones on the basis of cost shifting, or the parties settled.<sup>417</sup>

182. Trial Staff advocates that if the Commission finds that cost causation is relevant to zonal placement, SPP should be required to undertake an analysis that adequately supports a just and reasonable determination (including collateral engineering and reliability effects on SPP's system). According to Trial Staff, the Commission's provision of guidelines based on the record compiled in this proceeding would inform SPP's analysis to help assure "a statutorily permissible determination without unnecessary expense or delay."<sup>418</sup>

### **3. Briefs Opposing Exceptions**

#### **a. Tri-State**

183. According to Tri-State, the Presiding Judge correctly considered the cost shift and determined that SPP's proposed placement of Tri-State in Zone 17 was not unjust and unreasonable. Tri-State asserts that the Presiding Judge properly found that "shifting cost responsibility for some degree of legacy costs is not *per se* unjust and unreasonable;"<sup>419</sup> that the proposed zonal placement was not unjust and unreasonable because of the associated cost shift;<sup>420</sup> that the allegations of cost shift by NPPD and Trial Staff did not undermine the justness and reasonableness of SPP's placement of Tri-State in Zone 17;<sup>421</sup> and that Tri-State's placement in Zone 17 is consistent with the Commission's cost causation principle espoused in Order No. 2000 and relevant precedent.<sup>422</sup> Tri-State further asserts that, because the Presiding Judge reviewed and discussed the evidence relating to the cost shift presented by NPPD and Tri-State before

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<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> Tri-State Brief Opposing Exceptions at 30 (citing Initial Decision, 158 FERC ¶ 63,004 at P 335).

<sup>420</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 329).

<sup>421</sup> *Id.* (citing Initial Decision, 158 FERC ¶ 63,004 at P 329).

<sup>422</sup> Tri-State Brief Opposing Exceptions at 3-4, 38-39 (citing Initial Decision, 158 FERC ¶ 63,004 at P 344).

reaching this conclusion, NPPD is incorrect in asserting that the burden of proof concerning cost shift was shifted to SPP's customers.<sup>423</sup>

184. Tri-State argues that NPPD and Trial Staff, in their briefs on exceptions, rely on an incorrect measure of the cost shift in this proceeding by alleging that SPP's proposal to place Tri-State in Zone 17 results in a reduction by 60 percent of Tri-State's cost responsibility. According to Tri-State, this measure is not relevant because, to the extent that the Commission considers cost shifts, it does so as a measure of the costs shifted *to*, not *from*, transmission customers. Tri-State asserts that, because section 205 of the FPA generally protects customers against unjustly and unreasonably high costs, the extent to which Tri-State's costs are reduced as a result of joining SPP is irrelevant.<sup>424</sup>

185. Tri-State also argues that the calculation of the equalization payment under the NETS Agreement does not accurately reflect which party receives the greater benefit under the agreement. Tri-State explains that this is because the agreement uses an annual coincident peak to measure load, a method that SPP has replaced with monthly coincident peak. According to Tri-State, although annual coincident peak shows that, under the NETS Agreement, Tri-State has averaged 56 percent of load and NPPD has averaged 44 percent, monthly coincident peak shows that Tri-State has averaged 41 percent of the load and NPPD 59 percent. Consequently, Tri-State argues, NPPD has made greater use of the NETS Agreement facilities and also benefitted from the approximate \$1 million annual equalization payment from Tri-State.<sup>425</sup>

186. Tri-State further asserts that adding Tri-State to Zone 17 provides benefits that are commensurate with the cost increase to existing Zone 17 customers. Tri-State explains that adding new transmission owners to RTOs results in significant economic and reliability benefits, including increased efficiency through regional transmission pricing and the elimination of rate pancaking, improved congestion management, and more efficient planning for transmission and generation investments. In addition, Tri-State argues that there is ample evidence that NPPD benefits from the Tri-State transmission facilities to be placed in Zone 17, including the fact that Tri-State's facilities serve NPPD load and that NPPD has avoided duplicative construction through the joint planning, construction, and operation of their transmission facilities under the NETS Agreement.<sup>426</sup>

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<sup>423</sup> *Id.* at 8.

<sup>424</sup> *Id.* at 2-3; 36-37.

<sup>425</sup> *Id.* at 41-42.

<sup>426</sup> *Id.* at 38-41.

**b. SPP**

187. In opposition to Trial Staff's and NPPD's briefs on exception, SPP argues that its zonal placement proposal is not unjust and unreasonable because of the alleged cost shift;<sup>427</sup> that SPP's decision to place Tri-State in Zone 17 is consistent with cost causation;<sup>428</sup> and that shifting cost responsibility for some degree of legacy costs is not *per se* unjust and unreasonable.<sup>429</sup> SPP supports the Presiding Judge's conclusion that the NETS Agreement allowed NPPD to avoid expending money to develop transmission facilities to serve its customers. SPP notes that the NETS Agreement contains provisions stating that the NETS Agreement facilities "were built for the joint use and benefit of NPPD and Tri-State and their customers" and that the NETS Agreement adhered to the Single-Entity Concept "to avoid duplication of facilities and to result in the least possible cost without jeopardizing the adequacy or reliability of the system."<sup>430</sup>

188. SPP explains that placing Tri-State in Zone 17 is consistent with cost causation principles because Tri-State's NETS Agreement transmission facilities were constructed in part to serve NPPD's Zone 17 loads and they continue to serve such loads; therefore, it is "consistent with cost causation to continue to allocate the costs of these facilities to the customers for whom they were constructed and whom they continue to serve to date."<sup>431</sup>

189. SPP also argues that *ICC v. FERC* does not offer as constrained a view on cost causation as NPPD argues. SPP asserts that *ICC v. FERC* did not require a dollar-for-dollar matching of costs and benefits as NPPD seems to suggest. SPP notes that the court in *ICC v. FERC* explained that "[i]f it cannot quantify the benefits to the midwestern utilities . . . but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine; the Commission can approve PJM's proposed pricing scheme on that

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<sup>427</sup> SPP Brief Opposing Exceptions at 45.

