

103 FERC ¶ 61,009

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

American Electric Power Service Corporation

Docket No. ER03-242-000

ORDER REJECTING IN PART, ACCEPTING AND SUSPENDING IN PART,  
TRANSMISSION RATES, WITH MODIFICATION, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 1, 2003)

1. In this order we will reject, in part, and accept and suspend, in part, American Electric Power Company's (AEP) proposed transmission rates for joining the PJM Interconnection, L.L.C., subject to the modifications and conditions discussed below, and institute hearing and settlement judge procedures. We direct PJM to file revised transmission tariff sheets conforming with the directives in this order within 30 days of the date of this order. This order benefits customers by ensuring just and reasonable rates, while encouraging transmission growth and enhanced reliability in congested areas of the grid.

**Background**

2. AEP offers open access transmission service over its facilities pursuant to its open access transmission tariff (OATT). AEP's current OATT contains two pricing or rate zones, an east zone and a west zone. AEP's current rates for transmission service were established in 2000 in an order approving the merger between AEP and Central and

South West Corporation.<sup>1</sup> AEP now seeks to modify the rates for its east pricing zone<sup>2</sup> as a result of its plan to join the PJM Interconnection, LLC (PJM).<sup>3</sup>

3. On December 3, 2002, AEP filed proposed transmission rates,<sup>4</sup> under PJM's OATT, pursuant to Section 205 of the Federal Power Act (FPA).<sup>5</sup> AEP requests that its proposed rates be implemented in two steps. The first rate changes would take effect on February 1, 2003, when AEP expects to transfer functional control of transmission facilities to PJM, or when PJM actually offers transmission service over AEP's transmission facilities, whichever is later (Day One).<sup>6</sup> The second rate changes would take effect May 1, 2003, when AEP plans to become fully integrated into PJM's energy and ancillary service markets, or when the AEP control area is actually integrated into the PJM energy and ancillary services markets, whichever is later (Day Two).

4. AEP presents a transmission cost of service (TCOS) analysis to support the revenue requirement for AEP's east rate zone. Specifically, the TCOS analysis outlines the use of a levelized rate methodology and an adjustment to AEP's return on equity (ROE). In addition, AEP presents a production cost of service (PCOS) analysis used in the development of cost-based rates for ancillary services. Based on these analyses, AEP

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<sup>1</sup>See *American Electric Power Co. and Central and South West Corp.*, 90 FERC ¶ 61,242 (2000).

<sup>2</sup>The west pricing zone transmission rates are not at issue in this filing.

<sup>3</sup>On December 11, 2002, in Docket No. ER03-262-000, AEP, Commonwealth Edison Company, Dayton Power & Light Company and Virginia Electric and Power Company (VEPCO) (collectively, the new PJM companies), along with PJM filed an application to expand the scope of PJM to include the new PJM companies (Expansion Filing).

<sup>4</sup>The proposed rates were submitted on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

<sup>5</sup>16 U.S.C. § 824d (2000).

<sup>6</sup>AEP also states that on Day One, PJM will implement a Rate Reciprocity Agreement that will eliminate rate pancaking for transmission service involving both the PJM OATT and VEPCO's OATT.

proposes to charge: (1) a rate of \$1,420 per MW-month for Network Transmission Service (NTS) on Day One; and (2) a rate of \$1,875 per MW-month for NTS on Day Two. (The Day Two rate reflects various accounting and depreciation conversions, and an increased transmission revenue requirement of \$446.56 million.)

5. After Day Two, AEP proposes to charge cost-based rates (based on its production cost-of-service analysis) for Ancillary Service Schedules 1 and 2. AEP requests that it be relieved of offering the remaining ancillary services on Day Two since they will be available through PJM's markets. AEP states that during the period between Day One and Day Two (Interim Period), AEP will use the rates for ancillary services as set forth in the Expansion Filing, which are the rates currently approved for AEP's east rate zone.

