

149 FERC ¶ 61,282
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket Nos. ER15-277-000
ER14-2154-000
(consolidated)

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEEDINGS, AND CONSOLIDATING
PROCEEDINGS

(Issued December 30, 2014)

1. In this order, we conditionally approve a request by Midcontinent Independent System Operator, Inc. (MISO) and the City of Rochester, Minnesota, acting by and through its Rochester Public Utilities Board (RPU)¹ to make proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), to convert the RPU transmission rate formula to a forward-looking formula rate template with an annual true-up and to add RPU to Pricing Zone 16 (the Northern States Power (Northern States) pricing zone), effective January 1, 2015, as requested, subject to refund. We conditionally accept the Formula Rate Protocols (protocols), subject to the outcome of the proceedings in Docket No. ER13-2379-003.² We establish hearing and settlement judge procedures for the proposed revisions to Attachments O and GG, and

¹ MISO made this filing as administrator of the Tariff, but takes no position on the substance of the filing and reserves the right to comment or protest.

² Docket Nos. ER13-2379-002 and ER13-2379-003 are currently pending before the Commission.

Schedules 7, 8, and 9, and consolidate this proceeding with the ongoing hearing and settlement judge proceedings established in Docket No. ER14-2154-000.³

I. Background

2. MISO is a Commission-approved Regional Transmission Organization (RTO) that provides transmission service pursuant to rates, terms, and conditions of its Tariff. Among other things, MISO provides Point-to-Point Transmission Service and Network Integration Transmission Service under its Tariff. RPU is a member of Southern Minnesota Municipal Power Agency (SMMPA), a joint action agency. On August 28, 2014, the MISO Board of Directors (MISO Board) approved RPU's application to be a participating transmission-owning member, effective December 1, 2014. A portion of RPU's electric load is served by SMMPA through a partial requirements contract.

3. RPU is one of the co-owners of the Hampton-Rochester-La Crosse transmission project (HRL Project), a 345 kV transmission project that is one of several projects being developed by a consortium of utilities through CapX2020. CapX2020 is a joint initiative of 11 transmission-owning utilities in the Midwest that was formed to upgrade and expand the electric transmission grid. Besides RPU, other owners of the project include Xcel Energy Services Inc. (Xcel)/Northern States, Dairyland Power Cooperative (Dairyland), SMMPA, and WPPI Energy. RPU's ownership share of the HRL Project is nine percent.⁴ The MISO Board approved the HRL Project through the 2008 MISO Transmission Expansion Plan as a Baseline Reliability Project.⁵

4. On June 9, 2014, MISO submitted a request to the Commission for approval to allow for regional cost sharing for RPU for its ownership stake in the HRL Project in Docket No. ER14-2154-000. MISO also proposed revisions to Attachment FF-4 of the Tariff and Schedules 7, 8, and 9 to incorporate RPU's existing transmission facilities into Pricing Zone 20 (the SMMPA pricing zone). On November 28, 2014, the Commission

³ See *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,171 (2014).

⁴ See *Dairyland Power Coop.*, 142 FERC ¶ 61,100, at n.5 (2013).

⁵ As a Baseline Reliability Project approved in 2008, the Hampton-Rochester-La Crosse transmission project is subject to regional cost sharing approved in *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007), with 20 percent of approved project costs shared on a regional postage stamp basis, and the remaining 80 percent allocated on the basis of a Line Outage Distribution Factor analysis. The costs of Baseline Reliability Projects subject to regional cost sharing are recovered through rates calculated pursuant to Attachment GG and assessed pursuant to Schedule 26 of the Tariff.

conditionally accepted the Tariff revisions and established hearing and settlement judge procedures for the proposed revisions to Schedules 7, 8, and 9.⁶

5. On October 31, 2014, MISO submitted the instant request. RPU states that the proposed revisions modify MISO's Attachments O and GG in order to convert RPU's existing historic formula rate to a forward-looking rate with an annual true-up, consistent with what the Commission has approved for several other MISO transmission owners. RPU states that the use of a forward-looking formula rate will reduce the lag of recovery of its transmission costs which would help mitigate the cash flow strain RPU would otherwise experience due to its significant investment in the HRL transmission project.⁷ RPU states that improved cash flows will help RPU maintain its cash financial ratios used by credit rating agencies to evaluate RPU debt issuances and/or mitigate the rate impacts on RPU's customers that a lag in cost recovery would produce. Additionally, RPU states that a forward-looking formula rate will reduce administrative burden, given RPU's timeline for closing its books each year. In its formula rate, RPU utilizes the MISO-wide rate of return (ROE) of 12.38 percent for interconnected transmission owners.⁸

6. RPU also submitted protocols to govern the annual updates of the projected Annual Transmission Revenue Requirement (ATRR) and true-up. The protocols provide the mechanisms by which RPU will use projected financial data to develop the projected ATRR. The forward-looking rate template will be updated with projected data and submitted to MISO by October 1 of each year, and will go into effect on the following January 1. The protocols also provide that the true-up mechanism will compare projected financial and load data with actual financial and load results for the true-up year, as recorded on EIA Form 412, by June 1 of each year, and any over- or under-collections, with interest, will be included in the ATRR of the formula rate for the next rate year.⁹ RPU states that the protocols follow the formula rate protocols for transmission owners using the forward-looking Attachment O formula rate template that MISO included in its compliance filing on May 19, 2014 in Docket No. ER13-2379-003.¹⁰

⁶ *Midcontinent Indep. System Operator, Inc.*, 149 FERC ¶ 61,171.