<sup>428</sup> *Id.* at 48.

<sup>429</sup> *Id.* at 46.

<sup>430</sup> *Id.* at 49 (citing Initial Decision, 158 FERC ¶ 63,004 at P 346; Ex. No. TS-003 at 12).

<sup>431</sup> *Id.* at 51-52 (citing Opinion 494, 119 FERC ¶ 61,063 at P 42).



basis.”<sup>432</sup> SPP argues that the NETS Agreement provides the “articulable and plausible reason” to conclude that Tri-State’s placement in Zone 17 comports with cost causation.

#### 4. Commission Determination

190. We affirm the Presiding Judge’s finding that the cost shift at issue in this case does not render SPP’s proposed placement of Tri-State’s facilities in Zone 17 unjust and unreasonable.<sup>433</sup> We also affirm the Presiding Judge’s finding that placing Tri-State’s facilities in Zone 17 is consistent with the cost causation principle.<sup>434</sup>

191. We agree with the Presiding Judge’s statements that “shifting cost responsibility for some degree of legacy costs is not *per se* unjust and reasonable”<sup>435</sup> but that “cost shifts that result in significant rate increases to customers, but which are unaccompanied by commensurate benefits, are unjust and unreasonable.”<sup>436</sup> As the Commission and courts have stated, the “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”<sup>437</sup> Similarly, courts have explained that the cost causation principle “require[s] that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”<sup>438</sup> More recently, courts have found that “[t]o the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.”<sup>439</sup> Accordingly, we agree with the Presiding Judge that shifting cost responsibility for some degree of legacy costs is not *per se* unjust and

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<sup>432</sup> *Id.* at 53-54 (citing *ICC v. FERC*, 576 F.3d at 477).

<sup>433</sup> *See* Initial Decision, 158 FERC ¶ 63,004 at P 329.

<sup>434</sup> *Id.* P 347.

<sup>435</sup> *Id.* P 335.

<sup>436</sup> *Id.* P 332.

<sup>437</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 84, n.24 (2007) (quoting *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945)).

<sup>438</sup> *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (emphasis added).

<sup>439</sup> *ICC v. FERC*, 576 F.3d at 476.

reasonable, but there may be cases in which a cost shift would be unjust and unreasonable.

192. In this case, we agree with the Presiding Judge that the record shows that the proposed zonal placement is not unjust and unreasonable because of the cost shift. The NETS Agreement provides substantial evidence that placing Tri-State in Zone 17 is consistent with cost causation principles. First, an express purpose of the NETS Agreement is to “establish a joint transmission system for the Parties’ *mutual benefit* and joint use.”<sup>440</sup> The NETS Agreement further provides that “[t]he objective of this Agreement is to provide for planning, constructing, operating, and maintaining an integrated, interconnected, adequate, and reliable joint electric power transmission system to *serve the Parties’ customers in Western Nebraska*.”<sup>441</sup> The NETS Agreement also provides that plans for the addition of high voltage transmission facilities to the NETS Agreement facilities will be developed using the “Single-Entity Concept,” which is a “concept used in planning, designing, constructing, operating, and maintaining a transmission system where the *system is treated as though it were owned by only one Party*.”<sup>442</sup> The NETS Agreement explains that the “Single-Entity Concept is applied to *avoid duplication of facilities* and to *result in the least possible cost* without jeopardizing the adequacy or reliability of the system.”<sup>443</sup> In addition, the NETS Agreement provides for an Annual Equalization Payment to be made “from one Party to the other to make the benefits of each Party commensurate with its costs,”<sup>444</sup> illustrating that the parties treat the joint NETS Agreement system as if a single entity owns it and that each party benefits from the NETS Agreement.

193. Accordingly, the NETS Agreement explicitly provides that the purpose of the agreement is to serve the “mutual benefit” of both parties, to avoid duplication of transmission facilities, and to result in the least possible cost to the parties. These provisions of the agreement explicitly provide that the parties to the NETS Agreement will benefit and specify how they will benefit, i.e. by avoiding the duplication of facilities and producing the least possible cost to the parties.

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<sup>440</sup> Ex. No. TS-003 at 6 (emphasis added).

<sup>441</sup> *Id.* at 7 (emphasis added).

<sup>442</sup> *Id.* at 12 (emphasis added).

<sup>443</sup> *Id.* (emphasis added).

<sup>444</sup> *Id.* at 11.

194. Moreover, NPPD itself acknowledges that “there have been benefits to both NPPD and Tri-State from joint planning and joint use”<sup>445</sup> and that “the establishing and operation of a joint transmission system was mutually beneficially to both NPPD and Tri-State.”<sup>446</sup> In addition, the record shows that NPPD does not have a physical path to all of its loads without using Tri-State’s transmission facilities,<sup>447</sup> and that NPPD relies on Tri-State’s facilities to serve its load.<sup>448</sup> Therefore, not only does the NETS Agreement explicitly provide that the parties to the NETS Agreement will benefit and specify how they will benefit, but the record shows that NPPD in fact has, and currently does, benefit from Tri-State’s facilities that are governed by the NETS Agreement by relying on and using those facilities to serve its loads. These benefits are not “generalized system benefits” as NPPD alleges,<sup>449</sup> but direct benefits that Tri-States’ transmission facilities provide to NPPD. Moreover, we do not believe NPPD’s benefit is “generalized” when an agreement to which it has remained a party for over 30 years explicitly provides that it is intended to allow the parties to “avoid duplication of facilities,” and NPPD now in fact uses the facilities of the other party to serve its load. Accordingly, we believe that it is reasonable to conclude that the NETS Agreement has achieved its purpose and NPPD has benefitted by avoiding the construction of duplicative transmission facilities through its reliance on Tri-State’s transmission facilities.

