

155 FERC ¶ 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.	Docket Nos. ER16-1107-000
ALLETE, Inc.	ER16-1108-000
Great River Energy	

ALLETE, Inc.	ER16-1116-000
Midcontinent Independent System Operator, Inc.	

ORDER ON ZONAL AGREEMENTS AND NOTICE OF CANCELLATION

(Issued May 6, 2016)

1. On March 8, 2016, pursuant to section 205 of the Federal Power Act (FPA),¹ ALLETE, Inc. (ALLETE), on behalf of itself and Great River Energy (Great River) (collectively, Applicants), as well as Midcontinent Independent System Operator, Inc. (MISO), filed the following: (1) Coordinated Local Planning Agreement (Local Planning Agreement); (2) Joint Pricing Zone Revenue Allocation Agreement (JPZ Agreement); (3) Revenue Credit Agreement for Great Northern Transmission Line Project (GNTL Credit Agreement); and (4) Wholesale Distribution Service Agreement (Distribution Agreement) (collectively, Zonal Agreements).² On March 8, 2016, pursuant to section 205 of the FPA and section 35.15 of the Commission's regulations,³ ALLETE and MISO filed in Docket No. ER16-1116-000 a Notice of Cancellation of the "grandfathered" Network Integration Transmission Service Agreement (Network GFA) between

¹ 16 U.S.C. § 824d (2012).

² The first three agreements were filed in Docket No. ER16-1107-000; the Distribution Agreement was filed in Docket No. ER16-1108-000. Applicants and MISO request that all the agreements be treated as a package.

³ 18 C.F.R. § 35.15 (2015).

ALLETE and Great River. In this order, we accept the Zonal Agreements, subject to condition, and we accept the Notice of Cancellation for filing, as discussed below.

I. Background

2. ALLETE, through its Minnesota Power operating division, owns electric facilities and is engaged in the generation, transmission, distribution, and sale of electric energy in Minnesota. In partnership with Manitoba Hydro, ALLETE is also developing the Great Northern Transmission Line Project (GNTL Project), which includes, among other facilities, approximately 220 miles of a 500 kV transmission line between a point on the Minnesota-Manitoba (Canada) border northwest of Roseau, Minnesota, and the Blackberry Substation owned by Minnesota Power and located near Grand Rapids.⁴

3. Great River, a generation and transmission cooperative, supplies the majority of the electric requirements for 28 member distribution cooperatives in Minnesota and Wisconsin. Great River owns or contracts for 3,487 MW of generating capacity and 4,577 miles of transmission facilities in Minnesota, North Dakota, and Wisconsin.⁵

4. MISO is the regional transmission organization in which ALLETE's and Great River's transmission facilities are located, operates the transmission system and associated energy markets within its footprint, and collects and distributes the revenues derived from the use of ALLETE's and Great River's transmission systems.⁶ Both

⁴ Transmittal Letter, Docket No. ER16-1107-000, at 3.

⁵ *Id.*

⁶ Applicants state that MISO joins the Zonal Agreements filing for the sole purpose of the submission of the JPZ Agreement because such agreement concerns revenue sharing in the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). Applicants state that MISO is a signatory to the JPZ Agreement, but that it takes no position on the agreement's rates, terms, and conditions. MISO is not a signatory to the Local Planning Agreement, GNTL Credit Agreement or the Distribution Agreement and takes no position concerning these agreements. Transmittal Letter, Docket No. ER16-1107-000, at 2. MISO states that it joins the Network GFA filing as the administrator of the MISO Tariff, but takes no position on the substance of the filing and reserves the right to comment or protest. Transmittal Letter, Docket No. ER16-1116-000, at n.1.

ALLETE and Great River are transmission owning members of MISO and are signatories to the MISO Transmission Owners' Agreement (MISO TOA).⁷

A. Zonal Agreements

5. Applicants state that together, the Zonal Agreements govern their obligations to each other concerning local transmission planning, cost allocation, and revenue sharing for certain facilities and load within the Minnesota Power local balancing authority area (Minnesota Power LBAA) and the Minnesota Power Pricing Zone, including Applicants' revenue sharing obligations with respect to the GNTL Project.⁸

6. Applicants describe the Zonal Agreements as reflecting a "black box" settlement between ALLETE and Great River that was reached after two years of informal settlement discussions to avoid litigation concerning the way that they compensate each other for use of each other's systems and engage in coordinated local planning pursuant to their local planning obligations under the MISO Tariff. According to Applicants, these discussions were driven by disagreements between ALLETE and Great River concerning how to replace the Network GFA dated February 18, 2000. Applicants state that, rather than litigate their dispute, they agreed to replace, effective August 1, 2013, the Network GFA with the JPZ Agreement and the Distribution Agreement to govern payment obligations that had been contained in the Network GFA. Applicants state that during those negotiations, other issues arose and, as a result, they also negotiated the Local Planning Agreement and the GNTL Credit Agreement.⁹

1. Local Planning Agreement

7. Applicants state that the Local Planning Agreement integrates their internal planning processes with the open and coordinated planning processes of MISO in order

⁷ *Id.*

⁸ Applicants explain that, in order to tailor definitions to each agreement's purpose, the Zonal Agreements use three different terms to describe the same general geographic area associated with Applicants' facilities and load: the Minnesota Power LBAA, the Minnesota Power Pricing Zone (which is a MISO zone for revenue sharing under MISO's Tariff), and the Former Minnesota Power Control Area (which was the control area administered by Minnesota Power before it joined MISO). Transmittal Letter, Docket No. ER16-1107-000, at n. 5

⁹ *Id.* at 1-2.

to comply with the planning principles of Order No. 890,¹⁰ as incorporated into Attachment FF of the MISO Tariff.¹¹ Applicants explain that the steps included in the local system planning process culminate in the submittal of a “bottom-up” project to the MISO Transmission Expansion Planning process (MTEP), and includes the following: development of local system study models based on regional power flow models, contingency analysis, identification of violations of planning criteria, development of alternative solutions, evaluation of alternative solutions against planning criteria, cost and non-cost evaluation of alternative solutions, and selection of a preferred alternative.¹²

8. Applicants state that the Local Planning Agreement is intended to facilitate close coordination between ALLETE and Great River as each company meets its respective local planning obligations under the MISO Tariff. Applicants state that all bottom-up projects developed by ALLETE and Great River through the Local Planning Agreement are ultimately subject to the MTEP review process, approval by the MISO Board of Directors as part of the annual MTEP plan, and all the associated stakeholder review and project reporting requirements.

