

SPP's "Highway/Byway" cost allocation filing,³ and do not refute SPP's demonstration that the Highway/Byway methodology is just, reasonable, and not unduly discriminatory or preferential. To the contrary, the motions and protests controvert and misconstrue Commission and judicial precedent in an attempt to undermine the SPP Regional State Committee's ("RSC") approval of a just and reasonable cost allocation proposal that will provide significant benefits to the SPP Region and greatly enhance SPP's ability to develop a robust transmission system to meet the changing needs of its customers and markets.

I. BACKGROUND

On April 19, 2010, after an extensive stakeholder process spanning more than 15 months, SPP submitted revisions to its Open Access Transmission Tariff ("Tariff") to implement its new Highway/Byway regional cost allocation methodology. Under this SPP stakeholder-approved methodology, the costs of future Base Plan Upgrades in the SPP Region will be allocated on the basis of operating voltage levels so as to allocate the costs of the facilities based upon their primary regional or local use.

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Joint Protestors submitted a Supplement to the Joint Protest on May 28, 2010. Supplement to Joint Protestors' Motion to Reject Filing, Docket No. ER10-1069-000 (May 28, 2010) ("Joint Protest Supplement").

³ Submission of Tariff Revisions to Modify Transmission Cost Allocation Methodology of Southwest Power Pool, Inc., Docket No. ER10-1069-000 (Apr. 19, 2010) ("Highway/Byway Filing").

On April 26, 2010, the Nebraska Public Power District (“NPPD”) requested an extension of the intervention and comment deadline.⁴ The Commission granted a one-week extension to May 17, 2010 to file comments.⁵

By May 17, 2010, over 20 parties filed comments supporting SPP’s proposed Highway/Byway methodology, including five of the seven state commissions represented on SPP’s RSC.⁶ Six protests were filed,⁷ and one party filed a limited protest expressing general support for the Highway/Byway Filing.⁸ On May 21, 2010, two parties submitted

⁴ Motion to Intervene and for Extension of Comment Date of Nebraska Public Power District, Docket No. ER10-1069-000, at 1 (Apr. 26, 2010).

⁵ *Sw. Power Pool, Inc.*, Notice of Extension of Time, Docket No. ER10-1069-000 (May 4, 2010).

⁶ Motion to Submit Comments Out-of-Time and Comments of the Arkansas Public Service Commission, Docket No. ER10-1069-000 (May 21, 2010) (“Arkansas PSC Comments”); Comments of Kansas Corporation Commission (“KCC Comments”), Docket No. ER10-1069-000 (May 17, 2010); Comments of the Majority of the Missouri Public Service Commission, Docket No. ER10-1069-000 (May 17, 2010); Comments of the Public Utility Division of the Oklahoma Corporation Commission, Docket No. ER10-1069-000 (May 17, 2010) (“OCC PUD Comments”); Letter of Jeff Cloud, Vice Chairman, Oklahoma Corporation Commission Re: Proposed Highway/Byway Cost Allocation, Docket No. ER10-1069-000 (Apr. 22, 2010); Public Utility Commission of Texas’ Notice of Intervention, Docket No. ER10-1069-000 (May 17, 2010).

⁷ Additionally, 18 parties intervened without submitting comments, and five parties located outside of the SPP Region submitted comments expressing no opinion on the justness and reasonableness of SPP’s proposed Highway/Byway methodology.

⁸ Motion to Intervene and Limited Protest of Novus Windpower, LLC and Novus Wind II, LLC, Docket No. ER10-1069-000 (May 17, 2010) (“Novus Protest”).

an answer generally supporting SPP's proposed Highway/Byway proposal and refuting claims raised in protests.⁹

II. ANSWER

In Order No. 890, the Commission expressed its belief that “regional solutions that garner the support of stakeholders, including affected state authorities, are preferable,”¹⁰ and “a cost allocation proposal that has broad support across a region is more likely to provide adequate incentives to construct new infrastructure than one that does not.”¹¹ The Commission also has indicated that it “bases its decision on an objective review of the proposals offered. Although not the only deciding factor, the Commission considers the opinions of various stakeholders, states, and other affected parties in reaching its conclusions.”¹² The Commission also recognizes that, while a proposal may not “represent complete stakeholder consensus . . . the position of the majority of the transmission owning members . . . cannot be ignored.”¹³ In SPP, the Commission also

⁹ Motion for Leave to File Answer and Answer of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC in Support of Highway/Byway Cost Allocation, Docket No. ER10-1069-000 (May 21, 2010).

¹⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, at P 561, *order on reh’g*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹¹ Order No. 890 at P 560.

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081, at P 52 (2008) (“Midwest ISO January 2008 Order”).

¹³ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063, at P 56 (2007), *order on reh’g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008); *see also* Midwest ISO January 2008 Order at PP 30, 52 (continued. . .)

has assigned a prominent role to the RSC in determining the appropriate cost allocation for the region.¹⁴ An overwhelming majority of the state commissions within SPP¹⁵ approved the Highway/Byway cost allocation methodology, and it is supported by a majority of SPP’s stakeholders, including 12 of the 15 SPP Transmission Owning Members.¹⁶

Broad stakeholder support of the Highway/Byway Filing is evident from the comments submitted in this proceeding. The Arkansas Public Service Commission states that it “believes that the proposed Highway-Byway approach will accelerate investment in transmission for the SPP region by eliminating uncertainty over cost allocation, while protecting against undue adverse impact on ratepayers.”¹⁷ The Kansas Corporation Commission (“KCC”) indicates that “[t]he KCC and the Governor of the State of Kansas, Mark Parkinson, support the proposed cost-allocation methodology . . . because the

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(approving a proposal that was “overwhelmingly” supported by the Midwest ISO state commissions and transmission owners despite objections by other stakeholders).

¹⁴ *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,010, at P 94 (2004) (“we emphasize that the RSC has primary, but not sole, responsibility for determining the proposals [whether license plate or postage stamp rates will be used for the regional access charges]”).

¹⁵ The RSC voted six to one in favor of the Highway/Byway methodology, with the states of Arkansas, Kansas, Missouri, Oklahoma, New Mexico, and Texas voting in support of the Highway/Byway methodology. *See Southwest Power Regional State Committee Meeting Minutes*, at 3 (Oct. 26, 2009), *available at* <http://www.spp.org/publications/RSC102609.pdf>.

¹⁶ *Southwest Power Pool, Inc., Markets and Operations Policy Committee Meeting Minutes No. 43*, at 3-4 (Mar. 2, 2010), *available at* [http://www.spp.org/publications/MOPC Min&Attach - 03-02-10.pdf](http://www.spp.org/publications/MOPC_Min&Attach-03-02-10.pdf).

¹⁷ Arkansas PSC Comments at 5.

methodology is designed to ensure that costs are spread equitably in the various Zones and the region as a whole comparable to the benefits accrued from future transmission projects” and that “[t]he tariff revisions are the result of stakeholder consensus from the ground up.”¹⁸ The Public Utility Division of the Oklahoma Corporation Commission (“OCC PUD”) believes that the Highway/Byway methodology “will help greatly in the future development of regional transmission,” and that “[i]f the proposed cost allocation methodology is not approved, it is the OCC PUD’s opinion that individual companies within the SPP footprint would continue to build transmission that benefits themselves and their customers rather than the region.”¹⁹

Other stakeholders strongly endorse the Highway/Byway methodology as well. For example, American Electric Power Service Company observes, “[h]istorically, cost allocation has been one of the primary stumbling blocks to getting significant regional transmission built in the SPP region. The proposed cost allocation removes this barrier by not burdening a single customer or Zone with costs required to build needed transmission for regional usage.”²⁰ The American Wind Energy Association and the Wind Coalition “think the [Highway/Byway] proposal is a balanced approach to cost allocation that will likely untie the Gordian Knot that has stymied significant investment in needed transmission infrastructure.”²¹ Westar Energy, Inc. and Kansas Gas and

¹⁸ KCC Comments at 2-3.

¹⁹ OCC PUD Comments at 1-2.

²⁰ Motion to Intervene and Comments of American Electric Power Service Corporation, Docket No. ER10-1069-000, at 5 (May 17, 2010).

²¹ Comments of the American Wind Energy Association and the Wind Coalition, Docket No. ER10-1069-000, at 6 (May 17, 2010) (“AWEA Comments”).

Electric Company anticipate that the Highway/Byway methodology “will facilitate construction of needed transmission upgrades that will bring significant benefits to the SPP and the entire Eastern Interconnection . . . will spur the construction of [extra high voltage] transmission facilities throughout the SPP,” and “will provide other benefits such as relatively more robust energy and ancillary services markets currently under development at SPP.”²² Western Farmers Electric Cooperative “believes the proposed Highway/Byway transmission cost allocation methodology will promote more transmission construction than SPP’s current methodology by providing greater certainty to transmission builders and by allocating the costs of such transmission in a fair and equitable manner.”²³ Other stakeholders from all membership sectors filed comments expressing similar support for the Highway/Byway Filing.

Contrary to the myriad criticisms lobbed by the protestors, SPP submitted a well-supported, stakeholder-endorsed, just and reasonable cost allocation methodology that honors the Commission’s core cost causation principle that costs should be allocated to those entities that cause costs to be incurred and those that benefit from transmission facilities.²⁴ Along with its recently-proposed Integrated Transmission Plan (“ITP”)

²² Motion to Intervene of Westar Energy, Inc. and Kansas Gas and Electric Company, Docket No. ER10-1069-000, at 3 (May 17, 2010).

²³ Motion to Intervene and Comments of Western Farmers Electric Cooperative, Docket No. ER10-1069-000, at 3 (May 17, 2010).

²⁴ *See, e.g., San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 127 FERC ¶ 61,250, at P 43 (2009) (“[C]ost causation principles require that all approved rates reflect *to some degree* the costs actually caused by the customer who must pay them. Compliance with this principle is evaluated by comparing that costs assessed against a party to the burden imposed or the benefits drawn by that party.”) (emphasis in original) (internal quotations omitted); *ISO New Eng.*, (continued. . .)

process,²⁵ SPP's Highway/Byway methodology seeks to achieve goals articulated both by the Commission and SPP's stakeholders to develop a robust transmission system supporting the varying needs of all transmission customers.

Specifically, in recognition of the evolving needs of the region and the Commission's requirements articulated in Order No. 890 and elsewhere, SPP and its stakeholders developed a cost allocation framework that focuses on usage of a transmission facility over function – in other words, the Highway/Byway methodology focuses on whether a transmission facility is used primarily for regional purposes or local purposes rather than determining cost allocation on the basis of whether the facility was originally built primarily to resolve a reliability need or to provide economic opportunities such as reduced congestion. The Highway/Byway methodology supports the Commission's Order No. 890 goal of encouraging robust transmission development to serve customer needs for reliable and economic transmission service by recognizing the region-wide benefits of extra high voltage (“EHV”) transmission facilities and allocating the costs of such facilities across the wide spectrum of beneficiaries.²⁶ SPP

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Inc., 115 FERC ¶ 61,145, at P 13 (2006) (“Under cost causation principles, costs are allocated to the parties who cause the incurrence of such costs.”).