195. NPPD argues that the Annual Equalization Payment demonstrates that Tri-State has been the net beneficiary of the NETS Agreement because Tri-State has paid NPPD \$1 million per year for the greater use that it makes of the NPPD system.<sup>450</sup> However, the record indicates that the Annual Equalization Payment is just one measure of the relative benefits that Tri-State and NPPD receive under the NETS Agreement. As Tri-State

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<sup>445</sup> See NPPD Brief on Exceptions at 2.

<sup>446</sup> Ex. TS-013 at 6.

<sup>447</sup> See, e.g., Initial Decision, 158 FERC ¶ 63,004 at P 296; Ex. TS-013 at 5 (affidavit of NPPD Contracts Manager Mr. Rinne explaining that “neither party has the ability, solely through the use of its own facilities, to serve all of its load in Western Nebraska.”).

<sup>448</sup> See, e.g., Ex. TS-032 (NPPD response to TS-NPPD 1.15 stating that “NPPD does not have the ability, solely through use of its own facilities, to serve its entire load in the Eastern Interconnection without use of Tri-State’s Eastern Interconnection facilities.”).

<sup>449</sup> See NPPD Brief on Exceptions at 41-42.

<sup>450</sup> See *id.* at 2.

explains, using the monthly coincident peak methodology to measure load, as SPP currently does, Tri-State has averaged 41 percent of the load served under the NETS Agreement, and NPPD has averaged 59 percent. Applying this methodology to assess the relative benefits that Tri-State and NPPD accrue under the NETS Agreement indicates that NPPD is benefitting from greater use of the NETS Agreement system, and from an additional \$1 million Annual Equalization Payment based on the premise that Tri-State is making greater use of the system at the annual coincident peak.<sup>451</sup> Examining these two different metrics for assessing the benefits associated with use of the NETS Agreement facilities – usage based on annual coincident peak load and usage based on monthly coincident peak load – demonstrates that both Tri-State and NPPD benefit from these facilities and that there is an “articulable and plausible reason to believe that the benefits are at least roughly commensurate”<sup>452</sup> with costs in this case.

196. We also find that the Presiding Judge sufficiently explained why placement of Tri-State in Zone 17 is consistent with the cost causation precedent that NPPD and Trial Staff cite, namely Order No. 2000 and Opinion No. 494. As the Presiding Judge noted, placement of Tri-State’s transmission facilities in Zone 17 is consistent with the cost causation principle espoused in Order No. 2000 because “[t]he transmission facilities that were constructed under the NETS Agreement were built for the joint use and benefit of NPPD and Tri-State and their customers.”<sup>453</sup> Order No. 2000 states that, “[w]here possible and cost effective, cost causality principles can be used to price services.”<sup>454</sup> Cost causality principles provide “that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”<sup>455</sup> Because the NETS Agreement transmission facilities, including Tri-State’s NETS Agreement transmission facilities, were partly built to serve NPPD’s customers, it is reasonable to infer that those customers have caused part of the costs of those facilities; therefore, it is consistent with Order No. 2000 to assess part of the costs of those facilities to NPPD’s Zone 17 customers.

197. Opinion No. 494 similarly states that “when ‘transmission facilities [are] developed by . . . individual companies to benefit their own systems and their own customers . . . [i]t is . . . consistent with cost causation to continue to allocate the costs of

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<sup>451</sup> See Tri-State Brief Opposing Exceptions at 42.

<sup>452</sup> *ICC v. FERC*, 576 F.3d at 477.

<sup>453</sup> Initial Decision, 158 FERC ¶ 63,004 at P 344.

<sup>454</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,219.

<sup>455</sup> *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

these facilities to the customers for whom they were constructed and whom they continue to serve to date.”<sup>456</sup> Pursuant to the NETS Agreement, Tri-State’s transmission facilities were partly constructed to serve NPPD’s customers, and, as discussed above, NPPD relies on the use of Tri-State’s facilities in order to serve its load. Accordingly, it is consistent with the cost causation principles described in Opinion No. 494 to allocate part of the costs of Tri-State’s facilities to NPPD because those facilities were partly constructed for NPPD’s customers and they continue to serve NPPD’s customers to date.

198. Moreover, more recently than the issuance of Order No. 2000 and Opinion No. 494, courts have found that “[t]o the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.”<sup>457</sup> Because the NETS Agreement transmission facilities, including Tri-State’s NETS Agreement transmission facilities, were partly built to serve NPPD’s customers and NPPD’s customers benefit from the use of those facilities and from having avoided the costs of duplicate construction that otherwise would have been necessary to serve their load, it is reasonable to infer that those customers have caused part of the costs of those Tri-State facilities. Accordingly, Tri-State’s placement is also consistent with this more recent cost causation precedent.

199. NPPD disagrees with the Presiding Judge’s reliance on the argument that the NETS Agreement facilities were constructed for the joint use and benefit of NPPD and Tri-State and their customers, and therefore NPPD and its customers in Zone 17 served by the NETS Agreement facilities can be said to have caused some of the costs of those facilities, because that argument was “raised for the first time in SPP’s Reply Brief.”<sup>458</sup> NPPD states that it submitted a motion for leave to file a limited supplemental reply brief to address this new claim, which the Presiding Judge denied. NPPD contends that, notwithstanding this ruling by the Presiding Judge, the Commission should consider its argument and response in the supplemental reply brief. NPPD’s criticism on this point is misplaced. While SPP may have presented that specific argument for the first time in its reply brief, the argument was a response to legal arguments that NPPD and Trial Staff raised in their initial briefs before the Presiding Judge<sup>459</sup> and therefore, it was not

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<sup>456</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 346 (quoting Opinion No. 494, 119 FERC ¶ 61,063 at P 42).