9. According to Applicants, the primary objectives of the Local Planning Agreement are more efficient local planning and achieving revenue neutrality between ALLETE and Great River by minimizing inter-party payments under the JPZ Agreement for use of their respective transmission systems.¹³ Applicants explain that the Local Planning Agreement establishes the processes and procedures for coordinated local transmission planning in the context of ALLETE’s and Great River’s individual local planning obligations under Section D.1 of Attachment FF under the MISO Tariff. Thus, Applicants state that the Local Planning Agreement does not establish local transmission planning obligations or requirements that are different than Applicants’ obligations under the MISO Tariff, but establishes how they will coordinate for purposes of satisfying their respective, individual obligations under Attachment FF.

¹⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹¹ Transmittal Letter, Docket No. ER16-1107-000, at 4 (citing MISO’s local system planning obligations in Section I.D.1 of Attachment FF of the MISO Tariff).

¹² *Id.*

¹³ *Id.* at 5.

10. Applicants explain that the Local Planning Agreement establishes two types of facilities for purposes of revenue sharing and cost allocation under the JPZ Agreement and successor revenue sharing agreements: Zonal Transmission Facilities, which are facilities subject to revenue sharing under the JPZ Agreement (and subsequent revenue sharing agreements), and Sole Use Transmission Facilities, which are facilities not subject to revenue sharing and cost allocation (i.e., facilities whose costs will be directly assigned to the relevant party).¹⁴ Applicants explain that Article X of the Local Planning Agreement includes a dispute resolution process meant to resolve differences between Applicants regarding transmission planning, permitting, or a facility's or load's eligibility for revenue sharing under the JPZ Agreement.¹⁵

11. Applicants state that the Local Planning Agreement will result in just, reasonable and not unduly discriminatory rates because it facilitates the most cost-effective local transmission planning process, and that by collaborating on transmission planning for the potential joint development of projects for inclusion in the MTEP, Applicants are minimizing the potential for future disputes and litigation regarding revenue allocations of new projects.

2. JPZ Agreement

12. Applicants state that Appendix C, Article III, Section A.8 of the MISO TOA provides that MISO will distribute revenue to a single Transmission Owner within a pricing zone where there is more than one Transmission Owner, and that, in turn, this Transmission Owner will distribute revenue to other members of its zone using a methodology that will, to "the greatest extent possible, minimize cost shifts so that the [Transmission] Owners shall continue to receive the revenues they would have received absent the formation of MISO."¹⁶ Applicants explain that the JPZ Agreement provides

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ Appendix C Article III, Section A.8 of the MISO TOA states that:

Owners located within a Zone that has more than one (1) Owner shall appoint a single Owner or designee to receive the revenues allocated to the Zone and to further distribute such revenues pursuant to agreement of the Owners within the Zone. If the Owners in a Zone cannot agree to a methodology for distributing such revenues, Owners may seek recourse through the Dispute Resolution procedures under Attachment HH of the Tariff or the Owners may go to the FERC for resolution. An intra-Zonal revenue distribution methodology shall, to the greatest extent possible,

(continued...)

for such revenue distributions. Applicants state that the rates, terms, and conditions of the JPZ Agreement reflect a settlement that resolves disputes regarding their obligations to each other with respect to the facilities and loads that are eligible for revenue sharing in the Minnesota Power Pricing Zone.

13. Applicants state that the JPZ Agreement governs the allocation of inter-zonal revenue, intra-zonal revenue, and “imputed” transmission service not billed by MISO. Applicants explain that inter-zonal revenues are transmission revenues collected pursuant to Schedules 7 and 8 (firm and non-firm point-to-point transmission service) of the MISO Tariff for transmission service taken outside of the Minnesota Power Pricing Zone; intra-zonal revenues are transmission revenues collected pursuant to Schedule 9 (network integration transmission service) of the MISO Tariff for transmission services provided within the Minnesota Power Pricing Zone. Applicants state that both inter-zonal and intra-zonal revenues are initially collected by MISO from transmission customers and distributed by MISO to ALLETE pursuant to the MISO TOA; ALLETE then distributes this revenue to Great River pursuant to the JPZ Agreement. Applicants state that monthly net imputed revenue compensates ALLETE and Great River for the “imputed” network services, which were previously provided under the Network GFA for access to each other’s facilities in the Minnesota Power Pricing Zone, and is not collected by MISO. Instead, Applicants explain, the payments for these services are paid directly to ALLETE and Great River under the JPZ Agreement.¹⁷

14. According to Applicants, the heart of the dispute between ALLETE and Great River concerned the facilities and loads that should be subject to the joint pricing zone arrangement. Applicants explain that the facilities and load identified in Attachments D, D-1, E, and E-1 of the JPZ Agreement reflect a settlement and are used for purposes of calculating Applicants’ shares of revenue. These facilities and loads are generally divided into two groups: (1) existing facilities and loads subject to Applicants’ settlement, which are identified in Attachment D and Attachment E; and (2) future facilities and loads that will be subject to the coordinated planning of Applicants’ transmission systems. As part of their settlement, Applicants state that they have agreed that the facilities and load identified in Attachment D and Attachment E are not subject to unilateral revisions during the term of the JPZ Agreement; these attachments are subject to the “Mobile-Sierra” standard of review.¹⁸

minimize cost shifts so that the Owners shall continue to receive the revenues they would have received absent the formation of MISO.