⁷ Transmittal at 5.

⁸ Exhibit RPU-9 at 4, line 23

⁹ Transmittal at 6.

¹⁰ Exhibit RPU-2 at 8.

7. RPU states that it is not seeking to modify Attachment GG, but rather proposes to add a true-up for RPU, consistent with the forward-looking formula rate.¹¹ RPU explains that the proposed Attachment GG otherwise conforms to the *pro forma* Attachment GG.¹²

8. RPU proposes revisions to Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service), Schedule 8 (Non-Firm Point-to-Point Transmission Service), and Schedule 9 (Network Integration Transmission Service) of the Tariff to incorporate RPU into Pricing Zone 16 (the Northern States pricing zone), so that a portion of the non-cost shared investment in RPU's HRL facilities is allocated to Pricing Zone 16,¹³ to be recovered through RPU's ATRR. RPU states that it proposes to allocate the portion of its interest in the 345 kV facilities of the HRL Project that MISO has deemed ineligible for regional cost sharing to Pricing Zone 16, the zone that the facilities are located in. RPU states that this is consistent with the allocation between SMMPA and Xcel/Northern States for their ownership interests in the same facilities.¹⁴ RPU states that it proposes to allocate the portion of its interest in the 161 kV facilities of the HRL Project that MISO has deemed ineligible for regional cost sharing to Pricing Zone 20, which RPU states is also consistent with the allocation agreed upon by SMMPA and Xcel/Northern States for their interests in the same facilities. Lastly, RPU states that it proposes to allocate the costs of its 161 kV facilities not associated with the HRL Project to Pricing Zone 20, where they are located and RPU is already an approved transmission owner, and notes that MISO has already filed revisions to Schedules 7, 8 and 9 to reflect the inclusion of the costs of these facilities to Pricing Zone 20.¹⁵

9. RPU states that, while RPU is not a public utility under section 201 of the Federal Power Act (FPA),¹⁶ and therefore not subject to the Commission's jurisdiction under sections 205 and 206 of the FPA,¹⁷ in the event the Commission determines that this

¹¹ Transmittal at 4.

¹² Exhibit RPU-2 at 6.

¹³ Transmittal at 4.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8.

¹⁶ 16 U.S.C. § 824 (2012).

¹⁷ 16 U.S.C. §§ 824d, 824e (2012).

filing requires further proceedings, RPU will commit to paying any refunds with interest at Commission refund interest rates.¹⁸

II. Notice and Responsive Pleadings

10. Notice of MISO's filing was published in the *Federal Register*, 79 Fed. Reg. 66,709 (2014), with interventions and protests due on or before November 21, 2014.

11. The MISO Transmission Owners,¹⁹ Dairyland and Great River Energy filed timely motions to intervene. The South Dakota Public Utilities Commission (South Dakota Commission) filed a notice of intervention and comments. SMMPA filed a motion to intervene and comments. Xcel filed a motion to intervene, a motion to dismiss, and a protest. On December 9, 2014, RPU filed a motion to answer and answer to comments of SMMPA and Xcel. On December 16, 2014, SMMPA filed a reply to RPU's answer. On December 19, 2014, Xcel filed an answer to RPU's answer. On December 23, 2014, RPU filed an answer to SMMPA's and Xcel's answers.

¹⁸ Transmittal at 9.

¹⁹ The MISO Transmission Owners for this proceedings consists of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

A. Comments

12. SMMPA states that it has a number of questions and concerns about RPU's proposed ATRR rate design and how it will work in the zones in which it will be included. SMMPA suggests that the Commission should suspend RPU's ATRR for a nominal period and allow it to go into effect, subject to refund, and institute hearing and settlement judge processes. SMMPA states that it is unclear what the specific amounts of RPU's ATRR are to be allocated between Pricing Zone 16 and Pricing Zone 20.²⁰ SMMPA is particularly concerned because it is the sole transmission owner in Pricing Zone 20 and its formula rate is based off historical data. SMMPA states that it is unclear how introducing a formula rate design that differs from SMMPA's formula rate design, as proposed by RPU for its ATRR, will work in the context of Pricing Zone 20 and is concerned that it could potentially cause anomalies and increase the frequency and complication of zonal rate updates. SMMPA further states that RPU's proposal to include a portion of its ATRR in Pricing Zone 20 could affect the distribution of costs unfairly among SMMPA's members. SMMPA asserts that the Commission does not have sufficient information before it to resolve the rate design and revenue-sharing issues presented by RPU's proposed revisions.²¹ SMMPA further asserts that RPU's rate design proposal would have a significant impact on SMMPA's internal arrangements and could skew the outcome of any negotiations regarding revenue sharing.

13. SMMPA states that RPU's proposal to recover its full Pricing Zone 20 ATRR through a revenue-sharing agreement would create a substantial cost shift and disrupt established internal cost-allocation policies of the joint action agency in favor of one member and to the detriment of the other members.²² SMMPA asserts that, under this arrangement, RPU would receive revenues far in excess of what it would have received absent the formation of MISO.

14. SMMPA explains that four of the line segments RPU purported to transfer to MISO's functional control and include in the ATRR are subject to a January 18, 1989 lease agreement between SMMPA and RPU for the transmission capacity rights on the "North Loop" facilities to SMMPA (North Loop Lease).²³ SMMPA states that the North Loop Lease will remain in effect until March 31, 2030 and that, under the terms of the

²⁰ SMMPA Comments at 4.