### **Notice and Pleadings**

6. Notice of AEP's filing was published in the Federal Register, 67 Fed. Reg. 76,396 (2002), with interventions, protests, and comments due on or before December 24, 2002. Interventions are listed in Appendix A. Virginia State Corporation Commission (VSCC) also filed a motion to dismiss the proceeding and requests that it be consolidated with Docket Nos. ER03-257-000 and ER03-262-000. Industrial Energy Users of Ohio, the Coalition of Midwest Transmission Customers, and the West Virginia Energy Users Group (Industrials) have filed a motion consolidate this proceeding with Docket No. ER03-262-000. On January 13, 2003, AEP filed an answer to the protests.

### **Discussion**

#### **A. Procedural Matters**

##### **1. Interventions and Answer**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the notices of intervention and timely, unopposed motions to intervene serve to make the intervenors that filed them parties to this proceeding. Given their interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay, we will grant the late-filed motions to intervene.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to allow the AEP's answer as it provides additional information that assists the Commission in the decision-making process.

## 2. Motion to Dismiss

9. VSCC requests that the Commission dismiss AEP's filing as premature. It states that AEP has not received its approval to transfer control of, or responsibility to operate, AEP's transmission facilities to PJM, as required by the Virginia Electric Utility Restructuring Act of 1999.<sup>7</sup>

10. We will deny VSCC's motion to dismiss. This proceeding does not involve the transfer of operational control over transmission facilities to PJM, but only proposed transmission rates that AEP plans to implement under PJM's OATT.

## B. Day One

### 1. AEP's Filing

11. AEP proposes to convert the current load ratio share billing method for allocating the transmission revenue requirement for NTS to a stated rate method for both Day One and Day Two rates, to be consistent with the PJM OATT. For Day One, AEP proposes to utilize as its NTS rate the current Point-to-Point (PTP) rate of \$1,420 per MW-month.

12. AEP justifies the new Day One NTS and existing PTP rates by explaining that: (1) they are the same rates as the current PTP rate in the AEP east rate zone; (2) the enhancements that support the Day Two rates are not required to support the Day One rates; and (3) they are high enough to compensate for the reduced through and out revenues which may result once pancaked rates are eliminated because the new PJM companies have joined PJM.<sup>8</sup>

13. AEP proposes that its current zonal ancillary service rates be continued on Day One and through the Interim Period. However, AEP states that, if PJM requires AEP to maintain more capacity for regulation and operating reserves service, AEP requests that it be permitted to charge higher purchase obligation percentages to customers, based on the \$5.30/kW-month capacity costs reflected in the current AEP OATT.

## 2. Protests

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<sup>7</sup>Va. Code Ann. § 56-576 et seq. (2002).

<sup>8</sup>Testimony of Dennis W. Bethel, Exhibit AEP-1 at 6-7 (Bethel Testimony).

14. Several protestors request that the Commission require AEP to continue charging NTS rate based upon a 12-month rolling load ratio share calculation, rather than charge the proposed stated rate.

15. Ormet Primary Aluminum Corporation (Ormet) states that although the Commission has allowed a stated network rate in the past,<sup>9</sup> it has required an annual rate adjustment so that network customers would pay a rate at least approximating a load ratio share of the transmission system. Ormet states that AEP does not intend to perform this true-up. Ormet requests that, if the Commission allows AEP to switch to stated rates, it should do so only after AEP has justified such a change in rates in a hearing and only if AEP makes an annual true-up, as required in other cases.

16. Indiana Municipal Power Agency, Cities of Dowagiac and Sturgis, Michigan (Municipals) state that existing network customers should be held harmless from the rate impact of switching from a divisor that tracks throughput increases via use of a load ratio share method to a locked-in pre-2001 divisor used to calculate a stated rate.<sup>10</sup> The Municipals also state that the rate divisor should be updated annually, as in SPP, to follow load growth more accurately. The Municipals state that the effect of AEP's application of its unexplained, retroactive rate divisor to the very large rate increase would effectively increase AEP's overall revenue requirement by \$258 million, and that switching from a load ratio share method to a stated rate would allow AEP to pocket excess revenues. Certain other protestors argue that if AEP were to be granted a stated rate, the rate should not be above the current NTS rate of \$1,080 per MW-month.