²⁵ Submission of Revisions to Open Access Transmission Tariff to Incorporate Integrated Transmission Plan of Southwest Power Pool, Inc., Docket No. ER10-1269-000 (May 17, 2010) (“ITP Filing”).

²⁶ With the adoption of Order No. 890, the Commission sought to reform the Order No. 888 open access transmission framework “to ensure that transmission infrastructure is evaluated, and if needed, constructed on a non-discriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers.” Order No. 890 at P 57. Order No. 890 called upon transmission providers to look beyond serving basic reliability needs of their individual transmission systems and focus instead on developing a robust
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customers throughout the region will benefit from a robust, regionally-planned transmission system that does not segment transmission expansion into discrete categories such as reliability and economics, but instead addresses multiple needs with regionally-focused solutions.

As Mr. Leslie E. Dillahunty explains in his testimony, SPP and its stakeholders engaged in a rigorous process to examine existing cost allocation and transmission planning in the SPP Region and assess alternatives that would better align cost allocation and transmission planning with the needs and priorities of SPP's customers.²⁷ This process resulted in the Highway/Byway methodology, a cost allocation methodology that simplifies SPP cost allocation and facilitates the construction of needed SPP system upgrades by focusing on the level of local or regional benefits provided by transmission facilities of various voltage levels.

The procedural and substantive arguments offered by the protests fail to recognize that SPP's obligation under the Federal Power Act ("FPA") is to demonstrate that its proposed methodology is just and reasonable and not unduly discriminatory or preferential.²⁸ SPP is not required to refute and disprove the justness and reasonableness of other methodologies that a sub-group of its membership may prefer. Nor is SPP constrained to continue operating under its existing cost allocation methodology until it

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transmission system that not only ensures reliability, but also benefits customers by providing economic opportunities through reduced congestion. *See id.* at PP 57-61.

²⁷ Highway/Byway Filing, Exhibit No. SPP-1, Prepared Direct Testimony of Leslie E. Dillahunty on Behalf of Southwest Power Pool, Inc., at 16-21.

²⁸ 16 U.S.C. § 824d.

can prove that it is no longer just and reasonable. The protestors' tortured reading of Commission and judicial precedent and Commission regulations seek to mask the plain fact that SPP's Highway/Byway Filing provides the Commission with substantial evidence to conclude that SPP's proposal is just and reasonable.

A. SPP Has Met Its Obligations under the Federal Power Act

1. SPP's Burden under the Federal Power Act

Contrary to the protesting parties' assertions,²⁹ SPP has met its burden under section 205 of the FPA to demonstrate that its proposed Highway/Byway methodology is just and reasonable and not unduly discriminatory or preferential. The Joint Protest and other protests demand that the Commission hold SPP to a higher standard than imposed by FPA section 205, by calling for the Commission to require SPP to demonstrate: (1) that its existing cost allocation methodologies are no longer just and reasonable; (2) that the Highway/Byway methodology is superior to other potential cost allocation methodologies that the protestors may prefer; and (3) that the Highway/Byway proposal matches costs and benefits precisely to the penny.³⁰ Section 205 and related Commission and judicial precedent impose no such obligation.

As the Commission has recognized, "[t]he FPA does not define 'just and reasonable,' and the Commission is not limited to one method of determining what is just and reasonable [a] proposal does not need to be perfect, or the most desirable way of

²⁹ See, e.g., East Texas Cooperatives Protest at 5-6; Joint Protest at 9-13; NPRB Protest at 5; OPPD Protest at 1-5.

³⁰ See, e.g., East Texas Cooperatives Protest at 8-9, 13, 15-17; Joint Protest at 32, 39, 42, 67-70; LES Protest at 7-8, 11.

doing things, it need only be just and reasonable.”³¹ Accordingly, SPP’s obligation is to demonstrate that its Highway/Byway proposal is just and reasonable, and nothing more. SPP is not required to prove that the Highway/Byway methodology is superior to every alternative methodology or SPP’s existing cost allocation methodologies.³²

Moreover, contrary to protestors’ suggestions,³³ SPP is not required to demonstrate a 100% matching between costs and benefits in order to justify its Highway/Byway methodology under FPA section 205. The protestors’ interpretations of *Illinois Commerce Commission v. FERC*³⁴ are severely flawed. In *ICC v. FERC*, the Court of Appeals for the Seventh Circuit remanded the Commission’s approval of an EHV cost allocation methodology proposed by PJM Interconnection, L.L.C. (“PJM”) not because it was unjust and unreasonable under the FPA, but because the Commission failed to articulate sufficient reasons for its approval. Specifically, the *ICC v. FERC*

³¹ *Entergy Servs., Inc.*, 116 FERC ¶ 61,275, at P 32 (2006) (citing *Pub. Serv. Comm’n of Ind.*, Opinion No. 349, 51 FERC ¶ 61,367, at 62,222, *order on reh’g sub nom. PSI Energy, Inc.*, 52 FERC ¶ 61,260, *order granting clarification*, 53 FERC ¶ 61,131 (1990); *Pac. Gas and Elec. Co.*, 110 FERC ¶ 63,026 (2005); *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 63,026, at P 57 (2004); *New Eng. Power Co.*, Opinion No. 352, 52 FERC ¶ 61,090, at 61,336 (1990), *reh’g denied*, Opinion No. 352-A, 54 FERC ¶ 61,055 (1991), *aff’d sub nom. Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995)).

³² *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,185, at P 25 (2010) (“[T]he mere fact that the methodology can be refined does not undercut our conclusion that the overall method affords a just and reasonable rate for transmission customers. As the court noted . . . ‘reasonableness is a zone, not a pinpoint.’”).

³³ See East Texas Cooperatives Protest at 3, 8-9; Joint Protest at 3, 39, 42; MoPSC Minority Comments at 7-10.

³⁴ 576 F.3d 470 (7th Cir. 2009).

court characterized the Commission’s failure to provide a sufficient rationale for its approval as follows:

[N]o data are referred to in FERC’s two opinions (the original opinion and the opinion on rehearing). No lawsuits are mentioned. No specifics concerning difficulties in assessing benefits are offered. No particulars are presented concerning the contribution that very high-voltage facilities are likely to make to the reliability of PJM’s network. ***Not even the roughest estimate of likely benefits to the objecting utilities is presented.***³⁵

In other words, the Commission’s approval of PJM’s cost allocation methodology was remanded not because the FPA precludes regionalization of costs associated with EHV facilities, but because the Commission failed to point to ***any*** evidence in the record that attempted to quantify the benefits of such facilities to the customers paying the regional rate.³⁶ The Seventh Circuit did not mandate an exact, dollar-for-dollar matching of the benefits of a given facility with the costs assigned to specific customers; to the contrary, the court indicated that the Commission must have “an articulable and plausible reason to believe that the ***benefits are at least roughly commensurate***” and cannot “avoid the duty of ‘comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.’”³⁷

SPP, through the quantitative and qualitative analyses discussed in Mr. Dillahunty’s testimony, has demonstrated a correlation between the voltage level of a facility and its regional usage sufficient to justify cost allocation based on voltage levels as proposed in the Highway/Byway Filing and meet the evidentiary demands of *ICC v.*

³⁵ *Id.* at 474-75.

³⁶ *Id.* at 476-77.

³⁷ *Id.* at 477 (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)) (emphasis added).

FERC. As discussed in more detail in Mr. Dillahunty's testimony and below,³⁸ SPP's Transmission Distribution Analysis and Injection Withdrawal Transmission Utilization Analysis ("Injection/Withdrawal Analysis") demonstrate in different ways how EHV facilities constructed with regional goals in mind support regional energy flows, and how lower voltage facilities primarily provide for local flows.³⁹ Through its Highway/Byway Filing and Mr. Dillahunty's testimony, SPP has met its FPA section 205 burden.

As Mr. Dillahunty indicates, SPP has conducted quantitative analyses that demonstrate up to 98% regional usage of EHV facilities,⁴⁰ and has augmented these analyses with additional analysis of the non-quantifiable regional benefits of EHV facilities sufficient to justify 100% regional allocation of the costs of such facilities.⁴¹ Together, these analyses provide sufficient evidence to meet the standard articulated by *ICC v. FERC* and Commission precedent.

2. *SPP Is Not Required to Demonstrate that Existing Methodologies Are Unjust and Unreasonable to Adopt the Highway/Byway Methodology*

Several protests are premised upon the mistaken notion that, in order to demonstrate the justness and reasonableness of the Highway/Byway proposal, SPP is obligated to prove that its existing cost allocation methodologies are no longer workable under the FPA.⁴²

³⁸ Highway/Byway Filing, Exhibit No. SPP-1 at 36-42; *see also infra* Section II.C.1.

³⁹ Highway/Byway Filing, Exhibit No. SPP-1 at 36-42.

⁴⁰ *Id.* at 36-38.

⁴¹ *Id.* at 43-46.

⁴² *See* East Texas Cooperatives Protest at 8-9, 13, 15-17; Joint Protest at 42-45, 67-78; LES Protest at 7-8, 11.

SPP submitted its Highway/Byway Filing under section 205 of the FPA, which, as discussed above, requires a showing that the proposal is just and reasonable.⁴³ Protestors instead call for SPP to meet a burden similar to section 206 of the FPA, which requires the Commission to determine that a tariff provision is unjust, unreasonable, unduly discriminatory or preferential before establishing a new provision that is just and reasonable.⁴⁴ A section 206 analysis is not required for the Commission to approve SPP's Highway/Byway methodology.

Additionally, protestors' preferences for alternative cost allocation methodologies provide no basis for the Commission to reject the Highway/Byway methodology endorsed by the RSC and a majority of SPP's stakeholders.

- a. The Highway/Byway Methodology Produces Results Similar to SPP's Existing MW-mile Analysis Without the Complexity

Some protests criticize the decision by SPP's stakeholders to replace SPP's existing MW-mile methodology for allocating the zonal component of Base Plan Upgrade costs with a more streamlined approach to zonal cost allocation.⁴⁵ SPP's proposed Highway/Byway methodology, however, produces a result similar to the MW-mile analysis. As Mr. Dillahunty explained in his testimony, SPP's experience with the MW-mile methodology has resulted in over 80% of transmission revenue requirements subject to the MW-mile metric for facilities operating at greater than 100 kV and less

⁴³ See *supra* notes 31-32 and accompanying text.

⁴⁴ 16 U.S.C. § 824e.

⁴⁵ See, e.g., Joint Protest at 42-45; MoPSC Minority Comments at 4-6.

than 300 kV being allocated to the host Zone.⁴⁶ By allocating the zonal portion of Base Plan Upgrade costs to the host Zone, the Highway/Byway methodology achieves results similar to the MW-mile analysis, while avoiding the complexity associated with the MW-mile analysis.

Moreover, as Oklahoma Gas and Electric Company (“OG&E”) observes in its comments submitted in support of the Highway/Byway Filing, SPP’s existing MW-mile analysis is a “one-time snapshot of the system that determines whether an existing facility is unloaded by a proposed project” that may not fully account for increased loadings on other lines or changing flows and benefits on the dynamic system, and may not fully reflect the relative value of reduced loading on a given existing transmission line.⁴⁷ As a one-time snapshot, the MW-mile analysis also may not fully account for changes in benefits that occur on a month-to-month or year-to-year basis as new transmission facilities, generation resources, and loads are added to the system.⁴⁸ While a useful proxy to measure benefit under SPP’s existing cost allocation methodology for Base Plan Upgrades (“Base Plan Funding”), the complex MW-mile analysis does not depict the complete set of benefits to each Zone from transmission facilities that are planned under an integrated planning process that considers both reliability and economic considerations. Accordingly, SPP and its stakeholders have decided to implement a cost

⁴⁶ Highway/Byway Filing, Exhibit No. SPP-1 at 20.

