

137 FERC ¶ 61,075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER10-1069-001

ORDER ON REHEARING

(Issued October 20, 2011)

1. Nebraska Public Power District (NPPD), Lincoln Electric System (LES), and Joint Protestors¹ (collectively, Rehearing Parties) seek rehearing of the June 17, 2010 order in this proceeding,² which accepted Southwest Power Pool, Inc.'s (SPP) new "Highway/Byway" cost allocation methodology (Highway/Byway Methodology). As discussed below, the Commission denies the requests for rehearing.

I. Background

2. On April 19, 2010, SPP filed revisions to its Open Access Transmission Tariff (Tariff) to implement the Highway/Byway Methodology (April 19 Filing). Under the Highway/Byway Methodology, Base Plan Upgrade³ costs are allocated to SPP member

¹ Joint Protestors are Empire District Electric Co., Omaha Public Power District, City Utilities of Springfield, Missouri, NPPD, and LES. Joint Protestors filed a joint request for rehearing, while NPPD and LES filed individual requests for rehearing.

² *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010) (June 17 Order). *But see Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000) *infra* P 55.

³ Base Plan Upgrades are defined, in pertinent part, as follows:

Those upgrades included in and constructed pursuant to the SPP Transmission Expansion Plan [STEP] in order to ensure the reliability of the Transmission System. Base Plan Upgrades shall also include: (i) those Service Upgrades required for new or changed Designated Resources to the extent allowed for in Attachment J to this Tariff, (ii) ITP Upgrades that are approved for construction by

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utilities based on the voltage of a new transmission facility as follows: (1) the costs of facilities operating at 300 kV and above (EHV) are allocated 100 percent across the SPP region on a postage stamp basis; (2) the costs of facilities operating above 100 kV and below 300kV are allocated one-third on a regional postage stamp basis and two-thirds to the zone in which the facilities are located; and (3) the costs of facilities operating at or below 100 kV are allocated 100 percent to the zone in which the facilities are located. SPP also proposed to eliminate the MW-mile analysis⁴ to allocate costs under the Highway/Byway Methodology.

3. The Highway/Byway Methodology applies to Base Plan Upgrades that are developed after the June 19, 2010 effective date and that are not in a Balanced Portfolio.⁵ It also applies to the “Priority Projects,” which are a group of EHV projects approved by the SPP Board of Directors as interim projects pending implementation of SPP’s new transmission planning process, the Integrated Transmission Plan (ITP),⁶ and to projects resulting from the ITP.

the SPP Board of Directors, and (iii) high priority upgrades, excluding Balanced Portfolios, that are approved for construction by the SPP Board of Directors.

See SPP Tariff at 1.3g. A high priority upgrade is an economic upgrade recommended by SPP for inclusion in the STEP based on the results of a high priority study requested by SPP stakeholders. *See* SPP Tariff, Attachment O, section IV.3.

⁴ Prior to the acceptance of the Highway/Byway Methodology, under Attachment J of SPP’s Tariff, each zone with a benefit of at least 10 MW-miles from a given Base Plan Upgrade was allocated a portion of the zonal revenue requirement for the Base Plan Upgrade based on that zone’s incremental positive MW-mile benefit divided by the sum of the incremental positive MW-mile benefits for all of the zones with a benefit of at least 10 MW-miles from the upgrade.

⁵ Under the Balanced Portfolio provision of its Tariff, SPP evaluates a portfolio of economic upgrades to achieve a balance where the benefits of the portfolio to each zone (as measured by adjusted production costs) equals or exceeds the costs allocated to each zone over a ten-year period. Where necessary, SPP will include costs associated with reliability upgrades or existing facilities that are allocated zonally to achieve a balance among all SPP Zones.

⁶ On July 15, 2010 in Docket No. ER10-1269-000, the Commission accepted SPP’s ITP proposal, subject to a compliance filing and subsequently issued an order on rehearing. *See Southwest Power Pool, Inc.*, 131 FERC ¶ 61,042 (2010), *order on reh’g*,

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4. In the April 19 Filing, SPP also proposed revisions to the existing unintended consequences provisions set forth in Attachment J of its Tariff to require review of the Highway/Byway Methodology and allocation factors at least every three years, rather than every five years as previously provided. In addition, the Tariff revisions authorized the Regional State Committee (RSC)⁷ to recommend adjustments to the cost allocation if a review shows an imbalanced cost allocation to one or more zones, and it required that the analytical methods used in the review be defined. The revisions also provided that beginning in 2015, member companies that believe they have been allocated a disproportionate portion of costs may seek relief from SPP's Markets and Operating Policy Committee (MOPC).⁸

5. To support the Highway/Byway Methodology, SPP offered the results of two quantitative analyses in the April 19 Filing. First, SPP conducted the Transmission Distribution Analysis to determine which facilities are used primarily for regional flows and therefore fulfill more of a highway function on an integrated transmission network, and which facilities are used more at the local level (i.e., byway). SPP explained that the Transmission Distribution Analysis assessed the responsiveness of different facilities to power transfers among SPP zones as indicated by the impact of illustrative transactions on the facilities included in the analysis. SPP stated that this study indicated that EHV facilities were far more responsive to inter-zonal flows (98 percent for Balanced Portfolio EHV facilities and 77 percent for existing SPP EHV facilities) than were lower voltage facilities (38 percent for the 115-138 kV facilities and 14 percent for the existing 69 kV facilities).

6. SPP also offered the results of a second study, the Injection Withdrawal Transmission Utilization Analysis (Injection/Withdrawal Analysis), which it used to estimate the portion of transmission line flow that is the result of local utilities serving local load with local generation versus the portion of the transmission line flow that is the

136 FERC ¶ 61,050 (2011). The ITP process involves a three-year planning cycle during which SPP will study its transmission system needs over near-term (5-7-year), mid-term (10-year), and long-term (20-year) periods.

⁷ The RSC provides state regulatory agency input on regional matters related to the development and operation of bulk electric transmission and includes one designated commissioner from each state regulatory commission having jurisdiction over an SPP member. SPP Bylaws, Original Volume No. 4 section 7.2.

⁸ The MOPC consists of a representative officer or employee from each SPP member and reports to the SPP Board of Directors. Its responsibilities include recommending modifications to the SPP Tariff. *See* SPP Bylaws at section 6.1.

result of regional, non-local utilization. SPP stated that the results of the Injection/Withdrawal Analysis support the conclusion that EHV facilities primarily fulfill a regional function.

7. SPP further supported its proposal by describing regional benefits that it stated will result from greater development of EHV facilities including: congestion relief; transmission system unloading and regional reliability and stability; improvement of the interconnection and transmission service request processes; facilitation of public policy goals such as increasing use of renewable energy resources; and other economic benefits.

8. In response to SPP's Filing, protesters asserted that SPP had not adequately supported the Highway/Byway Methodology and requested that the Commission reject SPP's filing, or in the alternative hold the proceeding in abeyance and provide other relief.

II. Discussion

A. Procedural Matters

9. On August 3, 2010, SPP filed an answer to the requests for rehearing, to which Joint Protesters filed an answer. On November 18, 2010, Joint Protesters also filed a motion requesting that the Commission take official notice of documents relating to cost increases in the Priority Projects. NPPD filed an answer in support of the motion for official notice and SPP filed an opposing answer.

10. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2011), prohibits answers to requests for rehearing. Accordingly, we will reject SPP's answer and dismiss Joint Protesters' answer to SPP's answer.

11. We will deny Joint Protesters' motion for official notice and reject the answers filed by NPPD and SPP. As the Commission has stated, we are reluctant to chase a "moving target" by considering new evidence presented for the first time at the rehearing stage of Commission proceedings.⁹ Even if this extra-record evidence were allowed, however, it would not change our ruling on the merits, as it does not undermine our conclusions in the June 17 Order.

⁹ *Boralex Livermore Falls LP*, 123 FERC ¶ 61,279, at P 62 (2008); *Southern Cal. Edison Co.*, 102 FERC ¶ 61,256, at P 17 (2003); *Philadelphia Elec. Co.*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992).

B. Substantive Matters

12. Rehearing Parties raise a number of issues on rehearing, including, among other things, that SPP's Highway/Byway Methodology does not satisfy the cost causation principle. As discussed below, we deny rehearing of the June 17 Order.

1. Cost Causation

a. Requests for Rehearing

13. Rehearing Parties argue that in the June 17 Order, the Commission did not give effect to the cost causation principle. Rehearing Parties state that the cost causation principle, which has been expressed as both "cost causer pays" and "beneficiary pays," requires that rates for service reflect the costs actually "caused" or imposed by the customers that must pay those rates. Joint Protesters argue that the core concept is a measure of correlation between the rates charged to a customer and the costs imposed or benefits expected to be received by that customer—a correlation that the courts and the Commission have held does not need to be a precise dollar-for-dollar correspondence, and, in fact, the degree of correspondence can be wide. However, Joint Protesters assert that there must be positive benefits when costs increase.¹⁰

14. Rehearing Parties state that the Commission acknowledged that its discretion to approve transmission cost allocation proposals is bound by certain fundamental principles—the cost allocation principle in particular. Rehearing Parties also assert that in the June 17 Order the Commission recognized that the cost causation principle "requires the Commission to ensure that the costs allocated to a beneficiary under a cost allocation method are at least roughly commensurate with the benefits that are expected to accrue to that entity."¹¹ However, Rehearing Parties claim that the Commission erred in finding that SPP's Highway/Byway Methodology ensures that cost allocations are roughly commensurate with expected benefits. According to Rehearing Parties, not only did SPP fail to demonstrate a relationship between costs and benefits but it also failed to show that benefits increase as costs increase. Joint Protesters reiterate an argument raised in their protest and based upon their witness's review of the SPP's Priority Projects Phase II Report Revision I (Priority Projects Report). Rehearing Parties assert that this testimony is the only comparative evidence in the record and it revealed that six of SPP's

¹⁰ See Joint Protesters Request for Rehearing at 14.

