

166 FERC ¶ 61,019  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Southwest Power Pool, Inc.

Docket No. ER16-204-004

OPINION NO. 562-A

ORDER DENYING REHEARING

(Issued January 17, 2019)

1. On June 15, 2018, the Nebraska Public Power District (NPPD) filed a request for rehearing of Opinion No. 562.<sup>1</sup> For the reasons discussed below, we deny NPPD's request for rehearing.

**I. Background and Request for Rehearing**

2. This dispute arises out of Southwest Power Pool, Inc.'s (SPP) October 2015 filing, in which it proposed revisions to its Open Access Transmission Tariff (Tariff) to incorporate Tri-State Generation and Transmission Association, Inc. (Tri-State) as a transmission owner under the SPP Tariff as of January 1, 2016.<sup>2</sup> As relevant here, SPP proposed to incorporate Tri-State's transmission facilities and annual transmission revenue requirement (ATRR) into SPP's existing transmission pricing Zone 17 (Zone 17), a multi-transmission owner zone in which NPPD is the dominant transmission owner. SPP stated in the filing that the Tri-State transmission facilities being transferred to its control were highly integrated with NPPD's facilities in Zone 17 and, additionally, most of Tri-State's facilities were jointly managed with NPPD's facilities pursuant to

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<sup>1</sup> *Sw. Power Pool, Inc.*, Opinion No. 562, 163 FERC ¶ 61,109 (2018).

<sup>2</sup> *See id.* P 4.

the Western Nebraska Joint Transmission Agreement between Tri-State and NPPD (NETS Agreement).<sup>3</sup>

3. As explained in Opinion No. 562, SPP uses a license-plate rate design, also called a zonal rate design, pursuant to which its regional transmission organization (RTO) footprint is separated into a number of zones, and customers pay for transmission service for delivery to load within SPP based on the cost of the transmission facilities in the zone where the load is located.<sup>4</sup> For zones consisting of the transmission facilities of more than one transmission owner, the cost of transmission facilities in the zone is determined by combining the ATRR for the facilities of all the transmission owners in the zone. As relevant here, a Network Integration Transmission Service customer in a zone pays network service charges based on that customer's percentage share of total load in the zone multiplied by the total ATRR for the facilities of all of the transmission owners in the zone, i.e., its load-ratio share. When a new transmission owner is added to an existing zone, its ATRR and any load not already included in the zonal load are added to the existing zone's totals, resulting in a new total ATRR and a new amount of total load for the zone. This means that, unless the average cost of the new transmission owner's transmission system (i.e., its ATRR divided by its load) is the same as the existing zone's average cost, adding a new transmission owner to an existing zone will either cause network service rates to increase for the existing customers in the zone and decrease for the new transmission owner's customers, or vice versa.

4. NPPD protested SPP's proposed placement of Tri-State in Zone 17, and the resulting ATRR, on the basis that Tri-State's cost of serving load was higher than the average cost of serving existing Zone 17 load. Thus, NPPD argued, adding Tri-State to Zone 17 would increase the costs to existing Zone 17 customers, including NPPD's customers.<sup>5</sup> The Commission issued an order accepting SPP's proposed Tariff revisions, subject to refund, and establishing hearing and settlement judge procedures concerning whether SPP's proposed Tariff revisions were just and reasonable.<sup>6</sup> Following a hearing, the Presiding Judge issued an initial decision finding that SPP's proposal to place

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<sup>3</sup> SPP October 30, 2015 Transmittal Letter at 4.

<sup>4</sup> See Opinion No. 562, 163 FERC ¶ 61,109 at P 5.

<sup>5</sup> See NPPD November 20, 2015 Motion to Intervene, Protest and Motion for Summary Disposition or, in the Alternative, Hearing at 3, 10-13.

<sup>6</sup> *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,366 (2015) (Hearing Order).

Tri-State's transmission facilities in Zone 17 was just and reasonable and, in particular, that the alleged cost shift to Zone 17 customers did not render this placement unjust and unreasonable.<sup>7</sup>

5. The Commission affirmed these determinations in Opinion No. 562.<sup>8</sup> Specifically, the Commission found that SPP's application of its zonal placement criteria in this proceeding to determine that Tri-State should be placed in Zone 17 rendered a just and reasonable result, and the fact that SPP's zonal placement criteria do not explicitly consider cost shifts did not render Tri-State's placement in Zone 17 unjust and unreasonable.<sup>9</sup> The Commission confirmed, however, both that information regarding cost shifts was necessary in this proceeding to determine the justness and reasonableness of the proposed rates,<sup>10</sup> and that the Presiding Judge appropriately considered such cost shift information in determining that SPP's proposal was just and reasonable.<sup>11</sup> Based on the record, the Commission found that the benefits that NPPD and its customers receive from Tri-State's transmission facilities are at least roughly commensurate with the costs allocated to NPPD as a result of the placement of those facilities in Zone 17.<sup>12</sup>

6. On rehearing, NPPD asserts that the Commission erred in permitting an unjust and unreasonable shift of \$4.3 million of the costs of the legacy transmission system built to serve Tri-State's load to Zone 17 customers without the requisite showing that these transmission facilities will provide Zone 17 customers with benefits that are roughly commensurate with the shifted costs.<sup>13</sup> As an initial matter, NPPD argues that the Commission failed to consider the appropriateness of SPP's criteria for determining the zone in which to place a transmission owner joining SPP and, more specifically, whether SPP should include potential cost shifts as a factor in this determination.<sup>14</sup>

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<sup>7</sup> *Sw. Power Pool, Inc.*, 158 FERC ¶ 63,004, at PP 329-335, 342-347 (2017) (Initial Decision).

<sup>8</sup> *See* Opinion No. 562, 163 FERC ¶ 61,109 at P 18.

<sup>9</sup> *Id.* PP 32-33.

<sup>10</sup> *Id.* P 38.

<sup>11</sup> *Id.* P 33.

<sup>12</sup> *Id.* PP 190-208.

<sup>13</sup> *See* Rehearing Request at 6.

<sup>14</sup> *Id.* at 9-10, 38-39.