¹⁷ Transmittal Letter, Docket No. ER16-1107-000, at 7.

¹⁸ *Id.* at 8.

15. Attachments D-1 and E-1 of the JPZ Agreement, on the other hand, may be amended to include the facilities and loads identified as part of the transmission planning process underlying the Local Planning Agreement, and are subject to the “just and reasonable” standard of review. Therefore, Applicants state that they may make a unilateral filing with the Commission to amend Attachment D-1 and E-1 to the extent a dispute concerning a facility or load is not resolved through the Local Planning Agreement’s dispute resolution process.

16. Applicants assert that the JPZ Agreement is just, reasonable and not unduly discriminatory because it resolves a dispute between ALLETE and Great River concerning their revenue sharing obligations for disputed facilities and load, for purposes of cost sharing between ALLETE and Great River pursuant to Appendix C, Article III, Section A.8 of the MISO TOA. Applicants state that they have not removed facilities or load from the Minnesota Power Pricing Zone, and, therefore, there is no impact on the revenue requirement or load (and thus potentially a load-ratio share) that would be used to calculate the transmission rate for a third party. Accordingly, Applicants assert that the settlement underlying the JPZ Agreement has no third-party rate impact, and that it reflects a bilateral settlement agreement between ALLETE and Great River.¹⁹

3. GNTL Credit Agreement

17. Applicants state that the GNTL Credit Agreement governs the treatment of the relevant Party’s ownership interests in the GNTL Project for purposes of offsetting certain agreed-upon payment obligations under the JPZ Agreement and any successor revenue sharing agreement between ALLETE and Great River. Applicants state that effective January 1, 2021, payments for net imputed revenue for imputed transmission service not billed by MISO will become subject to the GNTL credit if agreed-upon conditions apply. Applicants state that the details of the application of the GNTL credit to potential net payment obligations under future revenue sharing agreements will need to be negotiated between ALLETE and Great River, when appropriate.

18. Applicants state that once certain conditions are satisfied, the Annual GNTL Credit is similar to the credit that may be available under Section 30.9 of the Commission’s *pro forma* Open Access Transmission Tariff (OATT) for network customers. Specifically, under Article II, the Annual GNTL Credit is calculated based upon each Party’s Annual GNTL Revenue Requirement and Network Load in the Former Minnesota Power Control Area. Applicants state that the GNTL Credit Agreement only applies if: (a) either ALLETE (collectively with its affiliates) or Great River (collectively with its affiliates) maintains at least a five percent ownership interest in the GNTL

¹⁹ *Id.* at 9.

Project; (b) an annual net payment obligation is triggered between ALLETE and Great River pursuant to a revenue sharing agreement; and (c) each Party has Network Load in the Former Minnesota Power Control Area. A Party's Annual GNTL Revenue Credit can only be used to offset any annual net payment obligation ALLETE or Great River is required to pay to the other Party under a revenue sharing agreement.²⁰

19. Effective January 1, 2021, if the above conditions are met, then an annual net payment obligation under the JPZ Agreement may become subject to the GNTL credit, which credit is the product of the relevant Party's GNTL revenue requirement and load-ratio share.²¹

20. Applicants explain that facilities and load identified for purposes of each Applicants' revenue requirement and load ratio share are based on the Former Minnesota Power Control Area, as opposed to the Minnesota Power Pricing Zone (or the Minnesota Power LBAA), because of the 45-year term of the GNTL Credit Agreement. Applicants state that they could not use an area defined under the MISO Tariff because it is not known if both ALLETE and Great River will remain in MISO for the entire term of the GNTL Credit Agreement. The credit will be implemented regardless of whether Applicants continue to be MISO members, members of another independent system operator (ISO) or regional transmission organization (RTO), or are no longer in any ISO/RTO.

21. Applicants assert that the GNTL Credit Agreement is just, reasonable and not unduly discriminatory because it reflects an agreed-upon resolution of ALLETE's and Great River's revenue sharing obligations with respect to the GNTL Project, effective January 1, 2021, if agreed upon conditions are met. Applicants assert that any credit stemming from the GNTL Credit Agreement will be applied to the revenue sharing obligations between Applicants under the JPZ Agreement that are not billed by MISO. Thus, Applicants state that the credit is a component of their overall settlement of their dispute over their revenue sharing obligations.²²

4. Distribution Agreement

22. Applicants state that the Distribution Agreement replaces the distribution service provisions included in Appendix E of the Network GFA. The Distribution Agreement

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 10.

establishes the rates, terms, and conditions for ALLETE's provision of wholesale distribution service to Great River over agreed-upon distribution and feeder facilities which are identified in Appendices A-D of the Distribution Agreement. Applicants state that the Distribution Agreement provides that ALLETE will determine an annual revenue requirement, with Great River's annual charges described in Schedule 1 based on a load ratio share methodology as applied to different agreed-upon settlement periods commencing on August 1, 2013. Applicants state that the Distribution Agreement provides no rights to transmission service over any of ALLETE's transmission facilities as such transmission service must be requested pursuant to the MISO Tariff.

