

162 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Indicated SPP Transmission Owners

v.

Docket No. EL18-20-000

Southwest Power Pool, Inc.

ORDER DENYING COMPLAINT

(Issued March 15, 2018)

1. On October 13, 2017, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² the Indicated SPP Transmission Owners (Complainants)³ filed a complaint (Complaint) against Southwest Power Pool, Inc. (SPP). The Complaint alleges that the SPP Open Access Transmission Tariff (Tariff) is unjust and unreasonable because, when a new SPP transmission owner is integrated into an existing transmission pricing zone, the Tariff allows the costs of the new transmission owner's existing transmission facilities to be allocated across the entire pricing zone through the Schedule 9 Network Integration Transmission Service (network

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.206 (2017).

³ Complainants are identified as the following entities: American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company; City Utilities of Springfield, Missouri; Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; Nebraska Public Power District; Oklahoma Gas & Electric Company; Omaha Public Power District; Southwestern Public Service Company; Sunflower Electric Power Corporation, LLC; Mid-Kansas Electric Company, LLC; Westar Energy, Inc.; and Western Farmers Electric Cooperative.

service) rates for that zone, resulting in shifting of costs between new and existing transmission customers in the zone. We deny the Complaint, as discussed below.

I. Background

2. SPP uses a license-plate rate design, also called a zonal rate design, pursuant to which its Regional Transmission Organization (RTO) footprint is separated into a number of transmission pricing zones (zones). Customers taking transmission service for delivery to load within SPP pay a rate for certain transmission services based on the cost of the transmission facilities in the zone where the load is located. In SPP, some zones consist of the facilities of a single transmission owner, while others consist of the facilities of multiple transmission owners. In a multi-owner zone, the annual transmission revenue requirement (ATRR) for the facilities of all owners in the zone is combined for purposes of determining the cost of the transmission facilities in the zone. As relevant to the Complaint, a network transmission service customer in a zone pays network service charges based on that customer's percentage share of total load in the zone multiplied by the total ATRR for the facilities of the transmission owner or owners in the zone, i.e., its load-ratio share. When a new transmission owner is added to an existing zone, its ATRR and any load not already included in the zonal load are added to the existing zone's totals, resulting in a new total ATRR and a new amount of total load for the zone.

II. Complaint

3. According to Complainants, under SPP's zonal rate design, adding a new transmission owner to an existing zone will cause network service rates for one set of customers to go down, and rates for the other set of customers to go up, relative to what they would have been had the new transmission owner been placed in its own zone, unless the average cost of the new transmission owner's transmission system (i.e., its ATRR divided by its load) is exactly the same as the existing zone's average cost. Complainants state that, as a result, either the new transmission owner's customers or the customers in the existing zone will pay increased network service rates because of the addition of the new transmission owner to the existing zone.⁴ Complainants allege that SPP's Tariff is unjust and unreasonable because it does not prohibit these changes in network service rates for customers in a newly combined zone, which they refer to as cost shifts.⁵ Specifically, Complainants allege that (1) the SPP Tariff causes cost shifts when a new transmission owner's transmission system is integrated into an existing SPP zone and that those cost shifts render the Tariff unjust and unreasonable; (2) the SPP Tariff is unduly discriminatory because the cost shift burden is not evenly distributed; (3) SPP's practice of ignoring cost shifts and failing to provide rate increase information

⁴ See, e.g., Complaint at 4-6.

⁵ *Id.* at 1-4.

exacerbates the problem caused by the SPP Tariff; and (4) the problem does not end upon the integration of a new transmission owner's transmission system into an existing SPP zone.

4. First, in support of their claim that the SPP Tariff causes cost shifts that render the Tariff unjust and unreasonable, Complainants explain that the ATRR for the zone where a transmission customer's load is located determines the network service rate for that customer and if more than one transmission owner is in a zone, the ATRRs are combined for purposes of determining a single zonal network service rate charged to all customers with load in the zone. Complainants state that, in recent years, SPP has increasingly decided to add new transmission owners to existing zones, particularly where new transmission owners have a smaller geographical footprint and lower total ATRR than the existing SPP zones.⁶ According to Complainants, upon integration of a new transmission owner's transmission system into an existing zone, unless the average cost of the new transmission owner's transmission system exactly matches the existing zonal average system cost, the SPP Tariff operates to shift costs to either the new transmission owner's customers or the existing customers in the zone in the form of increased rates for network service. Complainants argue that such cost shifts are unjust and unreasonable in that the customers paying the higher rate must pay for transmission facilities that were not planned or built for them, while the customers for whom the facilities were planned and built pay a lower rate than they otherwise would have paid. Complainants assert that this is a reallocation of sunk costs that is contrary to cost causation principles, which dictate that customers should pay for the transmission facilities that are constructed for them.⁷ Complainants further contend that these cost shifts contradict Commission transmission pricing policy, arguing that reallocating the sunk costs of one transmission owner to the customers of another transmission owner does not provide any incentive to invest in transmission or provide more efficient price signals for future investments.⁸

5. In addition, Complainants argue that permitting such cost shifts can be a disincentive to RTO membership. They contend that cost shifts could encourage a utility with below-average transmission costs to remain independent of or leave an RTO. Complainants also claim that the legitimate benefits of RTO membership are themselves powerful incentives to join RTOs and that cost shifts create a disincentive to new RTO membership.⁹ Complainants assert that the Midcontinent Independent System Operator, Inc. (MISO) RTO has addressed the cost shift issue through a bundled load exemption,

⁶ *Id.* at 5.

⁷ *Id.* at 13.

⁸ *Id.* at 14-15.

⁹ *Id.* at 15-18.

which allows vertically-integrated transmission owners that serve their native load through network service to avoid paying network service charges, such that “they are not impacted when a new [transmission owner] joins the zone and adds a potentially higher cost system to be charged through [network service] rates.”¹⁰

6. Second, Complainants allege that the SPP Tariff is unduly discriminatory because the cost shift burden is not evenly distributed. According to Complainants, in SPP similarly situated classes of customers—customers in single-owner zones and customers in integrated zones—are treated differently with no basis for that difference. Complainants argue that some zones receive new transmission owners with resulting cost shifts, while some zones do not and that there is no rational reason why customers in some zones should be singled out to bear these cost shifts, while others should not. Complainants contend that only those transmission owners who SPP chooses to be in multi-owner zones are required to be subject to cost shifts and that this randomness of the cost shifts renders the SPP Tariff zonal integration system unduly discriminatory, thereby compounding its illegality.¹¹

7. Third, Complainants contend that SPP’s practice of ignoring cost shifts and failing to provide rate increase information exacerbates the problem caused by the SPP Tariff. Complainants assert that, when SPP files with the Commission to incorporate the ATRRs of a new transmission owner into an existing zone, SPP does not discuss or calculate the cost shift that will take place. They argue that this means that customers are not notified when, by how much, and why their rates are increasing. Complainants assert that it is SPP’s responsibility to identify and justify any rate increase for existing SPP customers that will result from the addition of a new transmission owner to an existing zone.¹² Complainants state that, while SPP adopted a new process for zonal placement decisions in July 2017 that includes information exchange and negotiation regarding cost shifts, the cost shift-driven rate increase information remains opaque, and the process does not include a mechanism for mitigating any cost shifts.¹³ Complainants, however, explain that they do not wish to interfere in the exercise of SPP’s judgment or limit its flexibility in making zonal placement decisions.¹⁴

¹⁰ *Id.* at 16.

¹¹ *Id.* at 18-19.

¹² *Id.* at 19-20.

¹³ *Id.* at 11.

¹⁴ *Id.* at 4.