Second, NPPD alleges that the Commission improperly shifted to NPPD the burden to demonstrate that Zone 17 customers do *not* receive benefits roughly commensurate with the costs shifted to them due to the inclusion of Tri-State's facilities in Zone 17<sup>15</sup> and denied NPPD the opportunity to be heard by erroneously affirming the Presiding Judge's rejection of NPPD's request to respond to a cost causation argument that SPP raised for the first time in its Reply Brief.<sup>16</sup> Third, NPPD asserts that the Commission lacked substantial evidence for its finding that the benefits provided to Zone 17 customers are roughly commensurate with costs shifted to those customers<sup>17</sup> and mistakenly relied on a misinterpretation of the NETS Agreement to support this finding.<sup>18</sup> Fourth, NPPD contends that the Commission should have reopened the record to consider SPP's adoption of a new zonal placement criterion requiring consideration of the nature of the transmission service used to deliver power to load prior to the new transmission owner's transfer to SPP,<sup>19</sup> and erred in concluding that the Presiding Judge gave substantial consideration to the nature of the transmission service used to serve Tri-State load prior to its transfer to SPP.<sup>20</sup> Finally, NPPD renews its arguments that SPP should have considered alternate placements for Tri-State's transmission facilities, maintaining that the Commission wrongly relied on SPP's claims that placing Tri-State in its own zone could cause a future misallocation of the costs of transmission facilities built to address reliability issues,<sup>21</sup> and failed to address evidence that placing Tri-State in Zone 19 would be preferable because it would avoid cost shifts to Zone 17 without shifting material costs to Zone 19 customers.<sup>22</sup>

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<sup>15</sup> *Id.* at 10-14, 39.

<sup>16</sup> *Id.* at 15-16, 39.

<sup>17</sup> *Id.* at 16-19, 39-40.

<sup>18</sup> *Id.* at 19-27, 40.

<sup>19</sup> *Id.* at 29-31, 40-41.

<sup>20</sup> *Id.* at 32-34, 41.

<sup>21</sup> *Id.* at 28-29, 40.

<sup>22</sup> *Id.* at 34-38, 41.

## II. Commission Determination

### A. Procedural Matters

7. On June 2, 2018, South Central MCN LLC (South Central) filed a motion to strike one of the introductory paragraphs of NPPD's rehearing request or, in the alternative, to respond to the rehearing request.<sup>23</sup> South Central asserts that in its rehearing request NPPD contends that certain prospective transmission owners, "such as those represented by [South Central]," are "colluding" to ensure that new transmission owners are placed in existing transmission pricing zones that permit them to shift the greatest amount of costs to existing customers in that zone and that this statement constitutes a "false, misleading, and unsupported allegation" raised for the first time on rehearing.<sup>24</sup> NPPD filed a response to South Central's motion to strike on July 13, 2018, clarifying that it "makes no claim that South Central engaged in any activity that might amount to collusion in connection with this case," and referenced South Central only to illustrate that South Central might benefit from the type of cost-shifting behavior in which NPPD alleges that Tri-State and SPP have engaged.<sup>25</sup>

8. We deny South Central's motion to strike. We need not address NPPD's extraneous claim with respect to South Central, which is presented in an introductory paragraph to the rehearing request and, by NPPD's admission, does not form the basis for NPPD's specification of alleged errors in this proceeding. And, in any event, we are not persuaded that South Central has met the "heavy burden" imposed on proponents of motions to strike in light of the Commission's general preference for a complete record.<sup>26</sup>

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<sup>23</sup> As noted below, we reject South Central's alternative response to NPPD's rehearing request as an impermissible answer to a request for rehearing. 18 C.F.R. § 385.713(c) (2018).

<sup>24</sup> South Central Motion to Strike at 2.

<sup>25</sup> NPPD Answer to Motion to Strike at 4. The remainder of NPPD's answer pertains to cost-shifting generally and the evidentiary basis for its claims regarding cost-shifting by Tri-State and SPP and, as such, constitutes an impermissible answer to South Central's alternative response to NPPD's rehearing request. 18 C.F.R. § 385.713(c) (2018).

<sup>26</sup> See *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 163 FERC ¶ 61,117, at P 74 (2018) (noting that motions to strike are disfavored under Commission precedent, and "objectionable material will not be struck unless the matters sought to be omitted from the record have no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party") (quoting *Power Mining, Inc.*, 45 FERC ¶ 61,311, at 61,311 n.1 (1988)); *CenterPoint Energy Gas Transmission Co.*, 109 FERC ¶ 61,197,

Nonetheless, we note that our denial of South Central's motion to strike does not signal our agreement with NPPD's allegation concerning collusion among prospective transmission owners.<sup>27</sup>

9. On July 13, 2018, Tri-State submitted an answer to NPPD's request for rehearing. NPPD submitted a further answer to Tri-State's answer on July 27, 2018. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2018), prohibits an answer to a request for rehearing. Accordingly, we reject Tri-State's and NPPD's answers, as well as the alternative answer included in South Central's motion to strike.

## **B. Substantive Matters**

10. As discussed further below, we deny NPPD's request for rehearing and confirm the Commission's acceptance in Opinion No. 562 of SPP's proposal to incorporate Tri-State's transmission facilities into Zone 17. Generally, in its request for rehearing, NPPD repeats arguments that it previously presented on issues that were fully explored on the record during the course of the hearing and that both the Presiding Judge (in the Initial Decision) and the Commission (in Opinion No. 562) squarely addressed. We are not persuaded that the Commission erred in Opinion No. 562, which we believe appropriately responds to these concerns. Accordingly, we deny rehearing.

### **1. SPP's Zonal Placement Criteria**

11. NPPD's request for rehearing assumes that, unless SPP is required to consider cost shifts as a factor in its zonal placement decisions, the Commission will lack the information that it needs to determine that the ATRRs resulting from zonal placement decisions, such as Tri-State's placement in Zone 17, are just and reasonable.<sup>28</sup> As explained in Opinion No. 562, we find this premise to be invalid.

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at P 36 (2004) (denying a motion to strike a cover letter included with a relevant court order submitted with a rehearing order as an impermissible rehearing request supplement, on the basis that including the letter in the record would not delay the proceeding and would ensure a complete record).

<sup>27</sup> 18 C.F.R. § 385.713(d)(1) (2018).

<sup>28</sup> Rehearing Request at 9-10 (arguing that, if SPP is not required to consider cost shifts as a factor in its zonal placement decisions, it will continue to make these decisions without assessing potential cost shifts and the Commission, in turn, will not have a record to determine cost shifts when SPP make a Federal Power Act (FPA) section 205 filing of the resulting revised ATRR). *See* NPPD March 27, 2017 Brief on Exceptions at 24

12. In Opinion No. 562, the Commission affirmed the Presiding Judge's determination that the criteria SPP applied to determine that Tri-State should be placed in Zone 17 were appropriate for this proceeding and yielded a just and reasonable result.<sup>29</sup> The Commission found "that the fact that SPP's zonal placement criteria do not explicitly include the consideration of cost shifts or a specific cost shift criterion [did not render] the proposed zonal placement of Tri-State in this case unjust and unreasonable."<sup>30</sup> Moreover, the Commission declined to make a generic determination that SPP or any other RTO has an obligation to consider cost shifts when making zonal placement decisions.<sup>31</sup> The issue before the Commission in this proceeding was whether SPP met its burden under FPA section 205<sup>32</sup> to demonstrate that its proposed Tariff revisions, including the revised ATRR resulting from Tri-State's placement in Zone 17, were just and reasonable and not unduly discriminatory or preferential. Having found that SPP's zonal placement criteria produced just and reasonable and not unduly discriminatory or preferential results as applied to the inclusion of Tri-State's transmission facilities in Zone 17, and that the associated potential cost shifts did not render the proposed zonal placement unjust and unreasonable or unduly discriminatory or preferential, the Commission fulfilled its statutory duty under FPA section 205 with respect to the proposal.