23. Applicants assert that the Distribution Agreement is just, reasonable, and not unduly discriminatory because it reflects an arms-length bargain between ALLETE and Great River for wholesale distribution service over the agreed-upon facilities.²³

5. Effective Date

24. To the extent necessary, Applicants request waiver of the Commission's prior notice requirement, 18 C.F.R. § 35.3(a) (2015), to make the Zonal Agreements effective as of August 1, 2013. As good cause, Applicants state that the Zonal Agreements reflect a commercial settlement between Applicants premised on their obligations to each other as of August 1, 2013. Applicants state that pursuant to a series of letter agreements in 2013, ALLETE and Great River agreed to negotiate agreements to replace the Network GFA with the understanding that such agreements would be effective August 1, 2013.²⁴ Applicants assert that an August 1, 2013 effective date was a key factor in their willingness to continue negotiations over the past two years. Applicants further state that they ceased implementing billing under the Network GFA as of August 1, 2013, and that to date, no payments (or credits) have been made by either ALLETE or Great River under any of the Zonal Agreements.²⁵

B. Notice of Cancellation

25. In Docket No. ER16-1116-000, ALLETE and MISO state that the Network GFA was originally filed with the Commission on February 28, 2000, in Docket No. ER00-

²³ *Id.* at 11.

²⁴ *Id.* at 10.

²⁵ *Id.* at 12.

1714, and was accepted on March 28, 2000.²⁶ ALLETE and MISO further state that the Network GFA is currently listed on Attachment P of the MISO Tariff as GFA No. 292 as an “excluded” agreement because the network service provisions of the Network GFA were converted to MISO network integration transmission service under the MISO Tariff. ALLETE and MISO explain that the other rates, terms, and conditions of the Network GFA are administered bilaterally between Applicants, and that the Network GFA is currently designated as Service Agreement No. 28 under the MISO Tariff.²⁷

26. ALLETE and MISO propose the cancellation of the Network GFA, effective August 1, 2013, premised on the Network GFA being superseded by the Zonal Agreements as of August 1, 2013.²⁸

II. Notice of Filing and Responsive Pleadings

27. Notice of the filing of the Zonal Agreements was published in the *Federal Register*, 81 Fed. Reg. 13,358 (2016), with interventions and protests due on or before March 29, 2016. Notice of the Notice of Cancellation was published in the *Federal Register*, 81 Fed. Reg. 13,783 (2016), with interventions and protests due on or before March 29, 2016.

28. Great River filed a motion to intervene in Docket No. ER16-1116-000. Missouri River Energy Services (Missouri River) filed a motion to intervene and protest in all three dockets; Missouri River also moved for a 14-day extension of the comment date. On March 29, 2016, Applicants filed a joint answer in all three dockets.

29. On March 30, 2016, the Commission granted a seven-day extension of the comment date in all three dockets until April 5, 2016.

30. Missouri River filed a supplemental protest in all three dockets, and Residents and Ratepayers Against the Not-So-Great Northern Transmission Line (RRANT) filed comments in all three dockets. On April 19, 2016, Applicants filed a supplemental joint answer in all three dockets. On April 28, 2016, Missouri River filed an answer to Applicants’ supplemental joint answer in all three dockets.

²⁶ Transmittal Letter, Docket No. ER16-1116-000, at 2; *See Minnesota Power*, Docket No. ER00-1714-000 (Mar. 28, 2000) (delegated letter order).

²⁷ Transmittal Letter, Docket No. ER16-1116-000, at 3.

²⁸ *Id.* at 4.

Missouri River Protest

31. Missouri River states that it is a municipal joint action agency that provides firm supplemental wholesale power supply and transmission to member municipalities in four states. Missouri River states that it joined MISO as a transmission owning member in 2011 and is a market participant in the MISO energy market. Missouri River states that it has two member communities in the Minnesota Power Pricing Zone – Wadena Electric and Water (Wadena), and City of Staples (Staples). Missouri River explains that transmission service is purchased by Wadena and Staples from Minnesota Power pursuant to a grandfathered transmission service agreement and administered by Missouri River. Missouri River states that as a transmission customer with load within the Minnesota Power Pricing Zone, it may be impacted by changes to the revenue requirements included within the Minnesota Power Pricing Zone.

32. Missouri River states that while the Zonal Agreements are framed as a “black box” settlement, they will likely affect third parties, such as Missouri River.²⁹ Missouri River states that the settlement between Applicants was reached outside of Commission processes. Missouri River states that it protests the manner in which the GNTL Project is included in ALLETE’s revenue requirement.³⁰ Missouri River states that the GNTL Project will have approximately 883 MW of transmission capacity of which Minnesota Power has committed to purchase a portion but the quantity of capacity included in its revenue requirement is unclear and not accounted for in the settlement.

33. Missouri River asserts that it is unclear where and how the revenue requirement associated with the excess, unsold GNTL Project transmission capacity is being collected. Missouri River asserts that because Applicants have stated that the GNTL Project is participant funded, Commission precedent dictates that the GNTL Project’s cost should not be included in the rates for transmission service under an ISO’s OATT and that other transmission ratepayers should be held harmless from the costs of the expansion.³¹

34. Additionally, Missouri River states that Applicants, in their definition of Zonal Transmission Facilities within the Local Planning Agreement, attempt to classify transmission facilities that are eligible for cost recovery according to the agreement of a Management Committee rather than by MISO or the Commission applying the

²⁹ Missouri River Protest at 4.

³⁰ *Id.* at 5.

³¹ *Id.* at 6.