⁴⁷ Motion to Intervene and Comments in Support of Filing of Oklahoma Gas and Electric Company, Docket No. ER10-1069-000, at 4 (May 17, 2010) (“OG&E Comments”).

⁴⁸ *Id.* at 4.

allocation methodology that will provide substantially similar results to the results of the MW-mile analysis, but without the complexity.

In any event, the Joint Protestors' complaint that SPP's elimination of the MW-mile component of its Base Plan Upgrade cost allocation approach is "unexplained" and "unjustified"⁴⁹ is beside the point. As discussed above, SPP is not required to demonstrate that its existing methodology is unjust and unreasonable in order to adopt a new methodology. Likewise, the Joint Protestors' observation that both SPP and the Commission previously have endorsed the MW-mile analysis is neither here nor there, because, as indicated above, the Commission is fully within its authority to find more than one methodology just and reasonable.⁵⁰ Neither SPP nor the Commission is constrained to abide forever by earlier endorsements of the MW-mile calculation. Nor did such endorsements establish that the MW-mile analysis is the only just and reasonable approach to zonal cost allocation in SPP forevermore.

b. SPP's Cost Allocation Methodologies Continue to Evolve

The Joint Protestors' characterization of the Highway/Byway Filing as an "abrupt and radical course change" compared to SPP's recently-accepted cost allocation methodologies is equally baseless.⁵¹ As an initial matter, the Highway/Byway Filing proposes to modify SPP's Base Plan Funding methodology, which, as Mr. Dillahunt explains, was SPP's first regional cost allocation methodology adopted shortly after SPP became a Commission-approved Regional Transmission Organization ("RTO") six years

⁴⁹ Joint Protest at 42-45.

⁵⁰ See *supra* note 31 and accompanying text.

⁵¹ Joint Protest at 68.

ago.⁵² Since its inception as an RTO, SPP has continually evaluated ways to evolve cost allocation and transmission planning to address regional needs and ensure adherence to the Commission's Order No. 890 open access and planning policies and cost causation principles. SPP's subsequent cost allocation proposals for Sponsored Upgrades,⁵³ Balanced Portfolio upgrades,⁵⁴ and Base Plan Upgrades associated with wind Designated Resources,⁵⁵ reflect SPP's continued focus on improving existing methodologies to meet the changing needs of its customers and stakeholders.

c. SPP Retains and Enhances the Regional Cost Allocation for Wind-Related Base Plan Upgrades

Additionally, SPP is not abandoning any of its recently-accepted cost allocation methodologies.⁵⁶ The Highway/Byway methodology pertains to Base Plan Upgrades, which are being expanded to include Priority Projects and other economic projects in addition to Base Plan Funding's traditional focus on reliability-based upgrades.⁵⁷ SPP's existing Balanced Portfolio Tariff provisions are retained,⁵⁸ and its recently-accepted cost

⁵² See *Sw. Power Pool, Inc.*, 123 FERC ¶ 61,208 (2008); *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008), *order on reh'g*, 127 FERC ¶ 61,271 (2009); see also *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER09-394-000 (Jan. 28, 2009); see also Highway/Byway Filing, Exhibit No. SPP-1 at 11-14.

⁵³ *Sw. Power Pool*, 125 FERC ¶ 61,054; see also Highway/Byway Filing, Exhibit No. SPP-1 at 14.

⁵⁴ *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283 (2009); see also Highway/Byway Filing, Exhibit No. SPP-1 at 15-16.

⁵⁵ Highway/Byway Filing, Exhibit No. SPP-1 at 7-9.

⁵⁶ See East Texas Cooperatives Protest at 8-9, 13; Joint Protest at 67-70; LES Protest at 7-8, 11.

⁵⁷ Highway/Byway Filing, Exhibit No. SPP-1 at 5, 13-14.

⁵⁸ *Id.* at 9-10.

allocation methodology addressing Base Plan Upgrades associated with wind Designated Resources is being enhanced to provide wind generation-related Base Plan Upgrades the regional cost allocation either under the Highway/Byway methodology (i.e., 100% regionalization for wind-related Base Plan Upgrades operating at 300 kV and above) or under the existing cost allocation methodology (i.e., 67% regional cost allocation for wind-related Base Plan Upgrades operating above 100 kV and below 300 kV, where the upgrade is located in a different Zone than the customer's point of delivery).⁵⁹ The Highway/Byway methodology enhances, rather than "overwrites," cost allocation for wind-related Base Plan Upgrades as the Joint Protestors incorrectly contend,⁶⁰ by providing 100% regional cost allocation for 300 kV and above facilities while maintaining existing cost allocation for lower- and mid-voltage facilities.

d. The Balanced Portfolio Continues to Be an Option

Contrary to the Joint Protestors' claim, the Highway/Byway proposal also does not "render" the Balanced Portfolio "a nullity."⁶¹ Both Mr. Dillahunty's testimony and the Tariff language submitted in the Highway/Byway Filing contradict this contention. First, the Highway/Byway proposal retains SPP's existing Tariff provisions governing its Balanced Portfolio cost allocation methodology so that it may be used when that option has merit.⁶² Additionally, as Mr. Dillahunty explains, there are key differences between

⁵⁹ *Id.* at 7-8.

⁶⁰ Joint Protest at 76-77; *see also* LES Protest at 7-8, 11.

⁶¹ Joint Protest at 74-76.

⁶² *See* Highway/Byway Filing, Exhibit No. SPP-3 at Original Sheet No. 233.01.

the Balanced Portfolio process and the Highway/Byway methodology.⁶³ Importantly, by adopting the Highway/Byway methodology while retaining the Balanced Portfolio approach, SPP's Tariff will provide more opportunities for economic upgrades to be added to the SPP transmission system. The Balanced Portfolio and Highway/Byway are complimentary methodologies that together broaden the category of upgrades that can receive regional cost allocation. The Highway/Byway methodology will regionalize the costs of economic upgrades operating at over 300 kV whether or not they can meet the strictures of the Balanced Portfolio process. At the same time, the Balanced Portfolio Tariff provisions will continue to provide an option to regionalize both higher- and lower-voltage facilities if a particular portfolio of facilities meets the Balanced Portfolio requirements.⁶⁴

e. Alternatives Were Considered and Rejected

Finally, during the course of its 15-month stakeholder process detailed in Mr. Dillahunty's testimony,⁶⁵ SPP considered alternatives to both its existing cost allocation methodologies and the Highway/Byway concept, including alternative regional cost allocation factors and other proposals suggested by stakeholders.⁶⁶ However, the RSC

⁶³ *Id.* Exhibit No. SPP-1 at 9-10.

⁶⁴ While the Balanced Portfolio sets a threshold voltage requirement of 345 kV, *see* SPP Tariff, Attachment O § IV.6.b.i, it also permits lower-voltage facilities necessary to integrate an EHV facility, *see* SPP Tariff, Attachment O § IV.6.b.ii, and other lower-voltage facilities that are necessary to achieve a benefit balance across the pricing Zones, *see* SPP Tariff, Attachment O § IV.7.b.

⁶⁵ Highway/Byway Filing, Exhibit No. SPP-1 at 17-21.

⁶⁶ *See, e.g.*, MoPSC Minority Comments at 10 (arguing for a lower regional allocation factor); AWEA Comments at 9 (arguing for more costs to be allocated regionally).

and SPP’s stakeholders ultimately determined that the Highway/Byway methodology was the most appropriate cost allocation methodology for the SPP Region going forward. The Highway/Byway methodology was overwhelmingly approved by SPP’s RSC, the body that the Commission vested with determining cost allocation policy in the SPP Region,⁶⁷ and was supported by a significant majority of SPP’s stakeholders. That the protestors in this proceeding would prefer a different methodology does not subvert the justness and reasonableness of the Highway/Byway methodology.⁶⁸

B. Joint Protest Procedural Arguments in Favor of Rejecting the Highway/Byway Filing Have No Merit

Contrary to the Joint Protestors’ Motion for Rejection of the Filing,⁶⁹ the Commission’s regulations do not require the Commission to reject SPP’s Highway/Byway Filing on procedural grounds.

1. The Highway/Byway Filing Is a Cost Allocation Filing, Not a Rate Increase

Joint Protestors engage in a highly tortured reading of the Commission’s regulations governing rate increases in section 35.13 of the Commission’s regulations in their call for rejection of the Highway/Byway Filing,⁷⁰ but overlook one key fact – the

⁶⁷ *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 219 (2004) (“The RSC should have primary responsibility for determining regional proposals and the transition process in the following areas . . . whether license plate or postage stamp rates will be used for the regional access charge . . .”); *see also supra* note 14.

⁶⁸ *See Midwest Indep. Transmission Sys. Operator*, 131 FERC ¶ 61,185, at P 25 (indicating that “reasonableness is a zone, not a pinpoint” and that the fact that a proposed methodology may be refined does not undercut a finding of justness and reasonableness).

⁶⁹ *See* Joint Protest at 9-28; *see also* OPPD Protest at 3.

⁷⁰ Joint Protest at 9-28; *see also* OPPD Protest at 3.

Highway/Byway proposal is simply not a rate increase requiring the detailed cost support required by section 35.13.

SPP is not seeking to change rates for transmission service; it is seeking to change the method for allocating costs among its pricing Zones. The revenue that SPP will collect will not change under the Highway/Byway proposal; instead, SPP will collect the same revenue that it would collect if its existing cost allocation methodologies were unchanged, but under the Highway/Byway methodology costs will be allocated to Zones on a different basis than under SPP's current cost allocation methodologies. Whether it adopts the Highway/Byway methodology or retains its existing cost allocation provisions, the SPP Region will be revenue neutral. Simply put, the Highway/Byway methodology will not permit SPP to collect one dime more than it is able to collect under its existing methodologies, and, therefore, SPP is not obligated to provide the detailed cost data that section 35.13 requires for utility rate increases.

The Commission just last month distinguished between cost allocation and rate increase filings, finding that “the myriad requirements of Part 35 [of the Commission’s regulations] are not relevant” where cost allocation, rather than revenue level, is involved.⁷¹ SPP’s revenue levels will not change under the Highway/Byway methodology; therefore, the “myriad” section 35.13 data requirements do not apply.

⁷¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,174, at P 143 (2010) (“2010 SECA Order”); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,212, at P 49 (2003) (“[I]t is not necessary to require the filing of updated cost-of-service studies. We have previously accepted the existing rates of these companies as just and reasonable and our actions in this proceeding will maintain the revenues produced by those rates.”), *order on reh’g* 2010 SECA Order.