17. Protesters assert that AEP has failed to provide adequate justification for the proposed Day One NTS rate. In addition, the protestors assert that such a rate will allow AEP to recoup more than its costs. Several protestors assert that AEP's various revenue enhancements are unnecessary and duplicate the through and out and other transitional recoveries already proposed to be collected by PJM on behalf of AEP and other new PJM companies in Docket No. ER03-262-000.<sup>11</sup> Dynegy states that it objects to the recovery

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<sup>9</sup>Southwest Power Pool, 96 FERC ¶ 61,034 (2001)(SPP).

<sup>10</sup>Citing PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 at 61,221 (2001) (PJM Interconnection).

<sup>11</sup>See, e.g., Ormet's Protest at 15 ("AEP and the New PJM Companies will not suffer from any substantial diminution in revenue in eliminating rate pancaking, as revenue from previously pancaked transmission rates will be returned to AEP and New

of 'loss of pancaking' revenues in excess of AEP's revenue requirement, which is what AEP appears to be attempting.

18. Ormet points out that AEP not only changes the ancillary service rates, but also the rate design for ancillary services 1 and 2. Ormet states that currently, AEP charges those rates on a MW basis, but it proposes to change to a MWh basis with no explanation.

### **3. AEP Answer**

19. AEP answers that the Commission has approved stated rates for network service in the past, because they provide greater rate certainty to suppliers and customers.<sup>12</sup>

20. AEP argues that, although protesters claim AEP is proposing a double recovery of transitional costs (such as lost through-and-out revenues) through AEP's rates, and then again through the PJM Zonal Transmission Adjustment and others, the PJM-filed transitional adjustments do not adequately protect AEP from the reduction in revenues AEP will experience as a member of an RTO.<sup>13</sup> (Separately, in its answer in Docket No. ER03-262-000, AEP states that it has informed PJM that it will not transfer control before May 1, 2003.) It is not clear to the Commission from AEP's answer whether it wishes to continue with the Day One and Day Two rate proposals filed here. Nevertheless, given that AEP has not sought to amend or withdraw its filing here, we will address the issues raised by both the Day One and Day Two proposals.

### **4. Commission Determination**

21. AEP has neither justified its proposed Day One NTS rate, which could increase several protestors' rates by over 30 percent, nor explained how it will impact current rates or customers. For example, AEP does not present a revenue requirement for Day One

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<sup>11</sup>(...continued)

PJM Companies via the PJM Regional Through-and-Out Rate . . . , the PJM Zonal Transmission Adjustments . . . and the PJM Transitional Market Expansion Charge . . . charges.") (footnote omitted).

<sup>12</sup>Citing Pennsylvania-NewJersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1998).

<sup>13</sup>This latter argument of AEP's more properly belongs in another proceeding, rather than this one.

rates. We understand that AEP uses historical TCOS PTP data in the development of the NTS rate. We also agree with protestors that AEP's switch to a stated rate for network service could result in a significant overrecovery of costs by AEP as the demand on its system increases after it joins PJM. Consistent with PJM Interconnection,<sup>14</sup> we will allow AEP to use historical data to develop its stated rate for network service rates. To the extent that AEP has experienced an increase in network load and firm point-to-point reservations since the 2001 test year, the use of 2001 test-year demand data would increase the per-unit network service charges and revenues above those levels achieved with the rolling load ratio share allocation currently reflected in the AEP OATT. However, as AEP requests being held harmless from lost revenues, so should all existing network customers be held harmless from AEP's requested shift from a load ratio allocation method to a stated rate for both Day One and Day Two, and AEP's use of the 2001 test year demand divisor. We will direct AEP to propose, in a compliance filing to be submitted within 30 days of the date of this order, a mechanism to hold existing network customers harmless. We encourage AEP to collaborate with all affected customers in preparation of that filing, in order to arrive at an acceptable mechanism. We will set for hearing and settlement judge procedures below the remaining Day One rate issues.