Commission's seven-factor test.³² Missouri River states that Applicants, in their definition of Former Minnesota Power Control Area within the GNTL Credit Agreement, attempt to include facilities within the Minnesota Power Pricing Zone based upon an asset list that has not yet been identified, let alone evaluated against the seven-factor test. Lastly, Missouri River states that the Distribution Agreement expressly attempts to classify distribution facilities as transmission so they can be included in ALLETE's transmission revenue requirement.³³

Applicants' Answer

35. Applicants state that all of Missouri River's claims are either procedurally improper or unfounded and should not delay the Commission's approval of the Zonal Agreements.³⁴ Applicants state that Missouri River's claims that ALLETE and Great River negotiated the Zonal Agreements outside of Commission processes, and that the Zonal Agreements are inconsistent with the MISO Tariff and Commission precedent, are incorrect. Applicants state that the JPZ Agreement is the agreement between ALLETE and Great River implementing the revenue distribution provisions of Appendix C, Article III, Section A.8 of the MISO TOA, as negotiated to replace the "grandfathered" agreement. Applicants state that the rates, terms, and conditions of the JPZ Agreement, along with the other Zonal Agreements, reflect a settlement that resolves disputes between Applicants regarding their obligations to each other with respect to the facilities and loads that are eligible for revenue sharing in the Minnesota Power Pricing Zone. Therefore, Applicants assert that they worked within the context of processes set forth in the TOA, as approved by the Commission.³⁵

36. Applicants aver that the focus of Missouri River's protest is the appropriateness of the recovery of GNTL Project-related costs, as well as other unidentified facilities, under

³² *Id.* at 7 and n.15 (citing the MISO Business Practice Manual No. 028, Business Practices Manual: Transmission Determination Process for Prospective or Existing Unregulated Transmission Owners' Facilities (March 1, 2015)). Missouri River asserts that this source provides that "a determination of which of its facilities are transmission facilities or which are distribution [shall be made] in accordance with 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."

³³ *Id.* at 7.

³⁴ Applicants Answer at 3.

³⁵ *Id.* at 4.

ALLETE's Attachment O.³⁶ Applicants state that Missouri River's claim that Applicants may have improperly classified certain facilities as "Transmission" for purposes of cost recovery under Attachment O lacks merit because Missouri River has failed to identify any specific facility, other than the GNTL Project, which Missouri River believes should not be qualified as transmission.³⁷ Applicants reiterate that they have not removed, or added, facilities or load from, or to, the Minnesota Power Pricing Zone for purposes of calculating rates for transmission service under the MISO Tariff. Applicants explain that the Zonal Agreements are not the mechanism pursuant to which ALLETE will seek cost recovery under Attachment O for any particular facility, including the GNTL Project. Instead, Applicants assert that the Zonal Agreements simply establish revenue sharing and cost recovery as well as local planning obligations that will be used to feed information up to the MTEP. Applicants state that cost recovery for a particular facility under ALLETE's Attachment O is subject to the applicable requirements of the MISO Tariff, including ALLETE's Attachment O challenge protocols.³⁸ Therefore, Applicants assert that this proceeding is not the correct forum for Missouri River to raise concerns relating to any facility's eligibility for cost recovery under ALLETE's Attachment O. Applicants further assert that Missouri River's attempt to raise cost recovery issues in this proceeding is a thinly veiled attempt to usurp the process that the Commission has approved for reviewing ALLETE's Attachment O inputs and should be rejected.³⁹

37. Applicants state that the Commission should similarly reject Missouri River's attempt to misrepresent the GNTL Project's financing arrangements, as already approved by the Commission and the Minnesota Public Utility Commission (Minnesota Commission), as a means to expand this proceeding to include Attachment O cost-recovery. Applicants assert that ALLETE's and the Manitoba Hydro Subsidiary's (Manitoba Sub) respective capital contributions and ownership interests are based on the amount of capacity on the GNTL Project necessary to satisfy the GNTL Project's primary economic drivers. Applicants state that despite Missouri River's assertions otherwise, there is no "unaccounted for" revenue requirement for the GNTL Project. Applicants explain that ALLETE will own 51 percent and Manitoba Sub will own 49 percent of the GNTL Project as tenants-in common.⁴⁰ Applicants state that initially,

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 6.

³⁹ *Id.*

⁴⁰ *Id.* at 7.

ALLETE is responsible for 46 percent of the GNTL Project's costs even though ALLETE will own 51 percent of the GNTL Project, and Manitoba Sub is responsible for 54 percent of the Project's costs even though it will own 49 percent. Applicants state that one of ALLETE's power supply agreements with Manitoba Sub includes a payment from Manitoba Sub to ALLETE for an additional 17.7 percent of the GNTL Project's capital costs. Applicants assert that the payment will be applied toward ALLETE's capital obligations, thereby further reducing ALLETE's capital obligations for the GNTL Project from 46 percent to 28.3 percent. In other words, Applicants state that all amounts paid by Manitoba Sub to ALLETE for purposes of funding the GNTL Project will, in effect, apply as a "credit" toward the GNTL Project's retail revenue requirements and MISO Attachment O revenue requirement, and ALLETE's customers will only be allocated approximately 28.3 percent of the GNTL Project's costs, subject to applicable regulatory approvals. After construction, Applicants state, ALLETE will be responsible only for its pro rata share of operation and maintenance costs based on its 51 percent ownership percentage, and Manitoba Sub will be financially responsible for the balance of the GNTL Project's costs and its share of ongoing maintenance.⁴¹

38. Applicants assert that Missouri River fundamentally misread the GNTL Credit Agreement when it claimed that Applicants are attempting to include facilities within the Minnesota Power Pricing Zone based on an asset list that has not yet been identified or evaluated against the seven-factor test. Applicants assert that because they are still MISO members, the language referenced by Missouri River has not been implicated and, therefore, is not being used by ALLETE and Great River to include any facilities into a pricing zone for purposes of rate recovery.⁴²

39. Applicants disagree with Missouri River's argument that the definition of Zonal Transmission Facility allows the Management Committee established by the Local Planning Agreement to ignore the MISO Tariff and Commission precedent, including the seven-factor test, when deciding a facility's eligibility for cost-recovery under ALLETE's Attachment O.⁴³ Applicants assert that this is not their intent and Applicants' clear understanding was that such decisions would need to be consistent with Commission precedent. As such, Applicants state that if ordered by the Commission and as an accommodation to Missouri River, Applicants would be willing to revise the definition of

⁴¹ *Id.* at 8.

⁴² *Id.* at 8-9.