Tellingly, Joint Protestors tacitly admit that the Highway/Byway Filing does not rise to the level of a rate increase by characterizing it as a *de facto* rate increase on the basis that some Zones may be allocated more costs for certain Network Upgrades under the Highway/Byway methodology than they would for the same Network Upgrades if the costs were allocated under SPP's existing Base Plan Funding methodology.⁷² This characterization holds no water. The Commission has rejected arguments that a rate increase exists where redesign of cost allocation results in some customers paying more than they did under a previous methodology, but where the overall level of revenues remains unchanged.⁷³

Moreover, the Commission generally has not required RTOs filing revisions to their cost allocation methodology to submit the detailed cost data sought by the Joint Protest. In fact, the Commission approved SPP's existing Base Plan Funding, Balanced Portfolio, and wind Base Plan Funding cost allocation provisions without the detailed level of cost data that the Joint Protestors now demand.⁷⁴ SPP has provided as much, if not more, substantiation in the Highway/Byway Filing than it did in any of its previous Commission-approved cost allocation filings. Other RTOs also have proposed

⁷² Joint Protest at 11.

⁷³ 2010 SECA Order at P 102 (“Because the SECA maintains the revenue levels of the prior through-and-out rates, the SECA does not depart from cost-based considerations; it merely alters the rate design under which the existing revenue levels are collected.”).

⁷⁴ *Sw. Power Pool, Inc.*, 111 FERC ¶ 61,118, *order on reh’g*, 112 FERC ¶ 61,319 (2005) (accepting SPP’s Base Plan Upgrade cost allocation methodology); *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008), *reh’g denied*, 127 FERC ¶ 61,271 (2009) (accepting SPP’s Balanced Portfolio cost allocation methodology); *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283 (2009) (accepting SPP’s cost allocation methodology for upgrades associated with wind generators).

modifications to their cost allocation without including the myriad detailed cost data required by section 35.13, which the Commission has accepted.⁷⁵

2. *SPP Included Sufficient Support for Its Highway/Byway Filing*

Additionally, contrary to the Joint Protest, the Commission is not required to reject SPP's filing on procedural grounds because certain information relied upon by the Highway/Byway Filing was not included with the submission.⁷⁶ Mr. Dillahunty's testimony provides sufficient description of the various quantitative and qualitative analyses SPP has conducted, which are available on SPP's website.⁷⁷ SPP is not required to provide every publicly available piece of information to support its filing as just and reasonable. SPP need only provide sufficient information to sustain a Commission finding that its proposal is just and reasonable.⁷⁸

3. *The Commission May Act on SPP's Highway/Byway Filing as Requested and Separately from the ITP Proposal*

Likewise, Joint Protestors' request that the Commission hold this proceeding in abeyance lacks merit. Joint Protestors overreach in arguing that section 35.17 of the

⁷⁵ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, *order on reh'g*, 120 FERC ¶ 61,080 (2007) (accepting RTO cost allocation methodology for upgrades associated with generation interconnection).

⁷⁶ Joint Protest at 13-15.

⁷⁷ See, e.g., Southwest Power Pool, *Transmission Distribution Analysis of Regional Transfers* (Mar. 11, 2010), *available at* [http://www.spp.org/publications/Transmission Distribution Analysis of Regional Transfers- FINAL 03122010.pdf](http://www.spp.org/publications/Transmission%20Distribution%20Analysis%20of%20Regional%20Transfers-FINAL%2003122010.pdf); Southwest Power Pool, Inc., *Memo to the MOPC and Board of Directors, Highway-Byway Cost Allocation, Markets and Operations Policy Committee Meeting Agenda*, at 28-32 (of 163) (Mar. 2, 2010), *available at* [http://www.spp.org/publications/MOPC Agenda & Background - 03-02-10.pdf](http://www.spp.org/publications/MOPC%20Agenda%20&%20Background-03-02-10.pdf).

⁷⁸ See *supra* notes 31-32 and accompanying text.

Commission's regulations requires the Commission to hold this proceeding in abeyance and consider it only in concert with SPP's ITP proposal filed on May 17, 2010.⁷⁹ Rather than require the Commission to withhold judgment and consolidate multiple filings, section 35.17 of the Commission's regulations merely permits the Commission to take additional time to act on a filing if a subsequent filing modifies the same tariff language as the original filing.⁸⁰ The Commission retains its full discretion to accept the Highway/Byway Filing effective June 19, 2010, as requested.

The justness and reasonableness of the Highway/Byway methodology also is not undermined by the fact that it was filed separately from the related ITP.⁸¹ As the proponent of the tariff change under section 205 of the FPA, SPP has the discretion to submit its cost allocation methodology separately from its planning process revisions.⁸² The SPP RSC specifically directed SPP to "bifurcate" the filings,⁸³ and SPP is fully

⁷⁹ Joint Protest at 19-23; Joint Protest Supplement at 1-5.

⁸⁰ See *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,103, at P 1 n.2 (2009) (indicating that a subsequent filing modifying an earlier filing "changes the Commission's required date of action" on the previous filing); see also *Electronic Tariff Filings*, Order No. 714, III FERC Stats. & Regs., Regs. Preambles ¶ 31,276, at P 81 (2008) ("we are revising § 35.17 and § 154.205 to make clear that the filing of an amendment or modification to a tariff provision **will toll the period for action** on the prior filing and establish a new period for action.") (emphasis added).

⁸¹ Joint Protest at 19-23; Joint Protest Supplement at 1-5; see also East Texas Cooperatives Protest at 21.

⁸² *W. Mass. Elec. Co.*, 23 FERC ¶ 61,025 (1983), *aff'd sub nom. Commonwealth of Mass. v. FERC*, 729 F.2d 886 (1st Cir. 1984) (indicating that under section 205, public utilities have the discretion to choose whether or not to file).

⁸³ Southwest Power Pool Regional State Committee Meeting Minutes at 2-3 (Jan. 25, 2010) ("RSC January Meeting Minutes"), available at <http://www.spp.org/publications/RSC012510.pdf>.

within its rights under section 205 to oblige. In the past, SPP submitted its cost allocation and planning methodologies as separate filings in separate proceedings, and the Commission accepted them in separate orders.⁸⁴ The fact that protestors would prefer to consolidate this proceeding with the ITP proceeding does not render the RSC's bifurcation decision procedurally invalid, and the Joint Protest Supplement offers no additional information to aid the Commission's deliberation in this proceeding.⁸⁵

C. SPP Provided Ample Support for the Proposed Highway/Byway Methodology

Taken together, SPP's analyses of the quantitative and qualitative benefits of EHV facilities provide more than adequate support for the proposed Highway/Byway methodology. Protestors seem to suggest that each analysis, on its own, must rise to the level of "substantial evidence" to support a Commission finding of the justness and reasonableness;⁸⁶ however, when viewing the evidence provided by SPP as a whole, the Commission can conclude that the Highway/Byway cost allocation methodology is supported by substantial evidence.

⁸⁴ Compare *Sw. Power Pool, Inc.*, 111 FERC ¶ 61,118, *order on reh'g*, 112 FERC ¶ 61,319 (2005) (accepting SPP's Base Plan Upgrade cost allocation methodology separately from its transmission planning process), with *Sw. Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 62 (2008) (accepting SPP's Attachment O transmission planning process separately from "SPP's previously accepted Attachment J cost allocation methodology").

⁸⁵ See Joint Protest Supplement at 5-10 (criticizing Tariff language that is not before the Commission in this proceeding).

⁸⁶ See East Texas Cooperatives Protest at 3, 8-9; Joint Protest at 55-56; MoPSC Minority Comments at 7-10.

1. *Protest Criticisms of SPP's Quantitative Analyses Are Misplaced*

Through its Transmission Distribution and Injection/Withdrawal analyses, SPP has demonstrated the tendency of EHV facilities to support primarily regional flows and that there is a direct correlation between the voltage level and the regional support provided by a transmission facility. For instance, SPP's Transmission Distribution Analysis demonstrated that regionally-planned EHV facilities included in SPP's 2009 Balanced Portfolio showed 98% responsiveness to the interzonal transactions modeled by SPP, other existing EHV facilities in SPP that were not specifically planned with regional goals in mind demonstrated 77% responsiveness to interzonal flows, and lower voltage facilities demonstrated lower levels of support for regional transactions.⁸⁷ Likewise, SPP's Injection/Withdrawal Analysis indicates that a significant portion of the flow on EHV transmission facilities is a result of activity other than local usage.⁸⁸ On average, the Injection/Withdrawal Analysis demonstrated regional usage of the EHV facilities studied to be 78%, with regional usage as high as 85% in one season.⁸⁹ Together, these analyses demonstrate that the predominant use of EHV transmission lines is to facilitate regional transmission, and, while neither analysis demonstrates 100% regional usage of EHV facilities, as indicated above and in *ICC v. FERC*, the Commission can approve,

⁸⁷ See Highway/Byway Filing, Exhibit No. SPP-1 at 36-38. The Transmission Distribution Analysis revealed similar results for through transactions. *Id.* at 38-39.

⁸⁸ See *id.* at 41.

⁸⁹ See *id.* at 41, Figure 17.

and need not reject or modify, the Highway/Byway proposal on the basis that the analyses did not find 100% regional use of EHV facilities.⁹⁰

a. SPP Properly Used a 0.1% Tolerance Threshold in Its Transmission Distribution Analysis

Protestor criticisms of the Transmission Distribution Analysis and Injection/Withdrawal Analysis are without merit.⁹¹ First, the Joint Protest criticizes SPP's use of a 0.1% tolerance threshold in its Transmission Distribution Analysis, indicating that "there is no other instance in SPP's transmission planning or transmission service request processing where an impact value that extraordinarily low is used for any purpose."⁹² The East Texas Cooperatives make a similar claim.⁹³ Joint Protestors (as well as their witness who levies this charge) and the East Texas Cooperatives are wrong. Both SPP's transmission service request process and its existing transmission planning process use a 0.1% overload tolerance. For planning purposes, SPP utilizes a 0.1% tolerance level because it measures all impacts on the transmission system and all impacts are considered material in the transmission planning process. In its transmission service request process, SPP studies impacts using a tolerance level of 0.1%; however, the SPP Transmission Working Group ("TWG") and SPP Board of Directors adopted a

⁹⁰ *ICC v. FERC*, 576 F.3d at 476 (acknowledging that "FERC is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly") (internal quotations omitted).

⁹¹ See East Texas Cooperatives Protest at 10-11; Joint Protest at 41-42.

⁹² Joint Protest, Affidavit of Whitfield A. Russell on Behalf of Nebraska Public Power District, Omaha Public Power District, City Utilities of Springfield, Missouri, Lincoln Electric System, and The Empire District Electric Company, ¶ 19 ("Russell Affidavit"); see also Joint Protest at 41.

⁹³ East Texas Cooperatives Protest at 10.

3% cut-off for transmission service cost allocation specifically to insulate transmission service customers from some of the costs associated with the impacts of their requested transmission service on existing facilities. Use of a 0.1% cut off is necessary to determine all impacts on the transmission system for study purposes, while the 3% factor used in transmission service request cost allocation was a policy preference adopted by the TWG and Board of Directors.

