

SECA should be after a final Commission order, allowing enough time for the filing of compliance filings containing the requisite calculations, and no refunds should be ordered; (5) the SECA should replace only charges for through and out service for transactions that sink in either the expanded Midwest ISO or the expanded PJM and source in or wheel through the other RTO; and (6) the Commission must decide as a matter of policy whether the SECA should be charged to the sink RTO as a whole or whether there should be a sub-zonal option.⁸⁴

53. Most parties supported at least some of the Presiding Judge's recommendations while opposing the other recommendations.

Commission Decision

54. We cannot rule here on the Presiding Judge's recommendations or the parties' various concerns with the mechanics of the SECA. We will examine the specific attributes of any transitional cost recovery mechanisms when parties make section 205 filings, as discussed above.⁸⁵ However, based on our experience, we will provide the following guidance in this regard. As a general matter, we believe that any such filing should use NERC tag data and develop lost through and out revenues for the most recent twelve months, with adjustments for known and measurable differences, to most closely reflect future trading patterns. In addition, the transitional period for a SECA should be as short as possible, while allowing enough time for parties to develop a permanent solution to pricing transmission service between the regions. We believe that a two-year transition period for a transition cost recovery mechanism will provide sufficient time for the parties to find a permanent solution for pricing transmission service between regions in the Midwest ISO/PJM footprint. We will also permit charges on a sub-zonal basis, since sub-zonal charges best align the benefits of eliminating rate pancaking with the associated lost revenues. If transactions cannot be traced to load in various zones of the Classic PJM Companies' region, because of operation of the PJM spot market, Classic PJM Companies should address alternative methodologies for evaluating the

relative benefits from import transactions between the various zones of the Classic PJM Companies' region.⁸⁶ Finally, we encourage those entities that intend to make Section 205 filings to consult with interested parties and each other, to seek creative solutions to the concerns raised in this proceeding and to resolve as many issues as possible prior to making their Section 205 filings.

55. The Presiding Judge explained that efficiencies could only be produced by eliminating rate pancaking after the Commission issues a final order since past behavior cannot be changed.⁸⁷ Therefore, he recommended that no refunds should be ordered for past through and out charges. The Presiding Judge also ruled that no refunds should be ordered because the SECA replaces the RTORs with charges of a different form, a non-by-passable surcharge to be added to existing license plate zonal transmission rates but in approximately the same magnitude and imposed on the same groups of ratepayers; customers are not entitled to refunds because they have not overpaid.⁸⁸

56. Consumers argues that, because the Commission set a refund effective date, refunds should be available if the RTORs are found to be unjust and unreasonable. Midwest ISO TOs argue that, if the Commission requires elimination of the through-and-out rates, the elimination should be on a prospective basis, without refunds, and take effect simultaneous with the implementation of the SECA charge.

57. We affirm the Presiding Judge and will not order refunds here. Rather, as discussed above, we will make the elimination of the through and out rates effective on November 1, 2003. We direct PJM and Midwest ISO to make a compliance filing, within 30 days, eliminating the RTORs under their tariffs for transactions that sink in the Midwest ISO/PJM footprint into proposed RTOs, effective November 1, 2003.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part, and reversed in part, as discussed in the body of this order. The through and out rates under the tariffs of Midwest ISO and PJM for transactions sinking within their combined region, are hereby eliminated effective November 1, 2003, as discussed in the body of this order.

(B) The Wisconsin Commission's motion to intervene is hereby denied, but the Wisconsin Commission is hereby granted permission to participate as amicus curiae, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly Section Procedure and the 206 thereof, and pursuant to the Commission's Rules of Practice and regulations under the Federal Power Act (18 CFR chapter I), a public hearing shall be held in Docket No. EL03-212-000 concerning the justness and reasonableness of the through and out rates of AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L, as discussed in the body of this order.

(D) AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO and DP&L and other parties may submit to the Commission in Docket No. EL03-212-000 arguments and evidence, as outlined in the body of this order on or before August 15, 2003.

(E) Any interested person desiring to be heard in Docket No. EL03-212-000 should file a notice of intervention to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) on or before August 8, 2003.

(F) The Secretary shall promptly publish in the **Federal Register** a notice of the Commission's initiation of the proceeding in Docket No. EL03-212-000.

(G) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the **Federal Register** of the notice discussed in Ordering Paragraph (F) above.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.
Magalie R. Salas,
Secretary.

⁸⁴ Initial Decision at P 91-97.

⁸⁵ We note that, in the April 25 Order, while we found that a transitional rate mechanism appeared promising in concept, we stated that we would still need to evaluate the resulting rates to ensure that the mechanism produces a reasonable result.

Consistent with the April 25 Order, we do not have actual rates before us here, and therefore, will not render a decision on any particular methodology.

⁸⁶ We remind the parties that such a methodology will likely be necessary, in any event, for a long-

term solution to pricing transmission service between regions.

⁸⁷ Initial Decision at P 95.

⁸⁸ The Presiding Judge states that the parties which contested the RTOR are not contesting the level of the RTORs. Initial Decision at P 56.