¹¹ *Id.* at 13 (citing June 17 Order, 131 FERC ¶ 61,252 at P 67. See also NPPD Request for Rehearing at 10; LES Request for Rehearing at 3).

zones will experience higher costs of supplying energy to customers—i.e., there is a negative correlation between costs and benefits for these six zones.¹²

15. LES reiterates its argument made previously in its supplemental protest to the April 19 Filing in which it observed that under the Highway/Byway proposal, “LES would be required to fund its load-ratio share of high-cost EHV upgrades that are projected to increase, rather than decrease, LES’s power costs.”¹³ LES contends that the Commission misconstrued LES’s and Joint Protesters’ showing on this issue, and that the Commission mischaracterized the degree of the adverse impact on LES. According to LES, in the June 17 Order the Commission described the issue in terms of a study revealing “a ratio of transmission costs greater than production cost savings for an SPP zone or zones.”¹⁴ LES claims that this would be an accurate statement for several of the SPP zones; however, LES contends that this statement is not an accurate depiction of LES’s situation, because LES loses on the production cost analysis—i.e., the Priority Projects would raise, not lower, LES’s production costs even before any consideration of the allocation of the costs of those new EHV facilities. Thus, LES contends that the Highway/Byway Methodology requires LES to pay a full load-ratio share of the costs of the Priority Projects in addition to requiring LES to bear nearly \$44 million in higher production costs resulting from construction of those facilities.

16. LES asserts that in response to its evidence the Commission stated that production cost savings are not the only metric to consider. In LES’s view this statement shows that the Commission failed to read its protest carefully and failed to consider the Priority Project Report results, which Joint Protesters submitted as an exhibit to their witness’s testimony and LES appended to its supplemental protest. LES asserts that the Priority Projects Report studied other metrics of purported regional benefits to be expected as a result of the Priority Projects, such as the additional market-based benefits EHV projects are expected to produce.¹⁵ Thus, in LES’s view, even though the Priority Projects Report takes into account a variety of “metrics” in addition to production costs, LES will incur higher net costs as a result of the Priority Projects before it pays even one dollar of the costs of those facilities.

¹² *Id.* at 15-17.

¹³ LES Rehearing Request at 7

¹⁴ *Id.* (citing June 17 Order 131 FERC ¶ 61,252 at P 77).

¹⁵ *Id.* at 8-9.

17. Additionally, Rehearing Parties insist that the Commission is required to consider the effect of the Highway/Byway Methodology on individual SPP zones. According to Joint Protesters, the June 17 Order contains indications that the Commission properly understood its duty to evaluate the discrete Highway/Byway impacts at the zonal level but also shows “the Commission’s *refusal* to examine the allocation of costs and benefits on an individual zonal basis.”¹⁶ According to Joint Protesters, the June 17 Order “reveals a conscious decision by the Commission to keep the focus of the ‘benefits’ inquiry on the system as a whole.”¹⁷

18. Rehearing Parties also allege that the Commission relied on benefits it presumed transmission customers will enjoy simply because they are part of a larger interconnected network, which was the approach the Commission took in the order reviewed by the court in *Illinois Commerce Commission v. FERC*.¹⁸ Joint Protesters assert that

But [*Illinois Commerce Commission*] specifically warns the Commission against relying on presumptions about generalized system benefits in deciding whether a proposed allocation method results in costs and benefits being roughly commensurate for particular transmission customers. As the court stated with regard to one of the purported system-wide benefits (enhanced reliability) claimed in that case to justify region-wide cost recovery, the Commission “cannot use the presumption to avoid the duty of comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”¹⁹

b. Determination

19. As discussed further below, the Commission finds that the June 17 Order correctly interprets the relevant cost causation ratemaking principles and that SPP provided sufficient evidence to demonstrate that the Highway/Byway Methodology is just and reasonable and not unduly discriminatory. Developing a framework for the allocation of the costs of new transmission facilities is of the utmost importance to regional transmission organizations (RTOs), independent system operators (ISOs), transmission

¹⁶ Joint Protesters Request for Rehearing at 23 (emphasis by Joint Protesters). See LES Request for Rehearing at 4; NPPD Request for Rehearing at 11.

¹⁷ Joint Protesters Request for Rehearing at 23.

¹⁸ 576 F.3d 470 (7th Cir. 2009) (*Illinois Commerce Commission*).

¹⁹ Joint Protesters Request for Rehearing at 21; LES Request for Rehearing at 4.

providers, transmission service customers, state regulators, and other interested parties as evidenced by the extensive record in this proceeding: forty-seven entities filed motions to intervene in SPP's original filing, nineteen entities filed comments on SPP's original filing, eleven entities and two members of the Missouri Public Service Commission filed protests, and several entities filed answers. Our review of cost allocation proposals submitted pursuant to section 205 of the Federal Power Act (FPA) is guided by our statutory duties and fundamental rate-making principles, including the long-standing cost causation principle.

20. Under the cost causation principle, "it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them."²⁰ The courts, recognizing that cost allocation is "not a matter for the slide-rule,"²¹ have never "required a ratemaking agency to allocate costs with exacting precision;"²² rather, "the cost allocation mechanism must not be 'arbitrary or capricious' in light of the burdens imposed or benefits received."²³

21. Contrary to Rehearing Parties' assertions, in considering SPP's Highway/Byway Methodology proposal, the Commission did not merely recite the requirements of the cost causation principle, but reviewed the evidence pursuant to the requirements of the cost causation principle as developed by the courts and the Commission. Rehearing Parties interpret *Illinois Commerce Commission* as establishing a new, more stringent cost causation standard than has traditionally guided the Commission's rate-making determinations. However, as discussed further below, we disagree with arguments that the Seventh Circuit decision represents a break with the cost causation precedent of other courts.²⁴ Neither the Seventh Circuit decision, nor the District of Columbia Circuit

²⁰ *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (*KN Energy*).

²¹ *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945)

²² *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Circuit 2004) (*Midwest ISO TOs v. FERC*) (citing *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1 (D.C. Cir. 2002)).

²³ *Id.* at 1369. See also *Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009) (in ratemaking matters, the court's review is highly deferential since issues of rate design are fairly technical and, if not technical, involve agency policy judgments) (*Alcoa Inc.*).

²⁴ See, e.g., *Sacramento Mun. Util Dist. v. FERC*, 616 F.3d 520, 534-35 (D.C. Cir. 2010) (upholding, as consistent with cost causation principles, a pro rata allocation of over-collected revenues to all customers in the California ISO based on their electricity usage); *Cal. Dep't of Water Res. v. FERC*, 489 F.3d 1029, 1038 (9th Cir. 2007) (The

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decisions upon which it relies, requires a comparison of costs and benefits for each customer (or party) served by a utility prior to determining allocations.

22. In *Illinois Commerce Commission*, the Seventh Circuit partially remanded a Commission order adopting a postage stamp cost allocation methodology for new transmission facilities that operate at or above 500 kV in PJM Interconnection, L.L.C. (PJM). The court concluded that in accepting PJM's cost allocation proposal, the Commission did not establish that midwestern utilities in PJM would receive "enough of a benefit to justify the costs that FERC want[ed] shifted to those utilities."²⁵ The court explained that the Commission does not have to quantify benefits with precision.²⁶ If the Commission cannot quantify the benefits to the midwestern utilities, the Court stated that it must have "an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities'" share of the costs.²⁷

23. According to the Rehearing Parties, the Commission must find that the costs imposed on an individual utility or zone are roughly commensurate with the benefits enjoyed by that utility or zone. They contend that because the Highway/Byway Methodology does not purport to make such a comparison, the Commission lacked a reasoned basis for finding that it is just and reasonable. We disagree.

24. The *Illinois Commerce Commission* decision twice quotes *Midwest ISO TOs v. FERC* for the statement of the cost causation principle—a duty of "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."²⁸ The application of that principle in that case, and others cited by the Seventh Circuit, shows that it is sufficient to examine benefits on a broad basis.²⁹ In the orders on appeal in

Commission presumes that "an integrated system is designed to achieve maximum efficiency and reliability at a minimum cost on a system-wide basis [and that] all customers . . . receive the benefits that are inherent in such an integrated system").

²⁵ *Illinois Commerce Commission*, 576 F.3d at 477.

²⁶ *Id.* ("the Commission [does not have] to calculate benefits to . . . the last million or ten million or perhaps hundred million dollars.").

²⁷ *Id.*

²⁸ *Id.* at 476, 477, (citing *Midwest ISO TOs v. FERC*, 373 F.3d at 1368).

²⁹ See, e.g., *Alcoa Inc.*, 564 F.3d at 1346-48 (finding a nation-wide allocation of costs of the national organization which develops and enforces electric reliability standards meets the cost causation principle); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d

Midwest ISO TOs v. FERC, the Commission allocated the fixed and variable costs of administering the MISO Security Center and tariff to all load based on the Commission's finding that "all users of the grid . . . will benefit" from these services.³⁰ The District of Columbia Circuit held that the Commission's system-wide benefits analysis met the requirements of the cost causation principle, that is, to compare "the costs assessed against a party to the burdens imposed or benefits drawn by that party."³¹

25. Furthermore, in citing *Western Massachusetts*,³² the Seventh Circuit approved the application of this long-applied premise in any integrated transmission network.³³ In *Western Massachusetts*, the Commission not only relied upon a presumption of network benefits for network facilities, but also relied upon a load flow study that showed that once the new transmission line was in place "other grid customers will be making use of the upgraded grid facilities."³⁴ This study did not show that each customer on the grid would, or even could, make use of the facilities once constructed; rather, it showed that

1315, 1320-21 (D.C. Cir. 2004) (rejecting, as inconsistent with cost causation principle, an allocation of costs commensurate with each utility's benefits as measured by account balances); *W. Mass. Elec. Co. v. FERC*, 165 F.3d 922, 927 (D.C. Cir. 1999) (upholding roll-in of the costs of a new line based on an analysis of the benefits to the entire group of customers of the transmission provider) (*Western Massachusetts*); accord *KN Energy*, 968 F.2d at 1301 (upholding the Commission's allocation of cost to one of three classes of customers that did not cause the problem for which costs would be incurred, but would benefit as a class from the resolution of the problem because "all segments of the industry [will] ultimately benefit from their resolution [of the problem,] . . . all segments can rightly be assessed a portion of [those] costs").