Contrary to the protestors,⁹⁴ using a higher tolerance level, such as 3% or 5%, for study purposes would miss significant impacts on a studied transmission element. For example, if a transmission line has 5 transactions that each have a 2% response on a given transmission line, using a 3% study threshold would not capture the 2% impact from each of the 5 transactions, and the study would therefore not reflect a 10% impact from the 5 transactions on the transmission line. SPP's chosen threshold in its Transmission Distribution Analysis is wholly consistent with its existing transmission planning and transmission service request study processes and is therefore appropriate.⁹⁵

b. SPP's Injection/Withdrawal Analysis Supports 100% Regional Cost Allocation

Protest criticisms that SPP's Injection/Withdrawal Analysis should be rejected because it fails to demonstrate 100% regional usage of EHV facilities are also off the

⁹⁴ *Id.* at 10-11; Joint Protest at 41-42.

⁹⁵ SPP also uses a 5% Transmission Distribution Factor cut-off for its transmission loading relief process. While a 5% cut-off is appropriate for operational purposes, such a high cut-off is not appropriate for study purposes where the goal is to capture all impacts on a given transmission facility.

mark.⁹⁶ To understand the results of the Injection/Withdrawal analysis properly, one must carefully consider the exact nature of the measurements taken and the physical characteristics of the upgrades analyzed. As a matter of objective and by design, SPP plans its EHV system from a regional perspective and for regional use and benefit. SPP's proposed ITP process, once accepted, will significantly enhance this regional focus. While regional use is and will be the driver of SPP planning decisions going forward, SPP does not intend to – and from an engineering and physics standpoint cannot – preclude local use of EHV facilities.

Furthermore, the average regional usage of 78% demonstrated by the Injection/Withdrawal Analysis is easily explained by examining the anomalous results of the analysis from two of the transmission facilities examined. Specifically, the results from the Iatan–Nashua and Muskogee–Seminole 345 kV facilities demonstrate higher levels of local usage for reasons that are entirely expected.⁹⁷ First, both upgrades are wholly contained within a single Zone. Any line with more than one connection in a Zone will inherently bear some local flows. Additionally, because these facilities are Balanced Portfolio upgrades, they were specifically designed to provide significant local flow benefits to one or more Zones, given that the specific intent of the Balanced Portfolio is to achieve balance among Zones for the specific facilities included in the portfolio irrespective of other benefits flowing to the Zone from other facilities not

⁹⁶ See East Texas Cooperatives Protest at 11-12; Joint Protest at 37-39; MoPSC Minority Comments at 7-9.

⁹⁷ See Highway/Byway Filing, Exhibit No. SPP-1 at 41, Figure 17 (indicating that the Winter, Spring, and Summer Peak regional usage for the Iatan–Nashua line are 47%, 14%, and 23% respectively, and the Peak usages for the Muskogee–Seminole line are 22%, 63%, and 61% respectively).

included in the portfolio. Furthermore, the Injection/Withdrawal Analysis may fail to capture the complete regional usage of intrazonal facilities because zonal flows on new intrazonal facilities may provide (in addition to increased local flow capacity) for increased interzonal flows on existing facilities through flow displacement. Consequently, flows on a new facility may not provide sufficient data to capture the entire benefit associated with the new facility's addition to the grid. Such appears to be the case with the Iatan–Nashua and Muskogee–Seminole lines.

c. SPP's Analyses Support the Cost Allocation Factors of the Highway/Byway Methodology

As Mr. Dillahunty indicated in his testimony, no model analysis will show a facility to have 100% regional impacts all of the time under all conditions.⁹⁸ However, the Transmission Distribution and Injection/Withdrawal Analyses show varying levels of regional usage versus local use under various conditions, but consistently show high levels of regional use.⁹⁹ Additionally, as EHV facilities are identified and added to the transmission system over time, every Zone will receive some level of local benefit; however, the level of local benefit received by individual Zones does not diminish the merits of regional cost allocation for EHV facilities. Accordingly, the Transmission Distribution and Injection/Withdrawal analyses indicate that allocating 100% of the costs of 300 kV and above facilities on a regional basis is appropriate.

⁹⁸ *Id.* at 42.

⁹⁹ *See id.* at 36-43.

d. The Timing of the Analyses is Irrelevant

The Joint Protest’s accusation that the Highway/Byway Filing transmittal letter “clearly is meant to leave the impression that SPP first performed the two analyses described in its filing” is both wrong and irrelevant.¹⁰⁰ First, SPP never stated or even implied that it conducted its analyses as a precursor to considering whether to modify its cost allocation methodology. Second, and more importantly, the timing of the analyses does not minimize in any way their relevance in demonstrating the justness and reasonableness of SPP’s Highway/Byway methodology. Joint Protestors’ incendiary attempt to ascribe sinister motives to SPP is baseless and entitled to no weight.

As discussed in more detail in Mr. Dillahunty’s testimony, the SPP Board of Directors established the Synergistic Planning Project Team (“SPPT”) in 2009 to improve SPP’s existing transmission planning and cost allocation methodologies.¹⁰¹ Among other things, the SPPT recommended adoption of an integrated planning process and a highway/byway-type cost allocation methodology.¹⁰² The SPP RSC, the body tasked with establishing cost allocation policy for the SPP Region,¹⁰³ and its Cost Allocation Working Group (“CAWG”), spent the summer and fall of 2009 studying possible EHV regional rate design objectives and details.¹⁰⁴ Following months of study,

¹⁰⁰ Joint Protest at 33.

¹⁰¹ Highway/Byway Filing, Exhibit No. SPP-1 at 17.

¹⁰² *Id.* at 17-19.

¹⁰³ *See supra* note 14 and accompanying text.

¹⁰⁴ Highway/Byway Filing, Exhibit No. SPP-1 at 19.

the RSC voted in favor of the Highway/Byway methodology on October 26, 2009.¹⁰⁵ At a subsequent RSC meeting in January 2010, the RSC revisited the Highway/Byway allocation factors based on a preliminary Injection/Withdrawal Analysis conducted by SPP staff, and, based on the SPP staff's analysis, declined to make any changes to its October 2009 decision.¹⁰⁶

2. *SPP's Qualitative Assessments Provide Additional Support for the Highway/Byway Methodology*

Protest criticisms of SPP's qualitative analyses of the benefits of EHV facilities also miss the mark. Again, the protestors incorrectly imply that each analysis must independently demonstrate the justness and reasonableness of the Highway/Byway proposal and that each analysis, considered alone, must meet the substantial evidence threshold.¹⁰⁷ This view presents an unduly constrained reading of Commission and judicial precedent.

Mr. Dillahunt's discussion of the qualitative benefits of EHV transmission was not intended alone to demonstrate the justness and reasonableness of the Highway/Byway Filing. However, when viewed together, the body of quantitative and qualitative analyses conducted by SPP provides substantial evidence for the Commission to conclude that the Highway/Byway methodology is just and reasonable.

The *ICC v. FERC* court recognized some of the inherent qualitative benefits of EHV transmission, including that "high voltage is more efficient than low for

¹⁰⁵ *Id.* Only the Nebraska Power Review Board voted against adopting the Highway/Byway methodology.

¹⁰⁶ RSC January Meeting Minutes at 3.

¹⁰⁷ *See* Joint Protest at 55-56; MoPSC Minority Comments at 9.

transmitting electricity over long distances”¹⁰⁸ and that “the more transmission capacity there is, the less likely are blackouts or brownouts caused by surges of demand for electricity.”¹⁰⁹ While the court concluded that the Commission could not justify regional cost allocation on a mere claim of such benefits alone,¹¹⁰ it did not preclude the Commission from considering such benefits as part of the basis for a regional cost allocation methodology. SPP provides its analysis of qualitative benefits of EHV transmission development to augment its quantitative analyses that demonstrate extremely high (although not 100%) regional usage of EHV facilities. Together, these analyses form the basis of SPP’s rationale for 100% regional cost allocation for EHV facilities and provide a basis for the Commission to conclude that the Highway/Byway methodology is just and reasonable and consistent with the Commission’s cost causation principles.

3. *Previous SPP Studies Do Not Undermine the Results of the Transmission Distribution and Injection/Withdrawal Analyses*

Contrary to protestor claims,¹¹¹ previous SPP studies do not assail the validity of the analyses discussed in the Highway/Byway Filing, nor does the FPA impose on SPP any obligation to produce every study that it has ever conducted that may have some relevance to cost allocation. First, the suggestion that SPP is required to provide each and every study that may have some relevance to the instant proposal is patently absurd.

¹⁰⁸ *ICC v. FERC*, 576 F.3d at 475.

¹⁰⁹ *Id.* at 476.

¹¹⁰ *Id.* at 476-77.

¹¹¹ *See* East Texas Cooperatives Protest at 13-16; Joint Protest at 24, 27; LES Protest at 3-5; OPPD Protest at 5.

The FPA and judicial precedent demand that SPP submit sufficient evidence for the Commission to determine whether the Tariff change it proposes is just and reasonable and not unduly discriminatory or preferential.¹¹² Failure to present every study with possible relevance does not render a filing deficient.

More importantly, however, the very studies that Joint Protestors criticize SPP for not submitting do not undermine the findings of SPP's Transmission Distribution and Injection/Withdrawal analyses or contradict SPP's conclusions regarding appropriate cost allocation for EHV facilities. Importantly, both the 2009 SPP Balanced Portfolio Report ("2009 Balanced Portfolio Report")¹¹³ and the SPP Priority Projects Phase 2 Report Revision 1 ("Priority Projects Report"),¹¹⁴ referenced by protestors, focused on individual groups of projects. Instead, the Highway/Byway methodology is designed to match the benefits and costs of transmission facilities over time, with the possibility for adjustments to be made under the proposed "unintended consequences" provisions when warranted.¹¹⁵ Both reports cited by the protestors examine the costs and benefits of a single group of transmission upgrades and, therefore, do not present a complete picture of how the Highway/Byway methodology will distribute costs and benefits over time. These reports

¹¹² See *supra* notes 28, 31-32 and accompanying text.

¹¹³ Southwest Power Pool, Inc., SPP Balanced Portfolio Report (June 23, 2010), available at [http://www.spp.org/publications/2009 Balanced Portfolio - Final Approved Report.pdf](http://www.spp.org/publications/2009%20Balanced%20Portfolio%20-%20Final%20Approved%20Report.pdf).

¹¹⁴ Southwest Power Pool, Inc., SPP Priority Projects Phase II Report Revision 1 (Apr. 2, 2010), available at [http://www.spp.org/publications/Priority Projects Phase II Rev 1 Report - 4-2-10_final with Attachments.pdf](http://www.spp.org/publications/Priority%20Projects%20Phase%20II%20Rev%201%20Report%20-%204-2-10_final%20with%20Attachments.pdf).

¹¹⁵ See *infra* Section II.C.4.

each are based on a single set of projects and study a snapshot of the SPP transmission system that does not account for other transmission upgrades that will occur in the future.

The 2009 Balanced Portfolio Report does, in fact, demonstrate that pricing Zones do receive differing costs and benefits. However, while Joint Protestors argue that the 2009 Balanced Portfolio Report “shows that, before any reallocation of zonal revenue requirements, *seven out of sixteen zones* were projected to incur costs in excess of benefits,”¹¹⁶ the Commission-approved Balanced Portfolio Tariff language specifically provides for the reallocation of revenue from the deficient Zones to the Base Plan Zonal Annual Transmission Revenue Requirement to achieve balance. The Balanced Portfolio projects were chosen specifically with the understanding that any deficiencies across Zones would be addressed through the addition of other transmission upgrades or the reallocation of existing revenue requirements within that specific portfolio, and the existence of negative cost allocation impacts prior to reallocation *from this specific group of projects* does not contradict the findings of the Transmission Distribution and Injection/Withdrawal Analyses that EHV facilities provide primarily regional benefits.