²¹ *Id.* at 7.

²² *Id.* at 6.

²³ *Id.* at 8.

lease, RPU has no transmission rights on any of the facilities covered by the North Loop Lease. SMMPA argues that RPU should not include any of the costs for facilities that it does not have transmission rights for, and states that it is unclear from RPU's work papers whether RPU's proposed formula rate erroneously includes the costs of any facilities covered by the North Loop Lease. SMMPA further states that it is also unclear from RPU's work papers whether or not RPU included the full or partial costs of nine substations that are partially transmission-related.²⁴ SMMPA maintains that RPU should justify inclusion of costs related to the portion of these substations that perform a distribution function.

15. SMMPA states that it is not clear how RPU's Attachment O has accounted for a cash payment of \$1,870,000 from Northern States in December of 2000 to be used to upgrade the 161 kV transmission line between RPU's Silver Lake and Chester substations in order to increase capacity on the line for usage by Northern States.²⁵ SMMPA requests that RPU be required to demonstrate that this contribution in aid of construction has been appropriately recognized in RPU's ATRR.

16. Lastly, SMMPA states that it is unclear whether RPU's commitment to provide refunds is just for the forward-looking ATRR beginning in 2015 or whether it applies to December 2014.²⁶ SMMPA argues that, if it is found that RPU has overstated its ATRR for December 2014 in any manner, including those discussed in its comments, RPU should be required to refund any over-recovery.

17. The South Dakota Commission states that the Commission should not accept RPU's proposal to allocate a portion of its non-cost shared HRL Project facilities to Pricing Zone 16.²⁷ The South Dakota Commission maintains that it would be unjust and unreasonable to force South Dakota ratepayers to subsidize facilities that are used solely for RPU's own load and that RPU has failed to demonstrate that including the costs in Pricing Zone 16 is just and reasonable. The South Dakota Commission states that since RPU has no load in Pricing Zone 16, shifting costs to Pricing Zone 16 would allow RPU's ratepayers to escape their responsibility for the costs of the HRL transmission project and would violate the Commission's cost causation principle. The South Dakota Commission further states that the location of RPU's facilities within Pricing Zone 16

²⁴ *Id.* at 9.

²⁵ *Id.* at 10.

²⁶ *Id.*

²⁷ South Dakota Commission Comments at 3.

does not justify allocating the associated costs to Pricing Zone 16 because ratepayers in that zone do not benefit from those facilities.²⁸

18. Xcel states that the Commission should dismiss RPU's proposed revisions to Schedules 7, 8, and 9 altogether because neither MISO nor RPU hold filing rights under section 205 to submit such a rate filing under the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (TOA) and because the other transmission owners in Pricing Zone 16 have not agreed to the inclusion of RPU facilities in Pricing Zone 16 for the purposes of cost allocation.²⁹ Xcel states that RPU is not yet a MISO transmission owner at the time of the filing and therefore inherently lacks the filing rights accorded to MISO transmission owners.³⁰ Xcel maintains that, even if the Commission approves RPU's allocation of costs to Pricing Zone 20, this would still not give RPU the right to file cost allocation in Pricing Zone 16 as that would not make RPU a transmission owner in Pricing Zone 16. Xcel asserts that, under the TOA, transmission owners in each pricing zone are granted the exclusive right to make section 205 filings for new transmission facilities that would affect only the rates within that zone.³¹ Xcel states that pricing zones are financial/cost recovery constructs and each transmission owners' portion of a project can be recovered separately. Therefore, Xcel explains, adding a new financial portion of a project to a pricing zone is necessarily a change to a pricing zone and the same as adding a new transmission facility to a pricing zone, a right which under the TOA only current transmission owners for a pricing zone have the right to do.³²

19. Furthermore, Xcel states that the Commission should dismiss the proposed rate changes to Schedules 7, 8, and 9 because they would constitute a reconfiguration of Pricing Zone 16, which is barred by the TOA.³³ Xcel asserts that, under the TOA, all owners that would be affected by the reconfiguration must agree to any realignment, which they have not in this case.

²⁸ *Id.* at 5.

²⁹ Xcel Comments at 2.

³⁰ *Id.* at 13.

³¹ *Id.* (citing TOA App. K § II.E.1).

³² *Id.*

³³ *Id.* at 14 (citing TOA § II.C.3).

20. Lastly, Xcel also states that, under the TOA, parties filing proposals that affect existing transmission owners for a particular pricing zone are obligated to provide at least 30 days' notice prior to making any section 205 filing.³⁴ Xcel states that RPU did not provide such notice in this instance nor did they provide a copy of the proposed filing. Therefore, the filing should be dismissed.

21. If the Commission does not dismiss RPU's proposed revisions to Schedule 7, 8, and 9, Xcel requests that the Commission find the proposed revisions not just and reasonable and reject the revisions. Xcel states that RPU's proposed revisions unjustly and unreasonably shift RPU's costs to Pricing Zone 16, where RPU does not have load nor do the facilities benefit any ratepayers in Pricing Zone 16.³⁵ Xcel points out that this would be a violation of cost causation principles because none of RPU's ratepayers would pay for the costs of the facilities even though they would receive the benefits. Xcel states that allowing RPU's proposed revisions would result in RPU paying no cost for the facilities.³⁶ Xcel further states that even if RPU's proposal was consistent with cost causation principles, the proposal would still be unreasonable because of the cost shifts it would create, which the Commission has historically attempted to minimize.³⁷ Xcel also states that this cost shift would be inconsistent with the TOA, which states that "[a]n intra-Zonal revenue distribution methodology shall, to the greatest extent possible, minimize cost shifts so that the Owners shall continue to receive revenues they would have received absent the formation of MISO."³⁸ Xcel believes that RPU's proposed changes would result in a cost shift of at least \$1.9 million in RPU's ATRR, which is wholly inconsistent with these provisions of the TOA and should therefore be rejected.

