149 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Southwest Power Pool, Inc. Docket No. ER12-959-003

OPINION NO. 535

OPINION AND ORDER ON INITIAL DECISION

(Issued October 16, 2014)

1. At issue in this phase of the proceeding is whether the costs of specific Tri-County Electric Cooperative, Inc. (Tri-County) facilities are eligible for rolled-in rate recovery from Southwest Power Pool, Inc. (SPP) Zone 11 transmission customers pursuant to Attachment AI of the SPP Open Access Transmission Tariff (Tariff). As discussed below, we affirm the Initial Decision.

I. Background

2. SPP is a Regional Transmission Organization that administers its Tariff on a regional basis for transmission facilities located within its boundaries. The costs of transmission facilities in SPP Zone 11 are allocated to customers taking transmission service in SPP Zone 11, including Tri-County and Southwestern Public Service Company (SPS).[1] Tri-County is a non-jurisdictional not-for-profit distribution cooperative with headquarters in Hooker, Oklahoma serving approximately 23,000 customers in Oklahoma, Kansas, Texas, Colorado, and New Mexico. SPS is an electric utility that provides generation, transmission, and distribution services and is a transmission-owning member of SPP that provides transmission services over its transmission facilities under the SPP Tariff.[2]

[1] Tr. 342:13-15; Ex. XES-1 at 19:16-18.

[2] Xcel Energy Services Inc. (Xcel) is the service company affiliate of SPS.

II. Procedural History

3. On February 1, 2012, as supplemented on February 2, 2012, SPP filed revisions to its Tariff to implement Tri-County's proposed formula rate for transmission service. In its filing, SPP asserted that while each transmission owner was responsible for filing rate changes for its zone, SPP was responsible for filings necessary to incorporate such rate changes into the SPP Tariff.[3] SPP maintained that its Tariff revisions consisted solely of Tri-County's proposed formula rate and protocols. SPP stated that the formula rate would be used to calculate the annual transmission revenue requirement (ATRR) and the resulting update to Attachment H, ATRR for Network Integration Service, for Tri-County's transmission facilities. These facilities consist of: Tri-County's Bourk 115/69 kV Transmission Interchange (Bourk Interchange) and the Cole 115/69 kV Transmission Interchange (Cole Interchange); Tri-County's 115 kV and 69 kV power lines; facilities Tri-County identifies as needed to control and protect the 115 kV and 69 kV power lines, and high-voltage side equipment in all of Tri-County's substations (excluding the Bourk and Cole Interchanges), with the exception of transformer isolation equipment.[4]

4. SPP also submitted Tariff revisions to Attachment T, Rate Sheets for Point-to-Point Transmission Service, to incorporate Tri-County's charges for point-to-point transmission service for the SPP Zone 11.[5]

5. Intervenors[6] argued that Tri-County failed to provide sufficient evidence that its facilities meet the requirements of Transmission Facilities as defined in Attachment AI of SPP's Tariff.

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[3] SPP February 1, 2012 Filing at 2.

[4] *Southwest Power Pool, Inc*., 143 FERC ¶ 63,003, at PP 31-36 (2013) (Initial Decision); Exs. TCE-2 and TCE-3.

[5] *Id*. at 4.

[6] Timely motions to intervene and protests were filed by: Occidental Permian, Ltd. and Occidental Power Marketing, L.P. (collectively, Occidental); Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc. (collectively, New Mexico Cooperatives); Xcel, on behalf of SPS; and Westar Energy, Inc. and Kansas Gas and Electric Company.

6. By order issued on March 30, 2012, the Commission accepted SPP's proposed Tariff revisions for filing, without suspension, and set them for hearing and settlement judge procedures.[7] In so doing, the Commission found that the record in the proceeding did not provide enough information to determine the appropriate classification of the facilities that form the basis for the annual revenue requirements proposed by Tri-County. Furthermore, the Commission found that Tri-County's proposed formula rate template and protocols raised issues of material fact that could not be resolved based on the record before it and would be more appropriately addressed in the hearing and settlement procedures.

7. On August 22, 2012, the Chief Judge issued an order bifurcating the proceeding into two phases. Phase I addresses the classification of Tri-County's facilities, while Phase II pertains to Tri-County's proposed formula rate and protocols.[8]

8. Phase I testimony was submitted by Tri-County, Xcel and Commission Trial Staff (Trial Staff) from July 24, 2012 to November 9, 2012, in accordance with the procedural schedule.

9. On December 3, 2012, Tri-County filed a motion for leave to file supplemental prepared direct testimony. On December 4, 2012, prior to commencing the hearing in this proceeding, the Presiding Judge heard oral arguments regarding the motion and denied the motion, citing undue delay, the customers' lack of refund protection, and bad faith as grounds for such denial.[9] Immediately following the Presiding Judge's ruling, Tri-County made an offer of proof stating that the focus of the supplemental direct testimony was to exhibit how two wind generator interconnection agreements between SPP and Tri-County would affect power flows across the Tri-County system into the interstate system.

10. An evidentiary hearing on Phase I began on December 4, 2012, and concluded on December 5, 2012.

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[7] *Southwest Power Pool, Inc.*, 138 FERC ¶ 61,231 (2012) (Hearing Order), *order on reh'g*, 142 FERC ¶ 61,135 (2013) (Rehearing Order).

[8] *Southwest Power Pool, Inc.*, Docket Nos. ER12-959-003 and ER12-959-004, Order of Chief Judge Phasing Proceedings, Suspending Phase II for 60 Days, and Waiving Period for Answers (Aug. 22, 2012).

[9] Tr. 158:5 – 159:8.

11. On March 1, 2013, the Presiding Judge granted Occidental's motion to strike the portions of Tri-County's Reply Brief referencing and relying on the two generator interconnection agreements, finding that the generator interconnection agreement references in Tri-County's Reply Brief violated the December 4, 2012 ruling to exclude supplemental direct testimony.

12. On April 22, 2013, the Presiding Judge issued the Initial Decision. As discussed below, the Presiding Judge found that Tri-County's facilities are not "Transmission Facilities" under Attachment AI or transmission facilities under the Commission's seven factor test, and that none of Tri-County's facilities are, therefore, eligible to be rolled into SPP's Zone 11 ATRR.

13. Subsequent to the evidentiary hearing, on February 21, 2013, the Commission issued the Rehearing Order in Docket No. ER12-959-001, to address the concerns raised by the rehearing parties in April 2012 regarding lack of refund protection. The Commission found that it would not be just and reasonable to allow SPP to continue to pass through Tri-County's proposed rate prior to the Commission's order establishing a just and reasonable rate following hearing and settlement judge proceedings, without refund protection in place to ensure that ratepayers are ultimately paying only a just and reasonable rate. The Commission directed SPP either to submit a compliance filing removing from SPP's Tariff the tariff sheets under which SPP had been collecting Tri-County's rate, or to submit a compliance filing providing for a voluntary refund commitment by Tri-County pending the Commission's decision in this proceeding. On compliance, SPP submitted Tri-County's voluntary refund commitment.

14. On May 22, 2013, Tri-County filed a Brief on Exceptions and Occidental filed a limited Brief on Exceptions. On June 11, 2013, Briefs Opposing Exceptions were filed by: Xcel, on behalf of SPS; Occidental and New Mexico Cooperatives (collectively, Joint Intervenors); Tri-County; and Trial Staff.

15. On November 12, 2013, Tri-County conditionally withdrew as moot, subject to the acceptance of a then-pending notice of cancellation filing, portions of its Brief on Exceptions related to the supplemental direct testimony it had attempted to introduce but that the Presiding Judge excluded.[10] As that condition has been met -- the notice of

[10] Tri-County cites: (1) the then-pending Notice of Cancellation filed on October 28, 2013 in Docket No. ER14-193-000 by SPP of a Generator Interconnection Agreement among SPP as transmission provider; Generation Energy, Inc., as interconnection customer; and Tri-County as transmission owner; and (2) the Commission's October 4, 2013 acceptance, in Docket No. ER13-2189-000, effective August 2, 2013, of the cancellation of a Generation Interconnection Agreement among SPP as transmission provider; EVA WIND, LLC (EVA WIND) as interconnection

(continued..)

cancellation in Docket No. ER14-193-000 has been accepted, Tri-County's withdrawal of Exception 1 (regarding the Presiding Judge's exclusion of Tri-County's supplemental direct testimony) is accepted; we disregard the portions of pages 46-73 of its Brief on Exceptions that reference the EVA WIND and Generation Energy Generator Interconnection Agreements and the new project facilities arising thereunder.

III. Discussion

16. For the reasons discussed below, we will affirm the Initial Decision with respect to the Presiding Judge's findings that Tri-County's facilities are not "Transmission Facilities" under Attachment AI or transmission facilities under the Commission's seven factor test, and that none of Tri-County's facilities therefore are eligible to be rolled into SPP's Zone 11 ATRR.

A. Attachment AI

17. The Presiding Judge explained that Attachment AI is the mechanism by which Transmission Providers determine whether their facilities should be classified as Transmission Facilities, and that only facilities classified as Transmission Facilities under the SPP Tariff can be included in annual ATRRs, which allows their costs to be recovered from all customers in a specific zone.[11] Attachment AI states:

> I. Introduction
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> This Attachment sets forth the definition of Transmission Facilities to be implemented in accordance with the schedule in Section IV of this Attachment. Transmission Facilities shall be the facilities which meet the Criteria specified in this Attachment and which are used by the

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customer; and Tri-County as transmission owner. In light of those two project Generator Interconnection Agreement termination developments, Tri-County conditionally withdraws as moot Exception 1 of its Brief on Exceptions ("The ALJ erred in excluding Tri-County's Supplemental Direct Testimony regarding the effects of imminent wind power generation on Tri-County's transmission system."). In addition, Tri-County conditionally requests that the Commission disregard references to the EVA WIND and Generation Energy Generator Interconnection Agreements, and the new project facilities arising thereunder, discussed in Section III of Tri-County's argument, on pages 46-73 of its Brief on Exceptions.

[11] Initial Decision, 143 FERC ¶ 63,003 at P 108 (citing Ex. XES-1 at 17:3-13).

Transmission Provider to provide transmission service under Part II, Part III and Part V of the Tariff.

II. Criteria for Inclusion of Facilities

Transmission Facilities shall include all facilities that meet the following Criteria:

1. All existing non-radial power lines, substations, and associated facilities, operated at 60kV or above, plus all radial lines and associated facilities operated at or above 60kV that serve two or more eligible customers not Affiliates of each other. Rate treatment for transmission upgrades completed after October 1, 2005 will be determined pursuant to Section 1.3 (h) of this Tariff. For the purpose of the application of this criterion, "open loops" are radial lines. Additionally, at such time an existing radial is incorporated into a looped transmission circuit, that existing radial would be eligible for inclusion in rates on the same bases as the remainder of the facilities in the loop.

2. All facilities that are utilized for interconnecting the various internal zones to each other as well as those facilities that interconnect SPP with other surrounding entities.

3. Control equipment and facilities necessary to control and protect facilities qualifying as Transmission Facilities.

4. For substations connected to power lines qualifying as Transmission Facilities, where power is transformed from a voltage higher than 60 kV to a voltage lower than 60 kV, facilities on the high voltage side of the transformer will be included with the exception of transformer isolation equipment.

5. The portion of the direct-current interconnections with areas outside of the SPP region (DC ties) that are owned by a Transmission Owner in the SPP region, including those portions of the DC tie that operate at a voltage lower than 60 kV.

6. All facilities operated below 60 kV that have been determined to be transmission pursuant to the seven (7) factor test set forth in FERC Order No. 888, 61 Fed Reg. 21,540, 21,620 (1996), or any applicable successor test.

III. Excluded Facilities

The following facilities shall not constitute Transmission Facilities:

1. Generator step-up transformers and generator leads;

2. Radial lines from a generating station to a single substation or switching station on the Transmission System; and

3. Direct Assignment Facilities.

1. Initial Decision

a. Whether Tri-County Has Carried its Burden to Prove that Tri-County's Facilities At Issue, Specified in Exhibit Nos. TCE-2 and TCE-3, Are "Transmission Facilities" Under Attachment AI, Sections II.1 – II.6 of the SPP Tariff Eligible to be Rolled Into the SPP's Zone 11 ATRR, Taking Into Account:

i. Whether Tri-County's facilities are "Transmission Facilities" under the SPP Tariff Attachment AI, Section II.1.

18. The Presiding Judge stated that Tri-County acknowledges that its facilities do not satisfy Attachment AI Criteria 2, 5, or 6, but Tri-County does claim that certain of its facilities meet Criteria 3 and 4, and it claims that all of its facilities at issue in this proceeding satisfy Criterion 1 of Attachment AI.

19. The Presiding Judge explained that of the six Criteria listed in Section II of Attachment AI, Criterion 1 is the most relevant to the facilities at issue in this proceeding. The Presiding Judge stated that the first sentence of that Criterion provides: "[a]ll existing non-radial power lines, substations, and associated facilities, operated at 60kV or above, plus all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other." Criterion 1 provides that any existing non-radial facility operated at 60 kV or above is a Transmission Facility for purposes of Attachment AI, but on the other hand, no radial facility operated at 60 kV or above can be deemed at Transmission Facility unless it serves "two or more eligible customers not Affiliates of each other."[12] A radial line is "'a transmission or distribution

[12] *Id*. P 110.

line that carries power in only direction, similar to a one-way street.'"[13] "'The purpose of a radial line is to provide power to one or more end-users.'"[14]

20. The Presiding Judge found that Tri-County failed to address the status of several sets of facilities listed in Exhibit Nos. TCE-2 and TCE-3. The Presiding Judge concluded that, based on Trial Staff witness Hsiung's unrebutted testimony stating that all of these facilities operate in a radial configuration and serve only Tri-County's loads, the five sets of facilities listed in Exhibit Nos. TCE-2 and TCE-3 do not qualify as Transmission Facilities under Attachment AI.[15] The Presiding Judge also found that all of Tri-County's facilities at issue in this case are radial and none serves more than one eligible customer. Therefore, the Presiding Judge found that none of the facilities in this proceeding qualifies as a Transmission Facility under Attachment AI.[16]

ii. Whether the analysis of Tri-County's facilities should be conducted under Attachment AI of the SPP Tariff on a breaker-to-breaker basis or on a segment-by-segment basis.

21. The Presiding Judge stated that Tri-County witness Swearingen criticized both Xcel witness Fulton and Ms. Hsiung for using a segment-by-segment analysis of Tri-County's facilities instead of a breaker-to-breaker analysis, and argued that the designation of line segments on the one-line diagram is required by North American Electric Reliability Corporation (NERC).[17] The Presiding Judge also stated that Tri-County makes much of the fact that the word "segment" does not appear in Attachment AI. The Presiding Judge found that this observation has no significance, and that Attachment AI also does not contain the word "breaker." The Presiding Judge found that if a segment-by-segment analysis is not supported by the language of Attachment AI, neither is a "breaker-to-breaker" examination.[18]

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[13] *Id*. (quoting Ex. S-1 at 27:2-3).

[14] *Id*. (quoting Ex. S-1 at 27:3-4).

[15] *Id*. P 111.

[16] *Id*. P 112.

[17] *Id*. P 115 (citing Ex. TCE-21 at 8:22-9:8).

[18] *Id*.

22. The Presiding Judge found that Mr. Swearingen's claim that NERC requires the designation of line segments on the one-line diagram is not supported by the evidence. The Presiding Judge points out that Mr. Swearingen agreed that Requirement 18 in Reliability Standard TOP-002-2.1b does not compel the depiction of segments in a one-line diagram, and that it was Tri-County's decision to use segments as the uniform line identifiers.[19] Thus, the Presiding Judge found that Ms. Hsiung's and Mr. Fulton's examination of line segments is appropriate and supported by engineering practice.[20]

23. Trial Staff sought to contradict Mr. Swearingen's engineering arguments, citing a proceeding in Docket No. ER08-313, in which SPS filed a cost of service formula rate for transmission service and proposed to establish which of its facilities were Transmission Facilities under Attachment AI and which were radial. Trial Staff noted that in that proceeding, the parties, including Tri-County, reached a settlement regarding the classification of facilities.[21] With respect to Trial Staff's argument that the Joint Term Sheet in the settlement agreement in Docket No. ER08-313 contradicts Mr. Swearingen's engineering arguments, the Presiding Judge agreed with Tri-County's position that this settlement agreement does not govern the classification of Tri-County's facilities here. The Presiding Judge explained that the Commission has stated in no uncertain terms that "'settlements do not constitute precedents for any purpose, and are inappropriate to use as benchmarks, standards, or points of reference or departure.'"[22] The Presiding Judge also explained that the Commission's Order approving the settlement agreement in Docket No. ER08-313 contained the usual disclaimer that "'[t]he Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.'"[23] Thus, the Presiding Judge found that the settlement agreement in Docket No. ER08-313 does not and cannot govern the classification of Tri-County's facilities in this proceeding.

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[19] *Id*. P 116 (citing Tr. 225:8-12; 226:7-11; Tr. 226:12-24). Reliability Standard TOP-002-2.1b, Requirement 18 requires that "Neighboring Balancing Authorities, Transmission Operators, Generator Operators, Transmission Service Providers and Load Serving Entities shall use uniform line identifiers when referring to transmission facilities of an interconnected network."

[20] *Id*.

[21] *See Xcel Energy Services Inc*., 132 FERC ¶ 61,170 (2010).

[22] *Id*. P 118 (quoting *Flambeau Paper Corporation*, 53 FERC ¶ 61,063, at 61,202 (1990)).

[23] *Id*. (quoting *Xcel Energy Services Inc.*, 132 FERC ¶ 61,170, at P 4 (2010)).

24. The Presiding Judge rejected Tri-County's argument that Trial Staff's segment-by-segment analysis should not be used because Ms. Hsiung's testimony on use of the terms segment, power line, and sections was a "'confusing exchange[;]'" and instead found that the terms line, segment, and section are interchangeable terms of art used by engineers to refer to the same concept – a line on a one-line diagram. The Presiding Judge stated that this concept should not be difficult to grasp. As an example, the Presiding Judge stated that in *Kansas City Power & Light Co. and Aquila, Inc.*,[24] the Commission addressed specific facilities under Attachment AI of the SPP Tariff, and that Kansas City Power & Light Company identified eight "'radial-line segments'" and Aquila, Inc. identified 22 "'radial-line segments,'" that failed to meet the definition of Transmission Facilities of Attachment AI.[25]

25. The Presiding Judge also found that, as noted by Xcel, the broader approach of analyzing facilities breaker-to-breaker offers more opportunity for erroneously rolling-in facility costs that should not be included in the SPP Tariff.[26] The Presiding Judge found that this result is neither just nor reasonable and concluded that the analysis of the facilities at issue in this case is appropriately made on a segment-by-segment basis.

b. Whether Tri-County's 115 kV and 69 kV power lines/power line segments satisfy the following: "All existing non-radial power lines, substations, and associated facilities, operated at 60 kV or above..." (Attachment AI, Section II.1).

26. The Presiding Judge explained that to qualify as a Transmission Facility under this sub-criterion, the facility must not only be operated at 60 kV or above, but it must also be non-radial. The Presiding Judge stated that none of Tri-County's facilities can qualify under this provision because all of the facilities at issue are radial, and the only power lines Tri-County claims as non-radial are the power lines extending from Breakers 4510 and 4340 (line V1) and from Breakers 4520 and 4330 (lines V2 and Y1).[27] The Presiding

[24] 125 FERC ¶ 61,352 (2008) (*KCP&L*).

[25] Initial Decision, 143 FERC ¶ 63,003 at P 121 (citing *KCP&L*, 125 FERC ¶ 61,352 at P 9).

[26] *Id*. P 122 (citing Xcel Initial Brief at 10).

[27] *Id*. P 124 (citing Ex. TCE-4 at 4).

Judge stated that Tri-County admits that all of its remaining 115 kV and 69 kV power lines at issue are radial.[28]

27. The Presiding Judge rejected Tri-County's argument that, because the Bourk and Cole Interchanges are Transmission Facilities under the first Criterion of Attachment AI, all of its power lines are Transmission Facilities as well. The Presiding Judge based this determination on several findings. First, the Presiding Judge found that with the exception of one set of lines that Tri-County incorrectly asserts is looped, Tri-County admits that all of its power lines are radial, and thus the first sub-criterion of Criterion 1 cannot apply to any of Tri-County's lines.[29] Second, the Presiding Judge found that Tri-County's power lines cannot be deemed "associated facilities" and thus this sub-criterion does not apply to any of Tri-County's facilities. Third, the Presiding Judge found that Tri-County's contention that its power lines are Transmission Facilities because its substations are Transmission Facilities turns this analysis on its head because a substation is designated "transmission" when it is attached to transmission lines, not the other way around. Fourth, the Presiding Judge rejected Tri-County's argument that the Bourk and Cole Interchanges receive "transmission voltage power," and that this power flows into Tri-County's 115 kV and 69 kV transmission power lines for ultimate delivery to Tri-County's retail customers. The Presiding Judge stated that whether a facility performs a transmission function is determined by how it operates, not by its voltage level alone. Therefore, the Presiding Judge found that Tri-County's 115 kV and 69 kV power lines/power segments do not qualify as Transmission Facilities.[30]

c. Whether Tri-County's Facilities at the Bourk Interchange and the Cole Interchange satisfy the following: "All existing non-radial power lines, substations, and associated facilities, operated at 60 kV or above…" (Attachment AI, Section II.1).