### C. Day Two

22. AEP proposes an increased rate of \$1,875 per MW to reflect the levelized costs and the upward ROE adjustment in both NTS and PTP rates in the AEP Zone for Day 2.

#### 1. Levelized Rates

##### a. AEP's Filing

23. AEP proposes in the instant filing to switch from a net plant rate methodology to a levelized gross plant rate methodology. This change in rate methodologies will result in an approximately \$100 million increase in AEP's annual revenue requirement. AEP states that in accordance with Commission precedent<sup>15</sup> and Order No. 2000,<sup>16</sup> it may use

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<sup>14</sup>PJM Interconnection, 96 FERC ¶ 61,160 at 61,221.

<sup>15</sup>Citing WPS Resources Operating Companies, 93 FERC ¶ 61,338 (2000) (WPS); Niagara Mohawk Power Company, 92 FERC ¶ 61,168 (2000) (Niagara Mohawk); MidAmerican Energy Company, 73 FERC ¶ 61,027 (1995) (MidAmerican); Illinois Power Company, 73 FERC ¶ 61,026 (1995) (IPC); IES Utilities, Inc., et al., 72 FERC

(continued...)

a levelized rate methodology because the expanded PJM will provide a "new service" under its OATT or when an RTO reflects a "fresh start" with respect to the provision of transmission services. In addition, AEP states that the Commission has indicated that levelized rates are justifiable when significant new transmission upgrades or additions are made.<sup>17</sup>

**b. Protests**

24. Protestors argue that AEP's use of a levelized methodology is unreasonable. First, they argue that AEP's proposal does not constitute a new service. Protestors point out that service to many of AEP's current customers will remain unchanged and that a switch in service providers does not justify a switch to levelized rates.

25. Second, many of the protestors cite to Midwest Independent System Operator, Inc., 97 FERC ¶ 61,033 (2001), where the Commission rejected the argument presented by Consumers Energy Company that service being offered by Midwest ISO was a new service which justified the use of levelized rates. They assert that, although the Commission has recognized the appropriateness of levelized rates in certain circumstances, neither Order No. 2000 nor Order No. 2000-A state that all services provided by transmission owners participating in an RTO are new services. Certain protestors compare AEP's "new service" argument to the services offered under a corporate merger, in that although operational control changes in both circumstances, the majority of services and customers remain the same.

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<sup>15</sup>(...continued)  
¶ 61,296 (1995) (IES).

<sup>16</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

<sup>17</sup> Citing Maine Public Service Co., Opinion No. 434, 85 FERC ¶ 61,412 at 62,564 (1998) (in rejecting the utility's proposed levelized rates the Commission stated that the utility had planned "no significant transmission additions or upgrades."); Order No. 2000-A at 31,380-81 ("...levelized rates may be appropriate in circumstances . . . where an RTO reflects a fresh start with respect to the provision of transmission services, and potentially the customers for those services.").

26. Third, many protestors argue that there is no precedent where the Commission has allowed a switch to levelized rates because the utility planned significant future transmission additions or upgrades. They further argue that, even if this were the case, AEP has failed to provide sufficient factual support as to when or whether additions will be made and whether the costs of the additions provide a basis for levelized rates.

27. Many of the protestors point out that Order No. 2000 requires that a proposal to introduce a levelized rate methodology be supported by the explanations and analyses set forth in Section 35.34(e)(1) of the Commission's regulations.<sup>18</sup> American Municipal Power-Ohio, Inc., argues that it has never been established that the Commission has the legal authority to approve a contested switch from depreciating net plant method to a levelized gross plant method.

**c. AEP Answer**

28. AEP states that a significant number of AEP's customers have historically paid levelized rates for transmission service, and there are a number of customers who had never paid net plant rates until the Commission directed that at the time of AEP's Order No. 888 compliance. AEP argues that, if a switch from net plant rates to levelized rates results in an over recovery of depreciation costs for AEP, it should follow that customers who switch from a levelized to a net plant rate are recipients of a windfall.