22. Xcel points out that, in a similar case involving a new transmission owner, the Commission rejected a proposed shift in the pricing zone location of facilities when the shifts would simply serve to shift costs from one utility's load to another utility's load.³⁹ In that case, Xcel states that when Dairyland joined MISO as a transmission owner, SMMPA requested certain of its facilities be moved from the SMMPA pricing zone to

³⁴ *Id.* at 15 (citing TOA § II.E.1).

³⁵ *Id.* at 2.

³⁶ *Id.* at 20.

³⁷ *Id.*

³⁸ *Id.* at 22 (citing TOA App. C § III.A.8).

³⁹ *Id.* at 21-22 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,187, at P 22 (2010) (*Dairyland*)).

the new Dairyland pricing zone because those facilities would be physically within the Dairyland pricing zone, even though those facilities did not serve load within the Dairyland pricing zone. Xcel states that the Commission rejected the request because it would unjustly and unreasonably shift costs paid by SMMPA's load to those of the customers within the Dairyland pricing zone.

23. Furthermore, Xcel states that the TOA provides a mechanism for the recovery of the cost of a facility in a different pricing zone than the zone in which the facility is physically located, which RPU has not utilized, to align the costs of its facilities with the pricing zone that receives benefits from them. Xcel asserts that RPU's second justification for allocating costs to Pricing Zone 16, that Northern States and SMMPA allocated their shares of the 345 kV portion of the HRL Project to Pricing Zone 16, is not valid because RPU is not similarly situated to SMMPA or Northern States in that it does not have load in Pricing Zone 16 and therefore not entitled to the same treatment.⁴⁰ Xcel explains that the letter agreement that RPU cites⁴¹ between Northern States and SMMPA governing this allocation does not support RPU's allocation and instead supports the allocation of co-owned portions of the same facility to different pricing zones.

24. Xcel argues that accepting RPU's proposed allocation could encourage MISO transmission owners to attempt to push the costs of their facilities to other pricing zones where they do not have load.⁴² Xcel states that creating a break between who benefits from facilities and who pays for them will undermine the purpose of pricing zones. Lastly, Xcel argues that allowing RPU's claim that physical location of facilities should determine the cost allocation rather than the receipt of benefits would create an exception to Commission policies, such as Order No. 1000.⁴³ Xcel points out that projects constructed pursuant to the principles of Order No. 1000 can be placed physically near areas with renewable generation capacity, but distant from where the loads are to be served, therefore approving RPU's proposed allocation could undermine these principles.

⁴⁰ *Id.* at 26.

⁴¹ Transmittal at 6.

⁴² Xcel Comments at 28.

⁴³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

25. Xcel states that, if the Commission permits RPU's filing to go into effect, it should do so subject to RPU's voluntary commitment to file refunds, including interest at the Commission's refund interest rate.⁴⁴ Xcel further states that the Commission should make clear that the ROE component of the filing is subject to the outcome of the complaint proceeding in Docket No. EL14-12-000.⁴⁵ Lastly, Xcel states that, if the Commission does not dismiss the filing or reject the proposed revisions to Schedules 7, 8, and 9 as unjust and unreasonable, it should make them effective not less than 60 days after the filing, suspend them for the maximum five month period, and set them for hearing.⁴⁶

B. RPU December 9 Answer

26. RPU answers that no party opposes RPU's proposed forward-looking formula rate which is consistent with other forward-looking formula rates approved for other MISO transmission owners. RPU states that, although SMMPA questions how RPU's proposed formula rate true-up would work with the currently effective historic Attachment O formula rates in the SMMPA pricing zone, it did not protest the actual rate formula amendments.⁴⁷

27. RPU contends that its proposed ATRR allocations to the Northern States and SMMPA pricing zones are appropriate. With respect to the Northern States pricing zone, RPU states that only the ATRR associated with the 345 kV facilities of the HRL Project is being allocated to that zone. RPU also states that its investment in the 161 kV facilities of the HRL Project is being allocated to the SMMPA pricing zone (Pricing Zone 20). RPU contends that the impact on the Northern States pricing zone is far less than Xcel estimated, and that amount that RPU is allocating is approximately \$614,000, roughly one third the amount estimated by Xcel.⁴⁸

28. RPU disagrees with Xcel's contention that, because RPU has no load in Pricing Zone 16, RPU would bear none of the costs of RPU's interests in the HRL Project. RPU states that it is the largest member of SMMPA, accounting for approximately 43 percent

⁴⁴ Xcel Comments at 30.

⁴⁵ *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014).

⁴⁶ Xcel Comments at 32.

⁴⁷ RPU December 9 Answer at 5-6.