28. The Presiding Judge found that Tri-County had barely addressed the Bourk Interchange or the Cole Interchange in the context of Attachment AI.[31] The Presiding Judge stated that Mr. Swearingen's testimony focuses on the first sub-criterion of Criterion 1; i.e., that all existing non-radial power lines, substations, and associated

[28] *Id*. (citing Ex. TCE-4 at 5).

[29] *Id*. P 126 (citing Ex. TCE-4 at 4-5).

[30] *Id*. P 130.

[31] *Id*. P 131.

facilities, operated at 60 kV or above. The Presiding Judge explained that both interchanges operate above 60 kV, however, both interchanges also operate within a system composed of radial facilities. The Presiding Judge stated that the only power lines Tri-County claims as non-radial are the power lines extending from Breakers 4510 and 4340 (line V1) and from Breakers 4520 and 4330 (lines V2 and Y1). The Presiding Judge states that Tri-County admits that all of its remaining 115 kV and 69 kV power lines are radial, and the Presiding Judge states that, while lines V1 and V2 do originate from the Bourk Interchange, these lines do not operate in a looped fashion. The Presiding Judge relied on the testimony of Ms. Hsiung, who stated that Tri-County's substations "serve only Tri-County's own loads, and therefore do not meet the requirement of 'serve two or more eligible customers not Affiliates of each other' under Attachment AI."[32] The Presiding Judge found that accepting the argument that Attachment AI requires that all substations operated at or above 60 kV are Transmission Facilities would mean that the Bourk and Cole Interchanges, two substations completely contained within the Tri-County system, would be the only non-radial facilities in a system composed entirely of radial lines.

29. The Presiding Judge stated that while Tri-County claims that, because the Bourk and Cole Interchanges are substations operated at 60 kV or above, they meet the definition of Transmission Facilities, the record to which Tri-County cites provides scant support for this proposition. The Presiding Judge found that Mr. Swearingen's direct testimony makes only a vague reference to "'existing substations … that operate at 60 kV or above,'"[33] and that other than four sentences that state Tri-County's position without analysis or demonstrative evidence, Tri-County cites no other evidence. The Presiding Judge concluded that because the Bourk and Cole Interchanges are associated with radial power lines that do not qualify as Transmission Facilities under Attachment AI, Section II.1, the substations themselves must be considered radial facilities that do not qualify as Transmission Facilities.[34] The Presiding Judge found that neither the Bourk Interchange nor the Cole Interchange qualifies as a Transmission Facility under Attachment AI.[35]

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[32] *Id*. P 133 (quoting Ex. S-1 at 37:16-19).

[33] *Id*. P 135 (quoting Ex. TCE-1 at 5).

[34] *Id*. P 136.

[35] *Id*. P 137.

d. Whether Tri-County's power line/power line segments extending from Breaker 4510 and 4340 and Tri-County's power line/power line segments extending from Breakers 4520 and 4330 satisfy the following: "at such time an existing radial is incorporated into a looped transmission circuit, that existing radial would be eligible for inclusion in rates on the same basis as the remainder of the facilities in the loop." (Attachment AI, Section II.1).

30. The Presiding Judge explained that if a radial line is incorporated into a looped transmission circuit, the radial line would be eligible for inclusion in rates if the looped circuit itself is eligible under Attachment AI. The Presiding Judge stated that Tri-County claims that Tri-County's power line/power line segments extending from Breaker 4510 and 4340 (which includes segments V1 and Y1) and Tri-County's power line/power line segments extending from Breakers 4520 and 4330 (which includes segments V2 and Y1)[36] operate in a looped manner, but Tri-County provided little support for this contention.[37] In particular, the Presiding Judge found that Tri-County provided no analysis demonstrating that these lines operate in a looped configuration, and it provided no power flow studies or any other type of engineering analysis to buttress the validity of its contention.[38]

31. The Presiding Judge stated that Ms. Hsiung analyzed these facilities and found they do not operate in a looped configuration.[39] The Presiding Judge also stated that Mr. Fulton concluded "'[t]his is not a looped configuration, but a parallel set of lines for improved load serving during contingencies.'"[40] The Presiding Judge also found that Mr. Swearingen's reliance on the report on the Arizona-Southern California outages on September 8, 2011 to support his claim that "'parallel' power lines *are* looped power lines'" illustrates his misunderstanding of "loop flow."[41] The Presiding Judge found that

[36] *See* Ex. TCE-4 at 3-4.

[37] Initial Decision, 143 FERC ¶ 63,003 at PP 139-140 (citing Ex. TCE-1 at 5:18-19; Ex. TCE-4 at 2).

[38] *Id*. P 140 (citing Tr. 251:22-24).

[39] *Id*. (citing Ex. S-1 at 30:18-31-11).

[40] *Id*. (quoting Ex. XES-1 at 26:13-14).

[41] *Id*. P 141 (quoting Ex. TCE-21 at 12:13-14).

Mr. Swearingen's reliance on a footnote in Order No. 1000 also does not support Tri-County's claim that certain lines operate in a looped configuration.[42]

32. Further, the Presiding Judge stated that "these lines are radial because the source and sink for both lines is the same" and this means there are common points of failure for the two paths.[43] The Presiding Judge found that because power does not flow both ways on segments VI and V2, the only benefit these lines provide is an alternative path to deliver power from the Bourk Interchange to Tri-County's loads at the Thompson substation.[44]

33. In conclusion, the Presiding Judge found that Tri-County provided no support for its contention that segments V1, V2, and Y1 operate in a looped configuration, and that its case consists entirely of four sentences that merely state its position with no analysis, "and a detour into the irrelevant topic of loop flow."[45] The Presiding Judge stated that Ms. Hsiung and Mr. Fulton did analyze the facilities at issue and found they do not operate in a looped configuration; rather, they serve merely as "'two parallel paths in a radial network because power does not flow both ways.'"[46] The Presiding Judge also stated that Ms. Hsiung provided the results of power flow models to support her position,[47] which Mr. Swearingen did not attempt to refute. Therefore, the Presiding Judge found that Tri-County's power line/power line segments extending from Breakers 4510 and 4340 and Tri-County's power line/power line segments extending from Breakers 4520 and 4330 do not satisfy Criterion 1 of Attachment AI.[48]

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[42] *Id*. P 142 (citing Ex. TCE-21 at 13:3-7; Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at 31,381, n.394 (2011)).

[43] *Id*. P 144 (quoting Ex. XES-1 at 26:14-17).

[44] *Id*.

[45] *Id*. P 145.

[46] *Id*.

[47] *Id*. P 143 (citing Ex. S-1 at 31:12-33:12; Ex. S-1 at 31:5-11; Ex. S-5).

[48] *Id*. P 145.

e. Whether Tri-County's power line/power line segments extending from Breaker 0905 and Tri-County's power line/power line segments extending from Breaker 2010 satisfy the following: "all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other." (Attachment AI, Section II.1).

34. The Presiding Judge explained that this issue focuses on the second sub-criterion of Criterion 1 of Attachment AI, i.e., "all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other." The Presiding Judge stated that Tri-County claims that currently itself and Whiting Petroleum Corporation (Whiting) are the only eligible customers on its system, and that Tri-County provides service from line segment X1.1 at the Dry Trails Delivery Point, and from line segment Z1.8 at the NEHU/Adams Delivery Point.[49]

i. Whether Whiting is an "Eligible Customer" under the SPP Tariff (SPP Tariff, Definitions "E").

35. The Presiding Judge stated that the only reference to this subject in the direct testimony of Mr. Swearingen is his claim that certain unspecified facilities "'satisfy the Transmission Facilities definition'" of Attachment AI because they "'operate at or above 60 kV and serve two or more eligible customers not Affiliates of each other (Attachment AI, Section II.1).'"[50] The Presiding Judge also stated that it appears that Tri-County claims that Whiting is an Eligible Customer because it is a retail customer to whom Tri-County is providing unbundled transmission service that Tri-County voluntarily offered to Whiting. However, the Presiding Judge stated that only two sentences constitute the entirety of Tri-County's direct case that Whiting is an Eligible Customer, and Tri-County does not explain or demonstrate in its direct testimony and exhibits anything about the "unbundled transmission service" it purports to provide Whiting, nor does it provide any details about its "voluntary offer of such service."[51]

[49] *Id*. P 146 (citing Ex. XES-9 at 1; Ex. TCE-4 at 2).

[50] *Id*. P 148.

[51] *Id*. P 148 (citing Ex. TCE-4 at 2).

36. The Presiding Judge stated that "[t]he crux of the Eligible Customer issue is whether Tri-County is actually providing Whiting with unbundled transmission service."[52] The Presiding Judge states that Mr. Swearingen agreed that the SPP Tariff is a FERC-jurisdictional tariff, and he also concurred that to qualify its facilities as Transmission Facilities under Attachment AI, Tri-County would be required to satisfy the definition of Eligible Customer.[53] The Presiding Judge explained that although "unbundled transmission service" is not defined in the SPP Tariff, because that tariff is a FERC-jurisdictional document, and because it was created pursuant to the Commission's mandate that all public utilities that own, control, or operate transmission facilities file an Open Access Transmission Tariff, the interpretive guidelines for the SPP Tariff are found in the seminal documents setting forth that mandate, i.e., Order No. 888 and the Open Access Transmission Notice of Proposed Rulemaking (NOPR) that preceded it.[54] Therefore, the Presiding Judge's analysis of the Eligible Customer issue was discussed in the context of the NOPR and Order No. 888.[55]

37. The Presiding Judge found that Mr. Swearingen testified both that Tri-County's Rate Schedule 47, under which Tri-County provides service to Whiting, meets the Commission's requirements for unbundled transmission service, and that Tri-County is not obligated to meet those requirements because it is "'a small electric cooperative that is not regulated by any state and is not a 'public utility' under the Federal Power Act.'"[56] The Presiding Judge stated that "[a]ccording to Mr. Swearingen, Tri-County's Rate 47, under which Whiting takes service, is an unbundled rate under the SPP Tariff and

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[52] *Id*. P 150.

[53] *Id*. (citing Tr. 307:16-22).

[54] *Id*. (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 31,653-54 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888); NOPR, FERC Stats. and Regs. ¶ 32,514 at 33,049).

[55] *Id*. PP 150-156.

[56] *Id*. P 165 (citing Ex. TCE-21 at 3:9-12).

Commission orders because it provides transparency and flexibility."[57] The Presiding Judge stated that Mr. Swearingen contends that transparency and flexibility are afforded Rate 47 customers because "service and bills rendered under Rate 47 separately set out a transmission charge and a power charge on each bill,"[58] and he cites as proof of the rate's transparency that it separately sets out a facilities charge.

38. The Presiding Judge stated that Mr. Swearingen is unable to cite specific provisions in Order No. 888 and the NOPR or in the Federal Power Act to support his view of "unbundled transmission service." The Presiding Judge also found that Mr. Swearingen could not point to any provisions in the SPP Tariff for his position that "'Rate 47 satisfies the SPP Tariff … requirements for electric cooperatives such as Tri-County.'"[59]

39. The Presiding Judge concluded that Whiting does not have the freedom to procure power from third parties, explaining that Tri-County's Rules and Regulations of Service provide that "'the rates and fees [stated therein, including Rate 47] are based on exclusive use of the service of the Cooperative, and, except in cases where the Member has a contract with the Cooperative for auxiliary or supplementary service, no electric service from another source shall be used by the Member on the same installation in conjunction with the service of the Cooperative . . ..'"[60] The Presiding Judge stated that Tri-County does not allow Whiting or any customer to purchase energy from a source other than Tri-County,[61] nor is power transmitted across Tri-County's system to another system.[62] Further, the Presiding Judge stated that although Mr. Swearingen testified that "'if a consumer wishes to buy their power from another source and access through Tri-County's transmission lines, they always have the option to come and talk to us about it[,]'"[63] Whiting does not currently have this right under Rate 47.

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[57] *Id*. P 157 (citing Tr. at 228:21-23).

[58] *Id*. (quoting Tr. 228:13-25; Ex. TCE-21 at 4:16-17).

[59] *Id*. P 158 (quoting Ex. TCE-21 at 3:17-19; Tr. 261:11-262:6).

[60] *Id*. P 160 (citing Ex. XES-9, Attachment at 46).

[61] *Id*. (citing Tr. 241:11-242:10).

[62] *Id*. (citing Ex. S-8).

[63] *Id*. (quoting Tr. 241:16-19).

40. The Presiding Judge also pointed out that the description of the rate does not include a discussion of how a customer may bypass the Rate 47 charge and take service directly from SPP for the power bought from Tri-County. The Presiding Judge concluded that "Order No. 888 does not define unbundled service as an offer for a customer to appeal to the transmission owner for a waiver of exclusive service provisions[,]" stating "[e]xclusive service is inimical to open access transmission service, no matter how willing the utility may be to discuss special arrangements."[64] Thus, the Presiding Judge found that "Tri-County has cobbled together its own interpretation of unbundled transmission service which has no known antecedent and which has no reference to any type of authoritative documentation."[65] The Presiding Judge stated that Tri-County "applies this extra-Commission construct to define a term in a FERC-jurisdictional document in order to qualify its facilities as transmission under a FERC tariff."[66]

41. The Presiding Judge also stated that "Tri-County's inability to provide a coherent explanation of where unbundled transmission costs are recovered in the rate and on the bill suggests that Tri-County itself did not clearly comprehend at the time its tariff was filed how it recovers transmission costs, and only gained some understanding not long before it filed its rebuttal testimony."[67] Thus, the Presiding Judge found that Tri-County has not demonstrated that it provides Whiting with unbundled transmission service as that term is understood in the context of Order No. 888, and Whiting does not receive open access transmission service from Tri-County. The Presiding Judge found that, on the contrary, the rate under which Whiting takes service requires it to take exclusive service from Tri-County.[68]

42. With respect to Tri-County's argument that it is not required to meet the Commission's requirements for unbundled transmission because it is a small electric cooperative and is not a public utility under the FPA, the Presiding Judge found that Order No. 888 imposes an obligation to provide reciprocal services on non-public utilities, including cooperatives that take advantage of open access transmission service

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[64] *Id*.

[65] *Id*. P 166.

[66] *Id*.

[67] *Id*. P 163.

[68] *Id*. P 164.

on a public utility's system.[69] The Presiding Judge stated that to the extent Tri-County attempts to place its rates under SPP's Tariff, requiring all users in SPP Zone 11 to contribute to the costs of its facilities, Tri-County must offer open access transmission services on a comparable basis to all who use its system, unless it applies for and receives a waiver of the reciprocity provisions of Order No. 888. The Presiding Judge also explained that in the Hearing Order in this proceeding, the Commission found that, while Tri-County is not within the Commission's jurisdiction under FPA section 205, based on prior rulings, "'it is appropriate to apply the just and reasonable standard of FPA section 205 to Tri-County's proposed rates.'"[70]

43. The Presiding Judge also addressed Tri-County's arguments that the term "unbundling," means only separation of energy and transmission costs as opposed to services, finding that Tri-County's interpretation of Order Nos. 888 and 636[71] and *New York v. FERC*[72] do not support its position.[73]

44. The Presiding Judge stated that Tri-County relies on obfuscation and misquotation in its attempt to show that the Commission and the Supreme Court agree with it that unbundling means simply separating out the transmission charge and the energy charge. Further, the Presiding Judge found that Order Nos. 636 and 888 make clear that unbundling in the open access era requires separation of *services*, so that each service carries a discrete rate that potential customers can compare with those offered by other

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[69] *Id*. P 168 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760-762).

[70] *Id*. P 169 (citing Hearing Order, 138 FERC ¶ 61,231 at P 13 (citing *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006)).

[71] *Id.* PP 175-178; 182-184 (citing *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992) *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997); Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760-762).

[72] *Id.* PP 185-188 (citing *New York v. FERC*, 535 U.S. 1 (2002)).

[73] *Id.* PP 175-188.

providers. In addition, the Presiding Judge found that Rate 47 does not set out a transparent rate structure, and it is difficult to discern where the cost of any particular element of a service is recovered. The Presiding Judge also found that Tri-County has a monopoly over use of its facilities, and customers are bound by the "Exclusive Service" provisions to take all of their service from Tri-County.[74]

45. For these reasons, the Presiding Judge found that Tri-County's service to Whiting is not unbundled transmission service, and that Whiting therefore is not an "Eligible Customer" under the SPP Tariff. Therefore, the Presiding Judge found that the power line segments extending from Breaker 0905 and from Breaker 2010 serve only Tri-County's loads and Tri-County cannot satisfy the definition of Transmission Facilities in Attachment AI regarding "all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other."[75]

ii. If Whiting is an "Eligible Customer" under the SPP Tariff (SPP Tariff, Definitions "E"), whether the entire power line extending from Breaker 0905 and the entire power line extending from Breaker 2010 should be classified as Transmission Facilities under I.A.5 above.

46. The Presiding Judge's finding that Whiting is not an Eligible Customer summarily disposed of this issue.[76]

f. Whether Tri-County's equipment used to control and protect those 115 kV and 69 kV power lines that have been found to be Transmission Facilities under Attachment AI are "[c]ontrol equipment and facilities necessary to control and protect facilities qualifying as Transmission Facilities" (Attachment AI, Section II.3).

47. The Presiding Judge explained that Criterion 3 under Attachment AI provides that Transmission Facilities include "[c]ontrol equipment and facilities necessary to control and protect facilities qualifying as Transmission Facilities."[77] The Presiding Judge stated

[74] *Id*. P 200.

[75] *Id*. PP 170, 201.

[76] *Id*. P 202.

[77] *Id*. P 203 (citing Ex. S-2 at 3).

that under this Criterion, only equipment and facilities associated with Transmission Facilities can themselves qualify as Transmission Facilities. The Presiding Judge found that because none of the Tri-County 115 kV and 69 kV power lines at issue can be found to qualify as Transmission Facilities under Attachment AI, none of the control equipment and facilities associated with those power lines qualifies as Transmission Facilities. The Presiding Judge relied on Trial Staff's demonstration in its Initial Brief that none of the "control equipment and facilities" at issue can be classified as Transmission Facilities, because none of the facilities they purportedly control and protect is a Transmission Facility.[78] The Presiding Judge stated that Tri-County does not contradict this reasoning, and pointed out that Tri-County's statement that the power lines are Transmission Facilities does not prove they are Transmission Facilities.

48. The Presiding Judge found that the power lines at issue do not satisfy any definition of Transmission Facility under Attachment AI. Therefore, the Presiding Judge found that even if Tri-County is correct that the "control facilities" are needed to "control and protect" the 115 kV and 69 kV lines, the control facilities likewise are not Transmission Facilities under Attachment AI.[79]

g. Whether the high-voltage-side equipment in Tri-County's substations (excluding Bourk Interchange and Cole Interchange), satisfy the following under Attachment AI, Section II.4: "For substations connected to power lines qualifying as Transmission facilities, where power is transformed from a voltage higher than 60 kV to a voltage lower than 60 kV, facilities on the high voltage side of the transformer will be included with the exception of transformer isolation equipment."

49. The Presiding Judge stated that because none of Tri-County's power lines at issue qualifies as Transmission Facilities under Attachment AI, the transformers in substations connected to those lines also do not qualify as Transmission Facilities.[80] The Presiding Judge found that Tri-County's only argument to support including as Transmission Facilities equipment on the high side of the transformer is that "Tri-County's power lines are qualifying 'Transmission Facilities.'" Based on the finding that none of Tri-County's transmission lines qualifies as a Transmission Facility, the Presiding Judge found that the

[78] *Id*. P 204 (citing Trial Staff Initial Brief at 49).

[79] *Id*. P 205.