⁴³ *Id.* at 9.

Zonal Transmission Facility to expressly reference the MISO Tariff and the seven-factor test, in addition to the definition of Bulk Electric System already included therein.⁴⁴

Missouri River Supplemental Protest

40. Missouri River argues there is no evidence in the record to satisfy Applicants' burden of proof that the Zonal Agreements are just and reasonable and not unduly discriminatory or preferential or otherwise lawful. Missouri River requests that the Commission find as such or set the matter for an evidentiary hearing and settlement procedures.⁴⁵

41. Missouri River contends that Applicants' filing of the Zonal Agreements as a package obscures what standards Applicants will apply to designate transmission facilities as subject to the functional control of MISO and thus eligible for cost recovery

⁴⁴ Applicants propose the following revisions to the definition of Zonal Transmission Facility in the Local Planning Agreement:

Zonal Transmission Facility: Transmission Facilities that are eligible for cost recovery and revenue sharing under a Revenue Sharing Agreement. For purposes of this Agreement, the Parties agree that a networked transmission facility that meets the NERC definition of the Bulk Electric System shall be considered a Zonal Transmission Facility if such classification is consistent with the requirements of the MISO Tariff and FERC precedent, including the "Seven-Factor Test." In addition to networked transmission facilities, (1) any radial transmission facility with an operating voltage greater than 100 kV that transmits power to serve customers of both Parties, or (2) any radial facility with an operating voltage greater than 50 kV that transmits power to serve a Third Party, shall be considered a Zonal Transmission Facility. The Parties agree that the Management Committee may designate a transmission facility as a Zonal Transmission Facility for purposes of this Agreement even if it does not satisfy the above definition but reasonable and agreed-upon criteria are used, and the classification is consistent with the requirements of the MISO Tariff and FERC precedent, including the "Seven-Factor Test." The Parties recognize that the facilities identified in Attachment D of the JPZ Agreement may or may not satisfy the above definition and reflect a negotiated settlement to avoid litigation. *Id.* at 9-10.

⁴⁵ Missouri River Supplemental Protest at 2, 7.

through the MISO Tariff.⁴⁶ Missouri River asserts that despite Applicants' contentions, the Zonal Agreements do more than allocate revenues collected from the Minnesota Power Pricing Zone as required by the MISO TOA. Missouri River asserts that the Local Planning Agreement provides that the Management Committee determines whether facilities are eligible for cost recovery.⁴⁷ Further, Missouri River asserts that transmission customers cannot challenge such designations because they do not have a seat at the Management Committee table, and cannot utilize the dispute resolution provisions in these agreements.⁴⁸ Missouri River claims that Applicants are attempting to bias, in their favor, the process for including facilities in the revenue requirement.⁴⁹

42. Missouri River also contends that Applicants' filing is unclear if the GNTL Project will be treated as a merchant line not subject to cost recovery through the MISO Tariff or a completely open access line that is subject to cost recovery.⁵⁰ According to Missouri River, consistent with treatment of a participant funded project, it appears that there is no revenue requirement to be collected through MISO associated with Manitoba Sub's transmission capacity on the GNTL Project, but Missouri River claims it is not clear from the record.⁵¹ Additionally, Missouri River asserts that the agreements lack information regarding how ALLETE is allocating its revenue requirement, including the 28.3 percent of ALLETE's capital obligations for the GNTL Project.⁵² Missouri River contends that without this information, the Commission lacks a record upon which it can make a determination that the Zonal Agreements are just and reasonable.

43. Missouri River argues that Applicants' proposed revision to the definition of Zonal Transmission Facility does not go far enough. Specifically, Missouri River takes issue because it still calls for the Management Committee to designate Zonal Transmission Facilities, rather than the Commission, and because the definition of the "Bulk Electric System" was not replaced with the seven-factor test and corresponding

⁴⁶ *Id.* at 3.

⁴⁷ *Id.*

⁴⁸ *Id.* at 3-4.

⁴⁹ *Id.* at 4.

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 4-5.

⁵² *Id.* at 5.

precedent. According to Missouri River, the inclusion of the “Bulk Electric System” definition appears to be an effort to increase the likelihood that distribution facilities can be classified as transmission facilities.

RRANT Comments

44. RRANT states that they agree with Missouri River’s concerns, particularly noting that third parties may be affected by the Zonal Agreements. RRANT provides a detailed description of the evolution of the GNTL Project, including a review of the studies and circumstances that led to its existence.⁵³ RRANT argues that the claimed capacity of the GNTL Project, as approved by the Minnesota Commission, is inconsistent with the transmission studies used to support its application for a Certificate of Need, and utilization of the capacity is unclear.⁵⁴ RRANT contends that the GNTL Project is only a segment of a heavily-studied larger project, and that the GNTL Project was not studied separately and independently of the larger project. RRANT asserts that the GNTL Project is not capable of providing the benefits of the larger project, and the GNTL Project results in the need for network upgrades, whereas the larger project does not.⁵⁵

45. RRANT reiterates Missouri River’s assertion that Applicants repeatedly claimed that the GNTL Project is a participant funded project, and that the Minnesota Commission approved the Certificate of Need for the GNTL Project based on the assertion that it would be participant funded and that the share to be paid by Minnesota Power ratepayers in transmission riders would be limited.⁵⁶ Additionally, RRANT asserts that Missouri River appropriately raises the Commission’s position on rate recovery for participant funded transmission, which is that project costs will not be included in the rates for service, nor will these costs be shifted to the ratepayers.⁵⁷ RRANT argues that the Zonal Agreements seem to seek to circumvent Commission and Minnesota Commission policy and orders regarding participant funded transmission cost recovery.

⁵³ RRANT Comments at 2-9.

⁵⁴ *Id.* at 9.

⁵⁵ *Id.* at 9-10.