<sup>457</sup> *ICC v. FERC*, 576 F.3d at 476.

<sup>458</sup> See NPPD Brief on Exceptions at 44-45.

<sup>459</sup> See SPP Reply Brief at 42-46; NPPD Initial Brief at 15-17; Trial Staff Initial Brief at 23-30.

inappropriate for the Presiding Judge to consider the argument. Moreover, there was sufficient record evidence, primarily the provisions of the NETS Agreement itself,<sup>460</sup> to support the argument that the NETS Agreement facilities were constructed for the joint use and benefit of NPPD and Tri-State and their customers without needing to rely on the argument as presented in SPP's reply brief. Accordingly, we find that NPPD's argument on this point does not demonstrate that the Presiding Judge erred.

200. We disagree with NPPD's statement that the Presiding Judge, to support his finding that the cost shift is not unjust and unreasonable, "relied upon the fact that the Commission has approved each of the nine multi-Transmission Owner zones in SPP without rejecting any zonal placements on the basis of unjust and unreasonable cost shifts, and without requiring mitigation of any cost shifts caused by a new Transmission Owner joining an existing zone."<sup>461</sup> Trial Staff makes a similar statement, asserting that "[t]he Initial Decision makes much of the fact that the Commission approved each of SPP's nine multi-[transmission owner] zones."<sup>462</sup> Contrary to NPPD's and Trial Staff's characterization, the Presiding Judge merely noted this fact when discussing how the record did not show that the cost shift in this case was unjust and unreasonable.<sup>463</sup> He did not rely on it as the basis for his determination, but rather just noted it as context for his discussion.<sup>464</sup> Accordingly, NPPD's assertion that "his reliance on this point is misplaced

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<sup>460</sup> See, e.g., Ex. No. TS-003 at 6 ("the Parties desire to . . . establish a joint transmission system for the Parties' mutual benefit and joint use"); *id.* at 7 ("The objective of this Agreement is to provide for . . . [a] joint electric power transmission system to serve the Parties' customers"); *id.* at 12 ("The Single-Entity Concept is applied to avoid duplication of facilities and to result in the least possible cost.").

<sup>461</sup> See NPPD Brief on Exceptions at 36-37 (citing Initial Decision, 158 FERC ¶ 63,004 at P 332).

<sup>462</sup> Trial Staff Brief on Exceptions at 51.

<sup>463</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 332 ("*I would note that the Commission has approved each of the nine multi-[transmission owner] zones in SPP without rejecting any zonal placement on the basis of unjust and unreasonable cost shifts, and without requiring mitigation of any cost shift caused by a new [transmission owner's] joining an existing zone.*") (emphasis added).

<sup>464</sup> In fact, the Presiding Judge indicated that he could not rely on any Commission precedent regarding the zonal placement cost shifting that is at issue in this case because "the Commission has not considered whether the resulting cost shift stemming from the placement of a prospective [transmission owner] into an existing pricing zone within an RTO is unjust and unreasonable." See *id.* P 329.

because cost shifting was not an issue presented to the Commission for resolution in any of those nine cases” and Trial Staff’s similar argument are inapposite and do not demonstrate that the Presiding Judge erred.

201. NPPD also asserts that the Presiding Judge indicated “that anything less than a 26 percent cost shift within the structure of an existing license plate rate design is acceptable”<sup>465</sup> because he noted that Opinion No. 494 rejected proposals that would have resulted in cost shifts ranging from 26.1 percent to 73.2 percent and stated that this provided “a demonstration of when cost shifts may warrant Commission intervention.”<sup>466</sup> NPPD’s position mischaracterizes the Initial Decision. The Presiding Judge did not state or otherwise find that anything less than a 26 percent cost shift within the structure of an existing license plate rate design is acceptable.<sup>467</sup> Rather, he explained that “I find Opinion No. 494 to be *illustrative* in the present proceeding, *though not dispositive*, since it is not analogous to this proceeding” and that “[w]hile Opinion [N]o. 494 is not analogous, it provides me with a *demonstration* of when cost shifts *may* warrant Commission intervention.”<sup>468</sup> Accordingly, the Presiding Judge made it clear that he was citing the facts of Opinion No. 494 simply as an illustration of when cost shifts may warrant Commission intervention, for purposes of context. He explicitly stated that Opinion No. 494 was “not dispositive” and “not analogous to this proceeding.”<sup>469</sup> Therefore, we disagree with NPPD’s assertion that the Presiding Judge indicated “that anything less than a 26 percent cost shift within the structure of an existing license plate rate design is acceptable”<sup>470</sup> because he merely discussed Opinion No. 494 as an example for context in his discussion of cost shifts. As a result, NPPD’s argument on this point does not convince us that the Presiding Judge erred.

202. We also disagree with NPPD that the Presiding Judge mischaracterized *Allegheny*.<sup>471</sup> NPPD contends that the Presiding Judge cited *Allegheny* as standing for the proposition that “the operation and integration of facilities take precedence

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<sup>465</sup> NPPD Brief on Exceptions at 38.

<sup>466</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 334.

<sup>467</sup> See NPPD Brief on Exceptions at 38.

<sup>468</sup> Initial Decision, 158 FERC ¶ 63,004 at P 334 (emphasis added).

<sup>469</sup> *Id.*

<sup>470</sup> NPPD Brief on Exceptions at 38.