[80] *Id*. P 206.

high-voltage-side facilities in Tri-County's substations also do not meet the requirements necessary to be classified as Transmission Facilities under Attachment AI.[81]

50. Based upon due consideration of the evidence presented, the Presiding Judge found that Tri-County failed to carry its burden to prove that Tri-County's facilities at issue, specified in Exhibit Nos. TCE-2 and TCE-3, are "Transmission Facilities" under Attachment AI, Section II.1 – II.6 of the SPP Tariff eligible to be rolled into the SPP's Zone 11 ATRR.[82]

2. Briefs on Exceptions and Briefs Opposing Exceptions

51. In its Brief on Exceptions, Tri-County argues that the Initial Decision erred in finding that none of Tri-County's facilities should be included as a Transmission Facility under the SPP Tariff. Specifically, Tri-County argues that the Initial Decision erred in finding that the Bourk and Cole Interchanges could not be classified as Transmission Facilities, because the Initial Decision mistakenly determined that the first clause of the first sentence of Attachment AI, Section II.1 governs *non-radial facilities* while the second clause deals with radial facilities.[83] Tri-County argues that based on this improper understanding, the Initial Decision wrongly concluded "'that *any existing non-radial facility* operated at 60 kV or above is a Transmission Facility for purposes of Attachment AI.'"[84] Tri-County contends that Attachment AI does not set out such a requirement; rather, the first clause of Attachment AI expressly permits the inclusion of substations if they are in existence and operate at or above 60 kV.

52. Tri-County argues that the record shows without contradiction that Tri-County's Bourk and Cole Interchanges operate at 60 kV or above.[85] Tri-County notes that its Thompson and Seaboard (Boar Sub) Substations also satisfy the Criteria required under

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[81] *Id*. P 207.

[82] *Id*. P 208.

[83] Tri-County Brief on Exceptions at 37 (quoting Initial Decision, 143 FERC ¶ 63,003 at P 110).

[84] *Id*. (quoting Initial Decision, 143 FERC ¶ 63,003 at P 110) (emphasis added by Tri-County).

[85] *Id*. at 38 (citing Ex. TCE-1 at 5; Ex. TCE-4 at 1-2; Ex. TCE-21 at 20-24; *see also* Ex. TCE-3; Ex. TCE-6).

the first clause of the first sentence of Attachment AI, Section II.1 for inclusion as Transmission Facilities (i.e., as an existing substation facility that operates above 60 kV).[86]

53. According to Tri-County, no participant refuted that the Bourk and Cole Interchanges operate as substations at or above 60 kV. Moreover, Tri-County asserts that the Initial Decision ignored uncontroverted evidence elicited from Xcel's witness Mr. Fulton confirming that Tri-County's Bourk and Cole Interchanges receive high voltage power from the SPS transmission system, and that the power remains above 60 kV as the power flows into and through these transmission interchanges on Tri-County's system and continues to flow into Tri-County's high voltage power lines.[87] Tri-County argues that the Initial Decision's omission of any discussion of Mr. Fulton's testimony on the Bourk and Cole Interchanges "speaks volumes" and demonstrates that the Initial Decision cannot be reconciled with the plain meaning of Attachment AI with respect to these substation facilities.[88]

54. Tri-County contends that the Initial Decision did not determine that the Bourk and Cole Interchanges do not operate as substations at or above 60 kV; rather, it ignored the plain meaning of Attachment AI and centered its ruling on concerns not found in the Attachment AI Criteria. Tri-County argues that the Presiding Judge's concern with finding the Bourk and Cole Interchanges to be the only non-radial facilities in a system composed entirely of radial lines is unfounded.[89] Tri-County further argues that the Initial Decision erred in holding that the Bourk and Cole Interchanges themselves must be considered radial facilities that do not qualify as Transmission Facilities because they are associated with radial power lines that do not qualify as Transmission Facilities.[90] Tri-County contends that this reasoning improperly conflates the "radial lines and associated facilities" requirement in the second clause of the first sentence of Attachment AI, Section II.1, with the Criteria set out in the first clause of this sentence.

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[86] *Id*. at n.152 (citing Ex. S-4 at 1-2; Ex. TCE-1 at 5; Ex. TCE-2 at 3-4; Ex. TCE-3 at 2; Ex. TCE-4 at 1-3; Ex. TCE-6).

[87] *Id*. at 39 (citing Tr. at 372:15 – 373:12; 377:7 – 380:8 (Bourk a/k/a Texas County); 380:12 – 384:10 (Cole)).

[88] *Id*.

[89] *Id*. at 39-40 (citing Initial Decision, 143 FERC ¶ 63,003 at P 134).

[90] *Id*. n.156 (citing Initial Decision, 143 FERC ¶ 63,003 at P 126).

Tri-County argues that the term "radial" has no application to substations, and that "it is difficult to know what to make of all of this non sequitur."[91]

55. In addition, Tri-County argues that it showed that the Bourk and Cole Interchanges are the same transmission interchanges Tri-County purchased from SPS in 2006, which SPS had operated and classified as transmission.[92] Tri-County contends that the Initial Decision ignored record evidence in which Mr. Fulton described interchange facilities as "*interconnecting points on the transmission system* where lines with different voltage are transformed," and explained that SPS currently classifies the substation facilities it retained at both Bourk and at Cole as transmission.[93] According to Tri-County, Mr. Fulton's description of the path of power flows from the SPS system into the Tri-County system via the Bourk and Cole Interchanges refutes the Initial Decision determination that these substation facilities, solely as a consequence of a change in ownership, are not "attached to transmission lines." Tri-County argues that, on the contrary, the classification of power lines does not affect the classification of substations operated at 60 kV or above under Attachment AI, Section II.1, but rather this relationship is actually found in Section II.4 dealing with substations transforming power from high voltage (60 kV or above) to low-voltage (below 60 kV).[94] Tri-County argues that in contrast to Section II.4, Section II.1 does not require that substations be operated at 60 kV or above to be "connected to power lines qualifying as Transmission Facilities."[95]

56. Tri-County argues that the Initial Decision erred in finding that Tri-County's power line/power line segments extending from Breakers 4510 and 4340 and Tri-County's power line/power line segments extending from Breakers 4520 and 4330 facilities do not operate in a looped configuration and thus are not Transmission Facilities under Attachment AI, Section II.1.[96] Tri-County argues that it showed that: (1) line sections (or segments) VI and V2 both originate at the Bourk Interchange; (2) line section VI extends from Bourk to the Thompson Substation; (3) line section V2 extends

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[91] *Id*. n.156.

[92] *Id*. at 40 (citing Ex. TCE-1 at 4).

[93] *Id*. (quoting Ex. TCE-34 at 8-9, n.1; Tr. at 385:13-23) (emphasis added by Tri-County).

[94] *Id*. at 41 (citing Ex. TCE-7 at 3).

[95] *Id*. (quoting Attachment AI, Section II.1).

[96] *Id*.

from Bourk to Seaboard (Boar Sub); and (4) line section YI extends from Seaboard (Boar Sub) to the Thompson Substation, completing a physical loop.[97] According to Tri-County, because no party has disputed the existence of this physically looped configuration of lines, Tri-County established that it satisfied the plain, ordinary, and reasonable meaning of Attachment AI, Section II.1.[98] Tri-County contends that the Initial Decision wrongly rejected this showing, however, reasoning that power on these lines does not flow in both directions.[99]

57. According to Tri-County, the Initial Decision departed without explanation from the language of Attachment AI by imposing a requirement that power must flow in both directions over the lines of the proposed loop, and that this language does not appear in Attachment AI, Section II.1. Tri-County argues that the relevant language states "'at such time an existing radial is incorporated into a looped transmission circuit, that existing radial would be eligible for inclusion,'"[100] and there is no suggestion that the "existing radial" referred to must support power flow in both directions. Tri-County contends that if this were the requirement, then the "existing radial" would no longer be a radial line.

58. Tri-County also contends that the Initial Decision's insistence on bi-directional power flows effectively vitiates the clear purpose of the provision for looped lines to augment the definition of Transmission Facilities and renders that provision redundant to the first section of Section II.1. Tri-County argues that such a reading is erroneous under the basic principles of contract interpretation and cannot be sustained.[101] Tri-County argues that by contrast, its showing is consistent with the Commission's recent discussions in Order No. 1000[102] and in a joint Commission/NERC staff report stating

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[97] *Id*. at 42 (citing Exs. TCE-1 at 5; TCE-2 at 3-4; TCE-4 at 2; TCE-21 at 12-13; TCE-6; S-4 at 1-2; Tr. 248:2 -249:1).

[98] *Id*.

[99] *Id*. (citing Initial Decision, 143 FERC ¶ 63,003 at P 143 (quoting Ex. S-1 at 33:8-12)).

[100] *Id*. (quoting Attachment AI, Section II.1).

[101] *Id*. at 43 (citing *Devon Power LLC*, 117 FERC ¶ 61,133, at 61,727 (2006); *Midwest Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,108, at P 22 (2006) (citing *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089, at 61,166 (1984)).

[102] *Id*. at 44 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 506, n.394; *see also* Ex. TCE-21 at 13).

that parallel power lines are looped lines under "'the laws of physics.'"[103] Tri-County concludes that the Initial Decision failed to understand that the physics of looped power line flows necessarily includes power flows along lines that form parallel paths, and looped power not restricted to flows "between unrelated but interconnected systems" alone. Tri-County argues that in *Arizona-Southern California Outages on September 8, 2011: Causes and Recommendations*, NERC and Commission staff reported that "'[l]oop flow refers to power flow along any transmission paths that are in parallel with the most direct geographic or contract path.'" Tri-County also maintains that in Order No. 1000, the Commission explained that its reasoning for equating "loop flows" with "parallel flows" is grounded in physics.[104]

59. Tri-County excepts to the Initial Decision's finding that because "'the power lines at issue do not satisfy any definition of Transmission Facility under Attachment AI[,]…the control facilities likewise are not Transmission Facilities under Attachment AI.'"[105] Tri-County contends that the Initial Decision did not question that the facilities Tri-County identified in its testimony and shown on Exhibit No. TCE-3 are needed 'to control and protect'" the 115 kV power lines Tri-County contends are Transmission Facilities under Attachment AI. Therefore, Tri-County argues that to the extent it has demonstrated that these 115 kV and 69 kV power lines should be classified as Transmission Facilities under Attachment AI and/or under the Commission's seven factor test, the facilities associated with these lines described in Exhibit No. TCE-3 are also Transmission Facilities under Attachment AI.[106]

60. Further, Tri-County argues that the Initial Decision erred in finding that, because "none of Tri-County's transmission lines qualifies as a transmission facility… the high-voltage-side facilities in Tri-County's substations also do not meet the requirements necessary to be classified as Transmission Facilities under Attachment AI."[107] Tri-County argues that Attachment AI, Section II.4, provides that: "[f]or substations

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[103] *Id*. at 43 (quoting *Arizona-Southern California Outages on September 8, 2011: Causes and Recommendations*, at p. 22, n.26 (2012); Ex. TCE-30 at 14, n.26).

[104] *Id*. at 44 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at 31,381, n.394 (quoting *Indiana Michigan Power Co. and Ohio Power Co*., 64 FERC ¶ 61,184, at 62,545 (1993); Ex. TCE-21 at 13).

[105] *Id*. (quoting Initial Decision, 143 FERC ¶ 63,003 at P 205).

[106] *Id*. at 45.

[107] *Id*. (quoting Initial Decision, 143 FERC ¶ 63,003 at P 207).

connected to power lines qualifying as Transmission Facilities, where power is transformed from a voltage higher than 60 kV to a voltage lower than 60 kV, facilities on the high voltage side of the transformer will be included with the exception of transformer isolation equipment." Tri-County contends that the substation facilities shown on Ex. TCE-3 meet this requirement.[108] Tri-County argues that the Initial Decision did not question that all of Tri-County's substations listed on Exhibit No. TCE-3 (excluding the Bourk and Cole Interchanges) transform a voltage greater than 60 kV to a voltage less than 60 kV. Therefore, Tri-County argues that to the extent it has demonstrated that its 115 kV and 69 kV power lines should be classified as Transmission Facilities under Attachment AI and the Commission's seven factor test, the high voltage equipment in these substations described in Exhibit No. TCE-3, with the exception of transformer isolation equipment, should also be classified as Transmission Facilities under Attachment AI, Section II.4.

61. In their Brief Opposing Exceptions, Joint Intervenors argue that the Initial Decision is correct in finding that Tri-County has not carried its burden to prove that Tri-County's facilities at issue are Transmission Facilities under Attachment AI. Joint Intervenors state that the evidence in the record shows that the Bourk and Cole Interchanges are connected to radial lines, which do not qualify as Transmission Facilities under Attachment AI, and that the interchange facilities do not meet the requirement of Attachment AI to "serve two or more eligible customers not Affiliates of each other."[109] Joint Intervenors argue that Tri-County appears to press the theory that substation facilities may be classified as Transmission Facilities under Attachment AI solely on the basis of their voltage level and regardless of the lines to which they are connected. Joint Intervenors agree with the Initial Decision that Tri-County's position would lead to the absurd result that the Bourk and Cole Interchanges, two substations completely contained within the Tri-County system, would be the only non-radial facilities in a system composed entirely of radial lines.[110] Joint Intervenors argue that under Tri-County's theory, if none of Tri-County's lines are Transmission Facilities, save for two isolated substations among other radial facilities, SPP could provide transmission service over these islanded facilities, and SPP Zone 11 ratepayers must pay for their costs.

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[108] *Id*.

[109] Joint Intervenors Brief Opposing Exceptions at 25 (citing Initial Decision, 143 FERC ¶ 63,003 at PP 133-134).

[110] *Id*. at 26 (citing Initial Decision, 143 FERC ¶ 63,003 at P 134).

62. Joint Intervenors take issue with Tri-County's suggestion that the Initial Decision ignores the fact that the Bourk and Cole Interchanges were formerly owned by SPS and were accounted for as transmission at that time, and that a change in ownership should not affect the classification of these facilities. According to Joint Intervenors, Tri-County's suggestion ignores the evidence in the record regarding SPS's sale of the facilities as part of a larger transaction to exit the retail delivery business in Oklahoma, before any Attachment AI analysis of the facilities. Joint Intervenors state that SPS acknowledged that it previously booked as transmission approximately $5 million of the facilities it sold to Tri-County, and that SPS generally treated all 69 kV and above facilities as transmission plant. Therefore, Joint Intervenors argue that because the Bourk and Cole Interchanges were related to 69 kV lines classified as transmission at the time, the interchange facilities were also classified as transmission.[111]

63. Joint Intervenors argue that the fact that SPS classified the Bourk and Cole Interchanges as transmission is not relevant to the Attachment AI analysis because the Commission has recognized that the use of a facility may change over time, from local distribution to transmission, and vice versa,[112] and because these facilities were not classified as transmission by SPS under the terms of Attachment AI when they were owned by SPS. Joint Intervenors explain that Attachment AI is intended to establish a uniform basis for inclusion of transmission facilities in SPP transmission rates.[113] Joint Intervenors point out that Tri-County never challenged Mr. Fulton's explanation that how a Transmission Owner classified transmission prior to application of Attachment AI is irrelevant here.[114] Joint Intervenors also contend that, after Tri-County argued in its brief for a "plain meaning" approach to interpreting Attachment AI, Tri-County reverses course and argues that a prior owner's use of facilities is relevant to application of the Attachment AI Criteria. Joint Intervenors state that such Criteria are absent from Attachment AI and would be contrary to the purposes of Attachment AI.

64. Joint Intervenors also agree with the Initial Decision's conclusion that the power line segments extending from Breakers 4510 and 4340 (segment VI) and the power line segments extending from Breakers 4520 and 4330 (segment V2) do not operate as a

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[111] *Id*. at 27 (citing Ex. XES-1 at 5:9-18; 12:9-13).

[112] *Id*. at 28 (citing *MidAmerican Energy Co.*, 90 FERC ¶ 61,105 (2000); *MidAmerican Energy Co.*, 140 FERC ¶ 61,028 (2012)).

[113] *Id*. (citing *American Elec. Power Serv. Corp.*, 125 FERC ¶ 61,296, at P 2 (2008); *KCP&L*, 125 FERC ¶ 61,352 at P 2).

[114] *Id*. (citing Ex. XES-1 at 13:2-5).

looped circuit, and thus are not Transmission Facilities under Attachment AI.[115] Joint Intervenors state that the Initial Decision is well-founded on uncontested evidence in the record, which demonstrates that power flows only one way on segment VI and on segment V2, from the direction of the delivery points to the direction of Tri-County load, and that power does not flow bi-directionally on segment V1 and V2.[116] Joint Intervenors contend that the sum total of Tri-County's evidence of the flows on segments VI and V2 was Mr. Swearingen's testimony that "'[t]he facilities are non-radial because they operate in a looped configuration.'"[117] Joint Intervenors argue that Tri-County provided no power flow analysis or other engineering analysis on this point, and as the Initial Decision noted, has never addressed the evidence in this proceeding including the testimony of Xcel witness Fulton and Trial Staff witness Hsiung that the Tri-County facilities operate radially.[118] According to Joint Intervenors, Tri-County concedes that the single radial line feeding power to segments V1 and V2 is not a Transmission Facility under Attachment AI, and the record shows that both segment V1 and segment V2 have a common point of failure.[119]

65. Joint Intervenors also challenge Tri-County's position that the fact-finder should disregard the operational evidence and focus on the fact that segment V1 and segment V2 are arranged in the shape of a looped transmission facility. Joint Intervenors disagree with Tri-County that this is the "'plain, ordinary, and reasonable meaning of Attachment AI, Section II.1.'"[120] Joint Intervenors also disagree with Tri-County's assertion that Attachment AI does not define a "looped" facility as one with bi-directional flows.[121] Joint Intervenors respond that Tri-County's argument for a layman's "plain

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[115] *Id*. at 29 (citing Initial Decision, 143 FERC ¶ 63,003 at PP 138-145; *Detroit Edison Co*., 105 FERC ¶ 61,209, at P 18 (2003)).

[116] *Id*. (citing Ex. S-1 at 31:5-11, Ex. XES-1 at 26:16-17; Ex. XES-5; Ex. XES-1 at 23:21-24:3).

[117] *Id*. at 30 (quoting Ex. TCE-1 at 5:18-19).

[118] *Id*. (citing Tr. at 251:22-24; Initial Decision, 143 FERC ¶ 63,003 at PP 142, 145).

[119] *Id*. at 31 (citing Initial Decision, 143 FERC ¶ 63,003 at P 144 (citing Tr. at 251:7-17)).

[120] *Id*. (quoting Tri-County Brief on Exceptions at 42).

[121] *Id*. (citing Tri-County Brief on Exceptions at 43).

meaning" interpretation of the Attachment AI Criteria should be rejected because Tri-County's position has always been that lines V1 and V2 operate as a looped transmission circuit.[122] Joint Intervenors contend that, Tri-County is simply attempting to re-frame the issue and argue that the important consideration is the appearance of segment V1 and segment V2 on a one-line diagram. Joint Intervenors argue that the issue tried at hearing, however, was whether segment V1 and segment V2 operate in a looped configuration. They argue that all of the evidence establishes that the facilities do not operate in a looped configuration, and that Tri-County does not challenge that evidence.

66. With respect to Tri-County's claims that the Initial Decision erroneously disregards Tri-County's arguments that Commission policy holds that "'parallel lines are looped lines,'" [123] Joint Intervenors argue that in none of the citations provided by Tri-County did the Commission make such a determination.[124] Joint Intervenors argue that instead, these references discuss the concept of loop flows, which "'is simply the difference between the actual and scheduled flows on a line or over an interface.'"[125] Joint Intervenors argue that loop flows are irrelevant to a determination of whether specific lines are looped transmission lines. Joint Intervenors state that Tri-County offered no power flow analysis, and there are no facts in the record that its facilities experience loop flows from SPP Zone 11 Transmission Facilities. According to Joint Intervenors, Tri-County does not schedule any flows because it does not render any transmission service; rather, Tri-County simply supplies power to its retail customers as load increases or decreases on its distribution system. Joint Intervenors state that the fact that a facility may experience loop flow does not show that it is looped and integrated with the transmission system.[126]

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[122] *Id*. (citing Tri-County Initial Brief at 15-17; Ex. TCE-1 at 5:18-19; Ex. TCE-2 at 3-4; Ex. TCE-21 at 12:3-13:19).

[123] *Id*. at 32 (quoting Tri-County Brief on Exceptions at 43-44).

[124] *Id*. (citing Tri-County Brief on Exceptions at 43-44 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 31,381 n.394 and Ex. TCE-30)).

[125] *Id*. (quoting *N.Y. Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,049, at 61,259 (2009)).

[126] *Id*. (citing *Southern California Edison Co*., 117 FERC ¶ 61,103, at P 87 (2006)).