⁵⁶ *Id.* at 10-11.

⁵⁷ *Id.* at 12.

Applicants' Supplemental Answer

46. With respect to Missouri River's argument that Applicants have not satisfied the Commission's standards for revenue sharing and inclusion of assets in MISO pricing zones, Applicants respond that Appendix C, Article III, Section A.8 of the MISO TOA provides MISO Transmission Owners wide commercial latitude when negotiating joint pricing zone revenue sharing agreements, and results in exactly the type of transmission-owner-specific bilateral negotiations undertaken by Applicants to formulate the JPZ Agreement, as well as the other Zonal Agreements.⁵⁸ Applicants contend that Missouri River does not explain why Applicants have failed to satisfy the requirements of the MISO TOA. Further, Applicants allege that in regard to third-party rate impacts, Missouri River fails to acknowledge the express statements that Applicants have not removed, or added, facilities or load from, or to, the pricing zone for purposes of the JPZ Agreement.⁵⁹

47. Applicants assert that the Local Planning Agreement is intended to facilitate coordination between Applicants when formulating local transmission planning solutions that are ultimately fed up to the MTEP.⁶⁰ Applicants claim that the MISO Tariff does not require this kind of local planning, and that because the agreement is filed with the Commission, the agreement provides stakeholders more transparency regarding how Applicants coordinate local planning and what standards are used for transmission solutions that are fed up to the MTEP. Further, Applicants contend that any concerns that Missouri River (or any other party) may have about local transmission planning solutions (including a facility's qualification as transmission) can be addressed in the normal MISO MTEP stakeholder process.⁶¹

48. Applicants claim that there are no open questions concerning how the GNTL Project will be financed, but reiterate that Manitoba Sub's investment in the GNTL Project is being participant funded, as established by the Facilities Construction Agreement and accepted by the Commission in Docket No. ER14-2950.⁶²

⁵⁸ Applicants Supplemental Answer at 4-5.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 6.

⁶¹ *Id.* at 6-7.

⁶² *Id.* at 7-8.

49. Applicants argue that RRANT's comments should be rejected because RRANT has not described itself, its relationship to Applicants, or its interests relative to the Zonal Agreements.⁶³ Further, Applicants assert that RRANT's comments largely reiterate challenges RRANT raised at the Minnesota Commission concerning the "need" for the GNTL Project that the Minnesota Commission rejected as unpersuasive or irrelevant.⁶⁴

Missouri River Answer

50. Missouri River takes issue with Applicants' statements invoking the MISO TOA as justification that the Zonal Agreements are just and reasonable.⁶⁵ Specifically, Missouri River disagrees with Applicants' assertion that Transmission Owners shall continue to receive the revenues they would have received absent the formation of MISO, and that the framework provides MISO Transmission Owners with wide commercial latitude when negotiating joint pricing zone revenue sharing agreements.⁶⁶ Missouri River asserts that the Commission rejected this line of reasoning in a case involving Cleco Power LLC,⁶⁷ which Missouri River claims demonstrates that the MISO TOA does not provide MISO Transmission Owners with either *carte blanche* authority to construct any arrangement it deems necessary or to protect its historic practices.⁶⁸ Missouri River avers that the issues addressed by the Zonal Agreements far exceed the requirements of the MISO TOA.

III. Discussion

A. Procedural Matters

51. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make Missouri River and Great River parties to the proceedings in which they were filed.

⁶³ *Id.* at 8.

⁶⁴ *Id.* at 8-9.

⁶⁵ Missouri River Answer at 2.

⁶⁶ *Id.*

⁶⁷ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc. and Cleco Power LLC.*, 151 FERC ¶ 61,190 (2015) (*Cleco*)).

⁶⁸ *Id.* at 3.

52. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers filed by Applicants and Missouri River as they have provided information that assisted us in our decision-making process.

B. Substantive Matters

53. We accept the Zonal Agreements for filing, to become effective May 8, 2016, 60 days after the filing date, subject to condition as discussed below.⁶⁹ We also accept the Notice of Cancellation for filing, to become effective August 1, 2013, as requested. We deny Applicants' request for waiver of the Commission's 60-day prior notice requirement for filing the Zonal Agreements.⁷⁰ Applicants' rationale for failing to timely file the Zonal Agreements, i.e., to file at least 60 days prior to when service commences,⁷¹ does not constitute extraordinary circumstances that would justify waiver. Extended settlement negotiations have no bearing on the statutory requirement that utilities provide prior notice of proposed rates, terms, and conditions of jurisdictional service.⁷² Because Applicants state that no payments have been exchanged between them under the Zonal Agreements, a refund of the time value of revenues collected without Commission authorization is not appropriate in this case.⁷³

⁶⁹ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

⁷⁰ Contrary to the requirements of section 35.3 of the Commission's regulations (18 C.F.R. § 35.3 (2015)), Applicants failed to file the Zonal Agreements in a timely manner. Applicants are reminded that they must submit required filings on a timely basis or face possible sanctions by the Commission.

⁷¹ *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-94, *order on reh'g*, 65 FERC ¶ 61,081 (1993); *El Paso Elec. Co.*, 105 FERC ¶ 61,131, at PP 9-52 (2003).

⁷² *E.g., Entergy Servs., Inc.*, 119 FERC ¶ 61,341, at P 14, *reh'g denied*, 121 FERC ¶ 61,044 (2007).

⁷³ To the extent the Applicants provided services covered by the Zonal Agreements prior to the effective date we establish herein, the Applicants may use the terms of the Zonal Agreements to compensate each other for those services. *See Midwest Independent Transmission System Operator, Inc.*, 138 FERC ¶ 61,204, at P 28 (2012)

(continued...)