8. Next, Complainants argue that these cost shifts do not end after zonal integration. They assert that the cost shifts also occur any time one of the transmission owners in a multi-owner zone unilaterally plans and builds a new transmission facility outside of the SPP planning process because the cost of the new facility is added to the ATRR of the transmission owner that built it, and therefore, becomes part of the zonal network service rate that is assessed to all customers in the zone. Complainants contend that there is no guarantee that such a facility is needed by everyone in the zone, or is a least-cost solution addressing a zonal need, so such new transmission facilities can also result in unjustifiable cross-subsidization.¹⁵

9. Complainants contend that, in the absence of an agreement on cost sharing between the transmission owner being integrated into an existing zone and the transmission owner(s) in that zone, these cost shifts should be fully mitigated.¹⁶ To accomplish this mitigation, Complainants propose a two-pronged remedy. First, they propose to require that two separate network service rates be established when a new transmission owner joins an existing zone – one for the existing transmission owner(s) and customers (based on the existing zone’s ATRR and load), and one for the new transmission owner and its customers (based on the new transmission owner’s ATRR and load). Complainants state that this would mean customers would continue to pay the same rates that they would have paid absent the new transmission owner’s integration into the zone. Second, they propose that, after the zonal integration, any new local transmission facilities built by unilateral decision of a transmission owner outside of the SPP planning process would be added to the separate ATRR and network service rate for that transmission owner, not to a combined ATRR for the entire zone. Complainants assert that their proposal would avoid charging customers for investments that are planned on the same unilateral basis each transmission owner used before they were combined into one zone. Complainants ask for this relief, and the proposed Tariff revisions implementing it, to be prospective only, i.e., affecting only zonal integrations commencing after the filing of the Complaint.¹⁷

10. In support of their proposed remedy, Complainants contend that the inter-zonal license plate rate design that SPP has had in place since it became an RTO in 2004, which prevents cost shifts between zones for transmission facilities built before SPP’s formation as an RTO, should be extended to prevent cost shifts at the intra-zonal level. Complainants assert that when cost shifts between zones were a contested issue in the PJM Interconnection, L.L.C. (PJM) RTO, the Commission, in Opinion No. 494, strongly

¹⁵ *Id.* at 20-21.

¹⁶ *Id.* at 12; Ex. No. ITO-1 at 23.

¹⁷ Complaint at 21-23.

supported license plate rates as being consistent with the principles of cost causation.¹⁸ Complainants contend that the same reasoning should be applied at the intra-zonal level. Further, Complainants note that an appellate court agreed, finding that there would be no economic basis for shifting costs to other members because the transmission owner did not expect to have the costs of its facilities defrayed by anyone besides its customers.¹⁹ Complainants contend that the circumstances here are no different than those at issue in Opinion No. 494. Complainants argue that the same reasoning should be applied at the intra-zonal level, contending that a tariff that creates legacy cost shifts at the intra-zonal level but prohibits them at the inter-zonal level is unjustifiable.²⁰

11. Complainants include proposed Tariff sheets revising Attachment H (Annual Transmission Revenue Requirement for Network Integration Transmission Service) of the Tariff to incorporate their requested relief.²¹ In addition, these Tariff sheets include other proposed revisions that include new notice and process procedures that would apply when a new transmission owner attempts to join SPP.

III. Notice and Responsive Pleadings

12. Notice of the Complaint was published in the *Federal Register*, 82 Fed. Reg. 49,204 (2017), with interventions and protests due on or before November 2, 2017. Timely motions to intervene were filed by Arkansas Electric Cooperative Corporation, Southwestern Power Administration, the Missouri Joint Municipal Electric Utility Commission, Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Roosevelt County Electric Cooperative, Inc., Lincoln Electric System, Western Area Power Administration, East River Electric Power Cooperative, Inc., Mountrail-Williams Electric Cooperative, Otter Tail Power Company, Associated Electric Cooperative, Inc., Central Power Electric Cooperative, Inc., KAMO Electric Cooperative, Inc., Empire District Electric Company, Basin Electric Power Cooperative, the Kansas City, Kansas Board of Public Utilities, NextEra Energy Transmission Southwest, LLC, Southwest Transmission, LLC, and LSP Transmission Holdings, LLC. Notices of intervention were filed by the Missouri Public Service Commission and the Arkansas Public Service Commission.

¹⁸ *Id.* at 12 (citing *PJM Interconnection L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007) (Opinion No. 494)).

¹⁹ *Id.* at 13 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009) (*ICC v. FERC*)).

²⁰ *Id.* at 14.

²¹ *See id.* at App. B.

13. On November 2, 2017 SPP filed an answer to the Complaint (SPP Complaint Response). South Central MCN LLC (South Central) and Tri-County Electric Cooperative, Inc. (Tri-County) each filed timely motions to intervene and filed joint comments and protest. East Teas Electric Cooperative, Inc. and Northeast Texas Electric Cooperative, Inc. (collectively, Texas Cooperatives) filed a timely joint motion to intervene and a protest. TDU Intervenors²² filed a timely motion to intervene and a protest and motion to dismiss. Northwest Iowa Power Cooperative (NIPCO) and Corn Belt Power Cooperative (Corn Belt) filed a timely joint motion to intervene and comments. Timely motions to intervene and comments were filed by Alabama Power Company (Alabama Power), Midwest Energy, Inc. (Midwest Energy), ITC Great Plains, LLC (ITC Great Plains), Golden Spread Electric Cooperative, Inc. (Golden Spread), and Tri-State Generation and Transmission Association, Inc. (Tri-State). The Kansas Corporation Commission (Kansas Commission) filed a notice of intervention and comments.

14. Iowa Utilities Board (Iowa Board), the Public Utility Commission of Texas (Texas Commission), and Paragould Light Water & Cable, Paragould Light Commission, Poplar Bluff Municipal Utilities, Kennett Board of Public Works, City of Piggott Municipal Light, Water & Sewer, and the City of Malden (collectively, ARKMO Cities) filed motions to intervene out-of-time.

15. On November 17, 2017, Complainants filed an answer. Also on November 17, 2017, SPP submitted a supplemental affidavit to its answer. On December 4, 2017, South Central and Tri-County submitted an answer to Complainants' answer. On January 8, 2018, SPP filed an answer to certain comments and answers. On February 14, 2018, Texas Cooperatives filed a motion to expedite decision on the Complaint.

A. SPP Complaint Response

16. In its Complaint Response, SPP requests that the Commission deny the Complaint. SPP argues that not every cost shift that may result from placing a new transmission owner in an existing zone is *per se* unjust and unreasonable, and that granting Complainants' requested relief would undermine the Commission's ability to judge whether a particular proposed zonal placement results in just and reasonable rates based on the specific facts and circumstances of the case. SPP asserts that the Commission has never taken a rigid view that rate impacts, even cost shifts, are universally and patently unjust and unreasonable, but instead recognizes that matters of rate design involve judgment on a myriad of facts. SPP contends that Complainants' requested relief would

²² TDU Intervenors are identified as the following entities: The City of Independence, Missouri; Kansas Municipal Energy Agency; Kansas Power Pool; Missouri River Energy Services; Oklahoma Municipal Power Authority; and West Texas Municipal Power Agency.

require the Commission to forego consideration of the unique facts of each situation and could lead to unjust and unreasonable results, even when the circumstance of a specific case would result in rates that are just and reasonable even if there is a cost shift.²³

17. SPP asserts that its Tariff is not unjust and unreasonable because it does not require SPP to involve itself in evaluating and mitigating cost shifts. SPP argues that such determinations are for the Commission to make and are best addressed by the Commission on a case-by-case basis.²⁴

18. In addition, SPP contends that, contrary to the arguments in the Complaint, the reallocation of sunk costs upon zonal integration of a new SPP transmission owner into an existing zone does not necessarily conflict with cost causation principles. SPP states that each incorporation of a potential new transmission owner into an RTO is based on unique facts and circumstances, and that facts such as the integration or interdependence of the transmission owners' facilities, history of use of the transmission facilities, or factors demonstrating offsetting benefits could determine that a resulting new zonal rate is just and reasonable and aligns with cost causation. SPP asserts that the Commission has determined in some cases that an alleged cost shift did not render a proposal unjust and unreasonable.²⁵

²³ SPP Complaint Response at 1-3.