13. Contrary to NPPD's assertions, this does not mean that the Commission did not have an adequate record to determine whether the benefits to existing customers in the zone in which a new transmission owner's transmission facilities are placed are roughly

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("Of course, fair consideration of cost shifting will occur only if cost shifting is included among the criteria that SPP is required to consider when determining zone placement in connection with a new SPP Transmission Owner.").

<sup>29</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 32. In determining to place Tri-State's transmission facilities in Zone 17, SPP applied the following zonal placement criteria: (1) whether the new transmission owner's ATRR is less than the ATRR of the existing transmission pricing zone with the smallest ATRR; (2) the extent to which the new transmission owner's transmission facilities substantively increase the SPP footprint; (3) the extent to which the new transmission owner's facilities are integrated (including the number of interconnections) with an existing transmission owner's facilities; and (4) the extent to which the new transmission owner's facilities are embedded within an existing zone. *See id.* P 19.

<sup>30</sup> *Id.* P 33.

<sup>31</sup> *Id.* P 38.

<sup>32</sup> 16 U.S.C. § 824d (2012).

commensurate with any increase in costs resulting from such zonal placement.<sup>33</sup> In fact, in Opinion No. 562, the Commission confirmed that information regarding cost shifts was necessary in this proceeding to provide a sufficient record on which to determine the justness and reasonableness of the proposed rates,<sup>34</sup> and found that the record in this proceeding contained “extensive information regarding cost shift issues.”<sup>35</sup> NPPD asserts that this information “is *only* in the record because the burden was improperly shifted to NPPD” to provide information related to cost shifts and persuade the Commission that such cost shifts are not roughly commensurate with the benefits to existing customers in Zone 17 that the proposed zonal placement provides.<sup>36</sup> However, the fact that it was NPPD that first raised concerns regarding potential cost shifts does not negate the fact that this issue was then explored in depth at the hearing, and that the Commission found sufficient evidence in the record to determine that SPP’s proposed placement of Tri-State’s transmission facilities in Zone 17 was consistent with cost causation principles and not rendered unjust and unreasonable by the potential cost shifts to Zone 17 customers.<sup>37</sup>

## 2. Burden of Proof

14. We are also unpersuaded by NPPD’s revival on rehearing of its assertion that the Presiding Judge and Commission improperly shifted the burden to NPPD to produce evidence regarding cost shifts and demonstrate that Zone 17 customers do not receive benefits commensurate with the costs shifted to them.<sup>38</sup> NPPD is correct that SPP, as the rate proponent, had the burden under FPA section 205 to prove its proposal just and reasonable.<sup>39</sup> We confirm that “[n]othing in [Opinion No. 562] changes the fact that proposed zonal placements, and the resulting rates, must be just and reasonable,” including that any allocation of costs resulting from the zonal placement must be at least

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<sup>33</sup> See Rehearing Request at 9-10 (citing *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) (*ICC v. FERC*)).

<sup>34</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 38.

<sup>35</sup> *Id.* PP 33, 190-208.

<sup>36</sup> Rehearing Request at 10 (emphasis in original).

<sup>37</sup> See Opinion No. 562, 163 FERC ¶ 61,109 at P 192.

<sup>38</sup> Rehearing Request at 10-14, 17, 39; see NPPD March 27, 2017 Brief on Exceptions at 18-22.

<sup>39</sup> Rehearing Request at 10-11.

roughly commensurate with benefits.<sup>40</sup> The Commission recently rejected a similar argument from certain SPP transmission owners that SPP's Tariff unfairly placed the burden of proof on customers by failing to require consideration of potential cost shifts.<sup>41</sup> In affirming its denial of the transmission owners' complaint, the Commission cited to its determination in Opinion No. 562 and explained that:

[t]he fact that SPP's Tariff does not expressly require this filing [with the Commission, to add the ATRR of a new transmission owner to an existing zone's ATRR,] to justify any potential cost shifts does not change the Commission's obligation to determine that the revised ATRR is just and reasonable under FPA section 205. SPP, and any other proponents of the revised ATRR, still has the burden of proof to demonstrate that the rate is just and reasonable, and must ensure that there is a sufficient evidentiary record for the Commission to make a reasoned decision.<sup>42</sup>

15. Here, the Commission found that SPP had not made this showing in its initial filing, and thus set the proposal for hearing and settlement judge proceedings in the Hearing Order.<sup>43</sup> Following the full evidentiary hearing, which included filed testimony, a three-day hearing, and post-hearing briefs, the Presiding Judge found that SPP had demonstrated that the rate increase resulting from placing Tri-State's transmission facilities in Zone 17 was just and reasonable, and that the potential cost shift did not

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<sup>40</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 39.

<sup>41</sup> *Indicated SPP Transmission Owners v. Sw. Power Pool, Inc.*, 162 FERC ¶ 61,213, at P 74 (Complaint Order), *reh'g denied*, 165 FERC ¶ 61,005, at P 10 (2018) (Complaint Rehearing Order).

<sup>42</sup> Complaint Order, 165 FERC ¶ 61,005 at P 10 (citing Opinion No. 562, 163 FERC ¶ 61,109 at PP 39, 190-208); *see id.* ("Likewise, the fact that SPP's Tariff does not specify that SPP must justify any potential cost shifts in its filing with the Commission does not prevent parties from arguing that the allocation of the costs of a new transmission owner's facilities to existing customers in the zone in which SPP proposes to place those facilities renders the revised ATRR unjust and unreasonable under the circumstances of the case. In considering whether there is a sufficient record for it to assess the justness and reasonableness of the revised ATRR, the Commission will also consider the sufficiency of record evidence regarding any such claims.").

<sup>43</sup> Hearing Order, 153 FERC ¶ 61,366 at PP 43-44.

render the rate increase unjust and unreasonable or violate cost causation principles.<sup>44</sup> The Commission affirmed this finding based on the entirety of the record, including briefs on and opposing exceptions. The Commission agreed with the Presiding Judge “that the record shows that the proposed zonal placement is not unjust and unreasonable because of the cost shift.”<sup>45</sup> The Commission also expressly rejected NPPD’s argument on exceptions that the Presiding Judge improperly shifted the burden of proof to NPPD and Commission Trial Staff to demonstrate that SPP’s proposal to place Tri-State’s transmission facilities in Zone 17 was unjust and unreasonable due to potential cost shifts.<sup>46</sup>

16. NPPD recounts arguments that it presented in its testimony and briefs, which the Commission considered and found unavailing in Opinion No. 562,<sup>47</sup> and which we find no more persuasive on rehearing. NPPD reasons that SPP did not meet its burden of supporting the proposed rate because it failed to present evidence, at least prior to SPP’s reply brief, showing that Zone 17 customers receive benefits justifying the additional costs that they will incur due to Tri-State’s inclusion in Zone 17.<sup>48</sup> However, NPPD’s arguments do not support this conclusion. Rather than demonstrating that there was not sufficient evidence for the Commission to reach its determination, NPPD’s main objections appear to be with the timing and substance of the information regarding cost shifts provided by SPP and Tri-State.<sup>49</sup> NPPD claims that SPP presented no evidence in

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<sup>44</sup> See Initial Decision, 158 FERC ¶ 63,004 at P 360.