54. We agree with Applicants that Missouri River's concern about which facilities are included within ALLETE's Attachment O revenue requirement, including the GNTL Project, is not at issue in this proceeding. The GNTL Project was approved as a Transmission Delivery Service Project, i.e., a new project driven by a transmission service request, pursuant to the MTEP, as provided in Attachment FF of the MISO Tariff.⁷⁴ The MISO Tariff provides that the costs of such projects may be rolled into zonal rates, which, in the case of the GNTL Project, is ALLETE's Attachment O formula rate.⁷⁵ Thus, the MISO Tariff expressly permits cost recovery of the GNTL Project under ALLETE's Attachment O formula rate regardless of the terms and conditions of the Zonal Agreements and notwithstanding Applicants' statement in the Facilities Construction Agreement that the GNTL Project would be participant funded.⁷⁶

55. Further, we note that Applicants have emphasized that the Zonal Agreements have not removed, or added, facilities or load from, or to, the Minnesota Power Pricing Zone for purposes of calculating rates for transmission service under the MISO Tariff. Applicants state that the Zonal Agreements are not the mechanism pursuant to which ALLETE will seek cost recovery under Attachment O for any particular facility, including the GNTL Project. Rather, as Applicants assert, the Zonal Agreements establish revenue sharing and cost recovery as between ALLETE and Great River and local planning obligations, and that cost recovery for a particular facility under Applicants' Attachment O is subject to the applicable requirements of the MISO Tariff, including Applicants' Attachment O challenge protocols. Therefore, this proceeding is not the correct forum for Missouri River to raise concerns relating to any specific facility's eligibility, including the GNTL Project, for cost recovery under Applicants' Attachment O.

("[I]f a utility files an otherwise just and reasonable rate after new service has commenced, the rate is collectible, but the Commission will require the utility to refund the time value of the revenues collected for the entire period that the rate was collected without Commission authorization.").

⁷⁴ MISO Tariff, Attachment FF, section II.A.2.b.

⁷⁵ *See* MISO Tariff, Attachment FF, section II.A.2.e; MISO Tariff, Attachment N, section B.1.b, providing that MISO Transmission Owners "may elect to have all of the Network Upgrade facilities that it constructs on its system rolled-in in its zonal rate and any average Transmission Provider rate . . . , provided such election by a Transmission Owner must be made on a non-discriminatory and consistent basis."

⁷⁶ Filing of Executed Multi-Party Facilities Construction Agreement, Docket No. ER14-2950-000 (filed on Sept. 26, 2014).

56. Missouri River points to the definition of Zonal Transmission Facility in the Local Planning Agreement as evidence that Applicants are attempting to classify transmission facilities that are eligible for cost recovery according to the agreement of a Management Committee rather than by MISO or the Commission and its application of its seven-factor test.⁷⁷ Further, Missouri River claims that transmission customers cannot challenge the Management Committee's designations because they are not a part of the Management Committee and cannot utilize the dispute resolution provisions in the Zonal Agreement. We disagree. First, we clarify that the terms and conditions in the Zonal Agreements do not, under any circumstance, permit Applicants to circumvent the MISO Tariff or Commission precedent. Additionally, Applicants have offered to revise the definition of Zonal Transmission Facility to explicitly provide that the Management Committee's classifications will be consistent with the requirements of the MISO Tariff and FERC precedent, including the seven-factor test.⁷⁸ We find that this language clarifies Applicants' intent and directly addresses Missouri River's concern. Therefore, we direct Applicants to submit a compliance filing within 30 days of the date of this order, which revises the definition of Zonal Transmission Facility in the Local Planning Agreement to expressly reference the MISO Tariff and the seven-factor test as proposed in Applicants' Answer.⁷⁹ In regard to Missouri River's transparency concern, we find that Applicants have made it sufficiently clear that the Local Planning Agreement identifies transmission planning solutions that are ultimately fed up to the MTEP, and any concerns that Missouri River, or any other party, may have about Applicants' transmission planning solutions can be addressed through the MTEP stakeholder process. Thus, relative to other MISO Transmission Owners' local planning processes, the Zonal Agreements will not limit Missouri River's, or any other party's, ability to challenge transmission solutions identified by Applicants or a facility's eligibility for cost recovery under Applicants' Attachment O.

57. We reject Missouri River's arguments that *Cleco* requires a different result. The Commission required a revision to the JPZ agreement there because that agreement resulted in Cleco Power LLC not paying for transmission service it was receiving in a joint pricing zone.⁸⁰ This issue is not present here and thus, we find Missouri River's arguments to be inapposite.

⁷⁷ See Missouri River Protest at 7.

⁷⁸ See *Supra* n.45.

⁷⁹ *Id.*

⁸⁰ See *Cleco*, 151 FERC ¶ 61,190 at P 38.

58. Based on the foregoing, we find the Zonal Agreements appear to be just and reasonable and not unduly discriminatory or preferential or otherwise unlawful. Accordingly, we reject, for purposes of the present dockets, Missouri River's and RRANT's arguments concerning the GNTL Project, without prejudice to such concerns being raised in an appropriate forum.⁸¹ Likewise, we reject Missouri River's request to set this matter for hearing and settlement judge procedures.⁸²

The Commission orders:

(A) The Zonal Agreements are hereby accepted for filing, effective May 8, 2016, subject to condition, as discussed in the body of this order.

(B) The Notice of Cancellation is hereby accepted, effective August 1, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸¹ To the extent a party wants to challenge the justness and reasonableness of the Tariff provisions that allow rolled-in project costs in Transmission Owners' Attachment O rates, it may do so by filing a complaint with the Commission pursuant to section 206 of the FPA. Further, to the extent a party wants to challenge the justness and reasonableness of specific inputs, such as GNTL Project costs, to a Transmission Owners' Attachment O rates, it may do so pursuant to the challenge provisions provided for in the Transmission Owners' Attachment O protocols.

⁸² See Missouri River Supplemental Protest at 2, 7.