²⁴ *Id.* at 4.

²⁵ *Id.* at 6.

19. Specifically, SPP asserts that, in *Allegheny*,²⁶ the Commission found that the facts and circumstances made it reasonable for Allegheny Electric Cooperative, Inc. (Allegheny) to recover the revenue requirement for a transmission facility from customers in the PPL Electric Utilities, Inc. (PPL) zone in PJM. SPP states that PPL opposed the proposed allocation of the revenue requirement, arguing that it resulted in a cost shift to PPL zone customers. According to SPP, the Commission found that, under the specific facts and circumstances presented, the proposed allocation was reasonable, despite PPL's concerns about cost shifts.²⁷

20. SPP also argues that, in *Cleco*,²⁸ the Commission determined that concerns about cost shifts in the context of multi-owner zones in MISO did not render the establishment of the multi-owner zone unjust and unreasonable or require some form of mitigation. SPP asserts that the Commission rejected Cleco Power LLC's (Cleco) concerns about cost shifts, finding that Cleco must pay for transmission services that it received from the City of Alexandria, Louisiana (Alexandria), another transmission owner in the Cleco zone. SPP states that, even though Cleco availed itself of the MISO "bundled load exemption" to avoid paying transmission charges for its own facilities, the Commission found that it was inconsistent with MISO's tariff to exempt Cleco from paying for transmission services that it received from Alexandria.²⁹

21. SPP further contends that in *Ameren*,³⁰ in the context of a transaction under section 203 of the FPA,³¹ the Commission stated that "even if rates increase for some customers, the transaction can still be consistent with the public interest if there are countervailing benefits."³² According to SPP, the Commission found that the benefits of the transfer of facilities that increased the MISO footprint outweighed the increase in

²⁶ *PJM Interconnection, L.L.C.*, 94 FERC ¶ 61,295 (*Allegheny*), *reh'g denied*, 95 FERC ¶ 61,217 (2001).

²⁷ SPP Complaint Response at 6-7 (citing *Allegheny*, 94 FERC at 62,704, 62,076, 62,078).

²⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,190 (2015) (*Cleco*).

²⁹ SPP Complaint Response at 7-8 (citing *Cleco*, 151 FERC ¶ 61,190 at PP 36-38).

³⁰ *Ameren Servs. Co.*, 103 FERC ¶ 61,121 (2003) (*Ameren*).

³¹ 16 U.S.C. § 824b.

³² SPP Complaint Response at 9 (citing *Ameren*, 103 FERC ¶ 61,121 at P 23).

rates that may result from the transaction.³³ SPP also claims that Commission policy already accommodates a form of cost shifting under section 30.9 of the Commission's *pro forma* open access transmission tariff, by allowing cost shifts via credits from a transmission customer (who receives credits under Section 30.9) to the transmission owner based on a finding that the transmission facilities are integrated with and provide some benefit to the transmission owner and its other customers.³⁴

22. In addition, SPP asserts that in Opinion No. 474, the Commission affirmed an administrative law judge's initial decision that the costs of transmission facilities owned by Northeast Texas Electric Cooperative, Inc. should be rolled into Southwestern Electric Power Company's rates due to the integrated nature of the transmission network and benefits accruing to all network users, as well as for reliability reasons.³⁵

23. SPP further argues that a recent initial decision in Docket No. ER16-204, on which the Commission has not yet acted, illustrates that decisions involving rate impacts are best decided based on the specific circumstances and allegations of the case. In that case, SPP proposed to place Tri-State's facilities in existing SPP Zone 17. SPP states that this was based on the level of integration of the two systems, including a long history of joint operation and planning.³⁶ SPP notes that the administrative law judge found that, under the circumstances of the utilities' contractual arrangements, "placing Tri-State's facilities in Zone 17 is consistent with the Commission's cost causation principle espoused in Order No. 2000."³⁷

24. SPP also asserts that Complainants' reliance on the Commission's determination in Opinion No. 494 is misplaced, because, according to SPP, the issues addressed in that case are distinguishable from those raised in the instant Complaint and the Commission did not, in that case, find that costs can never be allocated if cost causation or benefits dictate otherwise.³⁸ SPP contends that, in Opinion No. 494, the Commission rejected various rate proposals, in part, "because of the *magnitude* of the cost shift, which in some

³³ *Id.*

³⁴ *Id.* at 9-10.

³⁵ *Id.* at 10, n.26 (citing *Ne. Tex. Elec. Coop., Inc.*, Opinion No. 474, 108 FERC ¶ 61,084, at P 47 (2004) (Opinion No. 474)).

³⁶ *Id.* at 8.

³⁷ *Id.* (citing *Sw. Power Pool, Inc.*, 158 FERC ¶ 63,004, at P 344 (2017)).

³⁸ *Id.* at 11.

zones was in excess of 70 percent.”³⁹ According to SPP, the Commission lacks a bright line definition of what magnitude of cost shift is inappropriate because the Commission appropriately considers each proposal on a case-by-case basis.⁴⁰

25. SPP disagrees with Complainants’ claims the Tariff’s approach unduly discriminates between single zone transmission owners and multi-owner zones. SPP argues that there is a rational basis for its zonal placement criteria and that it applies these criteria uniformly to all zones in SPP and to each potential new transmission owner, regardless of where on the SPP transmission system the new owner interconnects.⁴¹

26. SPP asserts that the Commission, not SPP, is solely responsible for determining whether a proposed zonal placement and any resulting rate impact is or is not just and reasonable. SPP states that, therefore, it analyzes zonal placements not from the perspective of a ratemaking body, but from a transmission scope and configuration viewpoint, as an RTO charged with administering open access transmission service and planning and expanding its transmission system to accommodate present and future load, generator interconnections, and existing and new transmission service.⁴²

27. SPP explains that, in administering its zonal placement process, it determines whether a new transmission owner’s facilities and its ATRR are sufficiently large enough to warrant a separate zone. SPP states that the criteria that it uses to make this determination⁴³ helps to avoid the establishment of zones with unreasonably small ATRRs that are not reflective of a commensurate share of the cost of accessing the entire SPP transmission system. SPP explains that the criteria also help to establish zones that are of sufficient scope and geographical size to internalize reliability problems, which reduces the likelihood of situations where a reliability issue in one disproportionately small zone causes the need for upgrades in another zone to resolve the issue, and thereby

³⁹ *Id.* at 12 (citing Opinion No. 494, 119 FERC ¶ 61,063 at P 59).

⁴⁰ *Id.* at 13.

⁴¹ *Id.* at 15-16.

⁴² *Id.* at 16-17.