<sup>45</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 192.

<sup>46</sup> *Id.* P 208 (“NPPD and Trial Staff were not shifted the burden of proving the proposal was unjust and unreasonable because of the cost shift, but rather in determining whether SPP had demonstrated that the zonal placement and resulting rate were just and reasonable, the Presiding Judge properly considered whether, in light of all of the facts and circumstances of the case, including the cost shift, the proposal was just and reasonable.”).

<sup>47</sup> Rehearing Request at 11-14; Opinion No. 562, 163 FERC ¶ 61,109 at P 208.

<sup>48</sup> Rehearing Request at 10-16.

<sup>49</sup> See *id.* at 11-12 (claiming that the fact that Tri-State witness Steinbach claimed in testimony included with SPP’s October 2015 filing that integration would provide “significant benefits” to NPPD’s and Tri-State’s customers, but did not repeat this argument in the testimony filed prior to the hearing, “creates an inference that the level of benefits provided to NPPD from the Tri-State facilities *do not* justify the increased costs shifted to NPPD”) (emphasis in original); *id.* at 12-14 (arguing that SPP and Tri-State failed to address in their initial briefs testimony from NPPD witness Malone that the

its direct testimony regarding the economic impact of its proposed placement of Tri-State's transmission facilities.<sup>50</sup> However, NPPD cites to testimony submitted by Tri-State, as one of the rate proponents, regarding benefits to NPPD and other Zone 17 customers,<sup>51</sup> and statements in Tri-State's initial brief regarding the general benefits of RTO membership,<sup>52</sup> as well as arguments in both Tri-State's and SPP's reply briefs.<sup>53</sup> Furthermore, although NPPD claims that Tri-State witness Steinbach provided no evidence that NPPD receives benefits from Tri-State's transmission facilities commensurate with the costs shifted, NPPD notes that Mr. Steinbach argued that NPPD cannot serve its entire load without using Tri-State transmission facilities, and receives benefits related to the NETS Agreement.<sup>54</sup> NPPD also disagrees with the Commission's assessment of this evidence; however NPPD fails to show that the Commission lacked sufficient evidence to conclude that SPP's proposed placement of Tri-State's transmission facilities in Zone 17 was just and reasonable and consistent with cost causation principles. In fact, in recounting the various arguments that NPPD, Tri-State, and SPP raised in the testimony and briefs, NPPD effectively supports the Commission's conclusion that "[t]he parties to this proceeding addressed the issue of the cost shift at length."<sup>55</sup> NPPD's disagreement with SPP's and Tri-State's arguments, and the Presiding Judge's and Commission's conclusions therefrom, does not signify that the burden of proof was unfairly shifted, nor that the Commission lacked substantial evidence on which to base its conclusion that placing Tri-State's transmission facilities in Zone 17 is consistent with cost causation principles and does not render the revised ATRR for Zone 17 unjust and unreasonable.<sup>56</sup>

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benefits from joint planning and use of the NETS facilities already were recognized under the NETS Agreement, and that Tri-State is the net beneficiary under the agreement).

<sup>50</sup> *Id.* at 11-14.

<sup>51</sup> *Id.* at 11-12 (citing Ex. No. TS-001 at 20:1-3, 17-27, 21:3-23, 31:1-16).

<sup>52</sup> *Id.* at 13.

<sup>53</sup> *Id.* at 14.

<sup>54</sup> *Id.* at 12.

<sup>55</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 33; *see* Rehearing Request at 11-14.

<sup>56</sup> As discussed in section II.B.3 below, we also disagree with NPPD's substantive claim that it demonstrated that there is no evidence that Zone 17 customers receive

17. As the Commission explained in Opinion No. 562, the fact that some of this evidence may have been raised later in the proceeding does not negate its validity. Specifically, NPPD renews its assertion that SPP argued for the first time in its reply brief that NPPD and its customers in Zone 17 “can be said to have caused some of the costs of those facilities (including those NETS facilities built by Tri-State) such that including those facilities in Zone 17 is consistent with cost causation principles.”<sup>57</sup> NPPD argues that the Commission erred in affirming the Presiding Judge’s denial of its motion to file a supplemental reply brief responding to this new argument, which NPPD asserts deprived it of due process and was “extremely prejudicial.”<sup>58</sup> We disagree. As the Commission explained in Opinion No. 562, while SPP may have made this specific argument for the first time in its reply brief, it was responding to legal arguments that NPPD and Trial Staff raised in their initial briefs.<sup>59</sup> NPPD counters that it raised cost causation in its initial testimony, and that SPP should thus have responded in its rebuttal testimony or initial brief.<sup>60</sup> However, we do not agree that parties should be automatically disqualified from making an argument responding to another party for failure to raise it at the earliest opportunity.<sup>61</sup> SPP raised the argument that NPPD and its customers in Zone 17 can be said to have caused the costs of some of Tri-State’s transmission facilities in response to NPPD’s argument in its initial brief that SPP’s failure to consider and mitigate potential cost shifts was contrary to Commission precedent.<sup>62</sup> It was within the Presiding Judge’s

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benefits from inclusion of Tri-State’s transmission facilities in Zone 17 that are roughly commensurate with the potentially shifted costs. *See* Rehearing Request at 14.

<sup>57</sup> *Id.* at 15 (quoting SPP January 9, 2017 Reply Brief at 44).

<sup>58</sup> *Id.* at 15-16, 39.

<sup>59</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 199 (citing NPPD December 14, 2016 Initial Brief at 15-17; Commission Trial Staff December 14, 2016 Initial Brief at 23-30).

<sup>60</sup> Rehearing Request at 15-16.

<sup>61</sup> *See* 18 C.F.R. § 385.706(b)(2)(i) (2018) (“A reply brief filed with the presiding officer must be limited to a response to any arguments and issues raised in the initial briefs.”). This limitation makes sense, as confining parties to responding to other parties’ initial briefs only with arguments already raised in their own initial briefs would seem to defeat the purpose of permitting a response at all. Conversely, permitting additional responses any time the response in a reply brief raises a different angle could lead to endless rounds of briefing.