⁴⁸ *Id.* at 7-8.

of SMMPA's total load. RPU explains that SMMPA uses a postage stamp rate structure among its members, and consequently, RPU pays about 43 percent of SMMPA's total costs.⁴⁹

29. RPU also disagrees with Xcel's claims of cost shifts. RPU states that, if it had not acquired its nine percent interest in the HRL Project, then the other project owners would have borne the costs of that nine percent ownership interest. RPU claims that, because all or most of the costs presently borne by RPU would have been incurred by SMMPA and Northern States and therefore allocated to the Northern States pricing zone (Pricing Zone 16), it is inaccurate for Xcel to characterize the effect of RPU's allocation as a cost shift.⁵⁰

30. RPU argues that there is no requirement that a Transmission Owner have load in a zone in order to allocate costs to that zone.⁵¹ RPU further states that conditioning zone allocation on having load in a zone would make it impossible for independent transmission companies or other non-load-serving third party transmission owners to recover their ATRRs from any zone because they by definition cannot be load-serving entities. RPU states that, by investing in the HRL Project, it is no different from a third party investor that would recover its ATRR for facilities located in a given zone to the extent that such investment did not qualify for regional cost sharing. RPU argues that Xcel's reliance on *Dairyland* to state that a transmission owner must allocate costs to its pricing zone even when the facilities are physically outside of those pricing zones is misplaced and that Xcel and Dairyland have chosen for undisclosed business reasons not to allocate the costs to the zones where the facilities are physically located.⁵²

31. RPU argues that SMMPA's allegations of rate impacts and claim of disruption of SMMPA established internal cost allocation policies is beyond the scope of this proceeding. RPU claims that RPU is fully within its rights to calculate its ATRR for those facilities which it has pledged to MISO's operational control.⁵³

32. RPU also disagrees with SMMPA's suggestion that the difference between SMMPA's historical-based rates and RPU's proposed forward-looking rates "may

⁴⁹ *Id.* at 8-9.

⁵⁰ *Id.* at 9.

⁵¹ *Id.* at 10.

⁵² *Id.* at 11.

⁵³ *Id.* at 14.

introduce anomalies” if RPU’s ATRR is introduced into the SMMPA pricing zone (Pricing Zone 20). RPU responds that, under the MISO Tariff, “Attachment O zonal transmission rates are based on the sum of the revenue requirements for all Attachment O zonal transmission facilities located within that pricing zone divided by the aggregate [l]oad served by all Transmission Owners within that pricing zone.”⁵⁴ RPU states that each ATRR within a zone is independent from the other ATRRs within that zone and that how SMMPA and RPU each calculate its respective ATRRs is immaterial. RPU explains that the zonal rate will be based on the sum of the ATRRs and RPU’s true-up of its ATRR will not affect SMMPA’s historical ATRR collection, because RPU’s true-up will become a part of RPU’s ATRR that is indistinguishable to SMMPA.⁵⁵

33. With respect to SMMPA’s comment that RPU did not articulate the specific manner in which the allocation will be made between the SMMPA pricing zone (Pricing Zone 20) and the Northern States pricing zone (Pricing Zone 16) or the specific amount of the ATRR that RPU proposes to add to SMPPA’s ATRR to produce the total Pricing Zone 20 ATRR, RPU notes that it stated this information in its original filing. RPU reiterates that it will allocate the portion of its ATRR that is associated with the HRL Project to the Northern States pricing zone (Pricing Zone 16) and the portion of its ATRR that is associated with the 161 kV facilities, as well as the portion of RPU’s ATRR associated with its existing facilities, to the SMMPA pricing zone (Pricing Zone 20).⁵⁶

34. RPU argues that contrary to SMMPA’s comment, RPU is entitled to include its ownership costs associated with the North Loop facilities in its calculation of the RPU ATRR. RPU states that its grant of use rights in the North Loop to SMMPA does not mean that RPU cannot properly include costs for the North Loop in its ATRR. RPU states that as the owner of the North Loop, RPU invested in the facilities and incurs ongoing costs.⁵⁷

35. With respect to Xcel’s argument that neither MISO nor RPU has filing rights under section 205 to change Schedules 7, 8, and 9, RPU contends that MISO is entitled to file revisions to its own Tariff. RPU also contends that Xcel’s interpretation of the authority transmission owners possess in exercising their section 205 filing rights is unreasonably expansive. RPU argues that a transmission owner can act unilaterally when

⁵⁴ *Id.* (citing Schedule 7 to the MISO Tariff, Section 8(b); Schedule 8 to the MISO Tariff, Section 8(b); Schedule 9 to the MISO Tariff, Section 3(b)).

⁵⁵ *Id.*

⁵⁶ *Id.* at 15 (citing Transmittal Letter at 7).

⁵⁷ *Id.* at 16-17.

it comes to its own ATRR, but not as to the zonal rate, which is based on the aggregate of all transmission owners' respective ATRRs for that zone.⁵⁸

36. RPU also argues that RPU and MISO are not seeking to realign or reconfigure the boundaries of the Northern States pricing zone (Pricing Zone 16), but are simply adding to the zonal rate a portion of RPU's ATRR that is associated with transmission facilities physically located within the existing zonal boundaries and which are, in part, also owned by Northern States.⁵⁹ RPU states that it has distributed draft revenue distribution agreements to both SMMPA and Northern States shortly before making the instant filing and that prior to the distribution it spent several months discussing with SMMPA and Xcel its plans to join MISO.⁶⁰ Subsequent to the distribution to SMMPA, RPU states that SMMPA contacted RPU to note that Schedule 9 revenues would need to be allocated proportionately between the parties based on the ratio of their respective ATRRs allocated to the SMMPA pricing zone. Except for this issue, RPU states that neither SMMPA nor Xcel has raised any objection to the revenue distribution agreements and that only SMMPA has questioned the implementation of the formula rate.⁶¹