⁴³ Specifically, SPP states that it uses the following criteria: (1) whether the new transmission owner’s ATRR is less than the smallest three-year average zonal ATRR; (2) whether the new transmission owner’s facilities substantively increase the SPP regional footprint; and (3) the nature of transmission service used to serve load prior to the expected transfer date. *Id.* at 18.

mitigates the potential that costs caused by a reliability need in one zone are allocated to another zone where the upgrade was constructed.⁴⁴

28. SPP explains that, if it determines that a new transmission owner should not be placed in a separate zone, it then goes on to identify the most appropriate pre-existing zone in which to place a new transmission owner. SPP explains that the goal of the criteria that it uses to make this decision⁴⁵ is to determine if a new transmission owner's facilities and load are significantly interconnected with or dependent on the facilities and load of an existing transmission owner such that the transmission owners' systems reasonably constitute a cohesive whole and are interdependent and used to serve the existing zonal and new transmission owner's collective loads.⁴⁶

29. SPP additionally notes that it has recently enhanced its zonal placement decision process by adding a requirement that, after it decides the appropriate zonal placement for a new transmission owner's ATRR and facilities, it will perform a rate impact analysis for that selected zone. SPP states that it will then provide that analysis to the affected parties as part of its public filing made with the Commission under section 205 of the FPA to effectuate the transfer of the new transmission owner's facilities to the existing zone.⁴⁷ SPP contends that this puts all parties on equal footing for negotiation purposes and increases transparency regarding SPP's internal processes. SPP explains that, in this manner, the effect on rates of the zonal placement are made public and the parties have the opportunity to raise concerns directly with the Commission. Accordingly, SPP asserts that its new zonal placement process is not opaque, as Complainants argue.⁴⁸

30. Furthermore, SPP contends that the Tariff revisions proposed by Complainants have not been vetted through the SPP stakeholder process and contain several flaws.⁴⁹ SPP asserts that, for example, the Complaint's proposed Tariff revisions do not address point-to-point transmission service, but would affect that service because both network

⁴⁴ *Id.* 17-19.

⁴⁵ Specifically, SPP states that it uses the following criteria: (1) the extent to which the transferring facilities are embedded in an existing zone; (2) the extent to which the transferring facilities are integrated with an existing zone; and (3) the nature of transmission service to serve load prior to the expected transfer date. *Id.* at 20.

⁴⁶ *Id.* at 20-21.

⁴⁷ *Id.* at 22-23.

⁴⁸ *Id.* at 23.

⁴⁹ *Id.*

service and point-to-point transmission service use the zonal ATRR in determining the rates for service; thus, a new solution for point-to-point transmission service would need to be developed to account for Complainants' proposed sub-zonal ATRRs within an SPP zone. Similarly, SPP points out that the Complaint's proposed Tariff revisions do not address the situation in which the new transmission owner does not have load accompanying the transfer of functional control of facilities to SPP, which leaves a potential gap in the Tariff.⁵⁰

B. Protests

1. South Central and Tri-County

31. South Central and Tri-County urge the Commission to summarily dismiss the Complaint. South Central and Tri-County argue that the Complaint's proposed Tariff revisions would preserve only for Complainants the right to recover their revenue requirements from more than just their own retail load, prescribing a different, inferior set of terms and conditions and cost recovery methodology for new transmission owners integrating into an existing zone. They further assert that the Complaint's proposed Tariff revisions do not contemplate, and therefore do not provide for, the recognition of investment in existing or new zonal facilities by an independent transmission company without its own load, such as South Central.⁵¹

32. South Central and Tri-County assert that what Complainants call an improper cost shift of the sunk costs of a newly-integrated transmission owner's existing facilities is, in reality, SPP's lawful implementation of the Commission's long-standing policy of rolled-in pricing for integrated transmission facilities. They argue that, according to this policy, when a transmission facility is integrated into a transmission network, that facility benefits all transmission customers in the system, and the costs for the facility are rolled-in to system-wide rates that are charged to all customers served, rather than directly assigned to specific customers. South Central and Tri-County assert that the Commission has found that separate rates were not justified where networked facilities were serving all customers in the area⁵² and that even facilities that were installed to meet a particular customer's request for service were still entitled to rolled-in rate treatment where their integration benefited all network users.⁵³ They contend that, by definition,

⁵⁰ *Id.* at 28.

⁵¹ South Central and Tri-County Protest at 2-3.

⁵² *Id.* at 6 (citing *Buckeye Power, Inc. v. Am. Transmission Sys. Inc.*, 148 FERC ¶ 61,174 (2014)).

⁵³ *Id.* (citing Opinion No. 474, 108 FERC ¶ 61,084 at P 47).

the facilities of a transmission owner joining SPP are integrated components of the transmission network administered by SPP and, therefore, it is consistent with Commission policy to use rolled-in pricing for those facilities, as the SPP Tariff currently does.⁵⁴

33. South Central and Tri-County state that, in SPP's RTO formation proceeding, the Commission directed SPP to resolve the question of the establishment of joint zones and to submit a compliance filing to the Commission. In response, South Central and Tri-County assert, SPP and its stakeholders, including Complainants, developed amendments to Attachments AI (Transmission Definition) and L (Treatment of Revenues) to "provide for the distribution of revenue between multiple entities owning transmission facilities in a single zone." They note that the Commission accepted these provisions, which contradicts Complainants' portrayal of the SPP Tariff's current provisions for establishing multi-owner transmission zones as an inadvertent loophole.⁵⁵

34. South Central and Tri-County assert that the Commission, in Order No. 2000, made clear that it wanted all types of transmission owners to participate in RTOs, including non-jurisdictional municipalities or electric cooperatives and independent transmission companies, so that "donut holes" in RTO regions could be filled. They argue that the Complaint would accomplish the opposite and discourage, rather than incent, participation in SPP to fill the donut holes because it would effectively create two classes of transmission owners in SPP, with new entrants being restricted to recovering their ATRR only from their own load, even though their facilities are part of the integrated transmission network and thus are used by and benefit all loads in the transmission zone.⁵⁶

35. South Central and Tri-County also point out that the Complaint's proposed Tariff revisions appear to deny independent transmission companies an opportunity to recover their ATRR for facilities placed in an existing transmission zone because they do not have their own retail load and therefore, would not have any customers that could pay a network service rate under the Complaint's proposed Tariff revisions. They argue that the proposed Tariff revisions thus violate the FPA's mandate that the Commission must provide each public utility with a reasonable opportunity to recover its costs.⁵⁷

⁵⁴ *Id.* at 7-9.

⁵⁵ *Id.* at 21-22.

⁵⁶ *Id.* at 25-26.

⁵⁷ *Id.* at 26.

36. South Central and Tri-County further assert that the Complaint also contravenes the Commission's policy of RTO independence because it would prohibit SPP from collecting the revenue requirement of a new transmission owner from all load in a joint zone in the absence of an "agreement by all [transmission owners] in the Newly Integrated Zone." According to South Central and Tri-County, this prohibition effectively gives Complainants veto power over SPP's independent decision making and ability to propose rates, terms, and conditions of transmission service provided over the facilities it operates.⁵⁸

2. TDU Intervenors

37. TDU Intervenors contend the Commission should deny or dismiss the Complaint, arguing that Complainants have not met their burden of proof to show that the SPP tariff is unjust, unreasonable, or unduly discriminatory.⁵⁹

38. TDU Intervenors argue that the cost shifting – or rather, cost sharing – was accepted by the Commission as just and reasonable when the Commission accepted SPP's Attachment AI, which outlined the criteria to define transmission facilities under the Tariff. They state that, when it accepted Attachment AI, the Commission explained that it intended to "determine which existing facilities will be rolled in for cost-sharing purposes."⁶⁰ TDU Intervenors then note that, on rehearing, the Commission rejected objections that rolled-in rate treatment of all existing transmission facilities that qualified as transmission under Attachment AI would cause cost shifting, stating that it had "considered the possibility of resulting cost shifts and the effects on the entire SPP system and found that, on balance, the definition is just and reasonable."⁶¹ TDU Intervenors contend that the Commission accepted that some parties may be adversely affected by SPP's Tariff revisions while others will benefit, but concluded they were just and reasonable so long as SPP applied them consistently.⁶²

39. TDU Intervenors also argue that the Commission has held that all customers benefit from an integrated grid and should share in the costs.⁶³ TDU Intervenors further

⁵⁸ *Id.* at 29-30, 33.

⁵⁹ TDU Intervenors Protest at 1-2, 21-22.

⁶⁰ *Id.* at 5 (citing *Sw. Power Pool, Inc.*, 112 FERC ¶ 61,355, at PP 38, 41 (2005), *order on reh'g*, 114 FERC ¶ 61,242 (2006)).