67. Joint Intervenors argue that the Initial Decision is correct in finding that because the Tri-County power lines/power line segments do not satisfy any definition of Transmission Facility under Attachment AI, the control facilities likewise are not Transmission Facilities under Attachment AI. Therefore, Joint Intervenors argue that Tri-County's exception to the Initial Decision's finding on this issue is moot.[127]

68. Joint Intervenors also agree with the Initial Decision's conclusion that because none of Tri-County's lines can be classified as Transmission Facilities under Attachment AI, the high voltage side of Tri-County's substations cannot be classified as Transmission Facilities. Joint Intervenors argue that as with Tri-County's control equipment, the Initial Decision reaches the correct conclusion regarding classification of Tri-County's facilities under Attachment AI, and Tri-County's exception is therefore moot. [128]

69. In its Brief Opposing Exceptions, Trial Staff argues that at this point, Tri-County has essentially abandoned its efforts to show that its facilities meet the Attachment AI Criteria, and it chose not to pursue any of its previous arguments that the vast majority of the facilities at issue satisfy the SPP Tariff requirements. Trial Staff states that the Initial Decision refers to numerous sets of facilities that were included in a Tri-County list of facilities at issue, but which Tri-County failed to address at all in testimony. Trial Staff argues that Tri-County did not mention these facilities in its Brief on Exceptions, and it did not except to the Initial Decision's determination that these facilities do not qualify as Transmission Facilities under Attachment AI.[129] As an example, Trial Staff states that Tri-County expended considerable effort in attempting to demonstrate that certain of its facilities satisfy the second clause of the first sentence of Criterion 1, i.e., "all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other." Trial Staff argues that the long discussion in the Initial Decision shows the extraordinary lengths to which Tri-County went to prove this illogical proposition, and the voluminous counterarguments the other participants were required to make in opposition. However, Tri-County does not mention these facilities in its Brief on Exceptions and does not except to the Initial Decision's finding that Tri-County did not meet its burden with regard to these facilities.[130]

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[127] *Id*. at 33.

[128] *Id*. at 34.

[129] Trial Staff Brief Opposing Exceptions at 38 (citing Initial Decision, 143 FERC ¶ 63,003 at P 111).

[130] *Id*. at 39 (citing Initial Decision, 143 FERC ¶ 63,003 at PP 146-202).

70. Trial Staff argues that Tri-County's Brief on Exceptions limits its Attachment AI case to a few facilities and advances essentially the same arguments dismissed by the Initial Decision. Trial Staff argues that after beginning this proceeding by attempting to show that all of its facilities are Transmission Facilities under Attachment AI, Tri-County abandons that approach and now advances the notion that the Commission will decide that all of its facilities are transmission based on the possibility that future facilities to support future generation projects may under some circumstances allow some power to leave the Tri-County system.[131]

71. Trial Staff agrees with the Initial Decision's finding that neither the Bourk Interchange nor the Cole Interchange qualifies as a Transmission Facility under Attachment AI, because all of the power lines attached to these substations are radial lines.[132] With respect to this issue, Trial Staff argues that Tri-County parses the applicable language in Attachment AI in a manner that warps its intent, because it appears to rest its arguments solely on the voltage level at which the substations operate.[133] Trial Staff argues that the plain meaning of the first clause of Criterion 1 of Attachment AI is to declare that all existing non-radial facilities and the equipment that supports them are Transmission Facilities. Trial Staff argues that the Initial Decision properly takes the first clause of the first Criterion as a whole, finding that "substations" means those substations associated with non-radial power lines. Trial Staff contends that Tri-County's argument comes down to asserting that the Bourk and Cole Interchanges are Transmission Facilities solely due to the voltage level at which they operate, and that Tri-County has provided no reasonable rationale for this position. Thus, Trial Staff argues that the Commission should uphold the Initial Decision and find that the Bourk and Cole Interchanges do not qualify as Transmission Facilities under Attachment AI.

72. Trial Staff agrees with the Initial Decision's finding that Tri-County's power line/power line segments extending from breakers 4510 and 4340 and Tri-County's power line/power line segments extending from breakers 4520 and 4330 facilities do not satisfy Criterion 1 of Attachment AI. Trial Staff states that Tri-County excepts to this determination, asserting that the Presiding Judge's quotation from Trial Staff's testimony that "'the power line does appear to have a looped configuration on the One Line Diagram'" means that the lines at issue satisfy Attachment AI, because the word "loop" appears in both documents. Trial Staff argues that Tri-County offers no evidence to

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[131] *Id*.

[132] *Id*. at 40 (citing Initial Decision, 143 FERC ¶ 63,003 at PP 134, 136).

[133] *Id*. at 40-41.

support its position and ignores the substantial testimony relied upon by the Initial Decision.

73. Trial Staff argues that Trial Staff witness Hsiung analyzed these facilities and found that, while they may appear to be looped on the One Line Diagram, they do not operate in a looped fashion.[134] Trial Staff argues that Tri-County's statement that "'[n]o party has disputed the existence of this physically looped configuration of the lines'" with a citation to a misleadingly edited quotation from Ms. Hsiung, is disingenuous.[135] Trial Staff states that, as Ms. Hsiung's testimony demonstrates, the lines at issue may appear to be looped, but in fact they are not.[136] Trial Staff contends that Tri-County completely ignores this compelling evidence and offers obfuscation in return, arguing that looped facilities do not need to "support power flows in both directions."[137] Trial Staff argues that Tri-County provides no support for this notion and has essentially conceded that power flows in only one direction on these facilities. Trial Staff states that, as the Initial Decision notes, "'loop flow' is an entirely different phenomenon from the situation in which two lines owned by the same utility are intentionally operated in parallel to provide improved load serving only during contingencies.'"[138] Trial Staff also argues that the documents Tri-County cited in support of its position refer to a completely unrelated phenomenon,[139] and that Tri-County did not perform any power flow studies or other technical analyses.

74. Trial Staff agrees with the Initial Decision's finding that the control facilities at issue are not Transmission Facilities under Attachment AI because the power lines at issue do not satisfy any definition of Transmission Facility under Attachment AI.[140] Trial Staff states that the only power lines Tri-County still claims qualify as Transmission

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[134] *Id*. at 43-44 (citing Ex. S-1 at 30:18-31:11).

[135] *Id*. at 44 (citing Tri-County Brief on Exceptions at 42).

[136] *Id*. (citing Ex. XES-1 at 26:13-14).

[137] *Id*. (quoting Tri-County Brief on Exceptions at 42-43).

[138] *Id*. at 45 (quoting Initial Decision, 143 FERC ¶ 63,003 at P 142).

[139] *Id*. (citing *Arizona-Southern California Outages on September 8, 2011: Causes and Recommendations*, at p.22, n.26 (2012); Order No. 1000, FERC Stats. & Regs. ¶ 31,323).

[140] *Id*. at 46-47.

Facilities under any Criterion of Attachment AI are the V1-V2-Y1 segments Tri-County contends are looped. Trial Staff argues that Tri-County never previously asserted that it could make a Criterion 3 showing using the seven factor test, and Attachment AI does not allow for facilities to be considered Transmission Facilities through the seven factor test. Therefore, Trial Staff argues that none of the power lines at issue qualifies as a Transmission Facility under Attachment AI.

75. Finally, Trial Staff argues that the Initial Decision was correct in finding that because none of Tri-County's power lines qualifies as a Transmission Facility, the high-voltage-side facilities in Tri-County's substations also do not meet the requirements necessary to be classified as Transmission Facilities under Attachment AI. Trial Staff argues that as with Criterion 3, Tri-County has never previously contended that it could make a Criterion 4 showing using the seven factor test, and Attachment AI does not allow for facilities to be brought under its aegis through the seven factor test. Trial Staff also avers that none of Tri-County's high-voltage side equipment in its substations qualifies as Transmission Facilities under Attachment AI.[141]

3. Commission Determination

76. We affirm the Presiding Judge's determination that Tri-County has failed to carry its burden to prove Tri-County's facilities specified in Exhibit Nos. TCE-2 and TCE-3 are Transmission Facilities under Attachment AI, Section II, Criteria 1 - 6 of the SPP Tariff that may be rolled into the SPP's Zone 11 ATRR. As discussed below, we disagree with Tri-County that some of its facilities listed in Exhibit Nos. TCE-2 and TCE-3 qualify as Transmission Facilities under Attachment AI, and we agree with the Presiding Judge that none of the facilities at issue in this proceeding qualifies as a Transmission Facility under Attachment AI.

77. Tri-County's argument that the Bourk and Cole Interchanges are transmission "substations [that] operate[ ] at 60 kV or above"[142] and that they therefore qualify as Transmission Facilities under Attachment AI, Criterion 1 is not supported by the evidence. Tri-County argues that substation facilities may be classified as Transmission Facilities under Attachment AI solely on the basis of their voltage level and regardless of the lines to which they are connected, and that under Attachment AI, Criterion 1, the classification of power lines does not affect the classification of substations operated at 60 kV or above. However, as explained by the Presiding Judge, to qualify as a

[141] *Id*. at 47.

[142] Tri-County Brief on Exceptions at 38 (quoting Ex. TCE-1 at 5; citing Ex. TCE-4 at 1-2; Ex. TCE-21 at 20-24; *see also* Ex. TCE-3; Ex. TCE-6).

Transmission Facility under Attachment AI, Criterion 1, the facility must not only be operated at 60 kV or above, but it must also be non-radial. We agree with the Presiding Judge's conclusion that both of these interchanges operate within a system composed of radial facilities.[143] Tri-County provides no evidence to support its proposition that because the Bourk and Cole Interchanges are substations operated at 60 kV or above, they meet the definition of Transmission Facilities.[144] In its Brief on Exceptions, Tri-County again asserts that the Presiding Judge improperly conflated "'radial lines and associated facilities'" in the second clause of the first sentence of Attachment AI, Criterion 1 with the first clause of this sentence, and, as a result, Tri-County argues that the Initial Decision cannot be reconciled with the plain meaning of Attachment AI with respect to these substation facilities.[145] Tri-County failed to provide any factual support to show that the Bourk and Cole Interchanges are connected to non-radial lines.[146]

78. We also agree with the Presiding Judge and Joint Intervenors that accepting Tri-County's argument that Attachment AI requires that all substations operated at or above 60 kV are Transmission Facilities would lead to the anomalous result that the Bourk and Cole Interchanges, two substations completely contained within the Tri-County system, would be the only non-radial facilities in a system composed entirely of radial lines.[147] Such a result would be contrary to the plain meaning of Attachment AI because facilities completely contained within a system composed entirely of radial lines would then be defined as non-radial lines. We agree with Trial Staff that Tri-County's arguments are inappropriate because they rest solely on the voltage level at which the Bourk and Cole substations operate.[148] We also agree with Trial Staff that Tri-County's reading of the first clause of Criterion 1 of Attachment AI obscures the plain meaning of the clause, which is to declare that all existing non-radial facilities and the equipment that supports them are Transmission Facilities.[149] As found by the Presiding Judge, the first

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[143] Initial Decision, 143 FERC ¶ 63,003 at P 134 (quoting Ex. S-1 at 37:16-19).

[144] Ex. TCE-1 at 5; Ex TCE-4 at 1-2.

[145] Tri-County Brief on Exceptions at n.156.

[146] *Id*. at 39-40.

[147] Initial Decision, 143 FERC ¶ 63,003 at P 134. *See also* Joint Intervenors Brief Opposing Exceptions at 25-26.

[148] Trial Staff Brief Opposing Exceptions at 40-41.

[149] *Id*. at 41.

clause of the Criterion should be read as a whole, and "substations" means those substations associated with non-radial power lines.[150] Therefore, we affirm the Presiding Judge's finding that because the Bourk and Cole Interchanges are associated with radial power lines that do not qualify as Transmission Facilities, neither of these two interchanges qualifies as a Transmission Facility under Attachment AI.[151]

79. We also find that Tri-County is incorrect in arguing that the Bourk and Cole Interchanges should be classified as Transmission Facilities under Attachment AI because they are the same facilities that SPS operated and classified as transmission. Attachment AI was developed in order to provide a uniform and consistent basis for establishing transmission rates under the SPP Tariff by determining which transmission facilities are to be included in transmission rates.[152] We agree with Joint Intervenors that the fact that SPS classified the Bourk and Cole Interchanges as transmission is not relevant to the Attachment AI analysis because these facilities were not classified as transmission by SPS under the terms of Attachment AI, and because the Commission has recognized that the use of a facility may change over time, from local distribution to transmission, and vice versa.[153] We also agree with Joint Intervenors that, after arguing in its brief for a "plain meaning" approach to interpreting Attachment AI,[154] Tri-County reverses course and argues that a prior owner's use of facilities is relevant to application of the Attachment AI Criteria. We find that because prior classification of facilities is absent from the Criteria set forth in Attachment AI, the fact that SPS classified the Bourk and Cole Interchanges as transmission is not relevant to determining whether these

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[150] Initial Decision, 143 FERC ¶ 63,003 at P 134.

[151] *Id*. P 137.

[152] *See Southwest Power Pool Inc*., 112 FERC ¶ 61,355, at P 2 (2005); *American Elec. Power Serv. Corp.*, 125 FERC ¶ 61,296, at P 2 (2008); *KCP&L*, 125 FERC ¶ 61,352 at P 2). Joint Intervenors also point out that Tri-County never challenged Mr. Fulton's explanation that "'[b]ecause Attachment AI requires Transmission Owners to remove transmission plant that does not meet the Attachment AI Criteria from transmission rates, it is irrelevant how the Transmission Owner classified transmission prior to application of Attachment AI.'" Joint Intervenors Brief Opposing Exceptions at 28 (quoting Ex. XES-1 at 13:2-5).

[153] Joint Intervenors Brief Opposing Exceptions at 28 (citing *MidAmerican Energy Co.*, 90 FERC ¶ 61,105 (2000); *MidAmerican Energy Co.*, 140 FERC ¶ 61,028 (2012)).

[154] Tri-County Brief on Exceptions at 37.

facilities may be classified as Transmission Facilities under Attachment AI of SPP's tariff.

80. Tri-County's argument that Tri-County's power line/power line segments extending from Breakers 4510 and 4340 (line V1) and power line/power line segments extending from Breakers 4520 and 4330 (lines V2 and Y1) operate in a looped configuration which results in their classification as Transmission Facilities under Attachment AI, Criterion 1 is not supported by the evidence. We agree with the Presiding Judge that Tri-County provides little support for its contention that these facilities operate in a looped configuration. Specifically, Tri-County provided no power flow studies or any other type of engineering analysis to support its contention.[155] Rather, as Joint Intervenors argue, Tri-County would have the Commission disregard the operational evidence and focus on the fact that line VI and line V2 are arranged in the shape of a looped transmission facility.

81. We find Tri-County's argument that because these power line/power line segments are configured in the form a physical loop, these facilities satisfy the meaning of Attachment AI, Criterion 1 to be unavailing. Rather, we agree with the Presiding Judge, Joint Intervenors, and Trial Staff that the "power on these lines does not flow in both directions and that the lines 'form two parallel paths in a radial network so if an outage occurs on one line, the other line can pick up the additional flow to maintain service to the load.'"[156] The uncontested evidence in the record of this case shows that power flows only one way on line VI and line V2, from the direction of the delivery points to the direction of Tri-County load, and power does not flow bi-directionally on line V1 and V2.[157] Tri-County is mistaken in arguing that the Initial Decision departed without explanation from the language of Attachment AI by imposing a requirement that power must flow in both directions over the lines of the proposed loop because this language does not appear in Attachment AI, Criterion 1. Tri-County provides no support for its assertion that looped facilities do not need to "support power flows in both directions."[158] Tri-County has not addressed the evidence in this proceeding that the Tri-County

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[155] Initial Decision, 143 FERC ¶ 63,003 at P 140 (citing Tr. 251:22-24).

[156] *Id*. P 143 (quoting Ex. S-1, at 33:8-12); Joint Intervenors Brief Opposing Exceptions at 29 (citing Ex. S-1 at 35:5-11; Ex. XES-1 at 26:16-17; Ex. XES-5; Ex. XES-1 at 23:21-24:3).

[157] Joint Intervenors Brief Opposing Exceptions at 29.

[158] Tri-County Brief on Exceptions at 42-43.

facilities operate radially,[159] and it ignores the evidence presented by Mr. Fulton and Ms. Hsiung showing that these facilities do not operate in a looped fashion.[160] However, Tri-County concedes that the single radial line feeding power to lines V1 and V2 is not a Transmission Facility under Attachment AI, and the record shows that both line V1 and V2 have a common point of failure. If the bus facility at the Bourk substation were to go out of service, lines VI and V2 would be de-energized and could not provide redundant service.[161] As explained by the Presiding Judge, because power does not flow both ways on V1 and V2, the only benefit these lines provide is an alternative path to deliver power from the Bourk substation to Tri-County's loads at the Thompson substation. For these reasons, we find unavailing Tri-County's argument that the Initial Decision's insistence on bi-directional power flows impermissibly departs from the language of Attachment AI.

82. Further, we agree with the Presiding Judge that Tri-County's reliance on the report on the Arizona-Southern California outages on September 8, 2011 to support its claim that "'parallel' power lines *are* looped power lines'" misunderstands "loop flow,"[162] and it does not support Tri-County's arguments that these line segments are looped. As explained by the Presiding Judge, the language cited by Tri-County witness Mr. Swearingen that "'[l]oop flow refers to power flow along any transmission paths that are in parallel with the most direct geographic or contract path'"[163] relates to the phenomenon of unintentional flows between unrelated but interconnected systems. We also agree with the Presiding Judge's finding that Mr. Swearingen's reliance on a footnote in Order No. 1000 does not support Tri-County's claim that certain lines operate in a loop configuration. This footnote explains that "loop flow" is a "different phenomenon than that of two lines owned by the same utility intentionally operated in parallel to provide improved load serving only during contingencies."[164] Therefore, we find that these citations do not support Tri-County's argument that Commission policy is that "parallel power lines are looped lines under the laws of physics," nor do they support its claim that lines VI, V2 and Y1 operate in a looped configuration. Accordingly, we affirm the

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[159] Initial Decision, 143 FERC ¶ 63,003 at PP 143, 145; Tr. 251:22-24.

[160] *See* Ex. S-1 at 30:18-31:11; Ex. XES-1 at 26:14-17.

[161] Initial Decision, 143 FERC ¶ 63,003 at P 144 (citing Tr. at 251:7-17).

[162] *Id*. P 141 (quoting Ex. TCE-21 at 12:13-14 (emphasis in original)).

[163] *Id*. (quoting Ex. TCE-21 at 12:19-13:1).

[164] *Id*. P 142 (citing Ex. TCE-21 at 13:3-7; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 31,381, n.394 (2011)).

Presiding Judge's finding that Tri-County's power line/power line segments extending from Breakers 4510 and 4340 (line V1) and power line/power line segments extending from Breakers 4520 and 4330 (lines V2 and Y1) do not operate in a looped configuration and are not Transmission Facilities under Attachment AI, Criterion 1.

83. We also disagree with Tri-County that the Presiding Judge erred in finding that because "the power lines at issue do not satisfy any definition of Transmission Facility under Attachment AI[,] … the control facilities likewise are not Transmission Facilities under Attachment AI." Criterion 3 under Attachment AI provides that Transmission Facilities include "[c]ontrol equipment and facilities necessary to control and protect facilities qualifying as Transmission Facilities."[165] We agree with the Presiding Judge that under this Criterion, only equipment and facilities associated with Transmission Facilities can themselves qualify as Transmission Facilities. As discussed above, Tri-County has failed to carry its burden to show that any of its facilities may be classified as Transmission Facilities under Attachment AI, and we agree with the Presiding Judge that "Tri-County's simple statement that the power lines are Transmission Facilities does not prove they are Transmission Facilities."[166] Because none of the Tri-County 115 kV and 69 kV power lines at issue qualify as Transmission Facilities under Attachment AI, none of the control equipment and facilities associated with those power lines qualifies as Transmission Facilities.[167]

84. We also find unavailing Tri-County's argument that the Presiding Judge did not question Tri-County's assertion that the facilities Tri-County identified in Exhibit No. TCE-3 are needed to control and protect the 115 kV power lines. The Presiding Judge did address this assertion, stating that "even if Tri-County is correct that the 'control facilities' are needed to 'control and protect' the 115 kV and 69 kV lines, the control facilities likewise are not Transmission Facilities under Attachment AI."[168] Therefore, we agree with the Presiding Judge's finding that because the Tri-County

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[165] Initial Decision, 143 FERC ¶ 63,003 at P 203 (citing Ex. S-2 at 3).

[166] *Id*. P 204.

[167] *Id*. (citing Trial Staff Initial Brief at 49). Tri-County argues that "[t]o the extent Tri-County has demonstrated that these 115 kV and 69 kV power lines should be classified as Transmission Facilities under Attachment AI and/or under the Commission's seven factor test, the facilities associated with these lines described in Exhibit No. TCE-3 are also Transmission Facilities under Attachment AI." Tri-County Brief on Exceptions at 45. Tri-County's argument regarding the seven factor test is addressed below.