29. AEP disagrees with protestors that a specific cost-benefit study is required to justify AEP's levelized ratemaking. Although referencing Order No. 2000, AEP does not contend that it is entitled to use this rate methodology as a matter of policy under Order No. 2000 or as an incentive to participate in an RTO. AEP contends that: (1) the levelized method is a longstanding, Commission-approved method; (2) that all of AEP's transmission customers are charged ancillary service rates based on this method; and (3) the transition to PJM is a basis for adopting this method at this time. AEP further states that it anticipates that the PJM RTO will want AEP to make significant additional

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<sup>18</sup>18 C.F.R. § 35.34(e)(1) (2002). Under the regulations relating to innovative rate treatment, the Commission requires that the applicant must provide a detailed explanation of how the innovative rate treatment would help achieve the goals of the RTO, including efficient use of the transmission system and reliability benefits to consumers. Further, the applicant must provide a cost-benefit analysis, show why the rate treatment is appropriate and how it is just, reasonable, and not unduly discriminatory or preferential.

upgrades and additions in order to alleviate constraints, making a levelized rate method reasonable.

**d. Commission Determination**

30. We reject AEP's proposal to use a levelized rate methodology. We disagree with AEP's assertion that the expanded PJM will provide new service. Although there will be a new transmission service provider (PJM), the essential nature of the service, transmission service, will remain the same.<sup>19</sup>

31. In addition, we find AEP's "significant additions" argument unsupported. The cost of AEP's "significant" new planned transmission upgrades are a small percentage of AEP's transmission system (under 3 percent) and do not justify this dramatic increase in rates contemplated by AEP's levelized methodology. AEP also has not provided the proper cost analysis to demonstrate the transmission upgrades that will be made. As for AEP's claims that PJM will likely require AEP to make transmission upgrades in the future, AEP may file revised rates to recover such costs at that time.

32. With respect to Order No. 2000, AEP has failed to provide the required cost support for its levelized rates. Under 18 C.F.R. § 35.34(e)(2)(iv) (2002), the Commission defines "transmission rates based on levelized recovery of capital costs" as innovative transmission rate treatments. Such rates must be supported by: (1) a detailed explanation of how the proposed rate treatment would help achieve the goals of the RTO, including efficient use of and investment in the transmission system and reliability benefits to consumers; (2) a cost-benefit analysis, including rate impacts; (3) a detailed explanation of why the proposed rate treatment is appropriate for the RTO.<sup>20</sup> AEP has failed to provide us with this information.

33. Further, the Commission has previously denied AEP's request to switch to levelized rates, in its Order No. 888 compliance,<sup>21</sup> on the basis that it would result in an

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<sup>19</sup>In distinguishing initial rates from changes in rates for suspension purposes under section 205 of the FPA, the Commission identifies a new service by looking at the fundamental characteristics of the service. See, e.g., Southwestern Public Service Co., 72 FERC ¶ 61,104 at 61,559 (1995).

<sup>20</sup>18 C.F.R. § 35.34(e)(1) (2002).

<sup>21</sup>American Electric Power Service Corporation, 88 FERC ¶ 61,141 at 61,441-42  
(continued...)

over-recovery of costs by allowing AEP to recover a second time expenses it had already previously recovered.<sup>22</sup> The Commission also previously rejected AEP's present argument that levelized rates should be allowed because certain of its customers have historically used levelized rates.<sup>23</sup> These findings continue to hold true. AEP has not shown the justness and reasonableness of its proposed levelized rates.

34. We find AEP's reliance on Commission precedent to support its proposed levelized rate methodology to be misplaced. In WPS and Niagara Mohawk, the Commission accepted levelized rates for ancillary services which were deemed to be new services under Order No. 888, which is not the case here.<sup>24</sup> AEP already charges levelized rates for ancillary services. In MidAmerican and IPC, the Commission accepted levelized rates that resulted in lower rates for consumers.<sup>25</sup> This is not the case in this filing. Lastly, in IES, the Commission restricted the use of a levelized rate for transmission services, as it would increase rates to existing customers, given the requisite cost support was not presented.<sup>26</sup>

#### D. Miscellaneous Issues

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<sup>21</sup>(...continued)  
(1999).