³⁰ *Midwest ISO TOs v. FERC*, 373 F.3d at 1367 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,033, at 61,169 (2001) (Opinion No. 453) (as amended), *aff'd sub nom. Midwest ISO TOs v. FERC*, 373 F.3d at 1369).

³¹ *Id.* at 1371.

³² *Illinois Commerce Commission*, 576 F.3d at 477 (citing *Midwest ISO TOs v. FERC*, 373 F.3d at 1368-1369); *Western Massachusetts*, 165 F.3d 922.

³³ *Id.*, (citing *Western Massachusetts* for an example of when "[FERC] can presume that new transmission lines benefit the entire network"); see *Western Massachusetts*, 165 F.3d at 927 (noting the Commission's "consistent policy to assign the costs of system-wide benefits to all customers on an integrated transmission grid").

³⁴ *Western Massachusetts*, 165 F.3d at 927.

“customers other than [the generator,]” which was the proximate cause of the new line, “will make use of and benefit from the grid upgrades.”³⁵ Accordingly, the Commission’s analysis in *Western Massachusetts*, cited by the Seventh Circuit as an example of the analysis that it sought from the Commission in the orders underlying *Illinois Commerce Commission*,³⁶ was not a utility-by-utility or a zone-by-zone analysis. We conclude that the Seventh Circuit’s repeated reliance on *Western Massachusetts* and *Midwest ISO TOs v. FERC* indicates that it does not require a customer by customer or load-zone by load-zone cost-benefit analysis.

26. Rather than representing a break with cost causation precedent, as the requests for rehearing contend, *Illinois Commerce Commission* turned on the court’s finding that the Commission failed to provide sufficient evidence to support PJM’s regional cost allocation proposal:

No doubt there will be *some* benefit to the midwestern utilities just because the network *is* a network, and there have been outages in the Midwest. But enough of a benefit to justify the costs that FERC wants shifted to those utilities? Nothing in the Commission’s opinions enables an answer to that question.³⁷

The court explained further:

If [the Commission] cannot quantify the benefits to the midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities’ share of total electricity sales in PJM’s region, then fine: the Commission can approve PJM’s proposed pricing scheme on that basis.³⁸

The requests for rehearing therefore misapprehend the holding of *Illinois Commerce Commission*, which faulted the Commission for an evidentiary failure, not an analytical

³⁵ *Id.*

³⁶ *Illinois Commerce Commission*, 576 F.3d at 477 (FERC did not avoid the duty of “comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party” in *Western Massachusetts*).

³⁷ *Id.* (emphasis in original).

³⁸ *Id.*

one. Thus, the question becomes not whether the Highway/Byway Methodology matches costs to benefits on a utility-by-utility or zone-by-zone basis, but whether it will provide sufficient benefits to the entire SPP region to justify a regional allocation of costs.

27. Rehearing Parties contend that the record in this proceeding does not demonstrate that the Highway/Byway Methodology satisfies the “roughly commensurate” comparison defined in *Illinois Commerce Commission*. We continue to conclude, however, that SPP made an appropriate demonstration that the Highway/Byway Methodology benefits the entire SPP region, satisfies the “roughly commensurate” comparison articulated in *Illinois Commerce Commission*, and is just and reasonable under section 205 of the FPA. Reviewing courts have consistently held that there is a presumption that transmission system “upgrades designed to preserve the grid’s reliability constitute system enhancements that . . . benefit the entire system.”³⁹ The corollary to this presumption is that, since all members of an integrated system benefit from system enhancements, they should share the costs of such enhancements.⁴⁰ The Seventh Circuit recognized this presumption, but noted that it does not relieve the Commission of the need to compare costs and benefits.⁴¹ In the June 17 Order, the Commission met this burden, examining the evidence presented by SPP and supporters and opponents of the Highway/Byway Methodology and concluding that the Highway/Byway Methodology is just and reasonable.

28. SPP, like other Commission-approved RTOs, operates its transmission system and energy market on a single-system regional basis to reliably and efficiently integrate resources to serve loads throughout its entire footprint. As the Commission noted in the June 17 Order, SPP conducts regional planning of its transmission network that reflects its single-system regional operations in order to enhance the reliability and efficiency of

³⁹ *Midwest ISO Transmission Owners*, 373 F.3d at 1369, (citing *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 543-44 (D.C. Cir. 2003) (*Entergy*) (system upgrades that prevent degradation of reliability benefit all system users; “benefits” are not limited to increases in capacity or to enhancements other than maintained stability in an expanded system); *Western Massachusetts*, 165 F.3d at 927 (“When a system is integrated, any system enhancements are presumed to benefit the entire system.”)).

⁴⁰ *See, e.g., Midwest ISO Transmission Owners*, 373 F.3d at 1371 (all members draw benefits from being part of a regional transmission system and thus should share administrative costs); *Calif. Dept. of Water Res. v. FERC*, 489 F.3d 1029, 1038-39 (9th Cir. 2007) (“Because DWR [a third-party generator] benefits from the integrated grid, [the Commission] reasonably required it to pay its share of the cost [of new facilities].”)

⁴¹ *Illinois Commerce Commission*, 576 F.3d at 477.

its regional market operations.⁴² The strong regionally-integrated transmission network that results from this process provides benefits to all that are interconnected to it. The fundamental benefit of the facilities supporting regional power flows is the flexibility they provide to deliver energy and operating reserves more efficiently and reliably within and between balancing areas throughout the SPP footprint, by way of centralized generation dispatch.⁴³

29. Furthermore, requiring a utility-by-utility or a zone-by-zone analysis of costs and benefits for new transmission facilities subject to cost allocation under the Highway/Byway Methodology would be inconsistent with the regional nature of regional transmission organizations. In Order No. 2000, the Commission detailed the benefits independent RTOs could provide, including helping to eliminate the opportunity for undue discrimination by transmission providers and improving transmission grid management efficiencies and reliability.⁴⁴ The Commission explained that RTOs would increase efficiency through regional transmission pricing and the elimination of rate pancaking, and provide more efficient planning for transmission and generation investments.⁴⁵ These benefits, however, are due to the regional nature of RTOs. Requiring SPP to trace the costs and benefits of new transmission facilities that are subject to the Highway/Byway Methodology to individual entities or zones would eliminate the benefits provided by SPP as an integrated system and would undermine the structure and intended purpose of SPP's operation as an RTO to provide increased efficiencies and benefits that are unachievable except through regionally coordinated operation.

30. Moreover, Rehearing Parties' interpretation of *Illinois Commerce Commission* would impose a standard on transmission providers that would be difficult, if not impossible, to meet. In interpreting the cost causation requirement of *Illinois Commerce Commission*, we apply our understanding of the current capabilities and limitations of the available tools used to measure the benefits of an integrated network. Even though currently available analytical methods, such as economic production cost studies, may

⁴² June 17 Order, 131 FERC ¶ 61,252 at P 78.

⁴³ *Id.*

⁴⁴ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,024 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴⁵ *Id.*

provide some granularity in assessing the costs and benefits for specific economic transmission construction projects, many of the specific benefits that accrue from long-lived EHV facilities are not easily quantifiable and may not be reflected in such studies. This is particularly true for a cost allocation methodology that applies to new transmission facilities built for reliability as well as economic purposes, such as the Highway/Byway Methodology. Although production cost models do exist, they do not, for example, address benefits such as certain reliability benefits which may be difficult or impossible to quantify.

31. Accordingly, we find that Rehearing Parties' narrow focus on selected portions of *Illinois Commerce Commission* does not support their argument that in the June 17 Order the Commission was required to conduct a utility-by-utility or zone-by-zone analysis to meet the requirements of the cost causation principle.

32. Rehearing Parties focus on the results of the Priority Projects and one type of benefit (i.e. production cost savings), estimated at a distinct point in time, to support their argument that there must be positive benefits when costs increase.⁴⁶ However, the Priority Projects are just one set of projects to be constructed over years of transmission development in SPP, and as we have already found the application of the cost causation principle in *Illinois Commerce Commission* and other cases cited by the Seventh Circuit, shows that it is sufficient to examine benefits on a regional basis.

33. We also find Rehearing Parties' argument that Joint Protestors' witness's analysis of the Priority Projects Report is the only probative evidence available for the Commission to use to determine if the Highway/Byway Methodology will assign costs in accordance with the cost causation principle to be false.

34. The Commission's statutory duty in reviewing SPP's FPA section 205 filing was to determine if SPP's proposed tariff revisions setting forth the Highway/Byway Methodology are just and reasonable and not unduly discriminatory. As the Commission discussed in the June 17 Order, SPP made a two-part showing to demonstrate that costs will be allocated fairly under the Highway/Byway Methodology. First, SPP offered data from its Transmission Distribution and Injection/Withdrawal Analyses to demonstrate that EHV facilities tend to support regional power flows among the SPP zones and that lower voltage facilities tend to support local power flows within a single SPP zone.⁴⁷ As

⁴⁶ June 17 Order, 131 FERC ¶ 61,252 at P 76.