[168] Initial Decision, 143 FERC ¶ 63,003 at P 205.

power lines/power line segments do not satisfy any definition of Transmission Facility under Attachment AI, the control facilities likewise are not Transmission Facilities under Attachment AI.

85. Tri-County incorrectly asserts that the Presiding Judge erred in finding that because "none of Tri-County's transmission lines qualifies as a transmission facility … the high voltage-side facilities in Tri-County's substations also do not meet the requirements necessary to be classified as Transmission Facilities under Attachment AI."[169] Under Criterion 4 of Attachment AI, only facilities on the high-voltage side of a transformer in a substation connected to power lines that qualify as Transmission Facilities under Attachment AI would themselves qualify as Transmission Facilities. We agree with the Presiding Judge that because none of Tri-County's 115 kV and 69 kV power lines at issue qualify as Transmission Facilities under Attachment AI, the transformers in those substations connected to those lines also do not qualify as Transmission Facilities. As stated by the Presiding Judge, Tri-County's only argument to support including as Transmission Facilities equipment on the high-voltage side of the transformer is that "Tri-County's power lines are qualifying 'Transmission Facilities.'"[170] Tri-County argues that the Presiding Judge did not question that all of Tri-County's substations listed on Exhibit No. TCE-3 (excluding the Bourk and Cole Interchanges) transform a voltage greater than 60 kV to a voltage less than 60 kV. For this reason, Tri-County asserts that, to the extent it demonstrated that its 115 kV and 69 kV power lines should be classified as Transmission Facilities under Attachment AI, the high-voltage side equipment in these substations should be classified as Transmission Facilities under Attachment AI. Tri-County provided no other factual support for this assertion. Therefore, we agree with the Presiding Judge's finding that, because the 115 kV and 69 kV power lines may not be classified as Transmission Facilities under Attachment AI, the high-voltage side equipment may not be classified as Transmission Facilities under Attachment AI.

[169] *Id*. P 207.

[170] *Id*.

B. Seven Factor Test

1. Initial Decision

a. Whether the Commission's Seven Factor Test May Be Used to Demonstrate that Tri-County's Facilities Are Transmission Facilities Eligible to Be Rolled into the SPP's Zone 11 ATRR and Whether Tri-County Has the Burden of Proof on this Issue.

86. In Order No. 888, the Commission established seven factors for identifying local distribution facilities (as distinguished from transmission facilities) in order to determine what facilities would be under the Commission's jurisdiction and what facilities would remain under the states' jurisdiction for retail regulatory purposes.[171] The indicators of local distribution in the Commission's seven factor test are:

(1) local distribution facilities are normally in close proximity to retail customers;

(2) local distribution facilities are primarily radial in character;

(3) power flows into local distribution systems, and rarely, if ever flows out;

(4) when power enters a local distribution system, it is not reconsigned or transported on to some other market;

(5) power entering a local distribution system is consumed in a comparatively restricted geographic area;

(6) meters are based at the transmission/local distribution interface to measure flow into the local distribution system; and

(7) local distribution systems will be of reduced voltage.[172]

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[171] *See, e.g.*, *California Pacific Elec. Co., LLC*, 133 FERC ¶ 61,018, at P 45 (2010) (*CalPeco*).

[172] Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 31,036 at 31,771, 31,981.

87. In *Southwest Power Pool, Inc.*,[173] the Commission accepted several revisions proposed by SPP to its OATT, including a new definition of Transmission Facilities. In a subsequent order, the Commission clarified that "we intended that the seven factor test may be applied to determine whether any facility is transmission, regardless of whether it is operated at, above, or below 60 kV and that SPP would be required to honor such a determination."[174]

88. The Presiding Judge found that the Attachment AI Orders permit use of the seven factor test to classify Tri-County's facilities at or above 60 kV as Transmission Facilities. The Presiding Judge cited the Attachment AI Order, in which the Commission agreed with SPP that the definition of "Transmission Facility" in Attachment AI does not limit application of the Commission's seven factor test to facilities below 60 kV.[175] The Presiding Judge noted that only one party to the Attachment AI proceeding sought clarification of the Attachment AI Order relating to the seven factor test, and that party sought clarification as to whether SPP is required to honor a determination pursuant to the Commission's seven factor test that a facility operated at or above 60 kV qualifies as a Transmission Facility. The Presiding Judge noted that the Commission responded to the request for clarification, stating: "[we] clarify that we intended that the seven factor test may be applied to determine whether any facility is transmission, regardless of whether it is operated, at, above, or below 60 kV and that SPP would be *required to honor such a determination*."[176] Because the Commission's response directly paralleled the party's request for clarification, the Presiding Judge found that the logical inference was that the Commission's clarification referred to application of the seven factor test in the same context as the party's motion for clarification – for the purpose of classifying or declassifying Transmission Facilities under the SPP Tariff.[177]

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[173] *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005) (Attachment AI Order).

[174] *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,242, at PP 6-8 (2006) (Attachment AI Clarification Order).

[175] Initial Decision, 143 FERC ¶ 63,003 at P 214 (citing Attachment AI Order, 112 FERC ¶ 61,355 at P 42).

[176] *Id.* PP 215-216 (quoting Attachment AI Clarification Order, 114 FERC ¶ 61,242 at P 8 (emphasis added in Initial Decision)).

[177] *Id.* P 216.

89. Occidental argued at hearing that facilities may be classified as transmission for many purposes other than rate recovery. Occidental argued that the Commission employed the seven factor test to: identify the primary function of a facility to determine whether the facility falls under the Commission's jurisdiction; classify facilities for accounting purposes under the Commission's Uniform System of Accounts; and to determine if a transmission element is a part of the Bulk Electric System for reliability purposes. But, Occidental contended that the Commission intended that only Attachment AI was applicable to determine whether a facility qualifies as a Transmission Facility under Attachment AI for rate recovery purposes.[178] However, the Presiding Judge rejected Occidental's suggestion that in the Attachment AI Clarification Order, the Commission intended to limit the applicability of the seven factor test to purposes other than classifying facilities as Transmission Facilities under the SPP Tariff, such as for accounting or reliability purposes. The Presiding Judge found that it would constitute a lapse of logic to now infer that the Commission's clarification in the Attachment AI Clarification Order related only to some other, merely tangential, function of the seven factor test, rather than the applicability of the seven factor test for the purpose of classifying facilities as Transmission Facilities under the SPP Tariff.[179]

90. The Presiding Judge also rejected other arguments that incorporation of the seven factor test under the Attachment AI Orders will necessarily upset Attachment AI's purpose of uniformity and consistency, finding that failure to apply the seven factor test could also produce inconsistency. While the Presiding Judge stated that she "[gave] credence" to the argument raised by Occidental that "the Commission did not direct SPP to revise Attachment AI to reflect parallel language that the seven factor test may be applied to facilities above 60 kV as well as to facilities below 60 kV,"[180] the Presiding Judge found that, "[n]otwithstanding these lesser inconsistencies, it would be simply untenable to hold that the Attachment AI Clarification Order suddenly, without further explanation, changed course to discuss application of the seven factor test for a purpose other than classification of Transmission Facilities under the SPP [Tariff]."[181] The

[178] Occidental Initial Brief at 32-34.

[179] Initial Decision, 143 FERC ¶ 63,003 at P 217.

[180] *Id.* P 219 (quoting Occidental Reply Brief 45).

[181] *Id.*

Presiding Judge also noted the Commission's discretion to resolve the observed inconsistencies and further clarify its intent through the forthcoming Opinion and Order on Initial Decision in this proceeding.[182]

91. The Presiding Judge also rejected the argument that the seven factor test was designed to address jurisdiction, finding that there was no prohibition against the Commission adopting the seven factor test for uses other than that for which it was originally intended. Indeed, the Presiding Judge noted, the seven factor test has already been adopted for the alternative uses cited by Occidental in its initial brief (discussed above). Further, the Presiding Judge found that the dual uses of the seven factor test to both determine jurisdiction and classify or declassify Transmission Facilities are not mutually exclusive.[183]

92. The Presiding Judge also rejected arguments that the principle of comparability requires that facilities proposed to be included in a joint pricing zone must be evaluated under the same Criteria as other facilities included in the zone. Tri-County stated that neither the Commission nor a state regulatory agency has ever classified SPS's Zone 11 facilities in an order on the merits.[184] Thus, Tri-County argued that it is impossible to compare the classification Criteria of its facilities to that of other facilities in SPP Zone 11. The Presiding Judge noted that no party cited to any other instance in which Zone 11 facilities have been classified, and the Presiding Judge held that her earlier finding that a settlement agreement may not serve as a reference point for comparability purposes under an Attachment AI analysis applies with equal force to a seven factor test analysis.[185]

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[182] *Id.* P 219, n.9

[183] *Id.* P 220. The Presiding Judge found similarly in rejecting an argument that a predicate for application of the seven factor test is that unbundled retail wheeling be occurring over the facilities. The Presiding Judge found that nothing the Attachment AI Orders established such a prerequisite to application of the seven factor test for the purpose of classifying or declassifying Transmission Facilities under the SPP Tariff. *Id.* P 221.

[184] Rather, Tri-County points out, the classification occurred in an uncontested settlement agreement that the Commission approved in Docket No. ER08-313.

[185] Initial Decision, 143 FERC ¶ 63,003 at P 222.

b. Whether the Seven Factor Test Should Be Applied to Tri-County's System as a Whole or Whether It Should Be Applied on a Facility-By-Facility Basis. On What Basis the Analysis under Each Factor Should Be Performed: System-Wide, Breaker-to-Breaker, Segment-by-Segment, or Any Combination Thereof.

93. At hearing, Tri-County argued that its system facilities are transmission under the first, fifth, sixth and seventh factors of the seven factor test. It contended that in the future, its system facilities would be transmission under the second, third and fourth factors upon the development of the wind generation.

94. Tri-County contended that the seven factor test should be applied to its system specified in Exhibit Nos. TCE-2 and TCE-3[186] as a whole because that approach is most consistent with the language of Order No. 888 and prior seven factor test evaluations by the Commission. In support, Tri-County cited *CalPeco* and *City of Pella, Iowa v. Midwest Indep. Transmission Sys. Operator, Inc*. (*City of Pella*).[187] According to Tri-County, the analysis of each factor under the seven factor test should generally be performed based on the Commission's specific language setting forth that factor. Based on that assertion, Tri-County maintained that its system should be evaluated on a breaker-to-breaker basis for the first and second factors; a system-wide basis for the third, fourth, fifth and sixth factors; and a system-wide or breaker-to-breaker basis for the seventh factor. Further, Tri-County cited the vast size of its service territory and the long distances over which its 115 kV and 69 kV power lines extended in support of its assertion under factor one that its facilities are not in close proximity to retail customers, and under factor five that its power is not consumed in a comparatively restricted geographical area. Tri-County also argued that it was irrelevant that its facilities are bounded by end-user customers. Tri-County also contended that, based on engineering principles, its facilities "upstream" of the distribution meters qualify as transmission.[188]

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[186] Tri-County does not claim that all of the facilities in its system are transmission. Rather, its claim applies to only its facilities listed in Exhibit Nos. TCE-2 and TCE-3. For ease of reference herein, we refer to the facilities listed in Exhibit Nos. TCE-2 and TCE-3 as Tri-County's facilities or Tri-County's system unless otherwise noted.

[187] 134 FERC ¶ 61,081 (2011), *order on reh'g*, 140 FERC ¶ 61,029 (2012).

[188] Initial Decision, 143 FERC ¶ 63,003 at PP 87-92.

95. Opposing parties argued that Tri-County's facilities qualify as transmission under only factor 7 (its facilities are at transmission voltage). They argued that the seven factor test should be applied on a facility-by-facility basis because the classification of some facilities as transmission under the seven factor test is insufficient to qualify all of Tri-County's facilities. For example, Trial Staff argued that Tri-County's facilities must be reviewed on a facility-by-facility basis because Tri-County does not ask the Commission to classify its entire system as transmission; rather, it seeks to include the costs of specific facilities. The opposing parties argued that Tri-County's approach of analyzing its system on a segment-by-segment basis rather than facility-by-facility presumably would permit Tri-County to satisfy one factor by reference to one portion of facilities and satisfy another factor by reference to a different portion. According to opposing parties, this approach ignores evidence pertaining to whether other facilities within the system could satisfy all seven factors. They argued that the analysis under each factor of the seven factor test should be applied to Tri-County's facilities on a segment-by-segment basis. They also disputed Tri-County's reliance on the size of its service territory under factors 1 and 5, arguing that the size was immaterial, because power does not flow out of the system but is consumed by Tri-County's end-use customer. They also argued that Tri-County's meters are distribution facilities under the sixth factor because there is no bilateral power flow across Tri-County's system.[189]

96. Noting that the parties relied on substantially similar reasoning to support their positions on both issues, the Presiding Judge addressed together the issues of:
(1) whether the seven factor test should be applied to Tri-County's system specified in Exhibit Nos. TCE-2 and TCE-3 as a whole or on a facility-by-facility basis; and
(2) whether an analysis under each factor should be performed system-wide, breaker-to-breaker, segment-by-segment, or by any combination thereof.

97. The Presiding Judge found that the seven factor test should be applied to the facilities specified in Exhibit Nos. TCE-2 and TCE-3 on a facility-by-facility basis. The Presiding Judge also found that the analysis under each factor should be performed on a segment-by-segment basis.[190] The Presiding Judge cited the Hearing Order in which the Commission established hearing and settlement judge procedures to determine the

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[189] *Id.* PP 93-107.

[190] In so doing, the Presiding Judge rejected intervenor arguments regarding comparability or consistency based on the earlier finding that the settlement agreement in Docket No. ER08-313 cannot establish a reference point in this proceeding. The Presiding Judge also disregarded arguments relying upon industry-standard practice or operational considerations to the extent that such arguments were not supported by expert witness testimony or other credible evidence on the official record. *Id.* P 225, n.11.

"appropriate classification of the *facilities* that form the basis for the annual revenue requirements proposed by Tri-County."[191] According to the Presiding Judge, a plain reading of the Hearing Order's mandate required an evaluation of each individual facility that is subject to classification in this proceeding, rather than a classification of Tri-County's system in its entirety.

98. In addition, the Presiding Judge cited the Attachment AI Order, in which the Commission noted that:

> SPP also responds to concerns about whether a facility would lose its designation as a Transmission Facility if two or more end-use customers decide to merge. SPP clarifies that once an existing facility is designated as a Transmission Facility, based on the customers attached to it, that designation will not be modified solely due to such a merger.[[192]]

The Presiding Judge found that "[t]he quoted language clearly discusses classification of individual facilities under the SPP [Tariff], rather than an entire system."[193]

99. The Presiding Judge also cited with approval Xcel's rebuttal of Tri-County's arguments relying on *CalPeco* and *City of Pella*. Xcel noted that in *CalPeco*, CalPeco filed an uncontested request for a declaratory order that all of the distribution facilities being transferred to it were local distribution facilities in accordance with Commission precedent and policy. Xcel pointed out that there were no disputed issues of fact in that case and that the Commission made a determination based on the record that all of the facilities were local distribution under the seven factor test. Xcel also noted that, similarly, in *City of Pella*, the Commission based its findings on the record developed in those proceedings and that the City of Pella provided evidence of the characteristics of each of its 69 kV lines.[194] The Presiding Judge noted that Tri-County, like the City of Pella, has claimed that some of its facilities, those specified in Exhibits TCE-2 and TCE-3, are Transmission Facilities. The Presiding Judge found that the intervenors and Trial Staff effectively challenged that claim through evidence on the record. Thus, the

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[191] *Id.* P 225 (citing Hearing Order, 138 FERC ¶ 61,231 at P 14).

[192] *Id.* P 226 (citing Attachment AI Order, 114 FERC ¶ 61,242 at P 24).

[193] *Id.*

[194] *Id.* P 227.

Presiding Judge found that, consistent with *City of Pella*, Tri-County then bore the burden to provide evidence regarding the individual characteristics of each of its purported "Transmission Facilities."[195]

c. First Factor: "Local Distribution Facilities Are Normally in Close Proximity to Retail Customers."

100. The Presiding Judge found that Tri-County's facilities are normally in close proximity to retail customers. Noting that the Commission has not defined the term "close proximity," the Presiding Judge looked to orders in which the Commission applied the first factor for guidance. In *City of Pella*, the Commission found that the evidence presented indicated that the City of Pella's 69 kV facilities were not in close proximity to retail customers, but were used to support service to communities across a wide region. For example, the Presiding Judge observed that "[the City of] Pella's 69 kV facilities are used to support service to communities and rural areas up to 30 miles from [the City of] Pella."[196] The Presiding Judge noted that the City of Pella's facilities extended thirty miles beyond its distribution system, where its retail customers were located, to support service to customers served by MidAmerican Energy Company and Central Iowa Power Cooperative across a wide region. By contrast, Tri-County's facilities are bounded by its own retail members. The Presiding Judge found that, although this fact is not dispositive, it is highly probative of the facilities being in close proximity to retail customers.[197]

101. The Presiding Judge was unpersuaded by Tri-County's attempt to contrast its vast multistate service territory, covering over 7,900 square miles, with the "concentrated" and "clustered" territory found to be distribution in *CalPeco*.[198] The Presiding Judge found that Tri-County seemed to conflate the size of its territory with the proximity of its facilities to retail customers. The Presiding Judge agreed with the explanation of Xcel witness Fulton's answering testimony that the size of Tri-County's territory is "reflective more of the geography of this part of the country rather than an indicator that the Tri-County facilities are transmission."[199] The Presiding Judge found that Mr. Fulton's explanation aligned with the Presiding Judge's understanding of close proximity as a

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[195] *Id.* P 228.

[196] *Id.* P 229 (citing *City of Pella*, 134 FERC ¶ 61,081 at P 73).

[197] *Id*.

[198] *Id.* P 230 (citing Tri-County Reply Brief at 55).

[199] *Id.* (citing Ex. XES-1 at 30-31).

relative term, as evidenced by the Commission's disinclination to define precisely what constitutes close proximity.[200]

102. The Presiding Judge rejected Tri-County's attempt to demonstrate that its facilities are not in close proximity to retail customers by measuring the distance of nine power lines using the breaker from which each line extends as the origin point. The Presiding Judge rejected this method of evaluation for the reasons discussed above in rejecting Tri-County's breaker-to-breaker approach to the seven factor analysis. The Presiding Judge was also persuaded by the testimony of Ms. Hsiung, who testified that "it is more appropriate to analyze the 'close proximity' on a segment-by-segment basis because most of the line segments are connected with delivery points or substations, which serve Tri-County end-user loads."[201]

103. Thus, the Presiding Judge found that Tri-County's facilities are distribution under the first factor.

d. Second, Third and Fourth Factors[202]

104. With respect to the second factor, the Presiding Judge found that Tri-County's facilities are radial in character.[203] The Presiding Judge noted that Tri-County acknowledges that its facilities are local distribution under this factor, but it also asserts that its power line extending from Breakers 4510 and 4340 and its power line extending from Breakers 4520 and 4330 are non-radial because they operate in a loop configuration. The Presiding Judge found that Tri-County's support for this statement rested on documents describing the inadvertent "loop flow" phenomenon, rather than facilities deliberately looped to provide redundant service to load. The Presiding Judge found that Tri-County did not perform any power flow studies to demonstrate that any of its facilities are looped.[204] Accordingly, the Presiding Judge found insufficient evidence for

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[200] *Id*.

[201] *Id.* P 231 (citing Ex. No. S-1 at 41:4-7).

[202] As noted above, the second factor in the Commission's seven factor test is: local distribution facilities are primarily radial in character. The third factor is: power flows into local distribution systems, and rarely, if ever flows out. The fourth factor is: when power enters a local distribution system, it is not reconsigned or transported on to some other market.

[203] Initial Decision, 143 FERC ¶ 63,003 at PP 233-234.

[204] *Id.* P 233 (citing Tr. 251:24).

Tri-County to carry its burden to prove that such lines are looped. With respect to the third factor, the Presiding Judge noted that Tri-County conceded that power flows into its system but does not flow out. With respect to the fourth factor, the Presiding Judge noted that Tri-County concedes that once power enters Tri-County's system, power is not reconsigned or transported on to some other market.[205] Thus, the Presiding Judge found that Tri-County's facilities are distribution under the second, third and fourth factors of the seven factor test.

e. Fifth Factor: Power Entering a Local Distribution System Is Consumed in a Comparatively Restricted Geographical Area.