⁶¹ *Id.* at 4-5 (citing *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,242 at P 15).

⁶² *Id.* at 5.

⁶³ *Id.* at 6 (citing, e.g., *City of Anaheim, Cal.*, Opinion No. 483, 113 FERC

assert that Complainants' reliance on Opinion No. 494 and the Seventh Circuit's ruling on review of that order⁶⁴ is misplaced because that case involved regional cost allocation between and among zones in an RTO, while this Complaint deals with allocation of costs within the far more limited scope of an existing zone. TDU Intervenors state that, in *ICC v. FERC*, the Commission sought to justify region-wide rolled-in pricing of to-be-constructed facilities on systems hundreds of miles distant from some of the customers that would be expected to pay the rolled-in rates, and the Seventh Circuit found that the lack of proximity and the geographic distance between the facilities and some of the customers that would be expected to pay for them undermined the application of rolled-in pricing for those facilities on a regional basis. TDU Intervenors argue that, in contrast, the issue in this case is cost allocation *within* an existing zone that has already been determined to constitute an integrated grid for purposes of applying rolled-in pricing.⁶⁵

40. TDU Intervenors further contend that the Commission should clarify that SPP's existing Tariff precludes parties from raising concerns about cost shifts when SPP determines that a new transmission owner's facilities should be included in an existing zone. TDU Intervenors argue that, if the Commission does not make this clarification, it should deny the Complaint and consider any cost-shift claims on a case-by-case basis.⁶⁶

41. In addition, TDU Intervenors assert that the Complaint's proposed Tariff revisions are not just and reasonable, claiming they would favor incumbent transmission owners and their customers.⁶⁷ TDU Intervenors further contend that several elements of the Complaint's proposed Tariff provisions are unclear.⁶⁸

3. Texas Cooperatives

42. Texas Cooperatives contend that the Commission should dismiss the Complaint. They argue that Complainants have not made the necessary showing that the existing

¶ 61,091, at P 2 (2005) *order on reh'g*, Opinion No. 483-A, 114 FERC ¶ 61,311 (2006); *Ne. Tex. Elec. Coop., Inc.*, 111 FERC ¶ 61,189, at P 42 (2005)).

⁶⁴ *ICC v. FERC*, 576 F.3d 474.

⁶⁵ TDU Intervenors Protest at 7-9.

⁶⁶ *Id.* at 10-12.

⁶⁷ *Id.* at 13.

⁶⁸ *Id.* at 20-21.

Tariff is unjust and unreasonable,⁶⁹ and that the Complaint's proposed Tariff revisions are poorly scoped and fraught with ambiguity and inconsistency. Texas Cooperatives argue that if, however, the Commission were to accept the proposed Tariff revisions, the effective date should be prospective only from a Commission order accepting an SPP compliance filing and not, as Complainants request, from the date of the Complaint.⁷⁰

43. Texas Cooperatives argue that the Complaint's fundamental argument is that cost shifting within existing zones should not be allowed.⁷¹ However, Texas Cooperatives contend that there is no *per se* rule against cost shifting.⁷² Instead, Texas Cooperatives contend that the rubric for cost allocation is whether costs are allocated in a manner that is at least roughly commensurate with estimated benefits.⁷³

44. Texas Cooperatives assert that the Commission accepts cost shifts in its cost allocation methodology among transmission owners when the equities call for it. According to Texas Cooperatives, in *Allegheny*, the Commission approved a PJM proposal to recover revenue requirements of Allegheny's 42-mile 500 kV line located within the PPL zone even though 98 percent of Allegheny's load was in the GPU Energy zone, finding that the facilities benefitted PPL, despite complaints of a cost shift from the cost allocation.⁷⁴ Texas Cooperatives additionally argue that in *Midwest ISO Transmission Owners v. FERC*,⁷⁵ the court affirmed a Commission decision to allocate the independent system operator (ISO) Cost Adder to all the load of MISO transmission owners because of the compensating benefits of having an ISO even though 60 to 70 percent of that load was excluded from MISO for a six-year transition period.⁷⁶

45. Texas Cooperatives argue that cost shifts are the inevitable result of any cost allocation methodology embraced by the Commission, and that the Commission

⁶⁹ Texas Cooperatives Protest at 3.

⁷⁰ *Id.* at 26-27.

⁷¹ *Id.* (citing Complaint at 12-15).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 5 (citing *Allegheny*, 94 FERC at 62,074 and 62,078).

⁷⁵ *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

⁷⁶ Texas Cooperatives Protest at 5 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d at 1368-71).

adjudicates the justness and reasonableness of cost shifts on a case-by-case basis.⁷⁷ Texas Cooperatives also contend that “any reasonable equitable analysis looks at complementary benefits of integration including RTO expansion, enhanced transmission access to existing zonal members and the new Transmission Owner, expanded regional planning of facilities, and elimination of rate pancaking.”⁷⁸ Texas Cooperatives further assert that concerns regarding transparency or lack of data regarding SPP’s zonal placement process are a procedural problem independent of the substantive Complaint that could be addressed by a narrower proposal.⁷⁹

4. Golden Spread

46. Golden Spread opposes the Complaint, stating that the proposed Tariff revisions are so one-sided that they are not just and reasonable. Golden Spread contends that the proposed revisions to Attachment H of the Tariff place the incumbent transmission owners in the role of SPP by requiring their express authorization to place a new transmission owner’s facilities within a zone. Golden Spread also notes that the proposed Tariff revisions contain no *de minimis* exception, and contends that such overly rigid rules may unintentionally discourage expansion of the SPP footprint. Golden Spread further contends the Complaint’s proposed Tariff revisions do not make clear whether the facilities of new transmission owners would be eligible for inclusion in the zonal ATRR.⁸⁰

5. NIPCO and Corn Belt

47. NIPCO and Corn Belt contend that aspects of Complainants’ proposed Tariff revisions are deficient. Specifically, NIPCO and Corn Belt note that Complainants’ proposed Tariff revisions do not appear to contemplate zones with more than two transmission owners. NIPCO and Corn Belt oppose application of the proposed Tariff revisions to existing transmission owners’ facilities. NIPCO and Corn Belt request that

⁷⁷ *Id.* at 5.

⁷⁸ *Id.* at 7 (citing *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,051, at P 52 (2015) (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, at P 155 (2014) (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,174-759 (2000))).

⁷⁹ *Id.* at 25.

⁸⁰ Golden Spread Comments at 4-8.

the Commission not direct SPP to amend its Tariff to incorporate the Complaint's proposed Tariff revisions.⁸¹

C. Other Comments

48. ITC Great Plains generally agrees with the Complaint that Commission action may be warranted on this matter,⁸² but it argues that the Commission must ensure that three categories of facilities are not required to recover costs through a separate rate mechanism as a function of their zonal placement. First, ITC Great Plains argues that all SPP facilities classified as Base Plan Upgrades (i.e., facilities identified in one of the Commission-approved SPP transmission planning processes) should not be subject to any restrictive cost allocation Tariff provisions. Second, ITC Great Plains asserts that alternate rate mechanisms should not apply to facilities that were already placed in an existing SPP zone and are transferred to a new SPP transmission owner, where the acquiring transmission owner is not seeking to change the zonal placement of those facilities. Third, ITC Great Plains argues that the costs of any new local upgrades to Base Plan Upgrades or the facilities described in the second category should be allowed to be zonally allocated, not made subject to the Complaint's proposed separate cost allocation mechanism for new local facilities added after integration into an existing zone.⁸³

49. ITC Great Plains also suggests that the Commission's cost causation principle is slightly broader than the Complaint's formulation of "customers should pay for facilities constructed for them."⁸⁴ ITC Great Plains contends that the original intended beneficiaries of a transmission facility are probative, but not wholly determinative, of the valid allocation of the costs thereof. ITC Great Plains points to *ICC v. FERC* and asserts that this case shows that costs should be allocated to those parties that make use of, or otherwise actually benefit from, a given transmission facility, and not merely the party or parties whom the facility was intended to be used by or benefit.⁸⁵

50. Alabama Power states that it shares Complainants' concerns about cost shifts and transmission service rate impacts created by changes in the transmission owners and systems that comprise an RTO, but urges the Commission to also consider these concerns

⁸¹ NIPCO and Corn Belt Comments at 4-6.