<sup>62</sup> NPPD December 14, 2016 Initial Brief at 14-17.

discretion, and in the interest of judicial economy, to deny NPPD's motion to file a supplemental reply brief, and the Commission correctly approved that decision.<sup>63</sup>

18. Moreover, the Presiding Judge and Commission did not "adopt" SPP's argument that NPPD and its customers in Zone 17 can be said to have caused the costs of some of Tri-State's transmission facilities, as NPPD asserts.<sup>64</sup> Rather, the Presiding Judge and the Commission considered the argument in connection with the entirety of the record evidence, including the provisions of the NETS Agreement, and found the totality of evidence was sufficient to support the argument that the NETS Agreement facilities were constructed for the joint use and benefit of NPPD and Tri-State customers.<sup>65</sup> We confirm that consideration of this argument in the context of the broader record was appropriate.

19. In any event, NPPD has now responded to this argument twice, in its brief on exceptions and now in its request for rehearing,<sup>66</sup> and these responses do not change our assessment. In its rehearing request, NPPD again asserts that the Presiding Judge erred in relying on SPP's "unsupported" assertion that allocation of \$4.3 million of the costs of Tri-State's transmission facilities to Zone 17 is roughly commensurate with any benefits those facilities might provide. Thus, NPPD argues, the Presiding Judge improperly shifted to NPPD the burden of proving that placement of Tri-State's transmission facilities in Zone 17 does not provide any quantifiable benefits to Zone 17

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<sup>63</sup> Rule 706 provides for initial briefs, setting forth the arguments supporting parties' positions, and reply briefs, responding to the arguments and issues raised in the initial briefs. 18 C.F.R. § 385.706(b). The Presiding Judge may permit additional briefs, as appropriate, but may also deny or limit the opportunity to reply for good cause. 18 C.F.R. § 385.705(b) (2018); 18 C.F.R. § 385.704(b)(2) (2018). *See Ozark Gas Transmission Sys.*, 39 FERC ¶ 61,142, at 61,512-13 (1987) (affirming as an appropriate exercise of discretion the administrative law judge's denial of motions to disregard portions of a reply brief alleged to raise new issues, or to allow for the filing of supplemental briefs).

<sup>64</sup> Rehearing Request at 15-16 (citing Initial Decision, 158 FERC ¶ 63,004 at P 344; Opinion No. 562, 163 FERC ¶ 61,109 at P 196).

<sup>65</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 199 (confirming that the Commission reached this conclusion without having to rely on this particular argument in SPP's reply brief).

<sup>66</sup> NPPD March 27, 2017 Brief on Exceptions at 44-48; Rehearing Request at 16-18, 39-40.

customers.<sup>67</sup> The Commission did not agree with this argument in Opinion No. 562, explaining that the Presiding Judge considered all of the facts and circumstances of the case, including the cost shift, and determined that SPP's proposal to place Tri-State's transmission facilities in Zone 17 was just and reasonable.<sup>68</sup> Nonetheless, NPPD continues to argue on rehearing that the record lacked evidence regarding cost shifting and cost causation, which "is an essential element of SPP's burden to demonstrate that its zonal placement decision was just and reasonable."<sup>69</sup> As discussed in section II.B.3 below, we do not agree with NPPD that the record contained no evidence to support the Commission's findings that the benefits that Tri-State's transmission facilities provide to Zone 17 are at least roughly commensurate with the costs shifted to Zone 17 customers as a result of Tri-State's zonal placement, and that the Commission erred in citing the NETS Agreement as evidence on this point. Accordingly, we deny rehearing.

### 3. Cost Causation

20. In Opinion No. 562, the Commission held that the \$4.3 million cost shift alleged by NPPD and Trial Staff, which would translate to an eight percent increase in existing Zone 17 rates, would be just and reasonable in light of all of the facts and circumstances of the case, including the significant integration of Tri-State's transmission facilities with Zone 17, the size of Tri-State's ATRR, the fact that Tri-State's transmission facilities would fill a gap in SPP's geographic footprint rather than expand it, and the benefits Zone 17 customers derive from Tri-State's transmission facilities.<sup>70</sup> The Commission also affirmed the Presiding Judge's finding that it would be reasonable to consider known adjustments to Tri-State's ATRR in the near future, namely the fact that the NETS Agreement will terminate in 2020, at which time Tri-State will no longer need to pay a \$1 million Annual Equalization Payment to NPPD under that agreement, and that approximately \$700,000 of Balanced Portfolio and regional costs under the SPP

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<sup>67</sup> Rehearing Request at 16-17.

<sup>68</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 208 ("The cost shift was one of the facts and circumstances considered, and the Presiding Judge found that all of the facts and circumstances demonstrated that the proposed rate was just and reasonable, despite the existence of the cost shift.").

<sup>69</sup> Rehearing Request at 17.

<sup>70</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 160.

Tariff will be allocated to Zone 17 by 2023 and paid by Tri-State load if it is placed in Zone 17.<sup>71</sup>

21. NPPD stresses on rehearing that this cost shift, “[e]ven assuming the validity of Tri-State’s projected adjustment,” is significant, “and unjust and unreasonable if unaccompanied by roughly commensurate benefits.”<sup>72</sup> The Commission did not suggest in Opinion No. 562 that this amount is insignificant. However, as the Commission explained in Opinion No. 562, shifting cost responsibility for existing transmission facilities is not *per se* unjust and unreasonable, as long as the costs allocated are at least roughly commensurate with the benefits provided.<sup>73</sup> The Commission agreed with the Presiding Judge that “cost shifts that result in significant rate increases to customers, but which are unaccompanied by commensurate benefits, are unjust and unreasonable.”<sup>74</sup> Cost causation principles generally require that rates approved by the Commission “reflect to some degree the costs actually caused by the customer who must pay them.”<sup>75</sup> The Commission has found, on a case-by-case basis, that some degree of cost shifting is just and reasonable, based on the unique circumstances of particular proceedings.<sup>76</sup> Given the facts of this proceeding, the Commission found, and we continue to find, that

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<sup>71</sup> *Id.* PP 149, 158. The Commission noted that the Presiding Judge did not precisely quantify the cost shift with these adjustments, but only found that they should be considered. *Id.* P 158.

<sup>72</sup> Rehearing Request at 18-19.

<sup>73</sup> *See* Opinion No. 562, 163 FERC ¶ 61,109 at PP 191, 206; *see also ICC v. FERC*, 576 F.3d at 477.

<sup>74</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 191 (citing Initial Decision, 158 FERC ¶ 63,004 at P 332).