<sup>471</sup> See *id.* at 38-39.

over cost shifts associated with the facilities in zone placement decisions.”<sup>472</sup> We disagree because the Presiding Judge merely noted that he found Tri-State’s reliance on the *Allegheny* proceeding persuasive in making its argument that operation and integration should take precedence over cost shifts. In his next sentence, the Presiding Judge made clear that he did not find that “the operation and integration of facilities take precedence over cost shifts,” or that *Allegheny* stood for that proposition, explaining that the “evidence regarding Tri-State’s facilities operation and integration with Zone 17 *strongly support* Tri-State’s placement into Zone 17.”<sup>473</sup> Had the Presiding Judge found that operation and integration take precedence over cost shifts, the evidence regarding the operation and integration of Tri-State’s facilities would be determinative of Tri-State’s zonal placement and would not merely “strongly support” that placement.

203. Moreover, it is NPPD who seems to argue that one factor should always take precedence, regardless of the overall facts and circumstances of a specific case. NPPD apparently takes the position that cost shifts should dictate zonal placement regardless of any other considerations when it states that “zone placement should be driven by the duty to minimize and mitigate cost shifting, which in turn would dictate assignment of the new Transmission Owner to the zone which results in minimal cost shifting.”<sup>474</sup> Thus, although NPPD takes issue with what it misinterprets as the Presiding Judge’s citation of *Allegheny* for the proposition that operation and integration of facilities take precedence over cost shifts, NPPD takes a position that is just as inflexible, asserting that minimizing cost shifts should dictate zonal placement, regardless of any other factors. Although cost shifts are an important consideration in determining a just and reasonable zonal placement, it should not be the only consideration, as NPPD suggests. All facts and circumstances of a given case should be considered in evaluating whether a proposed zonal placement is just and reasonable and no one factor should always dictate the decision.

204. NPPD also argues that, unlike in *Allegheny*, where Allegheny’s facilities were interconnected only with the PPL zone, here the Tri-State facilities are interconnected with Zone 19 and Zone 17 which, when coupled with the long history of service provided by the Zone 19 Integrated System to Tri-State, demonstrates that placement of Tri-State in Zone 19 is a viable alternative to Zone 17.<sup>475</sup> NPPD overemphasizes the extent to which the Commission in *Allegheny* relied on the fact that “Allegheny’s facilities were

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<sup>472</sup> *Id.* at 39 (citing Initial Decision, 158 FERC ¶ 63,004 at P 333).

<sup>473</sup> *Id.* (emphasis added).

<sup>474</sup> See NPPD Brief on Exceptions at 28.

<sup>475</sup> *Id.*



not interconnected with any other zone.”<sup>476</sup> In *Allegheny*, the Commission determined that, because PPL had operational control over the facilities “as if the facilities were PPL’s own facilities,” the facilities were interconnected with PPL, and the facilities primarily supported load within the PPL zone, “it is reasonable for customers in the PPL Group Zone to support these facilities by assigning the revenue requirement associated with those facilities to the PPL Group Zone.”<sup>477</sup> Therefore, although the Commission noted the fact that Allegheny’s facilities were not interconnected with any other zone in its decision, it also relied on other factors, including the fact that the facilities at issue “primarily support load within the PPL Group Zone” and the fact that “[h]ad Allegheny not agreed to pay for and own those facilities, the facilities would have been built and owned by PPL and would now be part of the PPL Group Zone revenue requirement in any event.”<sup>478</sup> Accordingly, we find that this argument by NPPD does not demonstrate that the Presiding Judge erred.

205. We also disagree with NPPD’s and Trial Staff’s assertions that the benefits attributable to inclusion of Tri-State in Zone 17 are not commensurate with the costs.<sup>479</sup> Specifically, NPPD argues that the Presiding Judge’s finding that the NETS Agreement demonstrates that placing Tri-State in Zone 17 is consistent with cost causation is a “claim of generalized system benefits” which is not sufficient to justify an increase in costs.<sup>480</sup> Similarly, NPPD contends that SPP and Tri-State have not quantified any benefit provided by Tri-State’s facilities to Zone 17 customers.<sup>481</sup> Trial Staff similarly asserts that the record does not contain any benefits analysis regarding Tri-State’s facilities or any indication that Tri-State’s facilities provide benefits to Zone 17 customers.<sup>482</sup> Contrary to NPPD’s and Trial Staff’s arguments, the record contains evidence demonstrating that NPPD benefits from Tri-State’s facilities. First, NPPD

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<sup>476</sup> NPPD Brief on Exceptions at 39.

<sup>477</sup> *Allegheny*, 94 FERC at 62,078.

<sup>478</sup> *Id.*

<sup>479</sup> See NPPD Brief on Exceptions at 41-42, 46; Trial Staff Brief on Exceptions at 44, 52-53, 55-56.

<sup>480</sup> NPPD Brief on Exceptions at 41 (citing *ICC v. FERC*, 576 F.3d at 476).

<sup>481</sup> *Id.* at 42-48.

<sup>482</sup> Trial Staff Brief on Exceptions at 55-56.

benefits from Tri-State's facilities by using those facilities to serve NPPD load.<sup>483</sup> Second, an express purpose of the NETS Agreement was to "avoid duplication of facilities and to result in the least possible cost."<sup>484</sup> The fact that neither NPPD nor Tri-State has a physical path to all of its loads without using the facilities of the other entity<sup>485</sup> indicates that NPPD has benefitted by avoiding duplication of facilities; otherwise, it would have had to construct its own facilities to serve the load that it currently serves using Tri-State's facilities. Third, the NETS Agreement provides that the parties' joint transmission system is for their "mutual benefit and joint use"<sup>486</sup> and intended to "serve the Parties' customers in Western Nebraska."<sup>487</sup> Accordingly, the Presiding Judge correctly concluded that, because the NETS Agreement facilities were built to serve both NPPD's and Tri-State's customers, it is reasonable to infer that "NPPD and its customers in Zone 17 served by the NETS facilities may have caused a portion of the costs of those facilities, including the NETS facilities built by Tri-State."<sup>488</sup> We agree, and are persuaded that NPPD has benefitted and continues to benefit from the NETS Agreement facilities. Upon consideration of the record, we conclude that the cost shift at issue in this proceeding does not render the rates resulting from the placement of Tri-State's transmission facilities in Zone 17 unjust and unreasonable because the costs allocated to NPPD remain at least roughly commensurate with the benefits that it receives from the transmission facilities in Zone 17.