<sup>22</sup>Id. This is due to the fact that AEP has significantly older transmission assets whose capital costs have largely been recovered already (through prior use of a net plant, non-levelized method). To apply a gross plant, levelized methodology, allowing for an even recovery of capital costs over the life of the asset, effectively starts capital recovery over at the beginning of the asset's life, and averages the capital recovery over the asset's lifetime, allowing for double recovery. The Commission therefore has found that where a utility proposes to switch from a non-levelized to a levelized method, it must make a showing that the proposed method is reasonable and accounts for the past use of a different method. The Commission therefore found AEP's proposed change to be unjust and unreasonable in allowing for double-recovery of capital costs.

<sup>23</sup> Id.

<sup>24</sup>WPS, 93 FERC ¶ 61,338 at 62,146; Niagara Mohawk, 92 FERC ¶ 61,168 at 61,577.

<sup>25</sup>MidAmerican, 73 FERC ¶ 61,027 at 61,065; IPC, 73 FERC ¶ 61,026 at 61,061.

<sup>26</sup>IES, 72 FERC ¶ 61,296 at 62,267.

35. Protestors raise numerous concerns over AEP's proposal to: (1) include a 13 percent ROE with a 50 basis point adder; (2) increase ancillary services charges on Day Two; (3) eliminate its current 12 month rolling average coincident-peak load divisor; (4) adjust its 2001 test year to include new transmission plant being put into service in 2002; (5) remove generator step-up transformer circuit breaker investment from its transmission cost of service and allocate it to its production cost of service; (6) include in its transmission rates transmission facilities below 40 Kv; and (7) change its classification procedure for general and intangible plant from a classification based on labor ratios to a classification based on the planned use of the facilities.

36. In addition, Municipals identify what they claim as additional flaws in AEP's TCOS.<sup>27</sup>

37. We find that these matters are best addressed in the hearing and settlement judge procedures that we are establishing in this proceeding.<sup>28</sup>

#### **E. Security Costs**

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<sup>27</sup>(1) AEP functionalized Account 561-related cash working capital to transmission rather than ancillary service schedule 1, (2) AEP failed to support its inclusion of \$8.6 million in its test year transmission O&M expenses for direct building costs, (3) AEP misallocated associated business development costs and portions of its subsidiaries' general advertising expenses and industry association dues under transmission, (4) AEP allocated Account 931 A&G rent expenses and Account 935 general plant maintenance expenses using unsupported allocation factors, whereas Commission policy specifies labor ratio allocators in the absence of specific support for a different allocator, (5) AEP mixes property-related tax functionalization methods, instead of maintaining its gross plant ratios, (6) AEP has included state commission assessments and local franchise fees without supporting the allocation of these costs to FERC-jurisdictional customers, and (7) AEP uses unsupported test period allocation factor adjustments, increasing the transmission revenue requirement by \$3.3 million.

<sup>28</sup>The Commission notes that AEP's proposed 50 basis point adder is consistent with Commission guidelines on acceptable ROE basis point increases to promote sound regional planning in its Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid, Docket No. PL03-1-000. We will make the 50 basis point adder requested by AEP subject to the outcome of that proceeding.

38. AEP states that while it is not seeking to recover security costs herein through a surcharge or other mechanism, it recommends that the Commission clarify the type of mechanism it would authorize for PJM to include in its tariff for recovery of security-related costs. AEP states it would support a rider that would allow such costs to be recovered as incurred.

39. VSCC agrees that the Commission should address the proper treatment of security-related expenses. However, the VSCC contends that this issue should be addressed in a generic proceeding, rather than this proceeding.

40. We find that this matter is more properly pursued in a proceeding to revise PJM's rates.

## **F. Two-Step Increase**

41. Protestors assert that the Commission generally disapproves of phased rate increases and that the Commission's policy is to base its analysis on the full rate increase requested, rather than allowing rate increases in stages. Moreover, protestors assert that AEP has failed to provide the evidence necessary to exempt it from the Commission's policy under 18 C.F.R. § 2.18(b) (2002).