The Priority Projects Report also demonstrates, unsurprisingly, that different Zones will receive different benefits and costs from this single set of Priority Projects. The Priority Projects: (1) are not a Balanced Portfolio; and (2) are not the only projects that will be allocated under the Highway/Byway methodology, if approved. As additional transmission upgrades are identified through SPP’s planning process, costs will be distributed under SPP’s Highway/Byway methodology, which will continue to alter the cost and benefit balance to Zones over time. The existence of negative benefits

¹¹⁶ Joint Protest at 24-25 (emphasis in original).

to certain Zones from one set of transmission projects does not belie the conclusion that EHV facilities provide primarily regional benefits and therefore are appropriately allocated on a regional basis.

Moreover, the Adjusted Production Cost Analysis used in both the 2009 Balanced Portfolio and Priority Projects Reports produces results that can appear to show negative impacts where positive benefits actually result. For example, transmission congestion can benefit generators in circumstances where transmission constraints limit access by load to alternative lower cost energy suppliers outside of the constrained area. Transmission congestion can also benefit loads in circumstances where transmission constraints limit the ability of low-cost generators located within the constrained area to sell into areas of higher priced energy. In both circumstances, transmission expansion that reduces congestion can have a negative impact on the loads or generators that were previously benefiting from extant congestion, resulting in such transmission expansion reflecting a negative benefit in the Adjusted Production Cost Analysis for those Zones where either of these conditions predominates at any period of time. Over time, the result is a reduction in the adjusted production cost or even a negative adjusted production cost, even though transmission expansion was beneficial overall.

4. *The Highway/Byway's Strengthened "Unintended Consequences" Provisions Enhance Customer Protection and Ensure Just and Reasonable Cost Allocation*

Protest criticisms of the enhanced "unintended consequences" provisions of the Highway/Byway proposal are misplaced.¹¹⁷ The unintended consequences provisions of

¹¹⁷ See East Texas Cooperatives Protest at 17-20; Joint Protest at 62-67; LES Protest at 5, 8-10.

the Highway/Byway proposal ensure that, while the cost allocation associated with a specific project or set of projects may reflect a negative benefit balance to one or more Zones, continued divergence between costs and benefits will not occur. The strengthened unintended consequences review protects customers from potential long-term material mismatches between costs and benefits by requiring SPP to evaluate the regional allocation methodology and factors every three years (or sooner) and determine the cost allocation impacts of the Highway/Byway methodology to each pricing Zone within the SPP Region.¹¹⁸ The unintended consequences provisions also provide a process for modifying Highway/Byway cost allocation if an imbalanced cost allocation in one or more Zones is discovered, and permits any Member company, after a transition period, to petition the SPP Markets and Operations Policy Committee (“MOPC”) if the Member feels that it has suffered an imbalanced cost allocation.¹¹⁹

Protests that SPP’s revised unintended consequences provisions do not provide adequate protections or that SPP will decline to pursue changes when warranted are unsustainable.¹²⁰ For example, when the 2006 SPP Transmission Expansion Plan (“STEP”) revealed unintended consequences, SPP and its stakeholders promptly revised

¹¹⁸ See Highway/Byway Filing, Exhibit No. SPP-3 at Second Revised Sheet No. 232 – Third Revised Sheet No. 233.

¹¹⁹ While SPP hopes any aggrieved stakeholder will follow the process set forth in the Tariff to address unintended consequences, the Tariff does not preclude any stakeholder from exercising its section 206 rights should it not agree with cost allocation impacts.

¹²⁰ See East Texas Cooperatives Protest at 18-19; Joint Protest at 62-63; LES Protest at 8-10.

the MW-mile methodology to remedy the problem.¹²¹ The revised unintended consequences protections in the Highway/Byway Filing are actually more stringent than existing provisions, in that they require more frequent review of the cost allocation methodology and factors than SPP's current unintended consequences protections,¹²² and they set forth a distinct process for SPP and its stakeholder groups to review annual cost allocations. They also provide stakeholders that believe they have suffered an imbalanced allocation a process to appeal to the MOPC for review and possible modification of cost allocations to remedy any imbalance. SPP's strengthened unintended consequences review ensures that revenue requirements assigned to specific SPP Zones will balance and remain just and reasonable over time.

Finally, while not required by the Highway/Byway methodology or the Tariff language submitted in the Highway/Byway Filing, following approval of the Highway/Byway methodology by the SPP Board of Directors, the SPP RSC created a Rate Impact Task Force comprised of state regulatory commissioners, SPP Members, a member of the SPP Board of Directors, and SPP staff, to analyze the impact of SPP cost allocation, assess the benefits to ratepayers associated with transmission projects, and review the rate impact on retail customers.¹²³ SPP, the RSC, and SPP stakeholders

¹²¹ *Sw. Power Pool, Inc.*, Letter Order, Docket Nos. ER07-1248-000 and -001 (Oct. 18, 2007) (accepting revision to SPP's MW-mile calculation); Submission of Revisions to Open Access Transmission Tariff of Southwest Power Pool, Inc., Docket No. ER07-1248-000 (Aug. 3, 2007) (revising MW-mile calculation when unintended consequences were discovered); *see also* Highway/Byway Filing at 6.

¹²² *See* SPP Tariff, Attachment J § III.D.1 (providing for a review of the regional and zonal allocation factors every five years).

¹²³ *See* Arkansas PSC Comments at 5 n.8.

remain committed to ensuring just and reasonable rates for transmission service in the SPP Region.

5. *SPP Has Provided Ample Support for All Aspects of the Highway/Byway Filing*

Contrary to the Joint Protest,¹²⁴ the Highway/Byway Filing provides ample justification for all aspects of the Highway/Byway cost allocation design, including the mid-tier voltage levels and the cost allocation percentages for mid-tier and lower voltage facilities. SPP's Transmission Distribution Analysis confirms that mid-tier facilities (those operating above 100 kV and below 300 kV) demonstrate responsiveness to interzonal flows consistent with the one-third/two-third regional-to-zonal cost allocation, and that lower voltage facilities (operating at or below 100 kV) show some, but not a significant amount, of interzonal flow responsiveness. Specifically, SPP's analysis of 182 illustrative interzonal transactions showed that facilities operating at 115 kV and 138 kV demonstrated 38% responsiveness, and the 69 kV facilities examined showed only 14% responsiveness.¹²⁵ Likewise, SPP's analysis of 56 illustrative through transactions revealed regional flow responsiveness percentages of 36% for 115 kV and 138 kV facilities and 9% for 69 kV facilities.¹²⁶ These results correlate to the SPP stakeholder decision to allocate one-third of the costs of mid-tier facilities on a regional basis and to allocate lower-voltage facilities 100% zonally.

¹²⁴ Joint Protest at 53-55.

¹²⁵ Highway/Byway Filing, Exhibit No. SPP-1 at 37-38.

¹²⁶ *Id.* at 38-39.

While the Transmission Distribution Analysis does indicate that even low voltage transmission facilities demonstrate some level of regional responsiveness, the allocation factors developed by the SPP RSC and stakeholder process are consistent with the results of this analysis. As *ICC v. FERC* confirms, cost allocation is not an exercise requiring “exacting precision,”¹²⁷ and SPP’s Transmission Distribution Analysis results demonstrate that the cost allocation percentages and voltage levels selected by SPP’s stakeholders are reasonable.

Finally, SPP’s one-third/two-third regional-to-zonal cost allocation for mid-level facilities is consistent with SPP’s current Base Plan Funding cost allocation methodology, which assigns the costs of all Base Plan Upgrades using these same allocation factors.¹²⁸

D. Other Criticisms of the Highway/Byway Methodology Lack Merit

Several protests, as well as some of the comments filed in this proceeding that generally support the Highway/Byway proposal, request that the Commission require SPP to modify various aspects of its Highway/Byway methodology; however, none of these requests demonstrates that SPP’s Highway/Byway methodology as proposed is unjust and unreasonable and therefore requires modification.

¹²⁷ *ICC v. FERC*, 576 F.3d at 477 (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d at 1369).

¹²⁸ See SPP Tariff, Attachment J § III.A.2.i (establishing a region-wide allocation of 33% for Base Plan Upgrades).

1. *Application of the Highway/Byway Methodology to Generation Interconnection, Wind Resources, and Generators*

As discussed above,¹²⁹ SPP's burden in this proceeding is to demonstrate that its proposed Highway/Byway methodology is just and reasonable, not to disprove the validity of other potential cost allocation methods. Some comments advocate applying the Highway/Byway methodology to generation interconnection, particularly wind generation,¹³⁰ while others argue that the Highway/Byway methodology as proposed unduly advantages wind generation.¹³¹ Neither viewpoint merits rejection of the Highway/Byway Filing.

First, SPP is not proposing any modifications to its generation interconnection or Aggregate Transmission Service Study processes. SPP's Highway/Byway proposal broadens the definition of "Base Plan Upgrade" to include economic projects in addition to reliability projects; however, SPP's existing Commission-approved study and cost allocation processes for generation interconnection upgrades and transmission service upgrades remain in effect.¹³² The Commission previously has determined these processes to be just and reasonable,¹³³ and the Highway/Byway methodology does nothing to

¹²⁹ See *supra* Sections II.A.1 – II.A.2.

¹³⁰ See Motion to Intervene and Comments of E.ON Climate & Renewables North America LLC, Docket No. ER10-1069-000, at 3, 8-9 (May 17, 2010); Novus Protest at 4-7; Motion to Intervene and Comment of Renewable Energy Systems Americas Inc., Docket No. ER10-1069-000, at 4 (May 17, 2010).

¹³¹ See East Texas Cooperatives Protest at 13.

¹³² Highway/Byway Filing, Exhibit No. SPP-1 at 6-7.

¹³³ See *Sw. Power Pool, Inc.*, 111 FERC ¶ 61,118, at PP 71-72 (order conditionally accepting cost allocation and cost recovery provisions related to facilities constructed for transmission service requests), *order on reh'g and compliance*, 112 FERC ¶ 61,319 (2005); *Sw. Power Pool, Inc.*, 122 FERC ¶ 61,060, at P 47 (continued. . .)

change that conclusion. Additionally, while upgrades related to generation interconnection do not receive Highway/Byway cost treatment, by encouraging the development of a robust EHV transmission grid by allocating costs on a region-wide basis, the Highway/Byway methodology will provide benefits to generators by upgrading the transmission system with facilities that otherwise might be the future responsibility of generators seeking to interconnect, as Mr. Dillahunty discusses in his testimony.¹³⁴

Despite the fact that the generation interconnection process will therefore realize some benefits, adoption of the Highway/Byway methodology does not unduly advantage wind generation resources. In his testimony, Mr. Dillahunty explains the many goals of the Highway/Byway proposal, including increased west-to-east transfer capability, relief to both the generation interconnection and Aggregate Transmission Service Study queues, and congestion relief (in addition to increased system reliability and other benefits).¹³⁵ While wind generation developers will benefit from increased capacity and enhanced west-to-east transfer capability, as Figure 8 of Mr. Dillahunty's testimony depicts, non-renewable generation also benefits from the Highway/Byway methodology.¹³⁶ In fact, both generators and loads will benefit from the increased opportunities provided by congestion relief and increased system reliability. The

(. . . continued)

(accepting SPP's generation interconnection cost allocation and crediting provisions), *reh'g denied*, 124 FERC ¶ 61,014 (2008).