206. Moreover, we agree with SPP that NPPD's interpretation of *ICC v. FERC* is too constrained. In *ICC v. FERC*, the United States Court of Appeals for the Seventh Circuit stated that

[w]e do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars. If it cannot quantify the benefits to the midwestern utilities . . . but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of

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<sup>483</sup> See, e.g., Initial Decision, 158 FERC ¶ 63,004 at P 296.

<sup>484</sup> Ex. TS-003 at 12.

<sup>485</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 296.

<sup>486</sup> Ex. TS-003 at 6.

<sup>487</sup> *Id.* at 7.

<sup>488</sup> Initial Decision, 158 FERC ¶ 63,004 at P 344.

total electricity sales in PJM's region, then fine; the Commission can approve PJM's proposed pricing scheme on that basis.<sup>489</sup>

207. We find that the record evidence demonstrating the benefits that NPPD received from the Tri-State transmission facilities provides "an articulable and plausible reason to believe that the benefits are at least roughly commensurate" with the costs that are being allocated to Zone 17 customers. Although there may not be a specific quantification of the benefits that NPPD received and will continue to receive from the Tri-State transmission facilities, this is unsurprising because the entities treated their transmission facilities under the NETS Agreement as if they were a single system owned by a single entity. The NETS Agreement detailed the benefits that the parties would realize, and the parties continued that agreement for over 30 years, indicating that they were in fact benefitting from the agreement.

208. NPPD and Trial Staff both argue that the Presiding Judge improperly shifted the burden of proof to NPPD and Trial Staff to demonstrate that SPP's proposed zonal placement of Tri-State was unjust and unreasonable because of a significant cost shift.<sup>490</sup> These arguments are unavailing. They misconstrue the Presiding Judge's findings. The question before the Presiding Judge was whether SPP had satisfied its burden to demonstrate that its proposed placement of Tri-State in Zone 17, and the resulting rate, was just and reasonable. The Presiding Judge found that SPP provided sufficient evidence to establish that its proposed zonal placement of Tri-State in Zone 17 was just and reasonable. He then found that, despite NPPD and Staff coming forward with arguments and evidence purportedly to support their arguments that the zonal placement resulted in an unreasonable cost shift, the record still supported SPP's proposal as just and reasonable.<sup>491</sup> NPPD points to the Presiding Judge's finding that NPPD and Trial Staff did not present a cost/benefit analysis of placing Tri-State in its own zone vis-à-vis Zone 17, and argues that this improperly shifts the burden to NPPD to perform a cost/benefit analysis.<sup>492</sup> We disagree. This reasoning by the Presiding Judge merely shows that the evidence put forth by NPPD and Trial Staff failed to persuade the Presiding Judge that the case put forth by SPP and Tri-State was overcome. NPPD and Trial Staff were not shifted the burden of proving that the proposal was unjust and unreasonable because of the cost shift, but rather in determining whether SPP had

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<sup>489</sup> See SPP Brief Opposing Exceptions at 54 (citing *ICC v. FERC*, 576 F.3d at 477).

<sup>490</sup> See NPPD Brief on Exceptions at 18-22; Trial Staff Brief on Exceptions at 55-56.

<sup>491</sup> See Initial Decision, 158 FERC ¶ 63,004 at PP 360, 378.

<sup>492</sup> See NPPD Brief on Exceptions at 63.

demonstrated that the zonal placement and resulting rate were just and reasonable, the Presiding Judge properly considered whether, in light of all of the facts and circumstances of the case, including the cost shift, the proposal was just and reasonable. The cost shift was one of facts and circumstances considered, and the Presiding Judge found that all of the facts and circumstances demonstrated that the proposed rate was just and reasonable, despite the existence of the cost shift.

**G. NPPD's Motion to Reopen the Record**

**1. NPPD Motion to Reopen the Record**

209. In its motion requesting that the Commission reopen the record in this proceeding, NPPD claims to present new evidence and extraordinary changes in circumstances that go to the very heart of this case and satisfy the requirements to reopen the record in a proceeding pursuant to Rule 716 of the Commission's Rules of Practice and Procedure.<sup>493</sup> NPPD states that the changed circumstances consist of the fact that SPP recently revised the criteria it uses to determine appropriate zonal placement of a new transmission owner joining SPP to include consideration of the nature of transmission service used to serve load prior to the expected date of transfer to SPP. According to NPPD, the Presiding Judge ignored such evidence (i.e., the nature of transmission service used to serve Tri-State's load), and also ignored NPPD's related argument that Tri-State's historical reliance upon the transmission facilities of Western-RMR and the Integrated System should be a factor for consideration in zone placement.<sup>494</sup>

210. NPPD also claims to have new evidence of public announcements made by Western-RMR that it has recommended entering into final negotiations with SPP, which if successful, will result in Western-RMR joining SPP as part of the Mountain West Transmission Group. NPPD states that the new evidence also includes other public documents posted by SPP on its website describing plans of Mountain West Transmission Group to join SPP, including new member integration process documents recently prepared by SPP.