42. While we normally do not allow phased rate increases,<sup>29</sup> we find that, because AEP is not merely seeking a phased rate increase but is implementing two phases of RTO membership (a transfer of operational control of transmission in the first phase; and a transfer of energy and ancillary services in the second phase), a two phase rate proposal is acceptable under these circumstances.

## **G. Waiver of Filing Requirements**

### **1. AEP's Filing**

43. AEP requests waiver of Sections 35.13(c) and (d), requiring cost of service information and revenue comparisons for Period I and Period II, stating, for example, that there is no preexisting condition with which to compare the projected rates and that Period II data would be of little use in this context. Additionally, AEP states that the comparison of revenues under existing and proposed rates is not applicable, because the proposed rates are for a different service than that previously provided; AEP states that

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<sup>29</sup>See 18 C.F.R. § 2.18 (2002).

revenues for a single utility system service cannot be compared to those under an RTO as proposed herein, and therefore requests waiver of this requirement.

## **2. Protests**

44. Protestors state that AEP has not adequately justified its waiver requests, and argue that AEP should be required to file the information required under Section 35.13, stating that Period II data and revenue comparisons are necessary in order for the Commission to determine the true impact of AEP's proposed rate increase. Ormet asserts that Period II data would reflect (among other things) increases in deferred taxes, the January 2003 expiration of the grandfathered Power Delivery Agreement with Buckeye Power Cooperative (for wheeling of 1600MW from the Cardinal Station to Buckeye members), and an increased usage of the transmission system, and that failure to examine this data would allow AEP to pocket excess revenues for years.

45. Several protesters argue that AEP's rates should be rejected, or at minimum set for hearing. The Municipals request that, to the extent that AEP's filing goes beyond seeking cost-based revenues, it must be rejected.

46. Consumers Energy Company (Consumers) states that AEP has not filed any of the requisite rate schedules (or parts thereof) required under Section 35.1(a) of the Commission's regulations and argues that this is a statutory requirement that cannot be waived. Consumers also points out that the proper form of tariff sheets has not been included, as instructed under Section 35.10 of the Commission's regulations.

## **3. Commission Determination**

47. Initially, we note that PJM will be required to file the requisite tariff sheets reflecting AEP's proposed changes under PJM's tariff.<sup>30</sup> With respect to the various cost of service-related matters raised by the parties, these are matters that can be addressed in the hearing and settlement judge procedures ordered below. We agree with the protestors that waiver of the requested filing requirements is inappropriate since it makes it difficult to determine the revenue impact of the proposed changes. Therefore, we will deny AEP's request for waiver of the filing requirements. As we have required modifications of the Day Two rates above, when AEP submits its compliance filing, it

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<sup>30</sup>Pursuant to Order No. 2000, the first function of the RTO is "Tariff Administration and Design," in which the RTO is the sole administrator of the tariff, and thus, should file the requisite tariff sheets. Order No. 2000 at 31,106.

should also submit the information required by section 35.13 of our regulations within 30 days of the date of this order.

## **H. Motions to Consolidate**

48. VSCC and Industrials request that this proceeding be consolidated with PJM's Expansion Filing<sup>31</sup> because the proceedings involve common issues of fact and law. In its Answer, AEP states that the Expansion Filing is much more complex and involves more issues and several parties with no particular interest in the instant proceeding.

49. Given the posture of the two filings at present, we will deny the requests to consolidate.<sup>32</sup>

## **I. Acceptance Suspension and Evidentiary Hearing**

50. The Commission's preliminary analysis indicates that the transmission and ancillary service rates in AEP's filing have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, with the changes summarily ordered above, the Commission will: (1) accept the Day One and Day Two rates for filing, suspend the Day One rates, to become effective as of the date that PJM first offers transmission service over AEP's transmission facilities,<sup>33</sup> subject to refund; (2) suspend the Day Two rates to become

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<sup>31</sup>Docket No. ER03-262-000.