<sup>75</sup> *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

<sup>76</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,190 (2015) (holding that mitigation was not required for potential cost shifts from the establishment of a multi-owner zone); *PJM Interconnection, L.L.C.*, 94 FERC ¶ 61,295, *reh’g denied*, 95 FERC ¶ 61,217 (2001) (permitting a transmission owner to recover the costs of transmission facilities from a zone in which only a small portion of its load was located because that zone’s customers benefited from the facilities); *see also* Complaint Order, 162 FERC ¶ 61,213 at PP 63-69 (denying complaint alleging that SPP’s Tariff is unjust and unreasonable to the extent that it permits cost shifting when new transmission owners join existing zones, and confirming that some cost shifting may be reasonable on a case-by-case basis).

the benefits that NPPD and its customers receive from Tri-State's transmission facilities are at least roughly commensurate with the costs allocated to NPPD as a result of the placement of those facilities in Zone 17.<sup>77</sup> Accordingly, we disagree with NPPD's contention that the cost shift in this proceeding was not roughly commensurate with benefits to NPPD and its customers and therefore deny rehearing.<sup>78</sup>

22. Contrary to NPPD's assertion, the fact that SPP and Tri-State initially discussed the NETS Agreement in their testimony in the context of SPP's integration criterion did not bar them, nor the Presiding Judge and Commission, from drawing conclusions from this evidence, already in the record, regarding benefits that NPPD receives from Tri-State transmission facilities.<sup>79</sup> As discussed above, the Commission found that "the record contains extensive information regarding cost shift issues,"<sup>80</sup> including the evidence submitted by SPP and Tri-State that NPPD cites in its request for rehearing,<sup>81</sup> and found SPP's proposal just and reasonable based on the record as a whole. NPPD essentially argues that its evidence regarding the magnitude of the cost shift and the respective benefits under the NETS Agreement is superior and should have been afforded more weight.<sup>82</sup> Although NPPD may disagree with the cost allocation outcome in this proceeding, it is well established that cost allocation is not an exact science, but rather "involves judgment on a myriad of facts" to determine that "rates reflect to some degree the costs actually caused by the customer who must pay them."<sup>83</sup> The Commission

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<sup>77</sup> See Opinion No. 562, 163 FERC ¶ 61,109 at P 205.

<sup>78</sup> Rehearing Request at 18-28.

<sup>79</sup> See *id.* at 19.

<sup>80</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 33.

<sup>81</sup> See *supra* P 16.

<sup>82</sup> Rehearing Request at 20 (asserting, that in contrast to the alleged lack of evidence from SPP and Tri-State, NPPD presented evidence that Tri-State will be able to reduce its cost for SPP network transmission service by \$4.3 million as a result of joining Zone 17 and that the \$1 million Annual Equalization Payment Tri-State made to NPPD under the NETS Agreement demonstrates that Tri-State was the net beneficiary under that agreement, and claiming that this evidence contradicts the Presiding Judge's and Commission's findings that NPPD received benefits under the NETS Agreement roughly commensurate with the cost shift).

<sup>83</sup> See Complaint Rehearing Order, 165 FERC ¶ 61,005 at P 33 (citing *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004); *ICC v. FERC*, 576 F.3d at 477;

reviewed the record evidence regarding the NETS Agreement, including evidence regarding the benefits that NPPD receives from use of Tri-State's transmission facilities and the countervailing evidence that NPPD cited, and agreed with the Presiding Judge that SPP's proposal to place Tri-State in Zone 17 is consistent with cost causation principles.<sup>84</sup>

23. We affirm this finding and are not persuaded by NPPD's contention that the Commission's interpretation of the NETS Agreement conflicts with or abrogates any portion of the agreement.<sup>85</sup> NPPD characterizes the NETS Agreement as intended to "ensure that benefits from joint use of [Tri-State's and NPPD's] respective, individually-owned systems were commensurate with each party's costs," and contends that it "defies logic" to use that agreement as evidence that NPPD receives benefits from Tri-State's transmission facilities commensurate with a \$4.3 million cost shift.<sup>86</sup> The Commission erred, NPPD maintains, in relying on selective references in the NETS Agreement, as well as the fact that NPPD uses the Tri-State transmission facilities to serve load connected to the Tri-State system, while ignoring that the purpose of the agreement is to ensure that the parties each receive benefits commensurate with their costs.<sup>87</sup>

24. We disagree. In Opinion No. 562, the Commission explained that the \$1 million Annual Equalization Payment made by Tri-State under the NETS Agreement, based on its usage of the NETS Agreement facilities as measured using annual coincident peak, "is just one measure of the relative benefits" the parties receive under the agreement. The Commission further stated that applying the monthly coincident peak method that SPP uses to measure usage shows that, on average, NPPD has averaged 59 percent of the load served under the NETS Agreement, compared to 41 percent for Tri-State.<sup>88</sup> NPPD is mistaken in its assertion that this analysis somehow contradicts or abrogates the NETS

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*Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002); *K N Energy, Inc. v. FERC*, 968 F.2d at 1300; Complaint Order, 162 FERC ¶ 61,213 at PP 61-62; *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 84 n.24 (2007)).

<sup>84</sup> Opinion No. 562, 163 FERC ¶ 61,109 at PP 192-199.

<sup>85</sup> Rehearing Request at 8, 20-27, 40.

<sup>86</sup> *Id.* at 8; *see* NPPD March 17, 2017 Brief on Exceptions at 40-48 (making similar arguments).

<sup>87</sup> Rehearing Request at 21-22.

<sup>88</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 195.

Agreement, as well as in its insinuation that the Commission adopted the monthly coincident peak approach to reach its preferred result.<sup>89</sup> While the parties negotiated their preferred definition of benefits (in this case, annual coincident peak usage) for the purpose of the NETS Agreement, there is no reason that the Commission should be restricted to this measure for the purpose of assessing whether SPP's proposal is consistent with cost causation principles. NPPD provides no reason why the monthly coincident peak method that SPP used is not appropriate for the Commission's FPA section 205 analysis. As confirmed in Opinion No. 562, the Commission applied both metrics, and concluded that the benefits provided to NPPD from use of Tri-State's transmission facilities are at least roughly commensurate with the costs that would be allocated to NPPD's customers as a result of the placement of these transmission facilities in Zone 17.<sup>90</sup> We do not find any error in this analysis.

25. NPPD likewise is mistaken in suggesting that the Commission relied on a phrase taken out of context in *ICC v. FERC* to evade the express intent of the parties to the NETS Agreement with respect to calculation of benefits and costs under that agreement.<sup>91</sup> According to NPPD, because the NETS Agreement expressly quantifies the benefits of sharing the transmission facilities by keeping the costs of the respective facilities separate and requiring a \$1 million payment from Tri-State to NPPD, the Commission must adopt this measure of benefits, and could not have found a \$4.3 million cost shift to be justified.<sup>92</sup> However, the court qualified its finding in *ICC v. FERC* by stating that, "if the Commission cannot quantify the benefits" to the customers, the Commission may nevertheless approve a pricing scheme if "it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate" with the allocated costs.<sup>93</sup> In this case, the Commission was not able to quantify the exact benefits

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<sup>89</sup> Rehearing Request 24-27.