37. In response to SMMPA and Xcel's requests for suspension, RPU states that the Commission lacks the authority to order a suspension for non-jurisdictional entities.⁶² To allay concerns expressed by SMMPA regarding refunds and to provide customers protection, RPU confirms that its rate, including the December 2014 ATRR, is subject to refund.⁶³

C. SMMPA Answer

38. SMMPA asserts that, contrary to RPU's claim, ownership of transmission facilities is not alone sufficient to permit inclusion of the facilities' costs in an RTO's transmission rates.⁶⁴ SMMPA states that the Commission has established that unless an

⁵⁸ *Id.* at 18-20.

⁵⁹ *Id.* at 20-21.

⁶⁰ *Id.* at 24.

⁶¹ *Id.* at 25.

⁶² *Id.* at 25-26 (citing 16 U.S.C. § 824d(e)).

⁶³ *Id.* at 6.

⁶⁴ SMMPA Answer at 4.

RTO has operational control over transmission facilities and can offer transmission service using those facilities under its open-access tariff, the transmission owner may not include those facilities in its ATRR.⁶⁵ SMMPA submits that, under the North Loop Lease, RPU relinquished all rights to the transmission capacity of the North Loop facilities to SMMPA; RPU therefore has no such rights to transfer to MISO and be eligible to recover those costs in its ATRR.⁶⁶

39. Furthermore, SMMPA states that section 2 of the North Loop Lease makes clear that the North Loop facilities would be included in the Shared Transmission System of SMMPA and Dairyland and that section 4 requires RPU to comply with all terms established under the Shared Transmission Agreement between those parties. SMMPA argues that, under the North Loop Lease, SMMPA is the party that would need to effectuate transfer of the facilities to MISO's functional control.⁶⁷

40. SMMPA states that exclusion of the North Loop facilities from RPU's ATRR is necessary to preserve the North Loop Lease's status as a grandfathered agreement under the MISO Tariff.⁶⁸ SMMPA argues that inclusion of the costs for the North Loop facilities in RPU's ATRR constitutes rewriting the non-jurisdictional North Loop Lease, which is impermissible.

41. SMMPA states that, it has repeatedly indicated to RPU that SMMPA is willing to proceed with a revenue distribution agreement that would give RPU a *pro rata* share of the revenues SMMPA will actually receive from MISO under Schedules 7, 8 and 9.⁶⁹ SMMPA submits that such a revenue sharing arrangement would allow RPU to recover some portion of its ATRR, while at the same time it would avoid disrupting the existing contractual allocation of costs among SMMPA's members. SMMPA argues that RPU invites the Commission to make the revenue sharing agreement, which has not been provided to the Commission, an issue in the instant proceedings.⁷⁰ SMMPA argues that the Commission need not render a decision regarding the just and reasonable contours of

⁶⁵ *Id.* at 4-5 (citing *City of Vernon, California*, Opinion Nos. 479 and 479-A, 111 FERC ¶ 61,092, *order on reh'g*, 112 FERC ¶ 61,207 (2005)).

⁶⁶ *Id.* at 5-6.

⁶⁷ *Id.* at 6.

⁶⁸ The North Loop Lease is designated as GFA No. 466 under Attachment P of the MISO Tariff. *Id.* at 7.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

a revenue sharing agreement in this proceeding, as RPU submits.⁷¹ SMMPA states that the Power Supply Contract between SMMPA and each of its members states that the costs of transmission facilities owned by an individual member will be borne exclusively by that member.⁷²

42. SMMPA submits that, if the Commission issues any order in this proceeding requiring SMMPA and RPU to enter into a revenue distribution agreement, it should make clear that any such agreement must respect and preserve the parties' existing contractual arrangements.

D. Xcel Answer

43. Xcel contends that RPU fails to rebut the concerns raised by Xcel in its protest and reiterates many of its arguments.⁷³ Xcel states that if the Commission enforces the MISO TOA, such that only transmission owners in a pricing zone can make section 205 filings, RPU can still join MISO as a transmission owner and bring its transmission facilities under the MISO Tariff. Xcel submits that RPU could negotiate with SMMPA to bring the RPU facilities within the SMMPA pricing zone where RPU's load is located. Alternatively, Xcel suggests that a subpricing zone could be created for RPU's facilities. Finally, Xcel suggests that the costs for the RPU facilities could be carved out of Attachment O-RPU cost recovery entirely even if they are subject to MISO functional control.⁷⁴

44. Xcel claims that RPU understates RPU's estimate of cost shifts because it does not represent the rate impact for a full year. Xcel states that because the RPU facilities are not currently expected to go into service until October 2015, RPU's \$614,000 figure is based on having the cost of those facilities in RPU's revenue requirement for only a quarter of 2015. However, according to Xcel, because RPU is seeking to have the RPU facilities permanently included in Pricing Zone 16 for ratemaking purposes, the cost of having the RPU facilities in Pricing Zone 16 for a full year is representative of the costs that RPU is seeking to impose on Pricing Zone 16 ratepayers. Xcel states that this cost shift is inconsistent with the agreement between RPU, Northern States, and the other

⁷¹ *Id.* (citing RPU Answer at 25).

