conditions under which those services will be made available * * *. [In contrast], a negotiation process creates uncertainty and imposes on customers delay and other transaction costs that the transmitting utility members of an RTG do not incur when using the transmission for their own benefit. Moreover, the ability to execute separate transmission agreements with different but similarly situated customers is the ability to unduly discriminate among them. A tariff ensures against such discrimination in the RTG.[115]

Thus, the Commission required the RTGs to amend their bylaws to commit all transmitting utility members to offer comparable transmission services to other RTG members pursuant to a transmission tariff or tariffs.

Most recently, the Commission has set for hearing whether transmission tariffs meet the *AEP* comparability standard in Commonwealth Edison Company,[116] Wisconsin Electric Power Company,[117] and Wisconsin Public Service Corporation.[118] In all three cases, the company agreed in principle to provide comparable service, but issues arose as to what constitutes such service.

c. *Lack of Market Power in New Generation.* In *KCP&L,* discussed in the prior section, the Commission continued to recognize that transmission remains a natural monopoly. However, it found that, in light of the industry and statutory changes that now allow ease of market entry, no wholesale seller of generation has market power in generation from new facilities.[119] In particular, the Commission explained that it had previously noted in *Entergy Services, Inc.* that

there was significant evidence that non-traditional power project developers, including qualifying facilities and independent power projects, are becoming viable competitors in long-run markets.[120]

The Commission further explained that since *Entergy,* Congress had enacted the Energy Policy Act, which had lowered barriers to the entry of new suppliers by creating a new class of power suppliers—EWGs—that are exempt from the provisions of PUHCA.[121] The Commission concluded that, in considering market-based rate proposals for generation sales, it need only focus on market power in transmission, generation market power in short-run markets, and other barriers to entry.[122]

d. *Further Commission Action Addressing a More Competitive Electric Industry.* To address the fact that the electric industry is becoming more competitive, and to remove barriers that might inhibit a more competitive industry, the Commission has initiated a number of additional proceedings: (1) Stranded Cost Notice of Proposed Rulemaking,[123] (2) Transmission Pricing Policy Statement,[124] (3) Pooling Notice of Inquiry,[125] and (4) Regional Transmission Group (RTG) Policy Statement.[126]

In the Stranded Cost NOPR the Commission recognized that the trend toward greater transmission access and the transition to a fully competitive bulk power market could cause some utilities to incur stranded costs as wholesale requirements customers (or retail customers) use their supplier's transmission to purchase power elsewhere. As the Commission noted, a utility may have built facilities or entered into long-term fuel or purchased power supply contracts with the reasonable expectation that its customers would renew their contracts and would pay their share of long-term investments and other incurred costs. If the customer obtains another power supplier, the utility may have stranded costs. If the utility cannot locate an alternative buyer or somehow mitigate the stranded costs, the Commission explained that ''the costs must be recovered from either the departing customer or the remaining customers or borne by the utility's shareholders.'' [127] Accordingly, the Commission proposed to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities.[128]

In the Transmission Pricing Policy Statement, the Commission announced a new policy providing greater flexibility in the pricing of transmission services provided by public utilities and transmitting utilities. The Commission traditionally had allowed only postage-stamp, contract-path pricing.[129] Under the new policy, it will permit a variety of proposals, including distance sensitive and flow-based pricing,[130] which may be more suitable for competitive wholesale power markets. The Commission explained that this ''[g]reater pricing flexibility is appropriate in light of the significant competitive changes occurring in wholesale generation markets, and in light of our expanded wheeling authority under the Energy Policy Act of 1992.'' [131] However, the Commission explained that any new transmission pricing proposal must meet the Commission's AEP comparability standard. The Commission further explained that comparability of service applies to price as well as to terms and conditions.[132]

The Commission issued the Pooling Notice of Inquiry to receive comments on traditional power pools and on alternative power pooling institutions that are being explored in today's more competitive environment. The Commission expressed concern that

[g]iven the ongoing changes in the competitive environment of the electric utility industry—in particular, the potential for substantially increased access to transmission—we must consider whether we

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[115] *SWRTA,* 69 FERC at 61,398.

[116] 70 FERC ¶ 61,204 (1995).

[117] 70 FERC ¶ 61,074 (1995).

[118] 70 FERC ¶ 61,075 (1995).

[119] KCP&L, 67 FERC ¶ 61,183 (1994).

[120] *Id.* at 61,557 (citing Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,756 and nn.63 and 65 (*Entergy*)).

[121] *Id.* The Commission added that ''after examining generation dominance in many different cases over the years, we have yet to find an instance of generation dominance in long-run bulk power markets.'' *Id.*

[122] *Id.* In *KCP&L,* the Commission declined to dismiss the possibility of market power in generation associated with sales out of *existing* capacity. As noted, however, we here seek comments on whether, and if so under what conditions, to drop the generation dominance standard in short-run markets, *i.e.,* for sales from existing capacity.

[123] See supra note 5.

[124] See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, 59 FR 55031 (November 3, 1994), III FERC Stats. & Regs., Regulations Preambles ¶ 31,005 (Transmission Pricing Policy Statement).

[125] See Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, 59 FR 54851 (October 26, 1994), IV FERC Stats. & Regs., Notices ¶ 35,529 (1995) (Pooling Notice of Inquiry).

[126] See Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (August 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 (RTG Policy Statement).

[127] Stranded Cost NOPR at 32,864.

[128] The Commission herein is making preliminary findings on stranded costs and issuing a supplemental Stranded Cost NOPR, seeking comments on the impact of our proposed open access NOPR on stranded costs.

[129] Most transmission contracts set a single price for energy flow over a utility's transmission system. This single-price policy is called ''postage stamp'' pricing because the rate does not depend on how far the power moves within a company's transmission system. If power flows through several companies, traditional industry practice is to specify that power flows along a ''contract path'' consisting of the transmission-owning utilities between the ultimate receipt and delivery points. See *infra* discussion of Indiana Michigan Power Company, 64 FERC ¶ 61,184.

[130] Unlike with postage stamp pricing, with distance-sensitive pricing the cost of moving power through a company depends on how far the power moves within the company. In contrast to contract path pricing, flow-based pricing establishes a price based on the costs of the various parallel paths actually used when the power flows. Because flow-based pricing can account for all parallel paths used by the transaction, all transmission owners with facilities on any of the parallel paths would be compensated for the transaction.

[131] Transmission Pricing Policy Statement at 31,136.

[132] *Id.* at 31,142.