⁴⁷ *See id.* P 73 (observing that the Transmission Distribution Analysis demonstrated that EHV facilities included in the Balanced Portfolio experience inter-zonal power flow changes in excess of the impact threshold for 98 percent of the study hours, other existing 345 kV facilities experienced such changes for 77 percent of the

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we found in the June 17 Order (and affirm below), the two studies demonstrated that facilities rated 300 kV and above are used in SPP more for regional purposes and that lower voltage facilities are more local in nature. Thus, SPP demonstrated that voltage levels can be used to indicate whether a particular facility is used for the benefit of regional or local uses.⁴⁸ In addition, in accordance with the “beneficiary pays” concept of the cost causation principle, under the Highway/Byway Methodology, costs of EHV facilities that are used more regionally and provide broad regional benefits are allocated on a regional basis, and the costs of lower voltage facilities that are used more locally and provide more local benefits are allocated on a more local basis.

35. Second, SPP described the benefits that accrue from regional use of EHV facilities, including congestion relief; transmission system unloading and regional reliability and stability; improvement of the interconnection and transmission service request processes; facilitation of public policy goals such as increasing use of renewable energy resources; and other economic benefits.⁴⁹ In addition, SPP provided examples of the benefits of an integrated transmission system such as explaining how a single five-minute flowgate breach affected prices on its network and how EHV facilities could have relieved this congestion.⁵⁰ Thus, contrary to Rehearing Parties’ assertion, there was probative evidence provided by SPP to support a finding in the June 17 Order that the Highway/Byway Methodology is just and reasonable and not unduly discriminatory.

36. Accordingly, we affirm the Commission’s determination in the June 17 Order that, based on the two-part demonstration SPP made in its filing, the Commission “has an articulable and plausible reason to believe that the benefits are at least roughly commensurate” with the costs under the Highway/Byway Methodology in accordance with the cost causation principle.

study hours, and lower voltage facilities (i.e., 115-138 kV and 69 kV) only were responsive to 38 percent and 14 percent of power flows, respectively).

⁴⁸ See *Western Massachusetts*, 165 F.3d at 927.

⁴⁹ June 17 Order, 131 FERC ¶ 61,252 at P 24.

⁵⁰ *Id.* P 25.

2. Evidence Regarding Regional Effects

a. Requests for Rehearing

37. Rehearing Parties claim that the Commission accepted SPP's descriptions of the Transmission/Distribution Analysis and Injection/Withdrawal Analysis at face value without any meaningful evaluation of the premises, methods, or assumptions underlying the studies. Rehearing Parties also argue that the Commission did not respond to protesters' critique of SPP's studies or address the competing evidence in a meaningful fashion. In support of this assertion, Rehearing Parties contend that in the June 17 Order, the Commission does not reference Joint Protestors' witness Mr. Russell's affidavit, which stated that SPP's impact threshold of 0.1 percent in the Transmission Distribution Analysis was unsupported and untenably low. NPPD claims that the Commission mischaracterized Mr. Russell's argument on this issue. Rehearing Parties contend that Mr. Russell did not argue that the Transmission/Distribution Analysis was flawed because it relied upon a 0.1 percent impact threshold instead of a 3.0 percent impact threshold.⁵¹ Instead, Rehearing Parties contend that Mr. Russell explained that a 0.1 percent impact threshold is technically invalid because it captures "noise," and hence produces meaningless results.⁵²

38. Additionally, Rehearing Parties contend that the Commission did not directly address Mr. Russell's testimony that the Injection/Withdrawal Analysis was flawed. NPPD argues that in his affidavit Mr. Russell explained that "[c]ontrary to SPP's description, SPP's [Injection/Withdrawal] Analysis was not structured to distinguish between 'local' and 'region-wide' usage of the grid; rather, it identifies 'local' usage and then classifies all remaining usage as 'regional,' even though the remainder is actually nothing more than 'non-local.'"⁵³ Rehearing Parties also argue that even if non-local and regional effects were reasonably considered to be the same, the level of regional use demonstrated by SPP's Injection/Withdrawal Analysis does not support a 100 percent allocation factor for EHV facilities.⁵⁴ According to Rehearing Parties, paragraph 74 of the June 17 Order summarily dismisses protesters' concerns with the Injection/Withdrawal Analysis as reflecting a disagreement among parties over choices

⁵¹ NPPD Rehearing Request at 42.

⁵² *Id.*

⁵³ *Id.* at 45 (citing Joint Protest, Russell Aff. at 25 (emphasis in original)). *See also* Joint Protestors Request for Rehearing at 31-32).

⁵⁴ NPPD Request for Rehearing at 46; Joint Protestors Request for Rehearing at 27 & n.28.

among study methods, without evaluating whether the competing choices are equally valid.⁵⁵

39. NPPD also asserts that the Commission did not address its contention that SPP's studies did not show the costs and benefits that zones can expect, but merely that EHV facilities provide more support for regional power flows than do lower voltage facilities.⁵⁶

40. Rehearing Parties also criticize as unsupported the Commission's finding that additional transmission facilities will alter the cost and benefit balance to zones over time. Rehearing Parties argue that the testimony of expert witnesses indicates that the unbalanced distribution of costs and expected benefits will likely increase over time. Rehearing Parties state that this is because a goal of the Priority Projects is to lay a foundation for an EHV transmission superhighway to move massive amounts of wind energy from western SPP to load centers east of the SPP region. Thus, Rehearing Parties reason that entities owning parts of the transmission superhighway will be winners reaping rewards for decades because of their location, while entities located elsewhere will not see such benefits, and with 100 percent regionalization of the costs, these entities will be forced to subsidize the costs for those that do benefit.⁵⁷

41. In addition, Rehearing Parties contend that the Commission erred in approving the Highway/Byway Methodology in isolation from the ITP process. Rehearing Parties argue that the Commission could not have evaluated the costs and benefits of the Highway/Byway Methodology fully without first knowing the framework for determining what facilities' costs will be allocated according to the methodology.

b. Determination

42. The Commission disagrees with Rehearing Parties' assertions that the Commission did not base its determinations on record evidence, ignored testimony filed by protestors, and accepted SPP's studies at face value. On the contrary, the Commission carefully evaluated the study results proffered by SPP and found that these studies show

⁵⁵ Joint Protesters Request for Rehearing at 31 (citing Appendix 1 to the Joint Protest at P 26; *Id.* at 31 n.37)).

⁵⁶ *See* NPPD Request for Rehearing at 38-39.

⁵⁷ Joint Protesters Request for Rehearing at 17-19; NPPD Request for Rehearing at 27-28.

that EHV facilities tend to support regional power flows and that lower voltage facilities tend to support local power flows.⁵⁸

43. Furthermore, in the June 17 Order, the Commission considered several arguments, including those made by Mr. Russell, challenging the reasonableness of the SPP studies, including whether it was reasonable for SPP to use a 0.1 percent impact threshold in the Transmission Distribution Analysis.⁵⁹ We find SPP's decision to use the 0.1 percent impact threshold reasonable based on its rationale that a higher impact threshold would miss significant impacts on a transmission element and a 0.1 percent tolerance level captures all material impacts.⁶⁰ We reject Mr. Russell's claim that such a threshold captures "noise" thus producing meaningless results. Indeed, Rehearing Parties acknowledge that a 0.1 percent tolerance threshold denotes the change in flows that can be reliably detected by the Transmission Distribution Analysis model.⁶¹ While SPP could have used a different threshold, as Rehearing Parties suggest, the Commission found that the use of this impact threshold was reasonable because it is the same threshold used to measure impacts in transmission planning for reliability purposes. Both analyses require a measure of actual transmission system usage, and thus it is reasonable to use an impact threshold level that captures all significant impacts. Moreover, having found reasonable SPP's use of a 0.1 percent impact threshold in the Transmission Distribution Analysis used to support the Highway/Byway Methodology, the Commission did not need to address the merits of any alternative proposal.⁶²

⁵⁸ See June 17 Order, 131 FERC ¶ 61,252 at P 73-74.

⁵⁹ *Id.* P 74.

⁶⁰ See SPP June 1, 2010 Answer at 27-28.

⁶¹ See NPPD Request for Rehearing at 43-44 ("In fact, if 0.1 percent is the error tolerance of the SPP model, this is another way of saying that a 0.1 percent change in flow on a transmission line is the smallest change in flow that can be reliably detected by the model.").

⁶² See *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Circuit 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one"); cf. *City of Bethany v. FERC*, 727 F.2d 1131, 1136, 234 (D.C. Cir. 1984) (when determining whether a proposed rate was just and reasonable, the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs"). See also *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009) (finding that because the Commission found the ISO's proposal

(continued...)

44. We disagree with Rehearing Parties' position, as reflected in Mr. Russell's testimony, that the Injection/Withdrawal Analysis is flawed. Rehearing Parties argue that based on SPP's methodology a new transmission facility would be considered to affect regional flow "if it had even a slight impact on facilities in any *single zone other than the host zone*."⁶³ However, we do not find it unreasonable for SPP to calculate the portion of transmission line flow that is the result of regional utilization by identifying all flows on a facility and subtracting identified flows caused by local generation to serve local load. Besides referring to their witness's opinion, Rehearing Parties identify no Commission or other standard that would effectively limit identification of regional flows to impacts on facilities caused by transfers between two zones other than the host zone. Flows on a facility resulting from a zone other than the host zone dispatching its own local generation to serve its own local load can reasonably said to be regional in nature.⁶⁴ In addition, as discussed above, the results of the Transmission Distribution Analysis demonstrated that, in general, an EHV facility can reasonably be expected to affect flows on multiple zones other than the host zone.

to be just and reasonable, it need not assess the justness and reasonableness of an alternative proposal); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009) (finding that "[u]nder the Federal Power Act, the issue before the Commission is whether the CAISO's proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives."); *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282, at P 29 (2006) (finding that "the just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient rate' standard. Rather, a range of alternative approaches often may be just and reasonable.").