105. The Presiding Judge found that power entering Tri-County's system is consumed in a comparatively restricted geographical area. The Presiding Judge cited the testimony of Ms. Hsiung, who argued that the power carried over the facilities at issue is consumed locally by end-user customers of Tri-County – meaning within a geographic area that is restricted to the end-users of Tri-County's system.[206] The Presiding Judge found that Tri-County failed to respond adequately to the contention that the geographic territory in which its power is consumed is restricted by end-user customers. Instead, as with the first factor, Tri-County drew a contrast between the vastness of its territory and the comparatively concentrated service territory that the Commission designated as distribution in *CalPeco*. The Presiding Judge found that Tri-County erroneously relied on the sheer size of its geographical territory to support the claim that its facilities are transmission. The Presiding Judge found that the persuasive value of Tri-County's argument is severely diminished by the observation of Mr. Fulton; i.e., that the geographical size of Tri-County's system is attributable to "the very rural nature of the Oklahoma panhandle in which Tri-County operates," rather than to its function as a transmission system.[207]

f. Sixth Factor: Meters Are Based at the Transmission/Local Distribution Interface to Measure Flows into the Local Distribution System.

106. At hearing, Tri-County argued that the Bourk 115/69 kV and Cole 115/69 kV Transmission Interchanges provide support to Tri-County's 115 kV and 69 kV systems,

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[205] *Id.* PP 235-236.

[206] *Id.* P 237 (citing Tr. 411:20-15; Ex. S-1 at 43:3-10).

[207] *Id.* P 237 (citing Ex. XES-1 at 32:5-7).

and that, therefore, they are transmission facilities.[208] Tri-County's witness, Mr. Swearingen, asserted that these distribution meters are the proper "transmission/local distribution interface" demarcation point under the sixth factor of the Commission's seven factor test. Mr. Swearingen concluded that Tri-County's facilities specified in Exhibit Nos. TCE-2 and TCE-3 that are "upstream" of these meters (that is, Tri-County's facilities at the Bourk and Cole Transmission Interchanges, Tri-County's 115 kV and 69 kV power lines, the high voltage side of Tri-County's substations that transform voltages from above 60 kV to below 60 kV, and associated facilities) are all transmission under this factor.[209]

107. Tri-County also cited language from Attachment AI, Section II.1, that Transmission Facilities include "[a]ll . . . substations . . . operated at 60 kV or above."[210] Tri-County also cited Section II.4 of Attachment AI, which provides that for substations connected to power lines qualifying as Transmission Facilities, where power is transformed from a voltage higher than 60 kV to a voltage lower than 60 kV, facilities on the high voltage side of the transformer will be included as "Transmission Facilities" with the exception of transformer isolation equipment.[211]

108. The Presiding Judge found that the Bourk and Cole Transmission Interchanges are not transmission facilities under the sixth factor. The Presiding Judge cited the Commission's determination in *City of Pella* that the City of Pella's meters were transmission because they were "designed to measure bilateral flows."[212] The Presiding Judge noted that Trial Staff's witness, Ms. Hsiung, explained that "[a] meter is configured to measure flows and is used by the local balancing authority for the purpose of billing transmission service." In addition, the Presiding Judge noted that Tri-County agreed that the meters at each of these substations were installed so that SPS and Golden Spread could determine the amount of power supplied to Tri-County under SPS's and Golden Spread's respective power sales agreements. The Presiding Judge also pointed out that Tri-County agreed that the meters only measure power flows into Tri-County's

[208] *Id.* P 239 (citing Ex. TCE-4 at 5).

[209] *Id.* P 241 (citing Ex. TCE-21 at 20-25).

[210] *Id.* P 242 (citing Tri-County Initial Brief 52 (citing Ex. TCE-7 at 3)).

[211] *Id.* (citing Tri-County Initial Brief 52-53 (citing TCE-7 at 3)).

[212] *Id.* P 240 (citing *City of Pella*, 134 FERC ¶ 61,081, at P 73).

local distribution system facilities serving Tri-County's retail customers. The Presiding Judge found that Tri-County did not even attempt to argue that the meters measure bilateral flows.[213]

109. The Presiding Judge was unpersuaded by Mr. Swearingen's testimony that the Bourk and Cole Transmission Interchanges are the proper "transmission/local distribution interface" demarcation point under the sixth factor of the Commission's seven factor test. The Presiding Judge found that the lack of bilateral power flow classifies Tri-County's facilities as distribution under this factor, notwithstanding the high voltage level of those facilities.[214]

110. The Presiding Judge also rejected Tri-County's reliance on language from Attachment AI, noting that she had found that Tri-County's facilities do not qualify as Transmission Facilities under Attachment AI. The Presiding Judge stated that "[t]he language cited by Tri-County is irrelevant to the Commission's seven factor test. Tri-County will not be permitted to cherry-pick favorable provisions from both of Attachment AI and the seven factor test in order to achieve its desired outcome."[215] The Presiding Judge concluded that Tri-County's facilities are distribution under the sixth factor.

g. Seventh Factor: Local Distribution Systems Will Be of Reduced Voltage.

111. Noting that the intervenors and Staff conceded that Tri-County's facilities are not of reduced voltage, the Presiding Judge found that Tri-County's facilities are transmission under the seventh factor.[216]

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[213] *Id.* (citing Ex. S-1 at 44:6-7; Tri-County Initial Brief at 50 (citing Ex. XES-1 at 32; Ex. S-1 at 44, 52)).

[214] *Id.* P 241.

[215] *Id.* P 242.

[216] *Id.* P 244.

h. Totality of Circumstances

112. The Presiding Judge stated that the seven factor test is not subject to formulaic application or categorical standards.[217] Rather, the test requires comprehensive consideration of how the totality of the circumstances bears on each of the seven factors. Moreover, no single factor or combination of factors is outcome determinative.[218] The Presiding Judge noted that the Commission has not announced a rule as to how many factors must be satisfied to determine how a facility is classified. Having found that Tri-County's facilities classify as transmission under factor seven only, the Presiding Judge found that Tri-County's failure to demonstrate that its facilities classify as transmission under factors one, two, three, four, five, and six is sufficient evidence to support the conclusion that Tri-County's facilities are not transmission under the seven factor test.[219]

113. Having concluded that Tri-County's facilities were not transmission under the seven factor test, the Presiding Judge found it unnecessary to reach the merits of whether such facilities also need to satisfy the Commission's *Mansfield* test (used to evaluate whether facilities are integrated with the transmission network) to be eligible to be rolled into SPP's Zone 11 ATRR.[220]

2. Briefs on Exceptions and Briefs Opposing Exceptions

a. Whether the Commission's Seven Factor Test May Be Used to Demonstrate that Tri-County's Facilities Are Transmission Facilities Eligible to Be Rolled into the SPP's Zone 11 ATRR and Whether Tri-County Has the Burden of Proof on this Issue.

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[217] *Id.* P 245 (citing Ex. TCE-8; Order 888, FERC Stats. & Regs. ¶ 31,036, App. G at 31,980-81).

[218] *Id.* (citing *CalPeco*, 133 FERC ¶ 61,018 at P 48 ("Given the totality of the circumstances, we find that the California Distribution System meets the seven factor test . . . .")).

[219] *Id.*

[220] *Id.* P 246. *See Mansfield Municipal Electric Dept*., Opinion No. 454, 97 FERC ¶ 61,134 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002).

114. Occidental agrees with the Initial Decision that there is ambiguity in the Attachment AI Clarification Order. But, Occidental argues, taking into account all of the relevant indicia on the meaning of the Commission's orders regarding Attachment AI, the better interpretation is that the only test that may be used to classify existing facilities as Transmission Facilities for purposes of rate recovery in SPP is embodied in Attachment AI.

115. According to Occidental, Section II.6 of Attachment AI expressly limits the use of the seven factor test to facilities operating below 60 kV, and the SPP Tariff contains no other reference to the use of the seven factor test for rate recovery purposes. Occidental argues that under the filed rate doctrine, utilities are required to have on file practices that significantly affect rates. It contends that the availability of an alternative rate recovery test to Attachment AI directly and significantly affects rates, and such an alternative test would have to be included in the SPP Tariff. Occidental asserts that, as the Commission did not order an amendment to the SPP Tariff to incorporate the seven factor test for facilities operating at all voltage levels, the Commission agreed to limit the applicability of the seven factor test for rate recovery purposes in SPP to those facilities operating below 60 kV. Occidental states that notably, Attachment AI is the only test found in SPP's filed rate.[221]

116. In addition, Occidental argues that the Attachment AI Clarification Order, on which the Presiding Judge relied, explicitly recognized that rate recovery is separate from the treatment of transmission for other purposes. Occidental argues that if the Commission had intended to require SPP to adopt the seven factor test to determine whether facilities are "Transmission Facilities" that qualify for rate recovery in SPP, it would have referred to the defined term in the SPP Tariff that has such a definition – not to "transmission," which does not have a specific meaning under the SPP Tariff. Occidental argues that there are multiple situations in which the seven factor test is used that do not involve the determination of which facilities are entitled to be treated as "Transmission Facilities" and rolled into SPP's rates.[222]

117. In its Brief Opposing Exceptions, Tri-County contends that Occidental's arguments should be rejected as an impermissible collateral attack on the Attachment AI Orders. Tri-County argues that the Presiding Judge correctly found that the fact that the Commission granted the motion for clarification established incontrovertibly that facilities shown to be transmission under the seven factor test — irrespective of the voltage of the facilities — are "Transmission Facilities" under Attachment AI.

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[221] Occidental Brief on Exceptions at 2-3, 9-12.

[222] *Id.* at 3, 14.

According to Tri-County, whether facilities shown to be transmission under the Commission's seven factor test are necessarily "Transmission Facilities" under Attachment AI was precisely the issue raised by Golden Spread's motion and clarified by the Commission. Further, Tri-County asserts that the proper time and forum for Occidental to raise its argument that "[a]llowing the seven factor test to be used for rate recovery purposes in SPP for facilities operating at or above 60 kV . . . would defeat the 'uniform and consistent basis' for determining rate recovery in SPP" was in the Attachment AI proceeding, not many years later in the instant rate proceeding in a limited Brief on Exceptions.

b. Whether the Seven Factor Test Should Be Applied to Tri-County's System as a Whole or Whether It Should Be Applied on a Facility-By-Facility Basis. And, Whether the Analysis under Each Factor Should Be Performed on a System-Wide Basis, or on a Breaker-to-Breaker Basis, or on a Segment-by-Segment Basis, or Any Combination Thereof.

118. Tri-County argues that the Presiding Judge ignored the language of the seven factor test, which plainly seeks to distinguish local distribution systems from transmission systems. Tri-County notes that factors 3, 4, 5, 6 and 7 reference "local distribution system" or "local distribution systems." According to Tri-County, the plain meaning of this language reveals that the seven factor test is, at bottom, a holistic test which sets forth considerations to be examined to distinguish local distribution systems from transmission systems. Tri-County further contends that the language of the other two factors, is consistent with this understanding, noting that factors 1 and 2 refer to "local distribution facilities." According to Tri-County, the Commission's use of the plural, "facilities," rather than the singular, "facility," supports the interpretation that groups of like facilities are supposed to be classified collectively under the test.[223]

119. Thus, for example, Tri-County states that in a system primarily composed of facilities in close proximity to retail customers, factor 1 would indicate a distribution system. Tri-County argues that the term "primarily" indicates that the probative value of the first two factors is affected by the ratio of facilities indicating a transmission system to facilities indicating distribution, such that those factors would be inconclusive in a system evenly split between both. On the other hand, and as in Tri-County's case, a system primarily characterized by equipment great distances from retail customers should be considered a transmission system under factor 1. By contrast, Tri-County argues, interpreting the term "facilities" in factors 1 and 2 to imply a "facility-by- facility"

[223] Tri-County Brief on Exceptions at 50-51.

analysis under these two factors alone would be pointlessly confusing and would conflict with the Commission's use of "system" in the remaining five factors. And to interpret the use of the term "facilities" in only two factors as mandating a "facility-by-facility" analysis under all seven factors would simply ignore the Commission's words altogether.[224]

120. Tri-County argues that the Presiding Judge reads too much into the Hearing Order's requirement to determine "appropriate classification of the facilities that form the basis for the annual revenue requirements proposed by Tri-County." Tri-County disputes the Presiding Judge's analysis that a plain reading of this mandate requires an evaluation of each individual facility that is subject to classification. Tri-County argues that, at most, the Hearing Order is inconclusive regarding how the seven factor test should be applied.[225]

121. Next, Tri-County contends that the Presiding Judge misreads *CalPeco* and *City of Pella*, both of which Tri-County argues applied the seven factor test on a system-as-a-whole basis. Regarding *CalPeco*, Tri-County states that the Commission referred to CalPeco's facilities as the "California Distribution System," did not separately evaluate each of CalPeco's 12.5 kV, 14.4 kV, 25.9 kV, 60 kV and 120 kV facilities, and instead evaluated CalPeco's system as a whole. Regarding *City of Pella*, Tri-County argues that while the City of Pella presented evidence of characteristics of each of the City of Pella's 69 kV facilities, the Commission did not perform a separate seven factor test evaluation of each of the City of Pella's three 69 kV power lines and substations. Instead, the Commission referred collectively to the City of Pella's "facilities" and not to each of the City of Pella's facilities on an individual basis.[226]

122. Tri-County also contends that the Presiding Judge misreads the Attachment AI Order in interpreting it as discussing classification of individual facilities under the SPP Tariff, rather than an entire system. It contends that the passage of the Attachment AI Order cited by the Presiding Judge was not discussing how to apply the seven factor test at all, but rather how individual facilities would be classified under one specific Attachment AI Criterion. Tri-County states that the Presiding Judge did not consider a footnote referring to the protest by Golden Spread pertaining to Attachment AI's proposed definition of Transmission Facilities as including those radial lines "that serve two or more eligible customers not Affiliates of each other." The Attachment AI Order

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[224] *Id.* at 51-52.

[225] *Id.* at 52.

[226] *Id.* at 53-54.

noted that SPP had answered Golden Spread's concern by indicating it would not change a particular facility's classification in the event of a merger between two eligible customers. Tri-County argues that this language concerning individual facilities unquestionably applies only to Attachment AI, Section II.1, because it resolves a problem that could only arise with respect to isolated facilities under that Criterion.[227]

123. Tri-County also argues that the Presiding Judge erred in finding that the analysis under each of the seven factors should be performed on a segment-by-segment basis. Tri-County argues that the word "segment" does not appear in the seven factor test. Tri-County argues that the analysis of each factor of the seven factor test should generally be performed based on the Commission's specific language setting forth that factor. Tri-County states that the first factor of the seven factor test expressly refers to "local distribution facilities" and implicitly refers to distance, i.e., "close proximity to retail customers." According to Tri-County, this language indicates that an examination should be made of the distances, or lengths, of Tri-County's facilities (its 115 kV and 69 kV power lines). Thus, the analysis of these power line distances or lengths should be conducted on a breaker-to-breaker basis and not on a segment-by-segment basis. That is to say, the analysis should be conducted on Tri-County's entire power lines rather than on the individual component sections or segments of these power lines.

124. Tri-County cites testimony of its witness, Mr. Swearingen, for support that this approach is consistent with the engineering and actual operations of power lines.[228] Mr. Swearingen testified that a complete transmission line originates from a source breaker, which is a form of protection equipment. The source breakers on either end of a line make the line a distinct entity for engineering purposes by allowing the line to be isolated from all other equipment. By contrast, each line section is not a complete transmission line by itself, because each line section depends on its connection to other line sections in order to transmit power from the source to the loads. Mr. Swearingen testified that sections or segments of lines are terms not based on engineering principles. Instead, segments are conceptually a fiction, the purpose of which is to provide a specific location on a transmission line — similar to a mile-marker on the highway.[229]

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[227] *Id.* at 54-55 (citing Ex. TCE-7 at 3).

[228] *Id.* at 55-56.

[229] *Id.*at 56 (citing Ex. TCE-21 at 8-10).

125. Tri-County notes that the second factor of the seven factor test refers to "local distribution facilities" and to the term "radial." Tri-County contends that, because the terms "radial" and "non-radial" are commonly used to describe power lines,[230] it is proper to consider whether its power line facilities are radial or non-radial. For the same reasons it proffered regarding the first factor above, Tri-County asserts that a breaker-to-breaker approach is appropriate to evaluate these power lines. Further, Tri-County argues that, because the third through seventh factors of the seven factor test all refer to a "local distribution system" or "local distribution systems," it is appropriate to evaluate those factors on a system-wide basis.

126. Trial Staff and Joint Intervenors argue that the Presiding Judge correctly held that the seven factor test should be applied to Tri-County's facilities, if at all, on a facility-by-facility basis rather than applied to Tri-County's system as a whole. First, according to Trial Staff, Tri-County's interpretation of a "holistic test" misreads Order No. 888, completely missing the fact that Order No. 888's reference to "local distribution facilities" and "local distribution systems" set forth the Commission's test "[t]o determine what facilities would be under the *Commission's jurisdiction* and what facilities would remain under the *state's jurisdiction* for purposes of retail stranded cost adders or other retail regulatory purposes…."[231]

127. Second, Trial Staff argues that there is no support for Tri-County's claim that the Presiding Judge read too much into the Hearing Order's requirement to determine the "appropriate classification of the facilities" at issue and that by "facilities" the Commission meant to analyze Tri-County's system rather than its individual facilities. Trial Staff argues that Tri-County would have the Commission ignore the plain language of the Commission's Hearing Order.

128. Third, Trial Staff disputes Tri-County's contention that the Presiding Judge misread *CalPeco* and *City of Pella* and the Attachment AI Order. According to Trial Staff, while the Commission may not have explicitly stated in its order that it had reviewed the facilities individually, a review of the record in *City of Pella* shows that the evidence in *City of Pella* provides a thorough record of each individual facility at issue.

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[230] *Id.* at 57, n.218 (citing Attachment AI, Section II.1, Ex. TCE-7 (Attachment AI Transmission Definition) at 3).

[231] Trial Staff Brief Opposing Exceptions at 54 (citing Attachment AI Clarification Order, 114 FERC ¶ 61,242 at P 5, n.6 (citing Order No. 888 (emphasis added))). Trial Staff states that, while other cases do address the seven factor test, the Attachment AI Orders are the only two cases that the parties found that address the seven factor test in relation to Attachment AI of the SPP Tariff. *Id.* at 54.

Trial Staff notes that the City of Pella's petition for a declaratory order in that case was a 895-page filing which included 47 pages of testimony and evidence of the individual 69 kV facilities at issue (including one-line diagrams, property listings, valuations, and meter data) and that the thorough analysis and footnote references to the filing in the Commission's order in that case make clear that the Commission did, in fact, review the extensive record.[232]

129. Regarding *CalPeco*, Trial Staff states that the petition for a declaratory order to find facilities to be distribution was not protested. But, the Commission expressed concern regarding factors three and four because of four instances where power flowed out of CalPeco's system. Trial Staff notes that the Commission found that the facilities were distribution based on the totality of the circumstances. In particular, Trial Staff notes that the Commission classified as distribution specific 120 kV lines (higher voltage than Tri-County's 115kV lines at issue in this case) connecting CalPeco with the Sierra Pacific Power Company system. Trial Staff also emphasizes that CalPeco did not ask the Commission to determine that some of the facilities in its system were distribution subject to state jurisdiction and other facilities were transmission subject to Commission jurisdiction and to roll the cost of the facilities into transmission rates to be borne by transmission customers who derive no benefit from the facilities.[233]

130. In addition, Trial Staff argues that, even if the Tri-County facilities at issue in this case were viewed on a whole-system basis, Tri-County's system would still qualify as distribution under the seven factor test: (1) the facilities at issue are radial; (2) Tri-County buys power to serve its retail load only; (3) the facilities at issue cannot be used to supply energy outside Tri-County's system; (4) energy flows in only one direction on Tri-County's system; (5) energy is completely consumed within Tri-County's system and does not supply any entity outside of the system; and (6) Tri-County's system does not move bulk power in the interstate market.[234]

131. Further, in response to Tri-County's reference to Attachment AI to interpret the seven factor test, Trial Staff argues that in *KCP&L*, the Commission analyzed individual facilities in determining the classification of Transmission Facilities under Attachment AI. Trial Staff states that the Commission addressed "the classification of equipment between transmission and distribution based on the predominant use *of each substation*…. KCP&L and Aquila state that they reviewed *each property* unit *in each*

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[232] *Id.* at 56-57.

[233] *Id.* at 57-58.

[234] *Id.* at 58-59.

substation to determine whether it supports the transmission function as defined by Attachment AI."[235] Trial Staff states that in that case, the Commission reviewed individual facilities and found that the applicants had correctly applied the definition of Transmission Facilities in determining which facilities (not "the system") qualified as Transmission Facilities.