<sup>90</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 195.

<sup>91</sup> Rehearing Request at 23.

<sup>92</sup> *Id.* (quoting *ICC v. FERC*, 576 F.3d at 477); *id.* at 14 (outlining the separate payments for the costs of the facilities built by NPPD and Tri-State).

<sup>93</sup> *ICC v. FERC*, 576 F.3d at 477 ("If the Commission cannot quantify the benefits to the Midwestern utilities . . . 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.").

to NPPD's customers.<sup>94</sup> The Commission found that the \$1 million Annual Equalization Payment constitutes one measure of the relative benefits to the parties under the NETS Agreement, but looked at the entirety of the record evidence to determine that the benefits to NPPD could be greater than this amount.

26. NPPD asserts that even using the monthly coincident peak method to calculate NPPD's and Tri-State's relative usage of the NETS Agreement facilities would yield a \$500,000 Annual Equalization Payment from NPPD to Tri-State that also is not commensurate with a \$4.3 million cost shift from Tri-State to Zone 17 customers.<sup>95</sup> We note that NPPD's repeated references to the \$4.3 million in costs that it alleges will be shifted to Zone 17 customers fails to account for the Commission's finding that this amount will, in fact, be reduced to some extent by known adjustments to Tri-State's ATRR in the next five to seven years.<sup>96</sup> And again, cost allocation "is not a matter for the slide rule,"<sup>97</sup> and does not require the precision NPPD demands. Using NPPD's calculation of the Annual Equalization Payment "demonstrates that both Tri-State and NPPD benefit from these facilities and that there is an 'articulable and plausible reason to believe that the benefits are at least roughly commensurate' with costs in this case."<sup>98</sup> Moreover, Tri-State's load will comprise only a small percentage of Zone 17 load, and the costs will be spread among a larger customer group, resulting in a Zone 17 rate increase of eight percent, without accounting for the known adjustments discussed above. We find this result just and reasonable.

#### 4. Nature of Transmission Service

27. We also deny NPPD's request for rehearing of the Commission's determinations regarding the nature of transmission service used to deliver power to Tri-State load prior

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<sup>94</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 207 ("Although there may not be a specific quantification of the benefits that NPPD received and will continue to receive from the Tri-State transmission facilities, this is unsurprising because the entities treated their transmission facilities under the NETS Agreement as if they were a system owned by a single entity.").

<sup>95</sup> Rehearing Request at 27-28.

<sup>96</sup> Opinion No. 562, 163 FERC ¶ 61,109 at PP 149, 158.

<sup>97</sup> *Colo. Interstate Gas Co. v. FPC*, 324 U.S. at 589.

<sup>98</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 195 (citing *ICC v. FERC*, 576 F.3d at 477).

to Tri-State joining SPP.<sup>99</sup> We disagree with NPPD's contention that the Commission erred in declining to reopen the record to consider SPP's new placement criterion requiring SPP to consider the nature of the transmission service used to deliver power to load prior to a new transmission owner transferring its facilities to SPP, which NPPD argues SPP adopted "mere months" after the issuance of the Initial Decision.<sup>100</sup> The Commission found in Opinion No. 562 that NPPD failed to demonstrate the "extraordinary circumstances" and "change in circumstances" going to "the very heart of the case" necessary to meet the high threshold for reopening the record under the Commission's Rule 716 after the issuance of the Initial Decision.<sup>101</sup> NPPD again presents no such "extraordinary circumstances" on rehearing. According to NPPD, the Presiding Judge and Commission erred in ignoring evidence regarding the nature of transmission service used to serve Tri-State's load prior to its transfer to SPP, "presumably because it was not relevant to the four criteria SPP used to assess Tri-State's zone placement."<sup>102</sup> We continue to find that the record in this proceeding shows that SPP's analysis using the criteria that it applied in this proceeding sufficiently demonstrates that its proposal is just and reasonable.<sup>103</sup> "The fact that SPP has subsequently changed its criteria does not affect that conclusion."<sup>104</sup> Nor does the fact that SPP subsequently changed its criteria suggest that the previous criteria, as applied in this proceeding, were unjust and unreasonable. In repeating arguments already advanced in this proceeding, NPPD fails to persuade us otherwise.<sup>105</sup>

28. Moreover, in addition to declining to reopen the record to consider SPP's new placement criterion regarding the nature of the transmission service, the Commission disagreed with NPPD that the Presiding Judge did not consider evidence on this point. NPPD acknowledges that during the course of this proceeding, it placed into the record substantial evidence relevant to this criterion, i.e., regarding "the nature of transmission

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<sup>99</sup> Rehearing Request at 29-34, 40-41.

<sup>100</sup> *Id.* at 29-31, 40-41.

<sup>101</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 220 (citing *E. Tex. Elec. Coop. Inc. v. Cent. & S. W. Servs. Inc.*, 94 FERC ¶ 61,218, at 61,800 (2001) (quoting *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,624, *order on reh'g*, 56 FERC ¶ 61,361 (1991))).

<sup>102</sup> Rehearing Request at 30.

<sup>103</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 221.

<sup>104</sup> *Id.*

<sup>105</sup> See NPPD December 27, 2017 Motion to Reopen the Record.

service used to serve Tri-State's load prior to its transfer to SPP."<sup>106</sup> Although the Commission found that the Presiding Judge did, in fact, give substantial consideration to the nature of such transmission service, NPPD argues that the discussion of this issue in the Initial Decision shows that the Presiding Judge only considered the NETS Agreement, which represents only a portion of the transmission service used for Tri-State's load prior to its transfer to SPP.<sup>107</sup> However, the fact that the Presiding Judge did not draw NPPD's desired conclusion from this evidence does not mean that this evidence was simply ignored, or that NPPD has been denied due process. Contrary to NPPD's claims, the Presiding Judge did not solely consider the nature of transmission service under the NETS Agreement,<sup>108</sup> and did in fact consider the nature of all services used to deliver power to Tri-State's load.<sup>109</sup>

29. NPPD again states that Basin Electric Power Cooperative (Basin Electric) used SPP Zone 19 transmission service to serve Tri-State load at all but two delivery points prior to Tri-State's transfer to SPP.<sup>110</sup> The Commission addressed this claim in Opinion No. 562 and found that NPPD's argument pertained to commercial integration, and that the location of generation used by Tri-State to serve its load was not relevant to how Tri-State's physical transmission facilities integrate with SPP existing physical transmission system for purposes of zonal placement.<sup>111</sup> While NPPD asserts that the evidence is relevant to SPP's new criterion regarding how Tri-State served its load prior to joining SPP,<sup>112</sup> we note that the Commission further found that this evidence highlighted the interdependent nature of NPPD's and Tri-State's transmission systems, because Tri-State

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<sup>106</sup> Rehearing Request at 30-31 (citing NPPD March 27, 2017 Brief on Exceptions at 30-32; Ex. No. NPP-008 at 18:1-10, 14-16). *See also* NPPD December 14, 2016 Initial Brief at 42-43; NPPD January 9, 2017 Reply Brief at 50-51.