⁶³ NPPD Request for Rehearing at 45; Joint Protestors Request for Rehearing at 27, citing Joint Protest, Russell Aff. at 26 (emphasis in original).

⁶⁴ SPP made a similar demonstration to support its previous cost allocation methodology filed in Docket No. ER05-652-000, which was accepted by the Commission on April 22, 2005. *Southwest Power Pool*, 111 FERC ¶ 61,118, *order on reh'g*, 112 FERC ¶ 61,319 (2005). In its February 28, 2005 Filing in that proceeding, SPP explained that it performed several different analyses to evaluate the regional and zonal (or local) use of the transmission system in order to determine the appropriate allocation of transmission upgrade costs to a region-wide rate. In the analysis on which SPP based its subsequently-approved cost allocation methodology, the transmission lines carrying flows that were in the same zone as the designated network resource was considered local usage and transmission lines outside of the designated network resource zone was considered regional usage. See SPP February 28, 2005 Filing, Docket No. ER05-652-000, Ex. SPP-1 at 6-8.

45. We also find unpersuasive Rehearing Parties' assertion that the level of regional use demonstrated by SPP's Injection/Withdrawal Analysis does not support cost allocation under the Highway/Byway Methodology. The particular group of EHV facilities that SPP analyzed in this study had total average percentage of regional usage 78 percent, with variances based on the facilities and time period studied (i.e., spring peak-85 percent; summer peak-83 percent; and winter peak-65 percent).⁶⁵ As SPP's witness explained no model analysis will show a facility to have 100 percent regional impacts all of the time under all conditions.⁶⁶ Furthermore, the Injection/Withdrawal Analysis, viewed in conjunction with the Transmission Distribution Analysis provides substantial evidence for Base Plan Upgrade costs to be allocated based on the voltage of new transmission facilities.

46. The Rehearing Parties also contend that the Commission did not refute Witness Reid's argument that "the current inequitable pattern of [benefit/cost] ratios among the SPP zones is likely to persist over time."⁶⁷ We find this contention to be speculative and unsupported. Rehearing Parties' claim is based on the witness's opinion that the purpose of the Priority Projects is primarily to build transmission to support the development of wind generation. However, as we have found above, the Priority Projects are just one set of projects to be constructed over years of transmission development in SPP. Accordingly, contrary to Rehearing Parties' assertion, it is reasonable for the Commission to find, as SPP demonstrated, that future transmission facilities added to the EHV transmission network will provide benefits such as congestion relief, transmission system unloading, and regional reliability and stability to the entire SPP transmission system, and that these projects will be needed to sustain a reliable network that supports all users over time. The fundamental benefit of the EHV facilities supporting regional power flows is the flexibility they provide to deliver energy and operating reserves more efficiently and reliably within and between balancing areas throughout the SPP footprint.⁶⁸ The Commission found such to be the case in the June 17 Order and affirms that finding here. Therefore, the Commission denies rehearing on this issue.

⁶⁵ See June 17 Order, 131 FERC ¶ 61,252 at P 24.

⁶⁶ See SPP April 19 Filing, Dillahunty Test., Ex. No. SPP-1 at 42.

⁶⁷ See NPPD Request for Rehearing at 28;

⁶⁸ June 17 Order, 131 FERC ¶ 61,252 at 78 (citing NERC Special Report: Accommodating High Levels of Variable Generation, p. 34-35. Available at [http://www.aeso.ca/downloads/IVGTF_Report_041609\(1\).pdf](http://www.aeso.ca/downloads/IVGTF_Report_041609(1).pdf)).

47. As discussed above, SPP was not required to demonstrate that costs are roughly commensurate with benefits on a utility-by-utility or zone-by-zone basis, contrary to Rehearing Parties' assertions. Furthermore, the evidence in this proceeding demonstrates that the regional benefits provided by EHV facilities are roughly commensurate with the costs that will be allocated regionally and that the benefits provided by local facilities are roughly commensurate with the costs that will be allocated locally.

48. The Commission also denies rehearing of the Rehearing Parties' contention that the Highway/Byway Methodology should have been filed in conjunction with the ITP process filing. While the ITP process is now the framework for determining which facilities' costs will be allocated according to the Highway/Byway Methodology, it does not render the Commission's original determination in this proceeding invalid. SPP provided significant quantitative and qualitative evidence that regardless of SPP's transmission planning methods, the voltage level of a proposed transmission facility is a reasonable indicator of whether it will support primarily regional power flows or serve local needs, and thus, provide benefits based on this usage. Moreover, as explained in the June 17 Order, a transmission service provider such as SPP has discretion under section 205 of the FPA to determine what to propose in its filing and when to propose it.⁶⁹

3. Undue Discrimination

a. Requests for Rehearing

49. Joint Protesters argue that in rejecting their discrimination argument the Commission erred by relying on factors that Joint Protesters claim do not show SPP's zones to be "similarly situated" for cost allocation purposes. Joint Protesters state that in the April 19 Filing, SPP stated that it was appropriate to adopt a uniform cost recovery mechanism because the benefits of new EHV facilities "tend" to be distributed across the region. Joint Protesters contend that on that basis, SPP proposed to spread the full cost of new EHV transmission facilities using zonal network load as the sole cost-allocating factor. Joint Protesters assert that in their protest they argued that by allocating EHV Base Plan Upgrade costs strictly in proportion to zonal loads, SPP assumes that the zones are similarly situated when judged by the factors that govern the distribution of benefits. Joint Protesters reiterate their argument that the individual SPP pricing zones are not similarly situated in terms of the use each zone will make, or the benefits each can expect to receive, from any given project.⁷⁰ Joint Protesters contend that because the Highway/Byway Methodology ignores the factors that create large differences among

⁶⁹ *Id.* P 117.

⁷⁰ Joint Protesters Request for Rehearing at 34-35.

zones in the expected receipt of benefits, the Highway/Byway Methodology fails to “align” or correlate the allocation of costs and benefits to any degree.

50. Quoting the June 17 Order, Joint Protesters also argue “[t]hat all of the SPP zones are ‘RTO participants, users, and beneficiaries of the same regionally-integrated EHV transmission network’ would be important only if these same factors also govern the distribution of benefits associated with new EHV transmission facilities.”⁷¹ Joint Protesters assert that “this clearly is not the case in SPP because, even within the SPP RTO footprint, a given set of upgrades will produce impacts that vary widely among the individual pricing zones, creating ‘winners’ and ‘losers....’”⁷²

51. Additionally, Joint Protesters argue that even if one were to accept the Commission’s premise that SPP-planned transmission facilities create benefits for all “participants, users, and beneficiaries of the same regionally-integrated network,” those benefits are not always confined to the RTO footprint. Joint Protesters assert that parties outside the RTO footprint often enjoy reduced costs and operational efficiencies from RTO-planned transmission facilities.⁷³ Citing their Witness Russell’s affidavit submitted to support their protest, Joint Protesters allege that “there is every reason to expect that the primary beneficiaries of SPP’s Priority Projects will be load-serving entities located outside and to the east of the SPP footprint, who will obtain energy from wind resources in western SPP through use of the Priority Project facilities.”⁷⁴

b. Determination

52. We disagree with Joint Protesters that the Highway/Byway Methodology is unduly discriminatory. The Commission has determined that discrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor.⁷⁵ In Joint Protesters’ view, regional allocation of new EHV facility costs under the Highway/Byway Methodology is discriminatory because for a given project or set of projects particular benefits will vary among zones, which Joint Protesters reason to mean that the zones are not similarly situated. The Commission does

⁷¹ See *id.* (citing June 17 Order, 131 FERC ¶ 61,252 at P 82).

⁷² *Id.* at 36.

⁷³ *Id.* at 37.

⁷⁴ *Id.* at 37 n.43.

⁷⁵ See, e.g., *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 115 (2003) (citing Order No. 436, FERC Stats. & Regs. ¶ 30,655, at 31,541 (1985)).

not disagree that each project or set of projects approved for construction at a given time will have varying levels of benefits for individual SPP zones. However, this does not mean that the Highway/Byway Methodology is unduly discriminatory.

53. Under the Highway/Byway Methodology, costs for projects approved through SPP transmission planning processes are allocated based on the voltage of the project. The Tariff provisions accepted in the June 17 Order apply the cost allocation uniformly to each SPP zone. Further, Joint Protesters opine that the SPP zones are not similarly situated because “a given set of upgrades will produce impacts that vary widely among the individual pricing zones, creating ‘winners’ and ‘losers.’”⁷⁶ However, Joint Protesters fail to recognize that cost allocation under the Highway/Byway Methodology is applied after SPP and its stakeholders determine, through appropriate transmission planning processes specified in the SPP Tariff, which projects to construct at given time. Accordingly, any differences in effects on a zone resulting from a particular project or set of projects—which differences are to be expected on a project-by-project basis—cannot be said to be a result of the Highway/Byway cost allocation. The fact that individual zones will experience varying effects and uses for particular projects or set of projects at particular times does not transform this bright-line cost allocation methodology into an unduly discriminatory Tariff provision. Furthermore, as discussed above, future transmission facilities added to the EHV transmission network will provide benefits such as congestion relief, transmission system unloading, and regional reliability and stability to the entire SPP transmission system, which will accrue to all users.

54. We also find Joint Protesters’ assertion that parties outside the RTO footprint often enjoy reduced costs and operational efficiencies from RTO-planned transmission facilities to be outside the scope of this proceeding and irrelevant to whether the Highway/Byway Methodology is unduly discriminatory. First, we find Joint Protesters’ allegation that entities outside of the SPP region will be the primary beneficiaries of the Priority Projects—which is but one set of projects to be allocated under the Highway/Byway Methodology—to be speculative. Moreover, in adopting Order No. 890, the Commission recognized that transmission planning and the construction of new transmission facilities in one region could affect neighboring regions.⁷⁷ In addressing

⁷⁶ Joint Protesters Request for Rehearing at 36.