⁸² ITC Great Plains Comments at 1.

⁸³ *Id.* at 4-7.

⁸⁴ *Id.* at 3.

⁸⁵ *Id.* at 2-3.

in connection with point-to-point transmission service, not just network service.⁸⁶ Alabama Power states that it does not have specific comments on the Complaint's proposed Tariff revisions, but submits that a reasonable and nondiscriminatory approach to mitigation of rate impacts due to legacy cost shifts should also account for impacts on point-to-point customers under Schedules 7 and 11 of the SPP Tariff.⁸⁷

51. The Kansas Commission agrees with Complainants that the alleged cost shifts are unjust and unreasonable and agrees with the Complaint's proposed Tariff revisions. However, the Kansas Commission seeks clarification regarding what new facilities would be included in the separate transmission owner ATRRs.

52. Midwest Energy agrees with Complainants, and notes that if SPP were to place another transmission owner in the Midwest Energy zone, Midwest Energy could be subject to cost shifts. Midwest Energy further contends that the Tariff revisions proposed by Complainants should pose little or no incremental burden on SPP.

53. Tri-State requests that the Commission confirm that any changes to the SPP Tariff made as a result of this proceeding be applied prospectively only and not to cases pending prior to the date on which the Complaint was submitted.⁸⁸

D. Answers

1. Complainants

54. In their answer, Complainants argue that there is no issue of uncertainty with the reallocation of sunk costs, and that the customers for whom those facilities were planned and built should still be required to pay for that investment.⁸⁹ Complainants further argue that there is no rational basis to prevent reallocation of sunk costs between zones while always requiring such reallocation within zones when the zonal allocation decision has nothing to do with rate considerations.⁹⁰ Complainants argue that if the existing facilities indeed benefit other customers in SPP, then SPP should determine who those customers are and propose rate treatment accordingly, but there is no reason to conclude that those

⁸⁶ Alabama Power Comments at 1.

⁸⁷ *Id.* at 3-4.

⁸⁸ Tri-State Comments at 5-7.

⁸⁹ Complainants Answer at 5.

⁹⁰ *Id.* at 6, 8-9.

customers are always the other customers in the zone.⁹¹ Complainants contend that the case-by-case approach to the issue adds a societal cost of repeat litigation.⁹²

55. Complainants contend their proposed Tariff revisions represent one of a range of possible just and reasonable outcomes, and that approving the proposed Tariff revisions is not a precondition for granting the Complaint. In any event, Complainants argue that their proposed Tariff revisions are just and reasonable, and many of the criticisms are based on an improper reading of the proposed Tariff revisions.⁹³

2. South Central and Tri-County

56. South Central and Tri-County assert that including a new transmission owner's ATRR in the total ATRR of an existing zone is not a reallocation of sunk costs or a cost shift, but is simply rolled-in pricing of networked transmission facilities that are used by and deemed to benefit all customers in the joint transmission zone.⁹⁴ South Central and Tri-County argue that Complainants incorrectly imply that all existing transmission facilities in an existing zone were built expressly and solely for the benefit of all customers within a zone. South Central and Tri-County contend that, even within a single owner zone, transmission facilities built by that owner are paid for by customers for whom those facilities were not expressly constructed because customers in opposite corners of the zone may use different specific transmission facilities, but all customers pay the same rolled-in transmission rate based on the ATRR of all transmission facilities in the zone.⁹⁵

3. SPP Answer

57. In its January 8, 2018 answer, SPP asserts that the SPP Tariff does not result in repeat litigation, as Complainants allege, because each zonal placement case involves different facts and considerations. SPP also argues that, out of the many instances in which SPP has added a new transmission owner to an existing zone, very few disputes have been brought to the Commission addressing allegations of cost shifting, and only one case has been litigated before the Commission in a hearing.

⁹¹ *Id.* at 7-8.

⁹² *Id.* at 10.

⁹³ *Id.* at 13-14.

⁹⁴ South Central and Tri-County Answer at 3.

⁹⁵ *Id.* at 5.

IV. Discussion

A. Procedural Matters

58. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission will grant the late-filed motions to intervene of the Iowa Board, the Texas Commission, and ARKMO Cities, given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

59. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by South Central and Tri-County, Complainants, and SPP because they provided information that assisted us in our decision-making process.

B. Substantive Matters

60. We deny the Complaint. Complainants have not met their burden of proof under section 206 of the FPA to demonstrate that the SPP Tariff is unjust, unreasonable, or unduly discriminatory, or preferential because it does not prohibit cost shifts that result from the addition of a new transmission owner to an existing zone. Under section 206 of the FPA, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant."⁹⁶ Accordingly, Complainants must demonstrate that SPP's existing Tariff provisions, which the Commission has previously accepted as just and reasonable, have become unjust and unreasonable or are unjust and unreasonable as applied to them. Complainants have not made such a demonstration and we therefore deny the Complaint.

61. According to Complainants, cost shifts in the form of increased network service rates result when a new transmission owner's transmission system is integrated into an existing zone and the average cost of the new transmission owner's transmission system (i.e., its ATRR divided by its load) is higher than the average cost of the existing zone's transmission system. Complainants request that the Commission find that the SPP Tariff is unjust, unreasonable, and unduly discriminatory because it does not prohibit such cost shifts. However, Commission precedent does not support taking such a rigid approach. The Commission and courts have stated that "[a]llocation of costs is not a matter for the

⁹⁶ 16 U.S.C. § 824e(a).

slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”⁹⁷ 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.”⁹⁸ Courts have also held that the cost causation principle does not require a “ratemaking agency to allocate costs with exacting precision.”⁹⁹

62. Complainants have not demonstrated that the SPP Tariff is unjust, unreasonable, and unduly discriminatory because it permits some degree of shifting of cost responsibility for existing transmission costs in the context of integrating a new transmission owner into SPP. Granting the Complaint would require the Commission to find that any potential cost shift that results from the reallocation of existing transmission costs when a new transmission owner joins an ISO or RTO like SPP is *per se* unjust and unreasonable and must be prohibited, absent agreement of the existing transmission owner in whose zone the new transmission owner has been placed. This inflexible approach would prevent the Commission from considering the “myriad of facts”¹⁰⁰ that must be evaluated to determine if a particular cost allocation is just and reasonable. In particular here, SPP must consider a wide variety of issues when determining where to place a new transmission owner that seeks to integrate into SPP, including the scope, configuration, and operational characteristics of the new owner’s transmission facilities and the existing SPP system, and the implications that the zonal placement will have for transmission planning and system reliability.¹⁰¹ Issues like these are case-specific and must be considered to determine whether zonal placements, including any resulting rate impact, are just and reasonable. Complainants would preclude the Commission from considering the unique circumstances of each particular zonal integration to determine if the resulting rate is just and reasonable and instead impose a rigid rule prohibiting any shifting of cost responsibility for existing transmission facilities, regardless of the circumstances. This would inhibit the Commission’s ability to determine if rates are just and reasonable and could cause unjust and unreasonable results. For example, if a

⁹⁷ *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)).

⁹⁸ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (emphasis added).

⁹⁹ *Midwest ISO Transmission Owners v. FERC*, 373 F.3d at 1369 (citing *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002)). See also *ICC v. FERC*, 576 F.3d at 477 (explaining that cost allocation may be adequate when “benefits are at least roughly commensurate” with costs.).