¹³⁴ Highway/Byway Filing, Exhibit No. SPP-1 at 29-30.

¹³⁵ *See generally id.* at 21-35 (discussing the goals of the SPPT Report and the Highway/Byway methodology).

¹³⁶ *Id.* at 30.

Highway/Byway proposal does not favor one group of transmission system users to the detriment of others.

Likewise, calls for the Commission to require SPP to modify its Highway/Byway proposal to require assignment of a portion of Base Plan Upgrade costs directly to generators¹³⁷ should be rejected. Base Plan Upgrades are not upgrades designed specifically to benefit generators. In considering cost allocation alternatives, SPP's CAWG considered establishing a generator access charge under the Highway/Byway methodology; however, the RSC rejected this option by a vote of six to one.¹³⁸ Generators will still be required to pay their share of costs associated with facilities that would not be constructed but for their interconnection requests, in accordance with the cost allocation provisions of SPP's Generation Interconnection Procedures in Attachment V of its Tariff, and, in some instances, also will pay for their use of the transmission system through their transmission service charges.

2. *Distinguishing Reliability Projects*

SPP's inclusion of reliability projects in the Highway/Byway methodology is not improper, as some commenters suggest.¹³⁹ As the Highway/Byway filing states, in SPP's increasingly integrated transmission system, it is progressively more difficult and less meaningful to continue to distinguish between "reliability projects" and "economic projects."¹⁴⁰ Projects built primarily to address violations of reliability standards also can

¹³⁷ MoPSC Minority Comments at 6-7.

¹³⁸ See *supra* note 15 and accompanying text.

¹³⁹ See, e.g., MoPSC Minority Comments at 1-4.

¹⁴⁰ See Highway/Byway Filing at 2-3 and Exhibit No. SPP-1 at 21-24.

provide economic opportunities, just as upgrades developed to alleviate congestion also contribute to system reliability. Moreover, as the SPP transmission system continues to evolve and new transmission facilities, generation resources, and loads are added and modified, transmission facilities built for one purpose may become more useful to fulfill another – “today’s economic project is tomorrow’s reliability project.”¹⁴¹

In addition, the Highway/Byway cost allocation methodology is not employed in a vacuum. Concerns expressed by Missouri Public Service Commissioners Jarrett and Davis that the Highway/Byway methodology will lead to massive construction of EHV facilities to resolve discrete local reliability needs are unfounded.¹⁴² The Highway/Byway cost allocation factors will be applied to Base Plan Upgrades identified through SPP’s planning process, which carefully studies the needs of the transmission system and develops appropriate solutions to meet those needs. Where an EHV facility is not needed to address an identified reliability issue, and no other benefits would result from constructing an EHV facility to address the reliability issue, an EHV facility will not be approved.

3. *Impact on Investment Decisions*

The Joint Protestors’ claim that SPP’s Highway/Byway proposal would distort investment decisions is meritless.¹⁴³ By focusing on the development of a robust regional transmission system and allocating costs accordingly, the Highway/Byway methodology removes a barrier to investment in generation alternatives and enables location-

¹⁴¹ Highway/Byway Filing at 2.

¹⁴² MoPSC Minority Comments at 3-4.

¹⁴³ Joint Protest at 57-60.

constrained and transmission congestion-constrained resources to compete in the market. In support of its argument that the Highway/Byway methodology somehow distorts investment decisions, the Joint Protest relies on examples provided by Joint Protestor witness Mr. David Ried. Mr. Ried's generation siting analysis,¹⁴⁴ however, myopically assesses transmission facilities as if they are single use, and ignores the other uses and benefits that result from transmission development. Both Mr. Ried's wind generation and coal-fired generation siting examples¹⁴⁵ completely ignore the fact the EHV transmission lines that would be built to transmit electricity from a hypothetical wind farm in Kansas or a coal-fired generator located near the mine could also be used by other customers and could potentially provide other system benefits (i.e., reliability or reduced congestion) that would justify broader cost allocation. If the transmission lines in question were built solely to service the hypothetical generation facilities in Mr. Ried's examples and provided no other system benefits, they would not receive Highway/Byway cost allocation, but instead would be allocated as part of SPP's generation interconnection process, thereby removing any "distortion" of investment and siting decisions.

Criticisms that the Highway/Byway methodology will lead to overinvestment in transmission or "gold-plating" of the SPP transmission system are likewise unfounded.¹⁴⁶ To receive cost allocation under the Highway/Byway methodology, a facility must qualify as a Base Plan Upgrade (i.e., must be identified through SPP's planning process

¹⁴⁴ Joint Protest, Affidavit of David G. Ried on Behalf of Joint Protesters ¶¶ 58-71 ("Ried Affidavit").

¹⁴⁵ *Id.*

¹⁴⁶ *See* NPRB Protest at 6; Joint Protest, Russell Affidavit ¶ 42.

including its high priority study process or qualify as a Service Upgrade eligible for Base Plan Funding under Attachment J of the SPP Tariff). SPP’s planning process (both the existing process and the proposed ITP process) requires SPP to assess transmission system needs and develop solutions to address identified needs. SPP then issues a “Notification to Construct” that provides detailed instructions to the designated builders regarding the specifications for the project, and transmission builders are obligated under Attachment O of the SPP Tariff and the SPP Membership Agreement to “use due diligence to construct transmission facilities as directed” by SPP and the SPP Board of Directors.¹⁴⁷ Transmission builders are not granted unfettered discretion to build whatever facilities they wish and then roll such facilities into the Highway/Byway cost allocation, and the stakeholder process to develop the STEP allows SPP and its stakeholders to guard against overbuilding of the transmission system.

4. *Impact on Continued Membership*

Finally, the individual protests filed by Lincoln Electric System (“LES”) and Omaha Public Power District (“OPPD”) provide no justification for rejecting the Highway/Byway proposal. First, both parties’ argument that they relied on existing cost allocation provisions when they joined SPP is immaterial,¹⁴⁸ because both parties knew, or should have known, that SPP is authorized to revise its Tariff under FPA section 205 at any time. Additionally, while LES and OPPD are free to evaluate the impact of the Highway/Byway methodology on their continued participation in SPP, LES’s and

¹⁴⁷ SPP Tariff, Attachment O § VIII.2; SPP Membership Agreement § 3.3(a).

¹⁴⁸ LES Protest at 10-12; OPPD Protest at 5-6.

OPPD's individual decisions regarding their SPP membership status¹⁴⁹ has no bearing on whether the Highway/Byway methodology is just and reasonable.

E. SPP Conducted a Thorough Stakeholder Process That Provided Ample Opportunity for Dissenting Views to Be Heard

Joint Protestor criticism of the SPP stakeholder process is completely unfounded, defies reality, and provides no basis for the Commission to withhold its usual deference to stakeholder-developed proposals.¹⁵⁰ As is readily apparent from the Joint Protest, attacks on the stakeholder process amount to nothing more than a thinly-veiled attempt to assail the outcome, rather than the process itself. Joint Protestors are dissatisfied that their position did not prevail in the stakeholder process, and therefore malign a stakeholder process that provided them with ample opportunity to debate the merits of their alternative proposals. Other criticisms of the stakeholder process equally lack merit.¹⁵¹

Contrary to protestors' claims, SPP engaged in a robust and open stakeholder process over a 15-month period that started with the formation of the SPPT – which itself was the result of stakeholder feedback on previous stakeholder satisfaction surveys¹⁵² – and concluded with the submission of the Highway/Byway Filing. As discussed above, SPP conducted a thorough stakeholder process over fifteen months to develop the

¹⁴⁹ See, e.g., OPPD Protest at 6.

¹⁵⁰ See Joint Protest at 78-84.

¹⁵¹ See East Texas Cooperatives Protest at 22.

¹⁵² Highway/Byway Filing, Exhibit No. SPP-1 at 17.

Highway/Byway methodology, and a significant majority of SPP's stakeholders, including an overwhelming majority of RSC members, approved the methodology.¹⁵³

While the initial meetings of the SPPT to define issues and assess proposed solutions were closed in that parties were not permitted to attend and participate, the meetings were held via teleconference open to any interested party to listen. Parties were permitted to submit written comments, which were distributed to the SPPT and discussed as the SPPT deemed appropriate. The SPPT also hosted an open meeting prior to presenting its recommendations to the MOPC, RSC, and Board of Directors in April 2009. Once the SPPT Report was formally presented, SPP held an additional five open teleconferences to discuss the progress toward achieving the SPPT Report recommendations, and SPP stakeholder groups including the CAWG, RSC, Regional Tariff Working Group ("RTWG"), MOPC, and ultimately the Board of Directors, considered all aspects of the SPPT Report and design of the Highway/Byway methodology and ITP in meetings and conference calls open to any interested stakeholder. The suggestion that the Highway/Byway stakeholder process varied from SPP's usual open and inclusive stakeholder process is indefensible.

In fact, stakeholder groups went to unusual lengths to ensure that the views of all interested stakeholders were aired and considered. Viewpoints and alternative language proposals by the Joint Protestors were included in meeting materials and are reflected in the meeting minutes of the stakeholder groups such as the RTWG,¹⁵⁴ and the Board of

¹⁵³ See *supra* Section II (introduction).

¹⁵⁴ See, e.g., Southwest Power Pool, Inc., Regional Tariff Working Group Meeting Minutes, at 12 (of 146) (Feb. 18, 2010), available at http://www.spp.org/publications/RTWG_Minutes_&_Attachments_-_02-18-10.pdf; Southwest Power (continued. . .)

Directors took the unusual step of including on its agenda both the Highway/Byway proposal and an alternative presentation by the Joint Protestors.¹⁵⁵ Joint Protestors were granted and took advantage of every opportunity to present their side, and their views were well known throughout the stakeholder process. To argue now that the stakeholder process denied them the opportunity for a full and fair hearing of their views unfairly maligns a full and open process.

Moreover, the Joint Protest conflates the term “consensus” with unanimity. While the RSC indeed was not unanimous in its approval of the Highway/Byway (six of the seven members voted *in favor* of the Highway/Byway), and while proposed Tariff language to implement the Highway/Byway proposal failed to garner the necessary two-thirds supermajority vote of both the Transmission Owning Member and Transmission Using Member sectors of the SPP membership, the Highway/Byway methodology was approved with strong majority stakeholder support.¹⁵⁶ The Commission does not require

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Pool, Inc., Regional Tariff Working Group Meeting Minutes, at 11 of 96 (Feb. 4, 2010), *available at* http://www.spp.org/publications/RTWG_Minutes_&Attachments_-_02-04-10.pdf.