⁷⁷ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523 (stating “[I]n addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider will be required to coordinate with interconnected systems to: (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data, and (2) identify system enhancements that could relieve congestion of integrate new resources). In Order No.

(continued...)

several transmission providers' filings to comply with Order No. 890's regional participation principle, including SPP's, the Commission directed the transmission providers to provide more detailed information regarding compliance with the interregional coordination aspect of the regional participation principle.⁷⁸

55. Furthermore, on July 21, 2011, the Commission issued a Final Rule regarding cost allocation and transmission planning.⁷⁹ Among other things, Order No. 1000 requires each public utility transmission provider to submit a compliance filing, revising its tariff or other documents subject to the Commission's jurisdiction to demonstrate that it meets the requirements set forth in the Final Rule with respect to interregional transmission coordination procedures and interregional cost allocation. Our determinations here address only the issues on rehearing and should not be construed as predetermining any aspects of the compliance filings public utility transmission providers in the SPP region are required to make under the Final Rule. Accordingly, while the Commission finds Joint Protesters' allegations to be unfounded, any interregional effects of new transmission facilities constructed within a transmission provider's footprint are appropriately addressed in SPP's transmission plan pursuant to the interregional coordination aspect of Order No. 890 and Order No. 1000.

4. Incentives to Construct Transmission

a. Requests for Rehearing

56. According to Joint Protesters the Commission applied the wrong standard to evaluate SPP's proposal—i.e., the Order No. 890 criteria for resolving disputes about whether a cost allocation proposal provides adequate incentives to construct new

890-A the Commission emphasized effective regional planning should include coordination among regions and that regions and subregions should coordinate as necessary to share data, information and assumptions to maintain reliability and allow customers to consider the resource options that span the regions. Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

⁷⁸ See *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 49 (2008) (directing SPP to submit a compliance filing to describe how the provisions of each of the agreements with its neighboring regions, meet the interregional coordination requirement of Order No. 890); See also *Southern Co. Servs., Inc.*, 124 FERC ¶ 61,265, at P 70 (2008); *United States Department of Energy Bonneville Power Administration*, 124 FERC ¶ 61,054, at P 65 (2008)).

⁷⁹ Order No. 1000, 136 FERC ¶ 61,051.

transmission.⁸⁰ Joint Protesters argue that in the June 17 Order the Commission justified acceptance of the Highway/Byway Methodology on the basis that it will provide incentives to build new transmission, which is a criterion for resolving disputes regarding cost allocation under Order No. 890. Thus, Joint Protesters argue that the Commission erred in this finding by giving the Order No. 890 criterion equal priority with the section 205 standards.⁸¹

57. Joint Protesters also argue that the Commission erred in relying on incentives to construct new transmission as a basis to accept the Highway/Byway Methodology without explaining why it chose not to require use of its existing regulatory framework, under section 35.35 of the Commission's regulations, for promoting the construction of beneficial projects.⁸² Joint Protesters add that certain entities responsible for constructing certain of the Priority Projects have already received transmission rate incentives authorization under section 35.35. Joint Protesters argue that it would be unjust and unreasonable to allow an entity to take advantage of two incentives for the same transmission project.

58. Additionally, Rehearing Parties contend that the Commission failed to address concerns that SPP's proposal may actually cause over-construction of facilities. Joint Protesters contend that the Commission's response to this concern was to point to the SPP planning process, which in Joint Protesters' view, failed to address protesters' concerns. Noting that in addressing this issue the Commission stated that "[a]s part of the existing process, SPP and the stakeholders examine each project as well as alternatives to proposed transmission expansions to determine the least cost solution to address reliability issues," NPPD contends that the Commission's finding on this issue has already been invalidated because SPP's ITP changed the "least cost" standard to "cost effective," which has not been defined.

b. Determination

59. In regard to the June 17 Order's discussion of incentives for construction of regional transmission facilities, Rehearing Parties are incorrect that the Commission erred by discussing the Order No. 890 criteria. SPP submitted its filing under section 205 of the FPA. Accordingly, the proper standard for the Commission's analysis was whether

⁸⁰ Joint Protesters Request for Rehearing at 37-38 (citing June 17 Order, 131 FERC ¶ 61,252 at P 69).

⁸¹ *Id.* at 38-39.

⁸² *Id.* (citing 18 C.F.R. § 35.35 (2011)).

SPP's filing was just and reasonable, and not unduly discriminatory or preferential, which the Commission applied. The Commission's discussion of goals of the cost allocation principle under Order No. 890, including providing incentives for the construction of transmission facilities, supplemented rather than supplanted the primary section 205 analysis in the June 17 Order.

60. Additionally, Joint Parties misapprehend the Commission's reference to the Order No. 890 goal of providing incentives for the construction of transmission facilities. Here, the Commission's general statements about the merits of the Highway/Byway Methodology were not intended to bestow any particular transmission rate incentive on any particular project. A project developer who seeks transmission rate incentives for a project would need to apply for rate incentives and be granted Commission authority upon a proper showing as provided in the Commission's regulations. Furthermore, whether a developer of a Priority Project may have been granted transmission rate incentives is irrelevant to whether SPP demonstrated that the Highway/Byway Methodology is just and reasonable and not unduly discriminatory or preferential. Transmission rate incentives are granted on a case-by-case basis under which the Commission evaluates a variety of criteria to determine if a project merits incentives.⁸³

61. We also continue to find the concerns regarding over-construction to be unfounded. In the June 17 Order, the Commission found that as an independent RTO, SPP and its stakeholders determine through the transmission planning process which facilities are needed. We noted that

[a]s part of the [then] existing process, SPP and the stakeholders examine each project as well as alternatives to proposed transmission expansions to determine the least cost solution to address reliability issues. For proposed economic upgrades, SPP estimates the cost of the upgrade using information provided by transmission owners. Because the transmission planning process has extensive stakeholder feedback, if any party believes the costs are excessive, the party can raise such objections during the planning process. Thus, the transmission planning process encourages SPP and its stakeholders to keep costs under control. Furthermore,

⁸³ See, e.g., *Okla. Gas & Elec. Co.*, 135 FERC ¶ 61,038, at P 37 (2011) (discussing rate incentives under Order No. 679, *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007)); *So. Cal. Edison Co.*, 133 FERC ¶ 61,107, at P 63 (discussing the Commission's FPA section 205 authority to grant rate incentives).

constructing transmission owners have an incentive to control costs to avoid any potential finding of imprudence and disallowance of cost recovery.⁸⁴

62. In order to have its project considered for cost allocation under the Highway/Byway Methodology, a developer must submit it for consideration under SPP's regional transmission planning process. SPP and its stakeholders will determine which projects are needed pursuant to the transmission planning processes delineated in the SPP Tariff. The planning processes under SPP's Tariff allow for stakeholder input throughout project approval and development.⁸⁵ As such, a party that believes a particular project is not needed or that the costs of a particular project are excessive may raise such objections during the planning process. While NPPD is correct that under the ITP, SPP now uses a "cost-effectiveness" standard in transmission planning, this does not mean that acceptance of the Highway/Byway Methodology will cause unneeded projects to be built because SPP's planning processes will mitigate against such a result. Accordingly, we deny rehearing on this issue.

5. MW-Mile Method

63. As noted above, prior to the acceptance of the Highway/Byway Methodology, one-third of Base Plan Upgrades costs were allocated on a regional basis, and two-thirds of the costs were allocated according to a MW-mile analysis. Under the Highway/Byway Methodology, one-third of the costs of facilities that operate above 100kV and below 300kV are allocated on a regional basis, and two-thirds of the costs are allocated directly to the zone where the facilities are located, eliminating the need for a MW-mile analysis.

a. Requests for Rehearing

64. Rehearing Parties assert that the Commission erred by failing to explain the reasonableness of allowing SPP to eliminate use of the MW-mile method under the Highway/Byway Methodology. According to Rehearing Parties, the Commission stated that its basis for doing so is that SPP provided testimony indicating that, under the existing MW-mile allocation, a host zone receives "the vast majority of benefits provided by such facilities."⁸⁶ Rehearing Parties contend that SPP did not state that the MW-mile

⁸⁴ June 17 Order, 131 FERC ¶ 61,252 at P 88.

⁸⁵ See, e.g., SPP Tariff, Attachment O, section III.2 (describing stakeholder planning summits for the ITP).

⁸⁶ Joint Protesters Request for Rehearing at 43 (citing June 17 Order, 131 FERC ¶ 61,252 at P 92).

method yields incorrect results, and Rehearing Parties note that the evidence on which the Commission relied for its finding was based on the results of a MW-mile study.

65. In addition, Rehearing Parties claim that direct assignment of zonal costs to the host zone will result in the host zones bearing roughly 20 percent more costs than with the MW-mile analysis. Thus, Rehearing Parties contend that the Commission's acceptance of SPP's proposal to eliminate the MW-mile analysis under the Highway/Byway Methodology creates an explicit cross-subsidy among zones. Furthermore, Rehearing Parties note that SPP will continue to use the MW-mile method for other purposes in the Tariff. Rehearing Parties contend that the Commission offers no explanation why this is reasonable.

b. Determination

66. In the June 17 Order, the Commission found that because the host zone already receives the majority of benefits under the MW-mile methodology, SPP's proposal to allocate the zonal costs of new facilities directly to that host zone, rather than apply the MW-mile methodology, was reasonable.⁸⁷

67. Further, as the Commission found in the June 17 Order, SPP is free to propose a new cost allocation methodology under section 205 of the FPA. In proposing a new cost allocation methodology under section 205 of the FPA, a transmission provider or RTO, such as SPP, is not required to demonstrate that an existing methodology yields incorrect or unreasonable results in order to have a new methodology approved.⁸⁸ Furthermore, the fact that SPP continues to use the MW-mile method for other purposes in its Tariff does not mean that its decision not to employ it under the Highway/Byway Methodology is unreasonable. Therefore, the Commission denies rehearing as to the elimination of the MW-mile cost allocation methodology.