132. Joint Intervenors argue that it is common practice in the industry for a facility-by-facility classification for rate recovery to occur based on a segment-by-segment analysis of those facilities.[236] They also argue that there are numerous examples in Attachment AI which call for facilities to be analyzed on a facility-by-facility basis. For example, they state that in evaluating whether a line "serve[s] two or more eligible customers not Affiliates of each other" (under Attachment AI, Section II.1), one would have to look at the individual characteristics of the line to determine the type of customers that are served. They note that Tri-County argues that some, but not all, of its facilities qualify as Transmission Facilities under Attachment AI.

133. Joint Intervenors also argue that if Tri-County's facilities are evaluated on a system-wide basis, SPP Zone 11 ratepayers may be forced to subsidize facilities that do not provide any benefit to the wider SPP system. They assert that, as an individual facility may not have the same operational characteristics as other facilities in a system, the classification of some facilities is insufficient to determine the classification of all facilities that Tri-County proposes to include in SPP Zone 11 rates. They argue that facilities at opposite ends of the system may have very divergent operational characteristics, and a party seeking rate recovery cannot be allowed to pick and choose the desired classification factors among a variety of facilities.[237]

134. Trial Staff and Joint Intervenors argue that the Presiding Judge correctly found that Tri-County's facilities should be analyzed on a segment-by-segment basis. First, Trial Staff contends that Tri-County again does not fully comprehend the Presiding Judge's reasoning. Trial Staff states that the Hearing Order did not state that the issue set for hearing was the proper classification of Tri-County's "system," but rather its "facilities." Further, Trial Staff asserts that Tri-County did not ask the Commission to

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[235] *Id.* at 60 (citing *KCP&L*, 125 FERC ¶ 61,352 at P 9 (emphasis added)).

[236] Joint Intervenors Brief Opposing Exceptions at 36 (citing *CalPeco*, 133 FERC ¶ 61,018 at P 45 ("[t]he seven-factor test enables us to identify the primary function of a facility. The primary function determines whether the facility is under our jurisdiction.")).

[237] *Id.* at 37-38.

classify its entire system as transmission (which would clearly subject Tri-County to the full panoply of the Commission's jurisdiction), but rather sought to include the costs of specific individual facilities in SPP's Zone 11 pricing so that those costs would be spread among all of the customers in that zone rather than borne only by the customers who benefit from the facilities (Tri-County and its own customers).[238]

135. In response to Tri-County's argument that the word "segment" does not appear in the seven factor test, Trial Staff cites the explanation of its witness, Ms. Hsiung, that the term "segment" is one of the "terms of art used by electrical engineers" to refer to lines on a one-line diagram or map.[239] Trial Staff also points out that it was Tri- County that referred to its facilities in terms of segments in the first place,[240] and Trial Staff also points out that the measurement terms suggested by Tri- County ("breaker-by-breaker" and "power line-by-power line") also do not appear in any of the seven factors. Trial Staff also disputes Tri-County's claim that sections or segments of lines are terms not based on engineering principles, but that segments are more like a "mile-marker on the highway." Trial Staff cites the explanation of Ms. Hsiung that power lines, power line segments, and power line sections are *all* "terms of art used by electrical engineers that just refer to the line that's on the one-line diagram or on the map."[241] Trial Staff states that the one- line diagram is one of the things the Commission reviews in determining how to classify a facility.

136. Trial Staff also contends that Tri-County's references to specific language of the individual factors are not persuasive. Trial Staff disputes Tri-County's claim that by referring to "close proximity" the first factor implicitly refers to distance and therefore the examination should be made of the "length" of Tri-County's "power lines" from breaker to breaker. Trial Staff states that there is no "length" to be applied to the meters and substations at issue because meters and substations are not power lines. Regarding Tri-County's argument that the term "radial" in the second factor is used to describe power lines and therefore a breaker-to-breaker approach is appropriate to evaluate its power lines under the first factor, Trial Staff responds that Tri-County does not explain the relevance of whether a power line is "radial" in terms of performing a breaker-to-breaker approach, but simply refers to the first factor. Trial Staff maintains that meters and substations are also separately listed by Tri-County as being at issue in this case, but

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[238] Trial Staff Brief Opposing Exceptions at 61-62.

[239] *Id.* at 62 (citing Tr. 414:1-4).

[240] *Id.* (citing Ex. TCE-2, Ex. TCE-3 and Tr. 226:12-24).

[241] *Id.* at 63 (citing Tr. 414:1-4).

meters and substations are labeled radial or non-radial, depending on the configuration of the power lines attached to them.[242] Further, Trial Staff states that a segment-by-segment review is not new to the Commission, noting that in *KCP&L*, the Commission reviewed individual segments to determine whether those facilities were transmission or distribution under Attachment AI. There, the Commission noted that "KCP&L's review identifies eight such radial-line *segments* for its system and Aquila identified twenty-two radial-line *segments* on its system that fail to meet the definition of Transmission Facilities under Attachment AI."[243] Finally, Trial Staff argues that Tri-County is attempting to ignore the language of Attachment AI and use its own reading of the seven factor test to broaden the Attachment AI Criteria to apply to a "system."

137. Joint Intervenors state that the analysis of Tri-County's individual facilities on a segment-by-segment basis is consistent with industry practice and precedent. For example, they state that in SPP, many other utilities, including other electric cooperatives, that have submitted petitions or reached settlement agreements regarding the classification of facilities for rate recovery purposes have used a segment-by-segment analysis.[244] According to Joint Intervenors, although its examples of segment-by-segment analysis performed by utilities for facilities classification were done pursuant to Attachment AI, they still represent the relevant industry practice for the use of the seven factor test for rate recovery purposes in SPP as no other SPP Transmission Owner has sought to use the seven factor test, instead of the Criteria in Attachment AI, Section II.1-6, to determine rate recovery.[245] Joint Intervenors also cite *KCP&L* in which the petitioners for a declaratory order in that proceeding analyzed numerous line segments. Joint Intervenors also note that Tri-County admitted, on cross-examination, that it delineated the lines on its one-line diagram by segments, based in part on industry practice.[246] They also assert that Tri-County has provided no evidence or support for the proposition that the distribution of breakers on electrical facilities has any correlation to whether the facilities are performing transmission functions.

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[242] *Id.* at 63-64.

[243] *Id.* at 64 (citing *KCP&L*, 125 FERC ¶ 61,252 at P 6 (emphasis added)).

[244] Joint Intervenors Brief Opposing Exceptions at 39.

[245] *Id.* at 39, n.140.

[246] *Id.* at 40-41 (citing Tr. 226:12-24).

c. First Factor: "Local Distribution Facilities Are Normally in Close Proximity to Retail Customers."

138. Tri-County cites its witness Mr. Swearingen's testimony regarding the long distances of its power lines:

- The power line extending from Breaker 0905 is 40.47 miles in total distance.
- The power line extending from Breaker 0860 is 30.68 miles in total distance.
- The power line extending from Breakers 4510 and 4340 is 7.35 miles in total distance.
- The power line extending from Breakers 4520 and 4330 is 6.99 miles in total distance.
- The power line extending from Breaker 4360 is 141.7 miles in total distance.
- The power line extending from Breaker 4350 is 66.05 miles in total distance.
- The power line extending from Breaker 2020 is 23 miles in total distance.
- The power line extending from Breaker 2040 is 24 miles in total distance.
- The power line extending from Breaker 2010 is 57.25 miles in total distance.[247]

139. Tri-County argues that in addition to the lengths of these power lines, it showed that these lines are not in close proximity to retail customers because the lines do not generally serve retail customers directly. According to Tri-County, its power lines generally cannot directly serve any retail customers because Tri-County's local distribution system generally operates between 4 kV and 25 kV, substantially less than the 69 kV and 115 kV high voltage lines. Before serving retail customers, the lines Tri-County proposes to be classified as transmission facilities terminate at substations where power is stepped down to those lower voltages before entering a distribution system. Thus, the lines listed above are removed from retail customers geographically by their own lengths and operationally by substations and distribution facilities necessary to serve retail customers.

[247] Tri-County Brief on Exceptions at 57 (citing Ex. TCE-2; Ex. TCE-4 at 4).

140. Trial Staff states that the Commission has never defined "close proximity" under the first factor. However, Trial Staff asserts that the facilities at issue in this case cover an aggregate distance of 406 miles, not 7,900 square miles and not 4,800 linear miles. By contrast, Trial Staff notes that the facilities in *CalPeco* consisted of an aggregate distance of 1,400 miles, and in that case, the Commission found that, based on the totality of the circumstances, the facilities at issue were distribution facilities, not transmission facilities.[248] Trial Staff asserts that Tri-County seems to be confusing the distance between its retail customers, which has nothing to do with factor one of the seven factor test,[249] and the distance between the facilities and the retail customers. Trial Staff argues that the Presiding Judge correctly found that Tri-County's facilities are normally in close proximity to retail customers and therefore distribution.

141. Trial Staff dismisses Tri-County's argument that its power lines cannot directly serve any retail customers because its substations transform the power line voltages to even lower voltages at which it serves its retail customers, typically between 4 kV and 25 kV. Trial Staff responds that all distribution systems step down from higher levels to lower levels as the power gets closer to the end-user. Trial Staff argues that the substations and power lines at issue in this proceeding are distribution facilities and the 4 kV and 25 kV lines extending from those substations have no bearing on the determination of whether the facilities at issue are transmission or distribution.[250]

142. Trial Staff and Joint Intervenors also argue that, on this issue (as well as regarding factors 2 through 6), Tri-County's claims that its facilities may soon be classified as transmission because of future wind projects (cited in its supplemental direct testimony that the Presiding Judge excluded) are speculative and premature, and should not be given any weight.[251]

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[248] Trial Staff Brief Opposing Exceptions at 66 (citing Ex. TCE-1 at 4:9; *CalPeco*, 133 FERC ¶ 61,018 at P 29).

[249] Trial Staff maintains that the fact that Tri-County's retail customers are spread out relative to each other is more reflective of the geography of this part of the country than an indicator that the facilities at issue are transmission.

[250] Trial Staff Brief Opposing Exceptions at 67-68.

[251] *See, e.g.*, Trial Staff Brief Opposing Exceptions at 68-69. As noted above, Tri-County has withdrawn the portions of its Brief on Exceptions arguing that its facilities will be transmission in the future when certain wind projects are built. Tri-County Brief on Exceptions at 61.

143. Joint Intervenors state that *City of Pella* shows that "proximity" is interpreted in the context of the purpose and customers that the facilities serve, noting that the City of Pella had introduced evidence that its 69 kV facilities support service to areas beyond its distribution system that are served by other utilities, are needed to complete imports and exports of power across a wide region, and allow for transmission over a broad region.[252] Regarding Tri-County's argument that its lines do not generally serve retail customers directly, Joint Intervenors assert that two of Tri-County's lines (the power line extending from Breaker 0905 and the power line extending from Breaker 2010), as Tri-County acknowledged, do directly serve a retail customer (i.e., Whiting). In addition, its facilities do not support service to any other communities or rural areas and are not involved in the import and export of power across a wide region (or exports of any kind).[253]

144. Joint Intervenors also argue that Tri-County seems to conflate the size of its territory with the proximity of its facilities to retail customers. They maintain that the geography at issue in *CalPeco* (the South Lake Tahoe and North Lake Tahoe areas, a popular tourist area in California and Nevada consisting of a large lake and surrounded by mountains) is very different than the sparsely-populated open plains in the Texas-Oklahoma Panhandle region where Tri-County's facilities are located. They argue that, simply because the Commission found that CalPeco's facilities, which are used to serve customers within 15 miles of South Lake Tahoe and North Lake Tahoe and 5 other towns, qualified as distribution under the first factor of the seven factor test, it does not mean that Tri-County's facilities, in different geographic circumstances, do not also qualify as distribution.[254] They also cite the testimony of Trial Staff's witness, Ms. Hsiung,[255] that most of the line segments identified by Tri-County in Exhibit No. TCE-2 are less than 20 miles in length. They also argue that if the first factor was solely concerned with the length of the power lines, it would have been phrased in such a way.

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[252] Joint Intervenors Brief Opposing Exceptions at 42 (citing 134 FERC ¶ 61,081 at PP 17, 73).

[253] Joint Intervenors Brief Opposing Exceptions at 42-43.

[254] *Id.* at 43-44.

[255] Ex. S-1 at 41:7-8.

d. Second, Third and Fourth Factors: Local Distribution Facilities Are Primarily Radial in Character; Power Flows into Local Distribution Systems, and Rarely, If Ever Flows Out; When Power Enters a Local Distribution System, It Is Not Reconsigned Or Transported on to Some Other Market.

145. Regarding the second factor, Tri-County acknowledges that the majority of its facilities at issue are local distribution under this factor. [256] Regarding the third factor, Tri-County states that it has acknowledged that power does not flow out of its system at present.[257] Regarding the fourth factor, Tri-County states that it has acknowledged that once power enters its system, power is not reconsigned or transported on to some other market at this time.[258] Trial Staff and Joint Intervenors cite Tri-County's acknowledgements regarding factors two through four, described above, and they argue that the Presiding Judge made the correct findings regarding the second, third and fourth factors of the seven factor test.

e. Fifth Factor: Power Entering a Local Distribution System Is Consumed in a Comparatively Restricted Geographical Area.

146. Tri-County reiterates its argument that its facilities deliver power to its distribution system serving loads covering a vast – 7,900 square mile – multistate service territory. Tri-County argues that the Presiding Judge incorrectly relies on *City of Pella* for the proposition that facilities serving loads limited to the system's retail boundary must necessarily be local distribution. Tri-County argues that the Commission's ruling in *City of Pella* concerned power leaving the retail boundary of a small municipal utility, which likely naturally occupies only a small geographic area, and Tri-County contends that there is no reason to extend that holding to a cooperative whose retail service area is comparatively large.[259]

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[256] Tri-County Brief on Exceptions at 61; Tri-County Nov. 13, 2012 Conditional Withdrawal Letter.

[257] Tri-County Brief on Exceptions at 62; Tri-County Nov. 13, 2012 Conditional Withdrawal Letter.

[258] Tri-County Brief on Exceptions at 62; Tri-County Nov. 13, 2012 Conditional Withdrawal Letter.

[259] Tri-County Brief on Exceptions at 63.

147. Further, Tri-County argues that the Commission considered the size of the geographical area served by the facilities in *CalPeco*. It notes that in that case, virtually all of the customers were served by distribution facilities that were within 15 miles of those communities and the Commission found the facilities to be local distribution. Tri-County contrasts CalPeco's circumstances with its own, stating that Tri-County's 7,900 square mile service territory is larger than the state of New Jersey. It argues that it is difficult to conceive how this service territory can be considered "a comparatively restricted geographical area" under any fair reading of the test and the Commission's few cases on the point.[260] Tri-County argues that the Presiding Judge erred in finding that the persuasive value of this argument was "severely diminished" by Xcel witness Mr. Fulton's observation that the geographical size of Tri-County's system is attributable to the very rural nature of the Oklahoma panhandle in which Tri-County operates rather than to its function as a transmission system. Tri-County states that most electric cooperatives serve rural areas. It contends that the Presiding Judge improperly weighted the seven factor analysis against electric cooperatives in a manner that would be questionable policy for the Commission to follow.[261]

148. Trial Staff argues that Tri-County's emphasis on the vast size of its service territory fails to respond to the contention that only eight specific power lines and related facilities are at issue, and the fifth factor hinges on their proximity to Tri-County's end-users. Trial Staff argues that the size of Tri-County's service territory is not relevant to the fifth factor and that Tri-County presented no evidence (other than the size of its service territory) to refute the contention that the geographic territory in which its power is consumed is restricted by end-users.[262]

149. Joint Intervenors note that in *City of Pella*, the Commission's analysis of the fifth factor looked at the City of Pella's connections with other utility systems, not the size of the city's service territory. They state that in contrast to the facilities at issue in *City of Pella* in which some of the power that entered the City of Pella's facilities was consumed on neighboring transmission systems, all of the power that enters Tri-County's facilities is consumed within Tri-County's system. Whereas the City of Pella's facilities provide benefits to the wider transmission system, Tri-County's facilities are only located within Tri-County's retail boundaries and, under normal circumstances, power only flows into the system to serve Tri-County's members – not out to serve neighboring systems. Thus, Joint Intervenors argue that, unlike the City of Pella's facilities, Tri-County's facilities

[260] *Id.* at 63-64.

[261] *Id.* at 64-65.

[262] Trial Staff Brief Opposing Exceptions at 72-73.

are not part of the integrated grid as they do not serve or benefit anyone besides Tri-County's members. Joint Intervenors contend that *City of Pella* stands for the proposition that power consumed beyond the service territory of the utility supports a finding that power is not consumed in a comparatively restricted area.[263]

f. Sixth Factor: Meters Are Based at the Transmission/Local Distribution Interface to Measure Flows into the Local Distribution System.

150. Tri-County asserts that the Presiding Judge misconstrued its position. Tri-County states that its witness, Mr. Swearingen, explained that because the meters at the Bourk 115/69 kV and Cole 115/69 kV Transmission Interchanges were not located at transmission/local distribution interfaces, they are not distribution facilities; rather, these meters provide support that Tri-County's 115 kV and 69 kV systems are transmission.[264] Citing Mr. Swearingen's rebuttal testimony, Tri-County argues that, from an engineering and operational perspective, transmission interchanges are within a transmission network — not at its termini — and meters at transmission interchanges do not mark the dividing point between transmission and distribution. Tri-County states that while both interchange facilities transform the voltages transmitted over 115 kV power lines to 69 kV power lines, the voltages nonetheless remain above 60 kV and, hence, at transmission voltages throughout the facilities.[265]

151. Tri-County asserts that there is little to distinguish the SPS-owned facilities that have been classified as Transmission under Attachment AI from the Tri-County-owned transmission facilities at Bourk and Cole from an engineering and operational viewpoint. For these reasons, Mr. Swearingen disagreed that these interchanges are located at the interface between transmission and local distribution, according to Tri-County. Tri-County contends that meters at the Bourk and Cole Interchanges are not located at the "transmission/local distribution interface" at all, but rather are at the interface between SPS's transmission facilities and Tri-County's transmission facilities.[266]

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[263] Joint Intervenors Brief Opposing Exceptions at 54-56 (citing *CalPeco*, 133 FERC ¶ 61,018 at P 27).

[264] Tri-County Brief on Exceptions at 65-66 (citing Ex. TCE-4 at 5).

[265] *Id.* at 66-67 (citing Ex. TCE-21 at 23).

[266] *Id.* at 67-68 (citing Ex. TCE-21 at 23).

152. Tri-County reiterates its contention, discussed above, that the language of Sections II.1 and II.4 of Attachment AI itself provides additional support for Mr. Swearingen's conclusion that the sales meters at the Bourk and Cole 115/69 kV Transmission Interchanges are not at the transmission/local distribution interface. According to Tri-County, Attachment AI teaches that the division between transmission and distribution typically occurs at those particular substations that might transform power from transmission voltages — that is, voltages "higher than 60 kV" — to distribution voltages, or voltages "lower than 60 kV."[267] Thus, Tri-County argues, meters at those substations – and not the sales meters at the Bourk and Cole 115/69 kV Transmission Interchanges – are the relevant facilities located at the "transmission/local distribution interface" for purposes of analyzing the sixth factor of the seven factor test.[268]

153. Tri-County states that its substations that transform voltage from above 60 kV to below 60 kV are shown on its one-line diagram, Ex. TCE-6, and are listed in Ex. TCE-3 (excluding the Bourk and Cole Transmission Interchanges). Mr. Swearingen explained that each of these substations transforms the voltages of Tri-County's high voltage power lines to the voltages at which Tri-County serves its retail customers, which is typically between 4 kV and 25 kV.[269] According to Tri-County, the meters at each of these substations that measure power flows into Tri-County's local distribution system facilities serving its retail customers are the proper "transmission/local distribution interface" demarcation point under the sixth factor.[270]

154. Tri-County states that it seeks to recover in SPP's Zone 11 ATRR only the costs of Tri-County's facilities that are "upstream" of Tri-County's distribution meters and that those facilities collectively comprise Tri-County's transmission system.[271]

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[267] Tri-County also disputes that it is cherry-picking a favorable provision of Attachment AI in its seven factor analysis. Rather, it states that it refers to this provision for guidance in determining the meaning of "the transmission/local distribution interface." *Id.* at 68, n.268.

[268] *Id.* at 68-69.

[269] Ex. TCE-21 at 24.

[270] Tri-County Brief on Exceptions at 69.

[271] *Id.* at 70.