<sup>32</sup>The parties may renew this request with the Chief Administrative Law Judge should circumstances change. See 18 C.F.R. § 385.503 (2002). Likewise, to the extent that individual issues raised here become more appropriately resolved elsewhere, the parties may petition the Chief Judge to consolidate such issues for hearing and decision. See id.

<sup>33</sup>AEP has requested the later of February 1, 2003, or the date PJM offers transmission service over AEP's transmission lines. The February 1 date having passed, we will grant AEP's alternate requested effective date.

effective, subject to refund,<sup>34</sup> the date that PJM first integrates the AEP control area into the PJM energy and ancillary service markets; and (3) set both the Day One and Two rates for hearing and settlement judge procedures, as ordered below.

51. In order to provide the parties an opportunity to resolve these matters among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>35</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>36</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) AEP's submittal, as modified as discussed in the body of this order, is hereby accepted for filing subject to refund, effective for Day One rates on the date that PJM first offers transmission service over AEP's transmission lines and effective for the Day Two rates on the date that PJM integrates the AEP control area into PJM energy and ancillary services markets, subject to refund.

(B) AEP must file a mechanism to hold existing network customers harmless from lost revenues within 30 days of the date of this order, as discussed herein.

(C) AEP must file the information required by section 35.13 of our regulations within 30 days of the date of this order, as discussed herein.

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<sup>34</sup>AEP requested the later of May 1, 2003 or the date that PJM first integrates the AEP control area into the PJM energy and ancillary services markets.

<sup>35</sup>18 C.F.R. § 385.603 (2002).

<sup>36</sup>If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience. ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

(D) 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 sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. ER03-242-000 concerning the justness and reasonableness of AEP's submittal as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall issue a report at least every sixty (60) days thereafter, apprising the Commission and the Chief Judge of the parties' progress towards settlement.

(G) If the settlement discussions fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

Docket No. ER03-242-000

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( S E A L )

Magalie R. Salas,  
Secretary.

**Appendix A**

American Electric Power Service Corporation

Docket No. ER03-242-000

Intervenors

American Municipal Power-Ohio, Inc.\*

Blue Ridge Power Agency and Old Dominion Electric Cooperative\*

Calpine Central, L.P.

Cinergy Services, Inc.

Docket No. ER03-242-000

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Constellation NewEnergy, Inc.\*\*  
 Consumers Energy Company\*  
 Detroit Edison Company\*  
 Duke Energy North America, L.L.C.  
 Dynegy Power Marketing, Inc.\*  
 First Energy Corporation  
 Indiana Municipal Power Agency and the cities of Dowagiac and Sturgis, Michigan\*  
 Indiana Office of Utility Consumer Counselor\*  
 Industrial Energy Users-Ohio, Coalition of Midwest Transmission Customers, and West  
     Virginia Energy Users Group\*  
 Louisiana Public Service Commission\*\*  
 North Carolina Electric Membership Corporation  
 Ohio Consumers' Counsel\*\*  
 Ohio Rural Electric Cooperatives, Inc. and Buckeye Power, Inc  
 Old Dominion Committee for Fair Utility Rates\*  
 Ormet Primary Aluminum Corporation\*  
 Public Service Commission of the Commonwealth of Kentucky  
 Public Service Electric and Gas Company and PSEG Energy Resources and Trade  
 LLC\*\*  
 Public Utilities Commission of Ohio  
 Reliant Energy Services, Inc.  
 Steel Dynamics, Inc.\*  
 Southeast Power Administration\*\*\*  
 Tenaska Power Services Company  
 Virginia State Corporation Commission\*  
 Wabash Valley Power Administration\*  
 Williams Energy Marketing & Trading Company\*\*  
 Wisconsin Electric Power Company  
 Wolverine Power Supply Cooperative, Inc.\*\*

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\*Also filed a protest

\*\*Motion to intervene out-of-time

\*\*\*Also filed comments