211. NPPD argues that the changes in circumstances and the new evidence are directly relevant to the Commission's consideration of (1) the criteria SPP used in this proceeding; (2) whether Tri-State's interconnections with Western-RMR transmission facilities should be considered when determining the degree to which Tri-State is integrated with and/or embedded within an existing SPP Zone; and (3) the extent to

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<sup>493</sup> NPPD Motion to Reopen at 3 (citing 18 C.F.R. § 385.716).

<sup>494</sup> *Id.* at 4.

which Tri-State's zonal placement causes a shift in costs between the new and existing transmission owners.

## 2. Answers

212. SPP, Tri-State, and Western argue that NPPD has failed to meet the Commission's high threshold for a motion to reopen the record under Rule 716,<sup>495</sup> which requires the requesting party must demonstrate the existence of "extraordinary circumstances" and "must demonstrate a change in circumstances that is more than just material—it must be a change that goes to the very heart of the case."<sup>496</sup>

213. According to SPP, NPPD's motion fails to justify reopening the long-since closed evidentiary record and it attempts to introduce irrelevant and extraneous evidence that is outside the scope of this proceeding.<sup>497</sup> According to SPP, because evidence presented by NPPD does not pertain to SPP's placement of Tri-State's ATRR and transmission facilities in Zone 17, such evidence must be excluded as irrelevant to the Commission's analysis of the October 2015 Filing.<sup>498</sup> SPP argues that the issue is whether SPP's proposal to place Tri-State's ATRR and transmission facilities in Zone 17 is just and reasonable.<sup>499</sup> SPP further argues that when the Commission reviews an FPA section 205 filing, it need not consider whether alternative proposals are also just and reasonable or more just and reasonable.<sup>500</sup> SPP additionally notes that the evidentiary record in this proceeding has been closed for well over a year and argues that the Commission has stated that "litigation must come to an end at some point."<sup>501</sup>

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<sup>495</sup> 18 C.F.R. § 385.716.

<sup>496</sup> *E. Tex. Elec. Coop. v. Cent. & S. W. Servs. Inc.*, 94 FERC ¶ 61,218, at 61,800 (2001) (*East Texas*) (quoting *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,624, *order on reh'g*, 56 FERC ¶ 61,361 (1991)).

<sup>497</sup> SPP Answer to NPPD Motion to Reopen at 1.

<sup>498</sup> *Id.*

<sup>499</sup> *Id.* at 2.

<sup>500</sup> *Id.* at 4-5.

<sup>501</sup> *Id.* at 9 (citing *East Texas*, 94 FERC ¶ 61,218 at 61,801 (quoting *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶ 61,009, at 61,037 (1985) *order on reh'g*, Opinion No. 238-A, 36 FERC ¶ 61,175 (1986))).

214. Western argues that NPPD mischaracterizes the content of the documents it offers as new evidence and, thus, the status of Western-RMR's negotiations with SPP. According to Western, Western-RMR's transmission owner membership in SPP is speculative and contingent. Western further argues that consideration of facilities of speculative members already was raised and rejected in the Initial Decision and therefore the Commission need not open the record to consider this issue.<sup>502</sup> According to Western, it has not made a decision to proceed with final negotiations with SPP regarding membership.<sup>503</sup> Additionally, Western states that "[t]he outcome of those Mountain West/SPP negotiations also could impact whether Western-RMR proceeds with SPP membership," and that "[e]ven if the above-described negotiations are successful *and* Western-RMR decides to execute a membership agreement, SPP still then would need to submit a filing *and* the filing would need to be accepted by the Commission."<sup>504</sup> Moreover, Western states that it is possible the effective date of Western-RMR's membership could be delayed.<sup>505</sup> Western also argues that SPP's new zonal placement criteria is irrelevant to whether SPP's proposal to place Tri-State's ATRR and transmission facilities in Zone 17 over two years ago is just and reasonable.

215. Tri-State argues that NPPD's motion is based on the incorrect assertion that SPP's new zonal placement criteria constitute a relevant change in the circumstances and that the additional information regarding Western-RMR's negotiations with SPP constitutes relevant new evidence. Tri-State notes that the Western-RMR Notice, explicitly states that "[a]t the conclusion of those final negotiations, it 'intends to provide notification of its decision . . . to either execute a membership agreement with SPP or terminate formal negotiations.'"<sup>506</sup>

216. In answer to SPP, NPPD argues that the principal intent of its motion to reopen the record was to highlight for the Commission certain changed circumstances and new evidence so as to prompt SPP and the Commission to consider evidence *already in the record* which was patently ignored throughout these proceedings<sup>507</sup> which, according to

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<sup>502</sup> Western Answer to NPPD Motion to Reopen at 3 (citing Initial Decision, 158 FERC ¶ 63,004 at PP 305, 307).

<sup>503</sup> *Id.*

<sup>504</sup> *Id.* at 4 (emphasis added by Western).

<sup>505</sup> *Id.*

<sup>506</sup> *Id.* at 6 (citing Western-RMR Notice at 47,505).

<sup>507</sup> NPPD Answer at 4 (emphasis added by NPPD).