¹⁵⁵ See Southwest Power Pool, Inc., Board of Directors/Members Committee Special Meeting Minutes, at 2, 3, 161 (of 195) (Mar. 31, 2010), *available at* <http://www.spp.org/publications/BOD033110.pdf>. While the Board of Directors requires stakeholder groups to include a statement of minority views in their recommendation reports, and while Board of Director meetings are generally open to the public and allow any interested attendee to participate in discussion prior to Board votes, the Board of Directors in this instance took the extra step of including the Joint Protestors’ “Compromise Position” presentation on the meeting agenda and devoted a substantial portion of the special meeting to hearing the views of the Joint Protestors.

¹⁵⁶ Joint Protestors’ objection to their perceived slight at being characterized as a “minority” is of little substance. Joint Protest at 83. The fact remains that a majority of SPP Members voted in favor of the Highway/Byway Proposal in each
(continued. . .)

unanimous stakeholder endorsement as a prerequisite for according deference to stakeholder-developed proposals.¹⁵⁷

F. Novus I and II’s Limited Protest Raises Issues Beyond the Scope of This Proceeding, Provides No Basis For Modifying the Highway/Byway Methodology, and Should Be Rejected

Finally, the limited protest of Novus I and II¹⁵⁸ provides no basis for modifying SPP’s Highway/Byway proposal.

1. Novus I and II Raise Issues that Are Not Relevant to the Highway/Byway Filing and Should Be Raised in Another Docket

Notably, Novus I and II repeatedly state that they “support the [Highway/Byway] filing and the resulting cost allocation methodology.”¹⁵⁹ Nevertheless, they file a protest in this proceeding and request modifications to the Highway/Byway proposal to address a dispute in another proceeding. Specifically, in Docket No. ER10-1233-000, SPP filed an unexecuted interconnection agreement among SPP, Novus Wind II, LLC (“Novus II”), and Southwestern Public Service Company. The agreement was filed unexecuted

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of the stakeholder groups that considered it. Furthermore, the Joint Protestors’ view is in fact a minority view, as is evident from the number of supportive comments as compared to protests, as well as the Joint Protestors’ own admission that they represent 18% of total load in SPP (meaning that 82% of load is not represented by the Joint Protestors). Joint Protest at 79.

¹⁵⁷ See, e.g., Opinion No. 494 at P 56 (accepting RTO proposal that did not receive unanimous stakeholder support); Midwest ISO January 2008 Order at PP 30, 52 (same).

¹⁵⁸ “Novus I and II” collectively refers to Novus Windpower, LLC and Novus Wind II, LLC.

¹⁵⁹ Novus Protest at 1; see also *id.* at 3 (“Novus I and Novus II support the efforts of SPP to streamline the transmission upgrade cost allocation policy.”); *id.* at 4 (“Novus and Novus II agree with the approach taken by SPP in its filing with respect to the cost allocation methodology and cost sharing.”).

because SPP did not agree to include proposed language that would specify that Novus II's cost responsibility would change and be recalculated if, in the transmission planning process, SPP's Board of Directors later approved Priority Projects or other upgrades that are the same as the Network Upgrades identified in Novus II's interconnection agreement.¹⁶⁰ SPP rejected including of such a provision because the SPP Tariff provides no mechanism for adjusting an interconnection customer's cost responsibility for upgrades that are required for its interconnection because of a later event that also would cause the upgrade to be included in the STEP.¹⁶¹ Novus I and II now want the

¹⁶⁰ Submission of Large Generator Interconnection Agreement of Southwest Power Pool, Inc., Docket No. ER10-1233-000, at 2 (May 12, 2010) ("Novus II LGIA Filing").

¹⁶¹ *Id.* As SPP explained in the Novus II LGIA Filing, SPP's rejection of the proposed language is valid. Consistent with Order No. 2003, an interconnection customer bears responsibility for funding the Network Upgrades that are necessary to interconnect its facility to the Transmission System that are not already in the SPP transmission expansion plan. *See* Novus Wind II LGIA Filing at 2 n.6; *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,146, at P 694 (2003) ("it is appropriate for the Interconnection Customer to pay initially the full cost of Interconnection Facilities and Network Upgrades that would not be needed but for the interconnection"), *order on reh'g*, Order No. 2003-A, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,160, at P 320 (2004) ("we clarify that the Interconnection Customer is responsible (and later may receive credits) for funding the cost of (1) all Network Upgrades (other than those already in the Transmission Provider's current expansion plan) that must be constructed to support that Interconnection Customer's In-Service Date"), *order on reh'g*, Order No. 2003-B, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,171, *order on reh'g*, Order No. 2003-C, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *see also pro forma LGIA* § 11.3 ("Network Upgrades described in Appendix A shall be solely funded by Interconnection Customer"). At the time that Novus II's generating facility was studied (using Novus II's queue position as the baseline), there were no Priority Projects or other upgrades in the STEP that would alleviate the need for the upgrades listed in the Novus Wind II interconnection agreement. Novus Wind II LGIA Filing at 3; *see also id.* at n.7; *Neptune Reg'l Transmission Sys., LLC v.* (continued. . .)

Highway/Byway proposal modified to provide such a mechanism.¹⁶² Such a modification would be inappropriate as the Highway/Byway proposal does not address how upgrades required for generation interconnections are determined or cost-allocated.¹⁶³ Moreover, as Novus I and II acknowledge, any dispute regarding whether such language should be included in Novus II's interconnection agreement will be resolved in Docket No. ER10-1233-000.¹⁶⁴

2. *The Highway/Byway Methodology Does Not Result in Undue Discrimination*

Additionally, the Highway/Byway proposal does not result in any undue discrimination that requires remedying, as Novus I and II suggest. First, any alleged discrimination stemming from differences between the interconnection agreement filed in Docket No. ER10-1233-000 and an interconnection agreement filed in an earlier docket¹⁶⁵ is unrelated to the Highway/Byway proposal and should not be addressed in

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PJM Interconnection, L.L.C. 111 FERC ¶ 61,455, at P 19 (2005) (“*Neptune*”), *aff’d sub nom. Pub. Serv. Elec. and Gas Co. v. FERC*, 485 F.3d 1164 (D.C. Cir. 2007).

¹⁶² Novus Protest at 4 (“The Commission should order SPP to allow Interconnection Customers to request a re-study in the case of projects where what would otherwise be EHV facilities with costs shared throughout the region are included in the applicable interconnection agreement and for which no authorization to proceed has been issued nor required to be issued prior to June 19, 2010, for EHV upgrades assigned to the Customer under the generation interconnection study process.”); *see also id.* at 1.

¹⁶³ *See supra* note 132 and accompanying text.

¹⁶⁴ Novus Protest at 3.

¹⁶⁵ *Id.* at 7.

this proceeding. Rather, that issue properly will be addressed in Docket No. ER10-1233-000.¹⁶⁶

Second, SPP's Highway/Byway proposal creates no discrimination issues between Transmission Customers and Generation Interconnection Customers. As Mr. Dillahunty testifies, the Highway/Byway proposal does not affect the existing cost allocation methodology for generation interconnections.¹⁶⁷ Currently, consistent with Order Nos. 2003 and 2003-A, under the existing SPP Tariff, Generation Interconnection Customers bear the responsibility for funding Network Upgrades not already included in the STEP that are necessary to interconnect their facilities to the transmission system.¹⁶⁸ Unlike upgrades required for new or changed Designated Resources (i.e., upgrades required for network service or Base Plan Upgrades), upgrades required for generation interconnections currently do not qualify for Base Plan Funding. This does not change under the Highway/Byway proposal. In short, under the current Commission-accepted SPP Tariff, upgrades required for generation interconnections and Base Plan Upgrades are treated differently with regard to cost allocation, which will remain the case after the Highway/Byway methodology is in place.

Third, contrary to Novus I and II's assertions, the Highway/Byway proposal does not create discrimination issues because "projects further behind in the interconnection process will receive the benefits of Base Plan Upgrades and the new transmission cost allocation procedures, but those with [interconnection agreements] but who have not

¹⁶⁶ *Id.* at 3.

¹⁶⁷ *Id.* at 6; Highway/Byway Filing, Exhibit No. SPP-1 at 6-7.

¹⁶⁸ *See supra* note 161; SPP Tariff, Attachment V § 4.2.5 and Appendix 6 § 11.3.

issued authorizations to proceed for EHV upgrades initially assigned to them under the generation interconnection study process apparently cannot.”¹⁶⁹ Today, Generation Interconnection Customers may benefit more or less from upgrades included in the STEP than other Generation Interconnection Customers, depending on their queue position. The Commission has held that an interconnection customer’s queue position “forms the basis for the determination of an interconnection customer’s cost responsibilities for the construction of facilities or upgrades.”¹⁷⁰ In other words, the upgrades required to interconnect generation to the transmission system are determined based on the configuration of the transmission system at the time of the Generation Interconnection Request.¹⁷¹ Therefore, the fact that a later-queued generation project may “benefit” from a different configuration of the transmission system (i.e., the addition of an EHV Base Plan Upgrade) does not unduly discriminate against the lower-queued project that entered the queue prior to that upgrade being included in the STEP. As the Highway/Byway proposal does not change how upgrades for generation interconnections currently are determined or cost-allocated, the modification Novus I and II seek would need to be made to the generation interconnection process, which is beyond the scope of the Tariff revisions filed in this proceeding. Moreover, to permit re-studies for interconnection customers that already have interconnection agreements in order to determine the impact of later-approved Base Plan Upgrades or Priority Projects, as Novus I and II suggest,

¹⁶⁹ Novus Protest at 7.

¹⁷⁰ *Neptune* at P 19.

¹⁷¹ *See id.*

would be inconsistent with SPP's generation interconnection process,¹⁷² Order No. 2003,¹⁷³ and the Commission's decision in *Neptune*.¹⁷⁴

Finally, even if the Highway/Byway proposal impacted the cost allocation process for Generation Interconnection Customers, a transition procedure would not be required. As the Commission previously has found, the cost allocation rules existing at the time an interconnection agreement was executed or filed unexecuted apply to that interconnection agreement.¹⁷⁵ Accordingly, in all events, Novus II's interconnection agreement, which was filed on May 12, 2010, with a requested effective date of April 12, 2010, would not be subject to the Highway/Byway cost allocation methodology that, if accepted, will not be effective until June 19, 2010.

¹⁷² See SPP Tariff, Attachment V §§ 8.6, 8.11.

¹⁷³ Order No. 2003 permits re-studies only if: (1) a higher-queued project withdraws from the queue, (2) a higher-queued project requires a modification, or (3) the project's point of interconnection is re-designated. Order No. 2003, *pro forma* Large Generator Interconnection Procedures §§ 6.4, 7.6, 8.5.

¹⁷⁴ *Neptune* at PP 19, 20, 23.

¹⁷⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 62 (2009) ("As to the trigger date, we have previously found that the Tariff that should apply is the one that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted.").

III. CONCLUSION

For the foregoing reasons and the reasons indicated in the Highway/Byway Filing, the Commission should reject the protests filed in this proceeding and accept the proposed Highway/Byway cost allocation methodology effective June 19, 2010.

Respectfully submitted,

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June 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 1st day of June, 2010.

/s/ Matthew J. Binette

Matthew J. Binette

**Attorney for
Southwest Power Pool, Inc.**