⁷² *Id.* at 9.

⁷³ Xcel Answer at 4-8.

⁷⁴ *Id.* at 8.

utilities regarding their respective capital contributions to the HRL Project, in which RPU agreed to be responsible for the entirety of its own costs.⁷⁵

45. Xcel claims that RPU fails to demonstrate that its proposal is consistent with the Commission's cost causation principles. With respect to RPU's claim that no cost shift will occur because RPU's share of the HRL Project would have been borne by other ratepayers if RPU had not participated in the project, Xcel states that the project would not have been designed to benefit RPU and therefore RPU's share would simply not have existed. Xcel submits that because RPU has not rebutted the cost shift resulting from its proposal as outlined by Xcel, the Commission should reject that proposal as unjust and unreasonable.⁷⁶

E. RPU December 23 Answer

46. RPU contends that the Commission should reject both SMMPA and Xcel's answers to RPU's December 9 Answer. RPU states that both answers are largely reiterative of arguments that SMMPA and Xcel have already made and that any new arguments that were contained in those answers should have been in the original answers.⁷⁷

47. RPU argues that the Commission should reject Xcel's claim that RPU should be prevented from recovering its investment in the 345 kV portion of the HRL Project in Pricing Zone 16 because the Commission has already approved a similar cost allocation.⁷⁸ RPU states that Allegheny Electric Cooperative (AEC) purchased an existing 500 kV line located in the PPL Group Zone with the majority of the line's capacity serving load in the GPU Zone. PJM and AEC proposed to allocate the revenue requirements associated with the line to PPL Group's Zone, over PPL Group's objection. The Commission found PJM and AEC's proposed allocation reasonable because RPU states that the Commission found that, even though AEC bore the cost of operating and maintaining the facilities, PPL Group retained full operation control of the facilities and maintenance of the facilities and, therefore, PPL Group's customers had full benefit of the use of AEC's facilities and should bear the costs of the facilities.⁷⁹

⁷⁵ *Id.* at 9-13.

⁷⁶ *Id.* at 13-16.

⁷⁷ RPU December 23 Answer at 2.

⁷⁸ *Id.* at 2-3 (citing *PJM Interconnection, L.L.C.*, 94 FERC ¶ 61,295, *reh'g denied*, 95 FERC ¶ 61,217 (2001)).

⁷⁹ *Id.* at 3.

48. RPU further argues that Xcel's statement that RPU's proposal will violate cost causation principles is wrong. RPU states that, by virtue of SMMPA's arrangements with its members, in which they pay *pro rata* shares of its costs, RPU will in fact pay for a share of the 345 kV HRL Project in Pricing Zone 16 because it is a member of SMMPA.⁸⁰

49. RPU states that, absent its investment in the 345 kV HRL Project in Pricing Zone 16, those facilities would have been built anyway by SMMPA and Xcel, and SMMPA and Xcel would have allocated the costs to Pricing Zone 16, consistent with how they have already agreed to allocate costs for the 345 kV HRL Project facilities they already own.⁸¹ RPU argues that it is disingenuous for Xcel to originally rely on the claim that RPU has no load in Pricing Zone 16 and to now shift to an argument emphasizing how small the costs RPU would pay are from Pricing Zone 16 due to the size of SMMPA's load.⁸² RPU further reiterates that having load in a zone is not an eligibility requirement for allocating costs to that zone. RPU also claims that Xcel ignores that its own customers benefit from the existence of the 345 kV facilities that RPU invested in.

50. RPU states that the agreement among the HRL Project owners expressly provides that, for owners that are MISO transmission owners, each owner's revenue requirement will be recovered both through the Tariff and through each owner's revenue requirement.⁸³ RPU argues that, now that it is a transmission owner, its proposal is consistent with the agreement among the HRL Project owners.

51. RPU states that Xcel's continued argument that RPU and MISO did not have the proper filing rights to make the proposal is incorrect. RPU states that there is nothing in the Commission's order approving the MISO TOA or in the MISO TOA itself that prohibits MISO from modifying its own Tariff.⁸⁴ RPU further argues that Xcel's arguments fail by equating an individual transmission owner's ATRR with that of a zonal rate, which is the sum of the ATRRs of all transmission owners in a Pricing Zone. RPU states that the MISO TOA preserves a transmission owner's exclusive domain to make

⁸⁰ *Id.* at 4.

⁸¹ *Id.*

⁸² *Id.* at 5.

⁸³ *Id.* at 6.

⁸⁴ *Id.*

filings altering its ATRR and that adding another ATRR to a Pricing Zone does not alter any other transmission owner's ATRR.⁸⁵

52. RPU reiterates that it engaged with parties as early as March 2011 to discuss its plans to become a MISO transmission owner and to allocate costs to their respective zones.⁸⁶ RPU states that Xcel's failure to acknowledge that involvement as constructive notice constitutes willful disregard on the part of Xcel.