⁸⁷ June 17 Order, 131 FERC ¶ 61,252 at P 95.

⁸⁸ 16 U.S.C. § 824d (2006). *See Transcontinental Gas Pipe Line Corp. v. FERC*, 518 F.3d 916 (D.C. Cir. 2008) (noting that under section 4 of the Natural Gas Act (NGA) which parallels section 205 of the FPA, a company need merely show that its proposal is just and reasonable while under section 5, which parallels section 206 of the FPA, the complaining party must show both that the existing rate/term is unjust and unreasonable and that the new rate/term is just and reasonable).

6. Unintended Consequences

a. Requests for Rehearing

68. Rehearing Parties argue that the Commission did not address, in a meaningful way, concerns that relief under the unintended consequences provision is discretionary rather than mandatory. Rehearing Parties contend that the Tariff provision does not contain an express requirement that the cost allocation provisions or the amount of costs allocated to an SPP Member actually be modified based on the outcome of an unintended consequences review, regardless of whether the review is initiated by SPP or at the request of an affected SPP Member.⁸⁹ Rehearing Parties also assert that in the June 17 Order, the Commission discounted their concerns that relief under the unintended provision was discretionary by alluding to SPP's 2007 modification to its Tariff when certain unintended consequences were found in the MW-mile calculation.⁹⁰ According to Rehearing Parties, that instance involved SPP determining that the then-effective Tariff language was flawed by a methodological glitch. Rehearing Parties conclude that it misconstrues history for the Commission to cite the 2007 correction of a computational glitch as proving SPP's willingness to grant relief to members burdened by the intended operation of its cost allocation methods.⁹¹

69. Rehearing Parties also contend that even if the 2007 instance represented what the Commission suggests, "[t]here simply is no reason why SPP's Members should be forced to rely on what the Commission 'expects' SPP will do if, in the future, an actual instance of inequitable cost allocation arises."⁹² Rehearing Parties allege that SPP has not always acted in accordance with expectations and is not unique among regulated entities in that regard.⁹³ Rehearing Parties also contend that SPP members should not be relegated to acting under section 206 of the FPA if SPP does not provide relief under the unintended consequences provisions.⁹⁴ Rehearing Parties complain that action under section 206 subjects complainants to substantial costs and burdens with no assurances of prompt

⁸⁹ Joint Protesters Request for Rehearing at 46; *see* NPPD Request for Rehearing at 47.

⁹⁰ *See* Joint Protesters Request for Rehearing at 47.

⁹¹ *Id.* at 48.

⁹² *Id.*, quoting June 17 Order, 131 FERC ¶ 61,252 at P 93.

⁹³ *Id.*

⁹⁴ *See id.* at 49.

action or meaningful relief. Rehearing Parties also aver that relief under section 206 is even less likely here because “imbalanced cost allocation” is undefined in the Tariff and the RSC has discretion to act on a request. According to Rehearing Parties, it would be very difficult to establish either that the RSC violated the tariff by failing to act in response to a request, or the RSC or some other SPP entity violated the tariff if the respondent in such a complaint proceeding disputed that the petitioner was subject to an imbalanced cost allocation.⁹⁵ Rehearing Parties add that it is not self-evident how the refund provisions of section 206 of the FPA would be applied in the context of a challenged allocation of costs across an entire region.⁹⁶

70. In addition, Rehearing Parties assert that the Commission ignored protesters’ complaints that an SPP member that believes it has an imbalanced cost allocation cannot request relief through the SPP MOPC until 2015. Rehearing Parties suggest that the Commission may not have found it necessary to address this issue because it believed that the Highway/Byway cost allocation will not affect charges to customers right away.⁹⁷ According to Rehearing Parties, the Commission did not inquire whether entities responsible for constructing the Priority Projects have obtained or may seek authorization to include Construction Work in Progress (CWIP) in their annual transmission revenue requirements, which would mean that the Highway/Byway cost allocation could affect rates before 2015.⁹⁸

71. Additionally, Rehearing Parties assert that the Commission did not reconcile its acceptance of a 40-year financial study period for the Highway/Byway Methodology with the Commission’s previous rejection of a protester’s request that the study period under the Balanced Portfolio provisions of SPP’s Tariff be longer than ten years.⁹⁹ Rehearing Parties argue that in the June 17 Order, the Commission relied on the “lifetime of the facilities” as a basis for accepting SPP’s 40-year study period, but it rejected this premise in addressing SPP’s Balanced Portfolio proposal.¹⁰⁰ Rehearing Parties assert that

⁹⁵ NPPD Request for Rehearing at 48-49; Joint Protesters Request for Rehearing at 49, n.50.

⁹⁶ Joint Protesters Request for Rehearing at 49.

⁹⁷ *Id.* at 50, citing June 17 Order at P 109 n. 141 (“Highway/Byway effects will be ‘insignificant’ during the first 12 months of effectiveness.”))

⁹⁸ *Id.* ; *see also* NPPD Request for Rehearing at 48.

⁹⁹ *See* Joint Protesters Request for Rehearing at 51.

¹⁰⁰ *Id.* at 52, citing June 17 Order, 131 FERC ¶ 61,252 at P 85; *Southwest Power*

the Commission has the legal obligation to act in a reasonably consistent manner, and its change of course should be supported by reasoned decision-making.

72. Rehearing Parties also contend that the Commission erred in relying on the unintended consequences provisions to resolve inefficiencies in generator siting. Rehearing Parties assert that the decision on where to locate a new power plant involves many economic trade-offs, one of which is the cost of constructing new transmission lines versus the cost of transporting fuel to a proposed plant location. Rehearing Parties further assert that this decision-making process would be distorted by SPP's proposal to recover new EHV facility costs through uniform region-wide charges because it would dilute the transmission costs born by the constructing utility. Rehearing Parties note that the Commission acknowledged that the Highway/Byway Methodology could adversely affect a utility's locational decision-making process, but concluded that any such impacts could be resolved as part of the transmission planning process and, if necessary, through the unintended consequences provisions. However, Rehearing Parties assert that the unintended consequences provisions are focused on a narrow set of effects, i.e., imbalanced cost allocations, resulting from the Highway/Byway Methodology, and they are not a cure-all for all adverse effects traceable to regional allocation of EHV facilities.¹⁰¹

b. Determination

73. The Commission finds Rehearing Parties' arguments to be misplaced. Along with revising Attachment O to its Tariff to implement the Highway/Byway Methodology, in the April 19 Filing SPP submitted revisions to Attachment J expanding the pre-existing unintended consequences provisions of its Tariff. The revisions SPP proposed in the April 19 Filing did not render the existing Commission-approved unintended consequences Tariff provisions unjust and unreasonable or unduly discriminatory. To the contrary, the revisions enhanced possible relief from unintended outcomes of cost allocations. Specifically, the revisions accepted in the June 17 Order: (1) require review of the Highway/Byway Methodology and allocation factors at least every three years, rather than every five years as previously provided; (2) include new authority for the RSC to recommend any adjustments to the cost allocation if a review shows an imbalanced cost allocation to one or more zones and require that the analytical methods used in the review be defined; and (3) beginning in 2015, provide member companies that believe

Pool, Inc., 125 FERC ¶ 61,054, at P 27, 36 (2008).

¹⁰¹ *Id.* at 54.

they have been allocated an imbalanced portion of costs an affirmative right to seek relief from the MOPC.¹⁰²

74. Despite Rehearing Parties' concerns that RSC action is not mandatory, the *pro forma* OATT does not contain tariff provisions addressing unintended outcomes of cost allocation methodologies. Nevertheless, in 2005 when it originally adopting its Base Plan Funding cost allocation methodology, SPP included language in its Tariff to address unintended consequences of cost allocations.¹⁰³ The unintended consequences provisions have been in effect under SPP's Tariff for over six years, and as discussed in the June 17 Order, on at least one occasion SPP invoked the provisions to file a revision to correct a problem with the MW-mile methodology.¹⁰⁴ While Rehearing Parties characterize that instance as the result of a "bust in the Tariff" that no member questioned the need to correct,¹⁰⁵ we disagree that this incident does not illustrate SPP's willingness to grant relief to SPP members burdened by the intended operation of SPP's cost allocation methods. In our judgment whether anyone questioned the need for a correction in the cost allocation, SPP took measures pursuant to the unintended consequences provisions of its Tariff to work with its members to develop a solution and file the tariff amendments with the Commission. It also belies Rehearing Parties' arguments that without an affirmative right for parties to request an unintended consequences review prior to 2015, SPP will not take action to remedy inequitable outcomes. Prior to the revisions accepted in the June 17 Order, member companies had no affirmative right to seek a cost allocation review yet SPP invoked the unintended consequences to remedy the problem with the MW-mile calculation to mitigate any inequitable outcomes of the cost allocation.

75. We also find Rehearing Parties' statement that SPP has not always acted in accordance with expectations and is not unique among regulated entities in that regard to be an unsupported allegation. However, the Commission's statement that "[w]e expect SPP will respond in a like manner if the Highway/Byway Methodology becomes inequitable"¹⁰⁶ was intended to point out that SPP has taken action in the past to address unintended consequences of the cost allocation provisions of its Tariff. Rehearing Parties present no evidence for us to believe that SPP would not do so in the future.