¹⁰⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213 at P 84.

¹⁰¹ See, e.g., SPP Complaint Response at 2, 6, 16-22. See also *id.* 18, 20; *supra* nn.43, 45.

transmission owner in an existing zone benefits from a new transmission owner's facilities, then it may be just and reasonable for some cost responsibility for the new owner's facilities to shift to the existing transmission owner and its customers. However, absent agreement of the existing transmission owner in whose zone the new transmission owner has been placed, Complainants' requested relief would preclude this result and could create an unjust and unreasonable rate.

63. The Commission has previously found, on a case-by-case basis, that some degree of cost shifting is just and reasonable and has permitted the costs of existing transmission facilities to be reallocated among existing transmission owners. For example, in *Allegheny*, the Commission allowed Allegheny to recover the costs of transmission facilities from the PPL zone in PJM even though 98 percent of Allegheny's load was in a different PJM zone. PPL complained that the allocation resulted in a cost shift to PPL zone customers because Allegheny would receive 2.1 percent of the revenues derived from sales to load in the PPL zone even though its load was only 0.09 percent of the zonal load.¹⁰² Despite PPL's cost shifting argument, the Commission found the facilities benefited PPL, and approved the allocation.¹⁰³

64. Similarly, in *Cleco*, the Commission determined that concerns about cost shifts did not render the establishment of a multi-owner zone in MISO unjust and unreasonable or require some form of mitigation. In that case, Cleco, an existing MISO transmission owner, argued that a cost shift would occur if Cleco was required to compensate a new MISO transmission owner, Alexandria, for use of the Alexandria transmission facilities through the sharing of revenues with Alexandria in a joint zone. Cleco sought to use the MISO "bundled load exemption"¹⁰⁴ to exempt itself from paying for transmission

¹⁰² *Allegheny*, 94 FERC at 62,076.

¹⁰³ *Id.* at 62,074 and 62,078. *See also PJM Interconnection, L.L.C.*, 95 FERC at 61,721 (On rehearing, the Commission summarized its reasoning based on the facts of the case. It found that the facilities would have been built and owned by PPL and the revenue requirement would have been recovered in the PPL zone if Allegheny had not agreed to pay for and own these facilities. Next, it noted that PPL had full control over the operation and maintenance of the facilities, and that PPL and its customers had the full use of Allegheny's facilities to serve load in the PPL zone. Further, it noted that these facilities were part of the PJM's (and PPL's) integrated transmission system under PJM's (and PPL's) control. Finally, it observed that the facilities were used, in part, to deliver the output of a plant where PPL owned 90 percent of the output and could use the Allegheny transmission facilities to deliver this output to PPL's load in the PPL zone.).

¹⁰⁴ We note that the Complaint portrays the MISO bundled load exemption as resulting in vertically-integrated transmission owners that "are not impacted when a new [transmission owner] joins the zone and adds a potentially higher cost system to be

services it received from Alexandria to serve its bundled load in the Cleco zone. The Commission ruled in favor of Alexandria, finding that Cleco was required to compensate Alexandria for transmission service now that Alexandria was integrated into MISO, even if Cleco had not paid Alexandria for transmission service in the past.¹⁰⁵ The Commission found that the relevant provision of the MISO Tariff “specifically contemplates that a [transmission owner] will pay for transmission service it receives in a joint pricing zone, that it does not provide itself, regardless of whether the [transmission owner was] billed for such service in the past.”¹⁰⁶ The Commission rejected “Cleco’s claim that requiring Cleco to pay for the transmission services it receives from Alexandria would amount to a cost shift forbidden under . . . the [MISO Transmission Owners Agreement],” and explained that agreeing with Cleco “would result in Cleco not paying for transmission service it receives.”¹⁰⁷

65. With respect to SPP specifically, the Commission accepted Tariff provisions SPP proposed even though those provisions could result in cost shifts. Specifically, the Commission accepted revisions to Attachment AI that would “determine which existing facilities will be rolled in for cost sharing purposes.”¹⁰⁸ On rehearing, Golden Spread argued that the Commission did not consider the cost shifts that would result from excluding two types of lines from the categories of facilities eligible for rolled in treatment.¹⁰⁹ The Commission denied rehearing on that point, stating that “[t]he Commission considered the possibility of resulting cost shifts and the effects on the entire SPP system and found that, on balance, the definition [of transmission facilities] is reasonable.”¹¹⁰ Therefore, the Commission acknowledged that cost shifts were possible as a result of the Tariff revisions, but it approved the revisions anyway. In that

charged through [network service] rates.” *See* Complaint at 16. However, the bundled load exemption does not necessarily mean that such transmission owners are completely unaffected when a new transmission owner joins their zones because the exemption does not apply to charges for transmission and/or other ancillary services that the transmission owner does not provide itself. *See* MISO Tariff at Section 37.3.a.

¹⁰⁵ *Cleco*, 151 FERC ¶ 61,190 at PP 37-38.

¹⁰⁶ *Id.* P 37.

¹⁰⁷ *Id.* PP 37-38.

¹⁰⁸ *Sw. Power Pool, Inc.*, 112 FERC ¶ 61,355 at PP 38, 41, *order on reh’g*, 114 FERC ¶ 61,242.

¹⁰⁹ *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,242 at P 13.

¹¹⁰ *Id.* P 15.

proceeding, SPP also proposed amendments to Attachment L to “provide for the distribution of revenue between multiple entities owning transmission facilities in a single zone”¹¹¹ and those provisions allowed for the cost shifts that are the subject of the Complaint. The Commission accepted the revisions, “finding that they are just and reasonable.”¹¹²

66. In addition to these cases in which the Commission found that some degree of cost shifting was just and reasonable, the Commission also has indicated that the magnitude of a cost shift, not the mere existence of a cost shift, is what is relevant to determining whether a rate is just and reasonable. In Opinion No. 494, which is cited by Complainants as supporting their argument to prevent cost shifts, the Commission found that the “magnitude” of cost shifts supported its decision to reject challenges to PJM’s license plate rate design.¹¹³ The Commission explained that “significant cost shifts would occur” under proposed alternative rate designs “with some zones experiencing increases to their transmission cost responsibility in excess of 70%” and then found “that cost shifts of this magnitude, and the range of parties that would be affected by the shifts, support our rejection of a move away from license plate rates for PJM’s existing transmission facilities.”¹¹⁴ Therefore, the Commission found that the magnitude of the cost shift, not the mere existence of a cost shift, was relevant to the decision.

67. Moreover, general Commission policy with respect to certain transmission facilities permits a form of cost shifting. Specifically, section 30.9 of the *pro forma* Tariff, as well as section 30.9 of SPP’s Tariff, permits cost shifting by allowing transmission customers to receive a credit for existing transmission facilities from a transmission owner (and by extension, its customers) based on a finding that the facilities are integrated with and provide some benefit to the transmission owner and its other customers.¹¹⁵

¹¹¹ *Sw. Power Pool*, 112 FERC ¶ 61,355 at P 43.

¹¹² *Id.* P 49.

¹¹³ *See* Opinion No. 494, 119 FERC ¶ 61,063 at P 59.

¹¹⁴ *Id.*

¹¹⁵ *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at Appendix D (*pro forma* tariff) § 30.9 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub*

68. Accordingly, the Commission has considered situations that involved alleged cost shifts on a case-by-case in the past and has not found that cost shifts are *per se* unjust and unreasonable. In light of this and the record before us, Complainants have not demonstrated that the SPP Tariff is unjust and unreasonable because it does not prohibit the costs of existing transmission facilities from being reallocated across an existing zone when a new transmission owner is added to that zone.