53. RPU states that SMMPA's reliance on *Dairyland* is misplaced because RPU is a new MISO transmission owner that will continue to pay its share of costs in Pricing Zone 20, resulting in no cost shifts.⁸⁷ RPU explains that, before RPU became a MISO transmission owner, SMMPA and other MISO customers had been using RPU's facilities without paying for their usage, because RPU had not dedicated them to MISO's control. These facilities are now under MISO's control and integrated into the MISO transmission system. Therefore, RPU claims that is entitled to recover its ATRR from MISO for these facilities and requiring SMMPA to pay for its continued usage of these facilities does not constitute a cost shift. RPU's actions do not change SMMPA's responsibilities under its existing power sales contracts because SMMPA passes its costs through to its members. The costs associated with RPU's entry into Pricing Zone 20 are MISO transmission service charges, like any other MISO charges SMMPA assesses to its members.⁸⁸

54. RPU states that SMMPA's argument about the North Loop facilities confuses rights to transmission service with rights as a MISO transmission owner.⁸⁹ RPU states that, as a MISO transmission owner, it has the right to recover through its ATRR the ongoing costs it incurs associated with the North Loop facilities. RPU further argues that, as an agreement between two entities exempt from the Commission's jurisdiction, the Commission does not have the authority to interpret the North Loop Lease.

⁸⁵ *Id.* at 7-8.

⁸⁶ *Id.* at 8.

⁸⁷ *Id.* at 9.

⁸⁸ *Id.* at 10.

⁸⁹ *Id.*

III. Discussion

A. Procedural Matters

55. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed notice of intervention and motions to intervene serve to make the entities that filed them parties to this proceeding.

56. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We will accept the answers of RPU, SMMPA, and Xcel because they have provided information that assisted us in our decision-making process.

B. Discussion

57. RPU's proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9 of the Tariff raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.⁹⁰

58. Our preliminary analysis indicates that the proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9 of the Tariff have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we will accept the proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9 to the Tariff, effective January 1, 2015, as requested and set them for hearing and settlement judge procedures. Because of the existence of common issues of law and fact, we will consolidate this proceeding with the proceeding in Docket No. ER14-2154-000 for purposes of settlement, hearing, and decision.

59. We recognize that RPU based its protocols on those MISO submitted in Docket No. ER13-2379-003. We note that the proceeding in that docket is still pending; therefore, we conditionally accept the protocols subject to the outcome of the proceeding in Docket No. ER13-2379-003.

60. We agree with Xcel's assertion that RPU's ROE should be subject to the proceedings of the complaint in Docket No. EL14-12-000. Transmission owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating

⁹⁰ RPU is not itself subject to FPA section 205, including Commission-imposed rate suspension and refund obligations. *See Southwest Power Pool, Inc.*, 142 FERC ¶ 61,135, at P 15 (2013).

their ATRR, but that ROE could change depending on the outcome of the proceedings in EL14-12-000. Accordingly, we accept the use of the currently effective MISO regional base ROE, subject to the outcome of that proceeding. In addition, we will accept RPU's commitment to provide refund protection, with Commission interest, as of December 1, 2014.

61. In addition, our review indicates that the proposed formula rate template does not contain stated values for the depreciation rates or ROE. Therefore, we direct MISO, on behalf of RPU, to make a compliance electronic (eTariff) filing of its Tariff within 30 days of the issuance of this order in order to include stated fixed components of the formula. RPU's Attachment O provides for depreciation expenses to be recovered under its formula rate but does not include the fixed stated values of its depreciation rates, nor does it specify the value of the ROE. MISO is directed, on behalf of RPU, to submit revised tariff sheets for its Attachment O to state the values of all fixed components of its formula rate.⁹¹

62. We note that RPU's Attachment O as filed in eTariff contains several ministerial errors. First, the page numbers for each page after page 2 of RPU's Attachment O are incorrectly numbered as page 2. We direct MISO, on behalf of RPU, to revise the page numbers to ensure clarity since the page numbers are reference in the formula rate. Secondly, on Page 3, Line 31 (Revenue Requirement to be Collected Under Attachment O), the reference lists the source as, "line 29-line 30a." Line 30, the Attachment MM adjustment should also be subtracted from Line 29. Thirdly, on Page 3, Line 25 and Line 26 include an "&" symbol in the source. However, the correct symbol to indicate multiplication should be included. We direct MISO, on behalf of RPU, to correct these errors in RPU's eTariff version of its proposed Attachment O in its compliance filing within 30 days.

63. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance. The settlement judge or presiding judge, as appropriate, previously designated in Docket No. ER14-2154-000, shall determine the procedures best suited to accommodate the consolidation ordered herein. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the

⁹¹ See *Old Dominion Electric Cooperative*, 133 FERC ¶ 61,261, at P 5 (2010) (stating that all fixed components of a rate must be included in tariff or rate schedules for public inspection pursuant to section 205(c) of the Federal Power Act).

parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) MISO's proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9 are hereby conditionally accepted, effective January 1, 2015, as requested, as discussed in the body of this order.

(B) RPU's proposed protocols are hereby conditionally accepted for filing, subject to the formula rate protocols proceedings currently pending in Docket No. ER13-2379-003, as discussed in the body of this order.

(C) RPU's proposed use of the ROE approved for MISO transmission owners is hereby granted, subject to the outcome of the pending complaint proceeding in Docket No. EL14-12-000, as discussed in the body of the order.

(D) MISO, on behalf of RPU, is hereby directed to submit a compliance filing, due 30 days after issuance of this order, as discussed in the body of this order.

(E) RPU's commitment to provide refund protection, with interest, as of December 1, 2014, is hereby accepted, as discussed in the body of this order.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be concerning the justness and reasonableness of RPU's proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9, as discussed in the body of this order.

(G) This proceeding is hereby consolidated with Docket No. ER14-2154-000 for purposes of settlement, hearing, and decision, as discussed in the body of this order.

(H) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER14-2154-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.