¹⁰² See SPP Tariff, Attachment J, section III.D.4.i.

¹⁰³ See *Southwest Power Pool Inc.*, 111 FERC ¶ 61,118, at P 61 (2005).

¹⁰⁴ See June 17 Order, 131 FERC ¶ 61,252 at 83.

¹⁰⁵ Joint Protesters Request for Rehearing at 48.

¹⁰⁶ June 17 Order, 131 FERC ¶ 61,252 at 83.

Furthermore, in spite of Rehearing Parties complaints about the process for filing a complaint under section 206 of the FPA, the Commission appropriately relies on section 206 of the FPA to ensure that tariff revisions accepted under section 205 of the FPA do not become unjust and unreasonable after they become effective. The United States Court of Appeals for the D.C. Circuit recently noted the importance of section 206 of the FPA in situations where the potential for harm exists in the future, explaining that where a process approved by the Commission under section 205 of the FPA leads to an unjust outcome, an aggrieved party may petition the Commission under section 206 of the FPA.¹⁰⁷

76. Rehearing Parties are also mistaken that the Commission did not address concerns regarding the 2015 date for SPP members to exercise their affirmative right to request relief under the unintended consequences provisions because it did not believe the Highway/Byway cost allocation would affect charges to customers right away. Rehearing Parties state that the Commission did not inquire whether entities responsible for constructing the Priority Projects have obtained or may seek authorization to include CWIP. While Joint Protesters argued in their protest that because SPP planned to apply the Highway/Byway Methodology immediately to the Priority Projects, “SPP’s Members could begin to feel the effects of SPP’s cost allocation proposal as early as this year,”¹⁰⁸ no party raised concerns regarding CWIP. The Commission was not required to address CWIP, which no party raised and which Rehearing Parties mention for the first time on rehearing. Nevertheless, we find Rehearing Parties’ arguments meritless.

77. First, as discussed above, the revisions to the unintended consequences provisions accepted in the June 17 Order expanded parties’ rights including providing for the first time an affirmative right for members that believe they have been allocated an imbalanced portion of costs an affirmative right to seek relief from the MOPC. Second, the Commission was well aware that the Priority Projects, which were developed as interim projects pending implementation of SPP’s new transmission planning process, would be subject to cost allocation under the Highway/Byway Methodology.¹⁰⁹ Third, Rehearing Parties point to an unrelated discussion in the June Order addressing the Commission’s filing requirements to conclude that the Commission found that

¹⁰⁷ *Tres Amigas LLC*, 132 FERC ¶ 61,233 (2010) (citing *Sacramento Municipal Utility Dist. v. FERC*, 616 F.3d 520, 542 (D.C. Cir. 2010)).

¹⁰⁸ Joint Protesters Request for Rehearing at 66.

¹⁰⁹ June 17 Order, 131 FERC ¶ 61,252 at P 11.

“Highway/Byway effects will be ‘insignificant’ during the first 12 months of effectiveness.”¹¹⁰ In that portion of the order, the Commission explained that

The Commission’s regulations in section 35.13(a)(2)(iii) require that companies file general information in section 35.13(b) and information relating to the effect of the rate change in section 35.13(c). SPP has filed the information required under section 35.13(b) as explained in its transmittal letter. SPP states that the requirements of section 35.13(c) are not applicable and there are no specifically assignable facilities. Because the rate comparison is for only the twelve months before and after the rate change, and the facilities at issue have not yet been built, the rate comparison in section 35.13(c) would not produce relevant information.¹¹¹

78. Accordingly, the Commission’s statement that “[w]hile there may be some costs in the regional rate during the first twelve months of construction, the overall rate impact would be insignificant during the first twelve months after the effective date” explained why section 35.13(c) was inapplicable. It was not a finding about whether or not the Highway/Byway cost allocation would not affect charges to customers right away.

79. We also reject NPPD’s argument that the Commission did not reconcile its acceptance of a 40-year financial study period for the Highway/Byway Methodology with the Commission’s previous rejection of a study period longer than ten years in the Balanced Portfolio proceeding. In that proceeding, a protester argued that limiting the period for calculating the costs and benefits to ten years would not provide representative results because transmission projects with useful lives of forty years or longer have greater cost effects in the early years.¹¹² In that case, the Commission found the 10-year study period to be just and reasonable because it was consistent with SPP’s then-existing 10-year planning horizon.¹¹³ Whether or not SPP chose a 10-year study period in that case is irrelevant to whether the 40-year study period is just and reasonable here. As noted above, under section 205 of the FPA, the issue before the Commission is whether

¹¹⁰ Joint Protesters Request for Rehearing at n.51

¹¹¹ June 17 Order at P 109 (footnotes omitted).

¹¹² *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,054, at P 27 (2008).

¹¹³ *Id.* at 36.

the proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives.¹¹⁴

80. In addition, Rehearing Parties misconstrue the Commission's statements regarding generator siting. The Commission was not suggesting that the unintended consequences provisions are a "cure all" of unintended outcomes, including inefficient generator siting. Rather, the Commission observed that SPP and its stakeholders could revise the provisions to identify inefficient generator siting as an unintended cost allocation consequence if they choose to do so. As the Commission stated

It is possible that under the Highway/Byway Methodology, members would be better off to propose an EHV line to deliver remote renewable resources, rather than to build generation locally and have local upgrades, even when the latter has a lower total cost, factoring in the costs of the transmission upgrades. As discussed in the following paragraph, we believe that these incentive issues are more appropriately solved by the transmission planning process identifying the appropriate expansions for the region....Because the transmission planning process has extensive stakeholder feedback, if any party believes the costs are excessive, the party can raise such objections during the planning process.¹¹⁵

81. Accordingly, the Commission did not find the unintended consequences provisions to be a cure all. Rather, the Commission recognized that the appropriate forum for concerns regarding controlling costs is in the transmission planning process where SPP and its stakeholders choose which projects to construct.¹¹⁶

7. Request for Evidentiary Hearing

a. Requests for Rehearing

82. Rehearing Parties argue that the Commission erred by not setting SPP's Filing for evidentiary hearing because genuine issues of material fact exist concerning SPP's Filing. NPPD asserts that because nothing in the record, or in the June 17 Order, refutes the

¹¹⁴ *Cal. Indep. Sys. Oper. Corp.*, 128 FERC ¶ 61,282 at P 31 & n.34 (citing *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692; *City of Bethany v. FERC*, 727 F.2d 1131, 1136; *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265 at P 21).

¹¹⁵ June 17 Order, 131 FERC ¶ 61,252 at P 87-88.

¹¹⁶ *Id.* P 88.

existence of such genuine issues, it was an abuse of discretion for the Commission to accept SPP's filing rather than to set it for hearing. Joint Protesters argue that the Commission had an obligation to conduct an evidentiary hearing where there are genuine issues of material fact and the disputed issues of fact cannot be determined based on the written record.¹¹⁷ According to Joint Protesters, by accepting SPP's Filing without setting it for hearing the Commission effectively granted a request for summary disposition in SPP's favor contrary to the Commission's rules and precedent. Joint Protesters add that as the party seeking summary disposition, SPP bears the burden of establishing the propriety of granting summary disposition in its favor and all inferences must be drawn in favor of Joint Protesters as the party opposing summary disposition.¹¹⁸

83. Joint Protesters also contend the Commission improperly converted SPP's burden of establishing the propriety of summary disposition into the protestors' burden of establishing that SPP's proposal was not just and reasonable. Thus, Joint Protesters claim that the Commission erroneously rejected protestors' arguments concerning defects in SPP's filing based on the view that protestors had the burden to prove that SPP's filing was unjust and unreasonable.¹¹⁹ Rehearing Parties argue that a proper analysis would require a determination as to whether SPP had overcome protestors' evidence showing the need for an evidentiary hearing, considering such evidence in a light most favorable to the protestors. Rehearing Parties assert that at the absolute minimum, protestors raised substantial issues of material fact that cannot be resolved on the submittals, and thus, the Commission abused its discretion by declining to set any such issues raised for hearing. According to Rehearing Parties, contrary to the FPA, the Administrative Procedure Act, and binding case law, the Commission put the onus on protestors to dissuade it from approving a proposal it strongly favored for policy reasons, which is arbitrary, capricious, and an abuse of discretion.

b. Determination

84. The Commission denies rehearing. The Commission enjoys "wide discretion in determining the probative weight to be given the opinion testimony of expert witnesses

¹¹⁷ Joint Protesters Request for Rehearing at 55 (citing *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Vermont Dept. of Pub. Serv. v. FERC*, 817 F.2d 127, 140 (D.C. Cir. 1987)).

¹¹⁸ *Id.* at 55-56 (citing *Phillips Pipe Line Co.*, 67 FERC ¶ 63,002, at 65,003 (1994)).

¹¹⁹ *Id.* at 55.

and may substitute its own expert opinion.”¹²⁰ In this case, the Commission decided the issues presented based on substantial evidence in the form of expert testimony and the pleadings submitted by SPP, commenters supporting SPP’s proposal, and protesters, including Rehearing Parties. Based on the Commission’s review of the evidence and pleadings, the Commission determined that the information provided was sufficient for the Commission to make a determination on the merits obviating any need for an evidentiary hearing.¹²¹ Accordingly, we deny rehearing on this issue.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹²⁰ *Williston Basin Interstate Pipeline Co.*, 68 FERC ¶ 61,357, at 62,432 (1994) (citing *Market Street Ry. Co. v. Railroad Comm’n of the State of Cal.*, 324 U.S. 548 (1945)).

¹²¹ *See Blumenthal v. FERC*, 613 F.3d 1142, 1145 (D.C. Cir. 2010) (finding that even when there are disputed factual issues, FERC does not need to conduct an evidentiary hearing if it can adequately resolve the issues on a written record).

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