155. Regarding the Presiding Judge's observation that in *City of Pella*, the Commission found that the City of Pella's meters were transmission because they were designed to measure bilateral flows, Tri-County states that measurement of bilateral flows is not the only consideration under the sixth factor and that the Presiding Judge did not give proper weight to other evidence that was highly probative, referencing future wind projects.[272]

156. Trial Staff contends that because Tri-County's argument that the interchanges are transmission under the sixth factor is based on the premise that the facilities surrounding the interchanges are transmission and the Presiding Judge has found that those facilities surrounding the interchanges are not transmission, the interchanges are not transmission either. Further, because the Presiding Judge had already found that the facilities at issue do not qualify as Transmission Facilities under Attachment AI, Tri-County's attempts to buttress its argument regarding the sixth factor by using language from Attachment AI also must fail. Further, Trial Staff notes that Tri-County admits that power flows one way through the meters, not both ways.[273]

157. Joint Intervenors argue that the seven factor test does not call for an identification of meters located at the interface of two sets of transmission facilities, so, even assuming *arguendo* that the substance of Tri- County's argument was correct, evidence of meters at such an interface would be irrelevant under the sixth factor. They argue that the correct analysis for the sixth factor attempts to identify the location of meters at a transmission/local distribution interface where the meters measure flows into the local distribution system. They state that in *CalPeco*, the evidence showed that CalPeco has perimeter meters around its local distribution system to measure flows into and out of the distribution system and in *City of Pella*, the evidence showed that Pella installed meters to measure bilateral flows at the transmission/local distribution interface to measure flows into its local distribution system for billing purposes.[274]

158. Joint Intervenors contend that the record in this case shows that the meters at the Bourk and Cole Interchange were installed only so that SPS and Golden Spread could determine the amount of power supplied to Tri-County through their respective power sales agreements. They cite testimony of Mr. Fulton that the Network Integration Transmission Service Agreements show that the meters were necessary to measure

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[272] *Id.* at 70.

[273] Trial Staff Brief Opposing Exceptions at 77 (citing Tri-County Brief on Exceptions at 62, and Ex. TCE-4 at 5).

[274] Joint Intervenors Brief Opposing Exceptions at 57-58 (citing *CalPeco*, 133 FERC ¶ 61,018 at P 28; *City of Pella*, 134 FERC ¶ 61,081 at PP 22, 73).

deliveries to Tri-County when Tri-County acquired SPS's distribution assets. Joint Intervenors argue that these meters show where transmission service to Tri-County, i.e., the transmission/local distribution interface (not the transmission/transmission interface) ends and where the delivery on Tri-County's non-networked, radial lines begins, and, thus, where SPP transmission service is measured for billing purposes.[275] They also cite Trial Staff witness Ms. Hsiung's testimony that there is only one-way power flow through the meter to the end-user of Tri-County.

159. Joint Intervenors argue that there is no support for looking to guidance from Attachment AI for application of the seven factor test, because they are two wholly distinct tests for determining what should be classified as transmission. And, even if it is correct to look to Attachment AI, they argue that Tri-County's reasoning is faulty because it ignores Attachment AI's other guidance that transmission facilities are non-radial, and serve more than one Eligible Customer. In addition, they contend that Tri-County offered little evidence to support its claim that its substations stepping voltages down from 60 kV to 4 kV and 25 kV constitute its transmission/local distribution interface. Further, they state that no evidence has been provided concerning the function of those meters. However, they argue that the purpose of those meters cannot be related to measuring transmission service usage, because the only Tri-County customer taking a distinct "transmission voltage" Rate 47 service is Whiting, who does not take deliveries at any of the locations where Tri-County claims the relevant meters are.[276]

g. Seventh Factor: Local Distribution Systems Will Be of Reduced Voltage.

160. No party filed exceptions on this issue. Trial Staff states that it does not except to the Presiding judge's finding that Tri-County's facilities are transmission under the seventh factor "(because the Presiding Judge correctly found that none of its facilities is eligible for cost recovery under Attachment AI)."[277] However, Trial Staff states that it believes it must address the seventh factor in conjunction with the totality of circumstances. Trial Staff states that in *CalPeco*, the Commission found that certain 120 kV and 60 kV facilities were distribution, even though they connected to CalPeco's distribution substations to Sierra Pacific Power Company's transmission and distribution

[275] *Id.* at 58 (citing Ex. XES-1 at 10, Ex. XES-5).

[276] *Id.* at 60-61 & n.221.

[277] Trial Staff Brief Opposing Exceptions at 78.

systems. Trial Staff states that the Commission's determination in *CalPeco* shows that a higher voltage power line can nevertheless still operate as distribution. Trial Staff states that the fact that the facilities at issue in this case include 69 kV and 120 kV facilities does not determine the outcome under the seventh factor.[278]

h. Totality of Circumstances

161. Tri-County contends that the Presiding Judge took a mechanical approach to the individual factors and failed to consider other factors, i.e., planned development of wind resources that would have had a bearing on the future classification of Tri-County's facilities as transmission. Tri-County argues that the planned development of wind generation sources "bears on how each of the seven factors fits into a comprehensive picture of Tri-County's system"[279] and that the Presiding Judge should have given more weight to that evidence. In addition, it argues that whether the costs of Tri-County's facilities should be included in SPP's rates bears directly on the Commission's policy objectives with respect to regional transmission markets and access to remote generation resources. Tri-County argues that its facilities are needed to move power generated by developers accessing the Oklahoma Panhandle's wind, oil, and gas resources for use where they are needed, far from Tri-County's sparsely populated territory to ultimate interstate markets. It states that "[t]hese projects are already underway" and that SPP's regional capabilities are vital to their continued development.[280]

162. Joint Intervenors argue that Tri-County is, in actuality, asking the Commission to rely heavily on the fact that it has a large service territory and that two proposed wind projects have signed generator interconnection agreements, both of which arguments should be dismissed. They contend that the totality of circumstances analysis, developed in *CalPeco*, is meant to show how facilities can still be found to be transmission or local distribution, based on the primary function of the facilities, even though the facilities may not technically be transmission or distribution under all of the factors of the seven factor test. They contend that Tri-County has not engaged in this type of analysis as it does not discuss the actual functions that its facilities serve.[281]

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[278] *Id.* at 78-79.

[279] Tri-County Brief on Exceptions at 71-72. As noted above, Tri-County has withdrawn the portions of its Brief on Exceptions discussing the planned wind projects.

[280] *Id.* at 72-73 & n.281.

[281] Joint Intervenors Brief Opposing Exceptions at 61-62.

163. Trial Staff contends that Tri-County has shown no evidence that it has even acquired funding for the wind projects, ground has not been broken on the projects, and there are no operational facts on record to support any of Tri-County's arguments under each of the seven factors. Thus, Trial Staff maintains that the possibility of wind projects in Tri-County's future is at this point speculative and should be given no weight at all. Trial Staff states that when the proposed wind projects become operational, Tri-County can then make its claim that its facilities are Transmission Facilities under Attachment AI. Regarding Tri-County's public policy argument, Trial Staff disputes Tri-County's statement that the projects are already underway, arguing that Tri-County improperly cited to the Commission's eLibrary that links to the wind project generation interconnection agreements. Trial Staff states that the Presiding Judge struck those agreements from the record and asserts that there is no evidence in this record or any other that those projects are underway. Finally, Trial Staff argues that the sort of public policy consideration Tri-County urges does not enter into an Attachment AI or seven factor test analysis under a straight-forward reading of either test.[282]

3. Commission Determination

a. Whether the Commission's Seven factor test May Be Used to Demonstrate that Tri-County's Facilities Are Transmission Facilities Eligible to Be Rolled into the SPP's Zone 11 ATRR and Whether Tri-County Has the Burden of Proof on this Issue.

164. We affirm the Initial Decision on both of these issues.

165. The Presiding Judge correctly interpreted the Attachment AI Orders as permitting the use of the seven factor test to classify Tri-County's facilities at or above 60 kV as Transmission Facilities eligible to be rolled into SPP's Zone 11 ATRR. Read together, the Attachment AI Orders hold that the seven factor test may be applied in order to determine whether a facility is included in Transmission Facilities under Attachment AI.[283] This is shown by the Commission's discussion in the Attachment AI Clarification Order:

[282] Trial Staff Brief Opposing Exceptions at 79-81.

[283] Our determination on this issue is limited to the applicability of the seven factor test in relation to Attachment AI, based on the Attachment AI Orders.

> In the Original Filing, SPP proposed that *Transmission Facilities would include* all facilities operated below 60 kV *that have been determined to be transmission under the Commission's seven factor test*. Some parties, including Golden Spread, argued that this proposed definition inconsistently applied the seven factor test by requiring it to be applied to facilities below 60 kV but not to facilities at and above 60 kV. In response, the Commission stated that *"the definition [did] not limit application of the Commission's seven factor test to facilities below 60 kV"* and that parties could seek determinations from this Commission or state commissions regarding *the status of any facility*. [Attachment AI Order, 112 FERC ¶ 61,355 at P 42.] (Emphasis added.)
>
> Golden Spread now argues that it is not clear from the [Attachment AI Order] whether SPP is required to honor a determination that a facility is transmission under the Commission's seven factor test; Golden Spread seeks clarification that such a determination is binding on SPP.
>
> We clarify that we intended that the seven factor test may be applied to determine whether any facility is transmission, regardless of whether it is operated at, above, or below 60 kV and that SPP would be required to honor such a determination.[**284**]

166. As the above text shows, the Commission expressly permitted the seven factor test to be used for the purpose of analyzing whether a facility is a Transmission Facility under Attachment AI. As the Presiding Judge noted, that is the context in which the Commission made that determination, i.e., the Commission's determination paralleled Golden Spread's request for clarification.

167. Occidental reads the Attachment AI Orders too narrowly. As the Presiding Judge noted, the Commission was not limited to employing the seven factor test for its original purpose only. Indeed, in *CalPeco*, the Commission expressly found that the seven factor test would be useful for other than its original purpose in that case:

> As CalPeco acknowledges, in Order No. 888 the Commission established the seven-factor test to analyze the jurisdictional status of facilities used for unbundled retail service. [Citation omitted.] Nonetheless, based on the facts of this case, we find the Criteria in the seven-factor test to provide

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284 Attachment AI Clarification Order, 114 FERC ¶ 61,242 at PP 6-8.

> helpful guidance in determining the jurisdictional status of the facilities at issue.[285]

168. In addition, even though the Commission did not order an amendment to the SPP Tariff to reflect its determinations in the Attachment AI Orders, Occidental's argument here that Attachment AI limits the use of the seven factor test to facilities below 60 kV is refuted by the Commission's express determination in the Attachment AI Orders, particularly the Attachment AI Clarification Order ("regardless of whether [a facility] is operated at, above, or below 60 kV"). Occidental's attempt to read the effect of the Attachment AI Orders out of existence is unpersuasive. Moreover, to the extent Occidental challenges the determinations of the Attachment AI Orders, the appropriate forum for Occidental to have made that argument was in the Attachment AI proceeding, not in this proceeding.

b. Whether the Seven factor test Should Be Applied to Tri-County's System as a Whole or Whether It Should Be Applied on a Facility-By-Facility Basis. Whether the Analysis under Each Factor Should Be Performed on a System-Wide Basis, or on a Breaker-to-Breaker Basis, or on a Segment-by-Segment Basis, or Any Combination Thereof.

169. We affirm the Presiding Judge's findings that the seven factor test should be applied to Tri-County's facilities on a facility-by-facility basis and that the analysis under each factor should be performed on a segment-by-segment basis. The approach adopted by the Presiding Judge is consistent with the relevant Commission precedent relied upon by all of the parties. In contrast, there is no support in Commission precedent cited by Tri-County for its proposed analysis.

170. As the Presiding Judge noted, the Hearing Order expressly set for hearing the classification of Tri-County's facilities. The context of the Hearing Order sheds light on this. Intervenors argued that Tri-County had not provided sufficient evidence (through its testimony and exhibits) that its facilities meet the requirements of "Transmission Facilities" as defined in Attachment AI. In addition, intervenors asserted that Tri-County failed to provide additional information, including a one-line diagram or map, that clearly indicates system configurations with radial and non-radial lines, substations and associated facilities, and their relation to the SPS electrical system. Intervenors also claimed that Tri-County's proposal includes Tri-County facilities that are radial lines

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[285] *CalPeco,* 133 FERC ¶ 61,018 at n.61.

serving Tri-County load only.[286] Against that backdrop of issues raised by intervenors, the Commission found that "the record before us does not provide enough information for us to determine the appropriate classification of the facilities that form the basis for the annual revenue requirements proposed by Tri-County," and it set the issue for hearing. It is apparent that the intervenors were concerned that at least some of Tri-County's facilities did not qualify as Transmission Facilities. A facility-by-facility analysis was the only reasonable way to address such concerns.

171. As the Presiding Judge found, analysis of each facility under the seven factor test on a segment-by-segment basis is consistent with the Commission precedent cited by the parties. As Trial Staff notes, in *City of Pella*, the City of Pella analyzed its individual facilities at issue under each of the seven factors.[287] The Commission found that the City of Pella's 69 kV facilities are transmission facilities, "[b]ased upon the record developed in this proceeding."[288] In *CalPeco*, the applicant sought a disclaimer of Commission jurisdiction over its facilities. The Commission noted that the applicant identified four instances where power flows out of CalPeco's system and found that it "raised a difficult question" with respect to the application of factors three and four of the seven factor test. However, the Commission found that all of the power flowing out will be either for border communities or to lend support in the event of an emergency or outage, and it found that CalPeco's facilities were distribution under the seven factor test based on the totality of circumstances. Thus, *CalPeco* did reflect an analysis of individual facilities.

172. Further, given that Tri-County seeks to invoke the seven factor test in order to provide guidance as to whether its facilities are Transmission Facilities under Attachment AI, it is improper to then invoke Attachment AI to interpret the seven factor test for the purpose of interpreting Attachment AI. In any event, as Trial Staff notes, in *KCP&L*, the applicants analyzed 30 radial line segments on their systems.[289] The Commission found that KCP&L correctly applied the definition of Transmission Facilities in determining which facilities qualified as Transmission Facilities under Attachment AI. Thus, even in applying Attachment AI, the applicant analyzed individual facilities. In addition, we agree with the observation of Trial Staff's witness that power lines, power line segments, and power line sections are terms of art used in common industry practice to refer to lines on a one-line diagram or on a map.

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[286] Hearing Order, 138 FERC ¶ 61,231 at P 6.

[287] *See* City of Pella, Iowa, Petition for Declaratory Order, July 2, 2010, Ex. P-11.

[288] *City of Pella*, 134 FERC ¶ 61,081 at P 73.

[289] *KCP&L*, 125 FERC ¶ 61,352 at P 6.

173. Tri-County has failed to refute the opposing parties' reliance on the Commission orders cited by the parties, and it points to no Commission orders analyzing an applicant's facilities on a "breaker-to-breaker" basis. Moreover, Tri-County admittedly identified its facilities by segment in its one-line diagrams.[290]

c. First factor: Local Distribution Facilities Are Normally in Close Proximity to Retail Customers.

174. We affirm the Initial Decision on this issue. The Presiding Judge found that if a utility's facilities are bounded by its own retail customers, they are deemed to be in close proximity to retail customers regardless of the size of the utility's service territory. The Presiding Judge's interpretation of the first factor is consistent with the seven factor test's emphasis on the primary function of a facility, particularly where the facilities are analyzed on a segment-by-segment basis where, as Trial Staff's witness noted, most of the line segments are connected with delivery points or substations, which serve end-users.[291] As the Presiding Judge noted, in *City of Pella*, the facilities extended beyond the City of Pella's distribution system, where its retail customers were located, to support service to other utilities' customers across a wide region, whereas Tri-County's facilities are bounded by its own retail members. As Joint Intervenors argued, under *City of Pella*, proximity is interpreted in the context of the purpose and customers that the facilities serve. Thus, the Presiding Judge properly analyzed where the facilities were in relation to the retail customers and what function those facilities performed. This is not the case with Tri-County's facilities, as shown by the evidence presented by Trial Staff and Joint Intervenors. Tri-County's emphasis is solely on the vast size of its service territory and how far its customers are from each other does not support its claim that its facilities are not in close proximity to its retail customers.

[290] *See* Tr. 225-226. Mr. Swearingen acknowledged that NERC did not require the depiction of lines as segments, but Tri-County determined that it was appropriate to do so to comply with NERC requirements.

[291] *See* Initial Decision, 143 FERC ¶ 63,003 at P 231. *See also CalPeco*, 133 FERC ¶ 61,018 at P 45 (regarding analysis of the primary function of the facilities under the seven factor test).

d. Second, Third and Fourth Factors: Local Distribution Facilities Are Primarily Radial in Character; Power Flows into Local Distribution Systems, and Rarely, If Ever Flows Out; When Power Enters a Local Distribution System, It Is Not Reconsigned Or Transported on to Some Other Market.

175. Tri-County concedes that its facilities are currently distribution under factors two, three and four. In addition, under factor two, Tri-County admitted that it did not perform any loop flow studies. Further, as noted above, Tri-County has withdrawn its arguments that in the future, certain wind projects will allow its facilities to be classified as transmission under these factors. Therefore, we affirm the Presiding Judge's findings that Tri-County's facilities are distribution under factors two, three and four of the seven factor test.

e. Fifth Factor: Power Entering a Local Distribution System Is Consumed in a Comparatively Restricted Geographical Area.

176. We affirm the Presiding Judge's finding that Tri-County's facilities are distribution under the fifth factor. We agree with the arguments that Tri-County incorrectly contends that a geographical area may not be restricted because it is vast. Again, keeping in mind the seven factor test's focus on determining the primary function of facilities at issue, the Presiding Judge correctly determined that the relevant consideration was not the sheer size of Tri-County's service territory, but the fact that the geographic territory in which its power was consumed is restricted by end-users. This is consistent with the facts of *City of Pella*, as the Presiding Judge found. Unlike Tri-County, some of the City of Pella's facilities served systems beyond its retail boundary.[292] Thus, Tri-County misstates the applicable analysis under this factor, and it has not provided evidence that its system is not currently bounded by its retail customers.

[292] *See also Alcoa Power Generating Inc. and Alcoa Power Marketing, LLC*, 143 FERC ¶ 61,161, at P 18 (2013) (finding that the facilities were not distribution because, among other factors, power not consumed by Alcoa's plant could be sold by the generators as they saw fit).

f. Sixth Factor: Meters Are Based at the Transmission/Local Distribution Interface to Measure Flows into the Local Distribution System.

177. We agree with the Presiding Judge's finding that the Bourk and Cole Interchanges are not transmission facilities, because the meters only measure power flows into Tri-County's local distribution system facilities serving Tri-County's retail customers and Tri-County did not show that the meters measure bilateral flows.[293] Indeed, Tri-County admitted that power flows only one way through the meters, in contrast with *City of Pella*, which satisfied the sixth factor where the City of Pella's meters measured bilateral flows. We also agree with the Presiding Judge that Attachment AI was irrelevant to the seven factor analysis.

g. Seventh Factor: Local Distribution Systems Will Be of Reduced Voltage.

178. As noted above, no party excepts to the Presiding Judge's finding on this issue, and we affirm the Presiding Judge's finding that Tri-County's facilities are transmission under the seventh factor.

h. Totality of Circumstances

179. As discussed above, we have determined that the Presiding Judge correctly found that Tri-County's facilities are not transmission under six of the seven factors of the Commission's seven factor test. While we do not suggest that only one factor out of seven could never be dispositive in an analysis of the appropriate classification of facilities, Tri-County points to no such case in which the Commission has done so. In any event, the voltage levels at which the Bourke and Cole Transmission Interchanges operate (the seventh factor) does not by itself determine whether a facility is transmission or distribution. The Commission will evaluate upstream and downstream power segments and flows across the facilities against the primary function of the facility to form a conclusion. We need not address the merits of Tri-County's arguments that our analysis of the totality of circumstances should also consider other factors (i.e., planned wind development projects that could affect the classification of Tri-County's facilities in the future and the Commission's public policy goals) in view of Tri-County's request that we disregard the portions of its Brief on Exceptions making such arguments. Accordingly, we find that, based on the totality of circumstances, Tri-County's facilities are distribution facilities.

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[293] *See* Initial Decision, 143 FERC ¶ 63,003 at PP 240-241.

IV. Conclusion

180. Based on the discussion above, we affirm the Initial Decision with respect to the Presiding Judge's findings that that Tri-County's facilities are not "Transmission Facilities" under Attachment AI or transmission facilities under the Commission's seven factor test, and that none of Tri-County's facilities are, therefore, eligible to be rolled into SPP's Zone 11 ATRR.

The Commission orders:

The Initial Decision is hereby affirmed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)