

increasing its zonal rates once the RTORs are eliminated.⁶⁸ TRRG similarly argues that before the Commission approves any lost revenue recovery, it must determine that each transmission owner requesting lost revenue recovery would otherwise be deprived of its ability to recover its costs and earn a reasonable return on its investment.⁶⁹ The Wisconsin Commission argues that the burden should be on the New PJM Companies to demonstrate that they would not over-recover their current cost of service with implementation of a transitional rate mechanism.⁷⁰

46. TRRG states that a cost-based approach to mitigating cost-shifts and eliminating rate pancaking, namely license plate rates with no lost revenue adders, has been used by the Commission in approving rates for the New York Independent System Operator, Inc., ISO-New England and PJM. It suggests that, given the intertwined nature of PJM and Midwest ISO, the Commission should view elimination of the RTORs as involving the elimination of intra-regional rate pancaking, and follow those cases.⁷¹

47. The Michigan Commission claims that there are legitimate reasons for denying any recovery of lost revenues in this proceeding in light of the former Alliance Companies' RTO choices. The Michigan Commission notes that the former Alliance Companies have continued to charge through and out rates far beyond the seams elimination date prescribed in the Illinois Power Settlement.⁷² They argue that this continued recovery of revenues under pancaked rates serves as enough of a transition period and mitigates the need for any further recovery of lost revenues.⁷³

Briefs Opposing Exceptions

48. Several parties support the Presiding Judge's ruling that a lost revenue recovery mechanism is necessary in the event that the Commission decides to eliminate the pancaked rates.⁷⁴ GridAmerica Companies and the New PJM Companies agree that transmission owners should be entitled to collect any

revenues lost from the elimination of rate pancaking, and further argue that a full cost of service analysis should not be a necessary prerequisite for such recovery. They argue that requiring such filings would be inconsistent with established Commission precedent.⁷⁵ Trial Staff also notes that the Commission has previously adopted proposals to collect lost revenues in an effort to remove disincentives to RTO membership without requiring a new, full cost of service.⁷⁶ The New PJM Companies argue that if the Commission eliminates the RTORs, then it is obligated under Section 206 of the FPA to establish a just and reasonable alternative.⁷⁷

Commission Decision

49. In prior cases, the Commission has approved the elimination of rate pancaking with a transitional rate mechanism for the recovery of lost revenues when the parties experiencing such lost revenues requested a transitional rate mechanism and demonstrated that it was just and reasonable.⁷⁸ On the other hand, the Commission has also approved the elimination of rate pancaking without such transitional rate mechanisms for recovery of lost revenues in cases where parties did not propose them or adequately support them.⁷⁹ That is, the Commission is not bound to establish transitional rate mechanisms for recovery of lost revenues.

50. We believe that mechanisms such as the proposed SECAs, if properly structured, can serve as reasonable transition mechanisms to address revenue losses arising from the elimination of rate pancaking due to RTO formation. However, no party to the proceeding has yet made a rate filing under section 205 of the FPA, 16 U.S.C. 824d (2000), either to increase its rates or to adopt a transitional rate mechanism to recover lost revenues.⁸⁰ If parties desire to increase their rates or to utilize such a transitional rate

mechanism to recover lost revenues, they should file pursuant to section 205 of the FPA. For those filings made prior to November 1, 2003, we will look favorably upon requests to waive the prior notice requirement to allow an effective date of November 1, 2003, the date that the through and out rates will be eliminated.

51. Some parties state that the proper benchmark to use to set rates is the cost of providing service, including expenses and a fair return on investment, not revenue levels under current rates. Consistent with prior rulings,⁸¹ however, we will not require that RTO members file an updated complete cost-of-service in order to justify transitional surcharges to recover lost revenues arising from the elimination of rate pancaking due to RTO formation.⁸² Such a requirement could create an unnecessary impediment to RTO formation. However, if customers feel that existing rates and revenues, upon which the transitional surcharges would be based, are no longer just and reasonable, they may file a complaint pursuant to section 206 of the FPA to seek a change in those rates and the corresponding transitional surcharges.⁸³

Specific Attributes of the SECA

52. Two SECA proposals were sponsored by parties to the proceeding, one by GridAmerica and one by the Midwest ISO TOs. The Presiding Judge made certain recommendations regarding the specific attributes of the SECA. Specifically, the Presiding Judge recommended that: (1) Calendar-year 2002 should be the test period; (2) there should be no phase-out of the SECA until another methodology is devised to ensure that there is no cost shifting to PJM's native load customers; (3) Michigan and Wisconsin customers should be able to opt out of the SECA and continue paying the RTORs; (4) the starting point for the elimination of the RTORs and implementation of any

⁷⁵ See also, GridAmerica Companies Brief Opposing Exceptions at 19, New PJM Companies and PECO Brief Opposing Exceptions at 34.

⁷⁶ See Trial Staff Brief Opposing Exceptions at 11.

⁷⁷ New PJM Companies and PECO Brief Opposing Exceptions at 34.

⁷⁸ See Alliance Cos., *et al.*, 94 FERC ¶ 61,070 (2001); see also PJM Interconnection, LLC and Allegheny Power Co., *et al.*, 96 FERC ¶ 61,060 (2001).

⁷⁹ See PJM Interconnection, LLC, 81 FERC ¶ 61,257 (1997); see also Midwest Independent Transmission System Operator, Inc., *et al.*, Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order on reh'g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002).

⁸⁰ Likewise, no party to this proceeding has developed a record sufficient for us to order increased rates or to adopt a particular transitional rate mechanism for any party in this proceeding.

⁸¹ See Alliance Companies, *et al.*, 94 FERC ¶ 61,070, *reh'g denied*, 95 FERC ¶ 61,182 (2001); April 25 Order at 61,446; PJM Interconnection L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001).

⁸² We do not address here whether this same approach, *i.e.*, not requiring an updated complete cost-of-service (as opposed to requiring such a cost-of-service with a demonstration that a party would otherwise be deprived of the ability to recover its cost-of-service due to the elimination of rate pancaking), would be appropriate for a public utility that has not yet joined an RTO.

⁸³ While parties to this proceeding presented evidence that they claimed demonstrated that the level of certain transmission owners' existing license plate rates was excessive, as the Presiding Judge correctly found, this analysis was hardly free from doubt and did not convincingly show that the existing rates were unjust and unreasonable. Initial Decision at P 74.

⁶⁸ WEPCO Brief on Exceptions at 27–30.

⁶⁹ TRRG Brief on Exceptions at 24.

⁷⁰ Wisconsin Commission Brief on Exceptions at 7.

⁷¹ See TRRG Brief on Exceptions at 46.

⁷² See Illinois Power Company, *et al.*, 95 FERC ¶ 61,183, *order denying reh'g*, 96 FERC ¶ 61,026 (2001).

⁷³ See Michigan Commission Brief on Exceptions at 16. WEPCO makes a similar argument in its Brief on Exceptions at 25.

⁷⁴ New PJM Companies and PECO, GridAmerica Companies, Ormet, Trial Staff, Illinois Power, the Midwest ISO TOs.