NPPD, “both SPP and the Presiding Judge failed to consider.”<sup>508</sup> Specifically, NPPD argues that SPP and the Presiding Judge ignored evidence of Tri-State’s prior transmission service with Western-RMR and the Integrated System, even though that evidence would be considered in SPP’s new zonal placement criteria.<sup>509</sup> Additionally, NPPD argues that the fact that actual integration of Western-RMR into SPP has not yet occurred is no reason to ignore the real likelihood that it will in the very near term.<sup>510</sup>

217. In answer to NPPD, SPP argues that NPPD fails to explain why extraordinary circumstances compel the Commission to accept the additional information regarding Western-RMR’s negotiations with SPP. SPP contends that NPPD does not even move for the admission of this information, but merely cites to it. SPP argues that the Commission should disregard NPPD’s attempt to introduce the information as involving speculation of events that have yet to occur and as wholly unrelated to the justness and reasonableness of SPP’s proposed placement of Tri-State in Zone 17.<sup>511</sup>

218. In responding to NPPD’s answer, Tri-State argues that the Initial Decision already contemplated the possibility of Western-RMR joining SPP and found that “the consideration of facilities outside of the SPP system in the integration analysis of Tri-State’s transmission facilities . . . is inappropriate.”<sup>512</sup> Tri-State additionally notes that the Western-RMR document that NPPD included as an attachment to its motion states that Western-RMR is still “evaluating the comments and evaluating whether to proceed with the recommendation.”<sup>513</sup>

### **3. Commission Determination**

#### **a. Procedural Matters**

219. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to an answer unless otherwise ordered by the

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<sup>508</sup> *Id.* at 2.

<sup>509</sup> *Id.* at 3.

<sup>510</sup> *Id.* at 5.

<sup>511</sup> SPP Answer to NPPD Answer at 3.

<sup>512</sup> Tri-State Answer to NPPD Answer at 2 (citing Initial Decision, 158 FERC ¶ 63,004 at P 305).

<sup>513</sup> *Id.* at 4 (citing Western Answer to NPPD Motion to Reopen at 3).

decisional authority. We will accept the answers filed by NPPD, SPP, and Tri-State because they have provided information that assisted us in our decision-making process.

**b. Substantive Matters**

220. We deny NPPD's motion to reopen the record in this proceeding. In order to meet the Commission's high threshold for a motion to reopen the record under Rule 716, the requesting party must demonstrate the existence of "extraordinary circumstances" and "must demonstrate a change in circumstances that is more than just material—it must be a change that goes to the very heart of the case."<sup>514</sup> We find that the NPPD's motion does not meet this threshold. NPPD's motion relies on a change in the criteria that SPP applies to determine zonal placements and additional information regarding the potential of Western-RMR joining SPP. Neither of these arguments demonstrate extraordinary circumstances or changes that go to the heart of the case.

221. As discussed herein, we find it unnecessary to determine whether the criteria that SPP applied in this proceeding are appropriate for ensuring a just and reasonable zonal placement on a generic basis because what matters in this proceeding is whether the criteria, as applied to the particular facts and circumstances of this proceeding, produced a just and reasonable result. As discussed above, in this case, the record shows that SPP's analysis using the criteria that it applied in this proceeding sufficiently demonstrates that its proposal is just and reasonable. The fact that SPP has subsequently changed its criteria does not affect that conclusion. Moreover, the new criteria consider the nature of transmission service used to serve load prior to the expected date of transfer to SPP, and we disagree that the Presiding Judge did not consider evidence on this point. The record shows that the Presiding Judge gave substantial consideration to the nature of transmission service used to serve the relevant loads.<sup>515</sup>

222. NPPD's argument that there is additional evidence that Western-RMR may join SPP is similarly unavailing. As discussed above, it was reasonable for the Presiding Judge to not consider the possibility of Western-RMR joining SPP in evaluating SPP's proposed zonal placement of Tri-State and the resulting rate because, at the time the record closed in this proceeding, Western-RMR was not a member of SPP and the record did not contain evidence of the specific terms and conditions that would be applicable to the integration of Western-RMR and its transmission facilities into SPP such as which

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<sup>514</sup> *East Texas*, 94 FERC at 61,800 (quoting *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,624, *order on reh'g*, 56 FERC ¶ 61,361 (1991)).

<sup>515</sup> *See, e.g.*, Initial Decision, 158 FERC ¶ 63,004 at PP 291, 296, 343-344, 346.



specific Western-RMR transmission facilities would be integrated into SPP, and in which zone they would be placed. In order for the Presiding Judge to have accurately considered the effect of Western-RMR's SPP membership on SPP's specific proposal in this proceeding, he would have needed additional certainty regarding whether Western-RMR would become a member of SPP and the specific terms and conditions that would be applicable to the integration of Western-RMR and its transmission facilities.<sup>516</sup> Despite the evidence provided by NPPD in its motion, it remains the case that we would need such additional certainty and additional facts in order to accurately evaluate the effect of Western-RMR's possible future SPP membership on SPP's specific proposed Tariff revisions in this proceeding. NPPD's evidence does not change the fact that the Commission does not have the specific terms and conditions that would be applicable to the future integration of Western-RMR into SPP that we could use to determine the effect of the integration on SPP's proposal in this proceeding. As the Commission has explained, "we recognize of course that changes have occurred since the close of the record. But such changes always occur. Yet litigation must come to an end at some point."<sup>517</sup> NPPD has not "demonstrated the existence of extraordinary circumstances that outweigh the need for finality in the administrative process."<sup>518</sup> For these reasons, we deny NPPD's motion to reopen the record.

## **H. Refunds**

223. For the reasons discussed above, we affirm the Presiding Judge's finding that SPP's proposed Tariff revisions, including their proposed placement of the Tri-State transmission facilities in Zone 17, are just and reasonable. Accordingly, we also affirm the Presiding Judge's finding that no refunds will be owed in connection with Tri-State's zonal placement, and thus that the only refunds that Tri-State will owe in this proceeding will be those resulting from the ATRR settlement.<sup>519</sup>

### The Commission orders:

(A) The Initial Decision is hereby affirmed, as discussed in the body of this order.

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<sup>516</sup> See *supra* PP 126, 159.

<sup>517</sup> *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶ 61,009, at 61,037 (1985).

<sup>518</sup> *East Texas*, 94 FERC at 61,801.

<sup>519</sup> Initial Decision, 158 FERC ¶ 63,004 at P 379.

(B) NPPD's Motion to Reopen the Record is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.