<sup>107</sup> Rehearing Request at 32-34, 41.

<sup>108</sup> *Id.* at 32.

<sup>109</sup> *See* Opinion No. 562, 163 FERC ¶ 61,109 at P 127 (citing Initial Decision, 158 FERC ¶ 63,004 at PP 115, 171, 212, 362, 367-368).

<sup>110</sup> Rehearing Request at 32-33.

<sup>111</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 128.

<sup>112</sup> Rehearing Request at 33.

required the use of NPPD transmission facilities to deliver power from the interface with the Integrated System<sup>113</sup> to Tri-State's load.<sup>114</sup>

30. NPPD also argues that, consistent with SPP's statement in Docket No. ER18-99-000 (which is another zonal placement proceeding) that the placement of transmission facilities should follow the load they serve,<sup>115</sup> Tri-State's facilities should follow its load to Zone 19, the pricing zone from which 38 of 40 Tri-State delivery points were served prior to transfer to SPP. As an initial matter, we note that the Commission has not reached a final determination in the Docket No. ER18-99-000 proceeding, which has been set for hearing. In any event, the Commission's ultimate determination in that proceeding does not dictate the result in the current proceeding, as the Commission has confirmed that it is appropriate to assess the costs attendant to each new transmission owner's zonal integration for compliance with cost causation on a case-by-case basis.<sup>116</sup> Based on the circumstances of this proceeding, we do not believe that the fact that Basin Electric used transmission service on facilities outside of Zone 17 to deliver the output of generating facilities partway to Tri-State load necessitates placement of Tri-State transmission facilities in Zone 19.<sup>117</sup>

## 5. Alternate Placements

31. Finally, we also reject NPPD's revival on rehearing of claims that the Commission erred in rejecting arguments that Tri-State should have been placed either in Zone 19 or

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<sup>113</sup> The Integrated System consisted of the transmission facilities of Western Area Power Administration – Upper Great Plains Region, Basin Electric, and Heartland Consumers Power District, as well as certain facilities included in what is referred to as the Missouri Basin Power Project, which is jointly owned by several entities, including Basin Electric, Heartland, Tri-State, and Missouri River Energy Services. *See* Opinion No. 562, 163 FERC ¶ 61,109 at P 69 n.152.

<sup>114</sup> *Id.* P 129.

<sup>115</sup> Rehearing Request at 33-34 (citing *Southwest Power Pool, Inc.*, 162 FERC ¶ 61,215, at P 10 (2018)).

<sup>116</sup> *See* Complaint Rehearing Order, 165 FERC ¶ 61,005 at P 23.

<sup>117</sup> Settlement judge procedures were terminated on July 13, 2018, and direct testimony has been submitted. *See Sw. Power Pool, Inc.*, Docket No. ER18-99-003 (July 13, 2018) (delegated order terminating settlement procedures).

its own transmission zone.<sup>118</sup> As the Commission explained in Opinion No. 562, the Commission’s charge under FPA section 205 was to determine whether SPP’s proposal was just and reasonable and not unduly discriminatory.<sup>119</sup> The courts have described this role as “essentially passive and reactive,” restricted to “evaluating the confined proposal.”<sup>120</sup> The Commission need only find that the proposal is just and reasonable, not that it is the only or even the most just and reasonable proposal.<sup>121</sup> Having found SPP’s proposal to be just and reasonable, the Commission was not required to consider whether alternative proposals were superior.<sup>122</sup> The Commission nevertheless considered NPPD’s arguments that Tri-State should be incorporated into Zone 19 due to its integration with the Western-RMR facilities and lack of cost impacts,

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<sup>118</sup> See Rehearing Request at 28-29, 40 (arguing that, given the known cost shift to Zone 17 customers, the Commission should not have relied on SPP’s claim that placing Tri-State in Zone 19 or its own zone could result in a future misallocation of costs for facilities built to address reliability issues); NPPD March 17, 2017 Brief on Exceptions at 60-61 (same); Rehearing Request at 8, 34-36, 41 (asserting that the Commission failed to address evidence that placing Tri-State in Zone 19 would result in only a *de minimis* cost shift to Zone 19 customers, which would be completely offset by incremental revenue from transferring load served directly from Tri-State facilities to Zone 19); NPPD March 27, 2017 Brief of Exceptions at 56-60 (same); Rehearing Request at 36-38 (arguing that the Commission erred by failing to consider evidence that Tri-State is highly integrated with Zone 19 through the Western Area Power Administration – Rocky Mountain Region (Western-RMR) facilities, which it argues are likely to be transferred to SPP’s functional control); NPPD March 27, 2017 Brief on Exceptions at 32-35 (same).

<sup>119</sup> Opinion No. 562, 163 FERC ¶ 61,109 at P 145 (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert denied*, 469 U.S. 917 (1984); *OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995); *S. Cal. Edison Co.*, 73 FERC ¶ 61,219, at 61,608 & n.73 (1995)).

<sup>120</sup> *Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017) (citing *City of Winnfield v. FERC*, 744 F.2d 871, 875-76 (D.C. Cir. 1984)).

<sup>121</sup> See *Cities of Bethany*, 727 F.2d at 1136 (describing the Commission’s authority under section 205 of the FPA as “limited to an inquiry into whether the rates proposed by a utility are reasonable – and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs”).

<sup>122</sup> See, e.g., *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009).

but found that these arguments did not support a finding that SPP's proposal was unjust and unreasonable.<sup>123</sup>

32. NPPD's response to this conclusion is to assert that, were SPP required to consider cost shifting when making zonal placement decisions, the relative lack of cost shifts to Zone 19 would virtually ensure its selection as the only just and reasonable choice.<sup>124</sup> As explained above, we do not accept this premise. Having found that SPP's proposal is just and reasonable, and having determined that the costs shifted to Zone 17 customers are consistent with cost causation principles and do not render the proposal unjust and unreasonable, the Commission need not consider whether the relative lack of cost shifts to Zone 19 customers alleged by NPPD renders that zone a more just and reasonable alternative. Accordingly, we deny rehearing and decline NPPD's request to further consider evidence that placing Tri-State in Zone 19 or its own zone would be more appropriate.

The Commission orders:

NPPD's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>123</sup> See Opinion No. 562, 163 FERC ¶ 61,109 at PP 146-148; *see also id.* P 159 (confirming that the Presiding Judge reasonably did not consider the possibility of the Western-RMR facilities being incorporated into SPP, given the lack of record evidence on this issue).

<sup>124</sup> See Rehearing Request at 35-36.