69. Complainants allege that the SPP Tariff's failure to contain such a prohibition is inconsistent with the cost causation principle.¹¹⁶ We disagree. First, as evidenced by the precedent above, not every reallocation of costs is necessarily inconsistent with the cost causation principle. Compliance with the cost causation principle is evaluated "by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."¹¹⁷ Therefore, it is possible that some cost responsibility for a new transmission owner's existing transmission facilities could be shifted to an existing transmission owner and such a shift would be consistent with the cost causation principle if, for example, the existing transmission owner benefits from the new transmission owner's facilities. For example, the addition of the new transmission owner's facilities to an existing zone could allow the existing transmission owner to avoid constructing an otherwise necessary reliability upgrade. The SPP Tariff allows each instance of a new transmission owner's zonal integration to be examined for compliance with the cost causation principle on a case-by-case basis. This is not inconsistent with the cost causation principle, but merely allows for compliance with the cost causation principle to be assessed in light of the facts and circumstances of each case. Complainants' requested relief would prohibit any reallocation of the costs of existing transmission facilities, regardless of the circumstances, and would hinder the Commission's ability to evaluate specific zonal integrations for compliance with the cost causation principle. In fact, their requested relief could create results that are inconsistent with cost causation principles if, under the circumstance of a specific case, the resulting rates would be unjust and unreasonable without a cost shift, and the Tariff would prohibit that cost shift. For example, a rate could be just and reasonable because of a cost shift if, otherwise, an entity would benefit without any commensurate cost responsibility, and in such a case, prohibiting the cost shift could render the rate unjust and unreasonable.

70. Complainants further argue that it is unjustifiable for the SPP Tariff to prohibit cost shifts at the inter-zonal level via a license plate rate design for transmission facilities

nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹¹⁶ See Complaint at 3-4, 6, 26.

¹¹⁷ See *Midwest ISO Transmission Owners v. FERC*, 373 F.3d at 1368-69 (citing *K N Energy, Inc. v. FERC*, 968 F.2d at 1300-01).

built prior to RTO integration, but not prohibit the reallocation of the costs of existing transmission facilities at the intra-zonal level.¹¹⁸ We do not find this argument convincing. The fact that SPP has adopted one rate design that applies on the inter-zonal level does not necessarily mean that the SPP Tariff is unjust and unreasonable because it does not apply that same rate design on the intra-zonal level. It is well established that there can be more than one just and reasonable rate¹¹⁹ and the Commission accepted SPP's Tariff provisions that apply a license plate rate design at the inter-zonal level but not the intra-zonal level based on the record before it when those provision were proposed. It is Complainants' burden to demonstrate that the SPP Tariff is now unjust and unreasonable because it does not mitigate cost shifts that occur at the intra-zonal level when a new transmission owner is added to an existing zone. As discussed above, we find that they have not met that burden. SPP decides whether to add a new transmission owner to an existing zone based on the unique circumstances of that situation and the SPP Tariff is not unjust and unreasonable merely because it does not prohibit cost shifting that may result, and instead allows the Commission to determine whether a particular cost shift is just and reasonable based on those unique circumstances.

71. Complainants also argue that the SPP Tariff's failure to prohibit cost shifts is contrary to Commission transmission pricing policy. In support, Complainants assert that reallocating the sunk costs of one transmission owner to the customers of another transmission owner does not provide any incentive to invest in transmission, or more efficient price signals for future investments. To support their assertions, Complainants cite to Opinion No. 494 for the proposition that "[t]he incentive to invest depends on the treatment of new investment, not existing investment (since that is sunk)."¹²⁰ Complainants contend that "[t]he issue here is no different from the issue in Opinion No. 494."¹²¹ However, Complainants' own quoted language from Opinion No. 494 states that the "incentive to invest depends on the treatment of new investment, not existing investment," but the cost shifts that are the subject of the Complaint involve the reallocation of the costs of existing investment, not the treatment of new investment. Thus, the treatment of the costs of a new transmission owner's existing investment in transmission facilities will not have an effect on the incentive to invest, according to Complainants' own quoted language from Opinion No. 494. Moreover, the precedent described above¹²² demonstrates that the Commission has found that some degree of cost

¹¹⁸ Complaint at 12-14.

¹¹⁹ See, e.g., *Sw. Power Pool, Inc.*, 158 FERC ¶ 61,063, at P 13 (2017).

¹²⁰ Complaint at 14 (citing Opinion No. 494, 119 FERC ¶ 61,063 at P 53 n.68).

¹²¹ *Id.* at 15.

¹²² See *supra* at PP 62-65.

shifting is just and reasonable under specific circumstances, and therefore that the Commission has not considered the mere existence of cost shifts to necessarily be contrary to transmission pricing policy. Accordingly, Complainants have not demonstrated that the SPP Tariff's failure to prohibit cost shifts is inconsistent with Commission transmission pricing policy.

72. We are also not convinced by Complainants' arguments that allowing cost shifts will be a disincentive to RTO membership.¹²³ As Complainants acknowledge, there are "recognized legitimate benefits of RTO membership" that "provide powerful incentives to join,"¹²⁴ and these incentives remain regardless of potential cost shifting. In addition, Complainants also acknowledge that a cost shift could benefit an existing transmission owner and its customers,¹²⁵ and this would not discourage continued RTO membership. Complainants also argue that cost shifts add an inefficient and harmful subsidy to the incentives for new RTO membership.¹²⁶ Again, not all cost shifts will benefit a new prospective transmission owner.¹²⁷ Moreover, SPP's zonal placement decisions and any resulting cost shifts are part of the integration process for a new transmission owner that has already decided to join the RTO. In addition, the effects of any cost shift are just one of many factors that an entity would consider when deciding whether to join a RTO.

73. Complainants further argue that SPP's approach to zonal placement is unduly discriminatory because similarly situated classes of customers—i.e., customers in single transmission owner zones and customers in multi-transmission owner zones—are treated differently with regard to alleged cost shifts (i.e., zones that get new transmission owners are subject to cost shifts, while those that do not get new owners are not), with no basis for that difference.¹²⁸ We do not find this argument convincing because there is a basis for SPP's zonal placement decisions and the creation of multi-transmission owner zones. SPP explained that it considers various factors in its zonal placement decisions and this provides a rational basis for the creation of single transmission owner zones in some cases and multi-transmission owner zones in other cases.¹²⁹ Complainants have not demonstrated that SPP's approach to zonal placement is unduly discriminatory merely

¹²³ Complaint at 15-18.

¹²⁴ *Id.* at 15; Ex. No. ITO-1 at 6-7.

¹²⁵ Complaint at 5.

¹²⁶ *Id.* at 15-18.

¹²⁷ *See id.* at 5.

¹²⁸ *Id.* at 18-19.

¹²⁹ *See, e.g., supra* at PP 27-28; nn.43, 45.

because SPP decides to add a new transmission owner to an existing zone in some cases, but not others, because of operational and other factors.

74. While we are denying the Complaint, this does not alter the rights that existing SPP transmission owners like Complainants and other parties have to represent their interests and take action to address cost shifts that may result from zonal integration. Existing transmission owners retain their ability to negotiate with SPP and potential new transmission owners about zonal integration issues and to design measures to mitigate potential cost shifts resulting from zonal integration. In addition, parties can participate in the SPP stakeholder process to develop and consider proposals to address this issue with more comprehensive participation by all stakeholders. Moreover, all parties retain their rights to participate in Commission proceedings and represent their interests before the Commission. Specifically, parties have the right to protest the proposed placement of a new transmission owner in an existing zone when SPP makes the filing pursuant to section 205 of the FPA to add the ATRR of the new owner to the existing zone's ATRR. In such protests, parties have the opportunity to argue that cost shifts render the proposed placement and new ATRR unjust, unreasonable, and unduly discriminatory or preferential. The language of the SPP Tariff does not preclude the Commission from then accepting or rejecting SPP's filing based on case-specific facts and circumstances.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.