

164 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

Midcontinent Independent System Operator, Inc.

Docket Nos. ER14-2154-006
ER15-277-005
(consolidated)

OPINION NO. 564

ORDER ON INITIAL DECISION

(Issued September 20, 2018)

1. This case is before the Commission on exceptions to an Initial Decision¹ issued on May 22, 2017, and involves whether the annual transmission revenue requirement (ATRR) associated with the investment in the Hampton to North Rochester 345 kV transmission line (H-NR Line) by the City of Rochester, Minnesota, acting through the Rochester Public Utilities Board (RPU), should be recovered in Midcontinent Independent System Operator, Inc. (MISO) Pricing Zone 16 (Zone 16) and whether MISO possessed filing rights, under Appendix K of the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (TOA) and section 205 of the Federal Power Act (FPA),² to make the filing on October 31, 2014 (October 2014 Filing) to add RPU to Zone 16. In this order, as discussed below, we affirm the Presiding Judge's findings that RPU's ATRR for the H-NR Line should be recovered in Zone 16 and that MISO possessed filing rights to make the October 2014 Filing.

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 159 FERC ¶ 63,016 (2017) (Initial Decision).

² 16 U.S.C. § 824d (2012).

I. Background

2. RPU³ is a co-owner 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 CapX2020.⁴ The HRL Project consists of approximately 125 miles of 345 kV transmission lines in Minnesota and Wisconsin, approximately 23 miles of 161 kV transmission lines, and three 345 kV substations (two in Minnesota and Wisconsin). The HRL Project includes various line/substation components, including two 345 kV transmission lines: the H-NR Line and the North Rochester to North La Crosse, Wisconsin 345 kV transmission line. The HRL Project investors and their respective ownership interests are: Northern States Power Company, a Minnesota corporation (NSP) (64 percent), Southern Minnesota Municipal Power Agency (SMMPA) (13 percent), Dairyland Power Cooperative (Dairyland) (11 percent), RPU (nine percent), and Wisconsin Public Power, Inc. (three percent).⁵

3. Individual ownership in the HRL Project varies for the different facilities comprising the project. For the H-NR Line, the investors are NSP (49.5 percent), SMMPA (23.4 percent), Dairyland (12.4 percent), and RPU (14.7 percent).⁶

4. The HRL Project was studied as part of the MISO Transmission Expansion Plan (MTEP) process and was approved in MISO's MTEP08 Report.⁷ The MTEP08 Report identifies two transmission lines of the HRL Project that qualified for regional cost-

³ RPU is a municipal utility serving approximately 50,000 electric customers. As a municipal electric system, RPU is not a Commission-jurisdictional "public utility" as that term is defined in the FPA. Joint Stipulated Fact 16. The Joint Stipulated Facts are contained in the Joint Statement of Issues, Joint Statement of Contested Issues, Joint Statement of Stipulated Facts, and Joint Statement of Contested Facts filed in these proceedings on January 10, 2017 at pages 7-13.

⁴ CapX2020 is a joint transmission system expansion initiative undertaken by 11 utilities in Minnesota, South Dakota, and Wisconsin. The HRL Project is one of five CapX2020 projects.

⁵ Joint Stipulated Fact 32.

⁶ Joint Stipulated Fact 33.

⁷ Joint Stipulated Fact 38.

sharing as Baseline Reliability Projects, whose cost recovery are not at issue in these proceedings.⁸

5. The H-NR Line, which is part of the HRL Project, did not qualify as a Baseline Reliability Project, and was instead classified as “Other”; therefore, it was not regionally allocated by MISO.⁹ NSP and SMMPA have assigned their respective ATRRs associated with their ownership interests in the H-NR Line to Zone 16, where the facility is physically located. Dairyland assigned its ATRR for the H-NR Line to MISO Pricing Zone 26 (Zone 26), where its load is located.¹⁰

6. On June 9, 2014, in Docket No. ER14-2154-000, MISO requested Commission approval to allow for regional cost sharing of RPU’s ownership stake in the regionally allocated portions of the HRL Project.¹¹ As part of the filing, MISO also proposed revisions to Attachment FF-4 and Schedules 7, 8, and 9 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to incorporate RPU’s existing transmission facilities into Zone 20.¹² On November 28, 2014, the Commission

⁸ Joint Stipulated Fact 39.

⁹ The MTEP08 report found that the H-NR Line “is a potential Regionally Planned Generator Interconnection Project [] for generator outlet of Southern Minnesota wind generators and for area redundancy.” 2008 MTEP, App. D1 West at 62 (contained in Ex. No. RPU-9).

¹⁰ By comparison, for the North Rochester-Chester 161 kV line of the HRL Project, which was also classified by MISO as “Other,” the Transmission Owners adopted a different zonal allocation. NSP has allocated its ATRR for the North Rochester-Chester 161 kV line to Zone 16, where the facility is physically located, while SMMPA has allocated its ATRR for this facility to MISO Pricing Zone 20 (Zone 20), the SMMPA pricing zone. Joint Stipulated Fact 41. Further, pursuant to a partial settlement between RPU and SMMPA in these proceedings, RPU has also allocated its ATRR for the North Rochester-Chester 161 kV line to Zone 20. *See infra* PP 11, 96.

¹¹ Section 205 Filing of MISO to Add RPU to Zone 20, *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER14-2154-000 (filed June 9, 2014) (June 2014 Filing).

¹² *Id.* at 1.

conditionally accepted the June 2014 Filing and set portions of it for hearing and settlement proceedings.¹³

7. In the October 2014 Filing, in Docket No. ER15-277-000, MISO and RPU proposed revisions to Attachments O and GG, and Schedules 7, 8, and 9 of the Tariff to, among other things: (1) convert the RPU transmission rate formula to a forward-looking formula rate template with an annual true-up; and (2) add RPU as a Transmission Owner to Zone 16, thereby enabling RPU to allocate its ATRR for the H-NR Line to Zone 16 (i.e., enabling RPU to recover its ATRR for the H-NR Line through Zone 16 transmission rates), effective January 1, 2015.¹⁴ On December 30, 2014, the Commission issued an order conditionally accepting the October 2014 Filing, setting it for hearing and settlement, and consolidating it with the June 2014 Filing.¹⁵

8. Xcel Energy Services Inc. (Xcel), on behalf of NSP and Northern States Power Company, a Wisconsin corporation (collectively, the NSP Companies), filed a request for clarification or rehearing of the November 2014 Order,¹⁶ a request for rehearing of the December 2014 Order,¹⁷ and a subsequent request for a stay of the December 2014 Order or alternatively for Commission authorization to establish an escrow account for transmission service revenues associated with the inclusion of RPU's ATRR for the H-NR Line in Zone 16.¹⁸ Xcel sought clarification that RPU's commitment to provide refunds based on the outcome of the hearing and settlement procedures includes any

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,171, at PP 1, 17-20 (2014) (November 2014 Order).

¹⁴ October 2014 Filing at 1-2.

¹⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,282, at PP 1, 58 (2014) (December 2014 Order).

¹⁶ Request for Clarification, or in the Alternative Rehearing, of Xcel, *Midcontinent Independent System Operator, Inc.*, Docket No. ER14-2154-002 (filed Dec. 29, 2014) (Xcel Clarification Request).

¹⁷ Request for Rehearing of Xcel, *Midcontinent Independent System Operator, Inc.*, Docket Nos. ER15-277-001 and ER14-2154-003 (filed Jan. 29, 2015) (Xcel Rehearing Request).

¹⁸ Motion for Limited Stay, or, in the Alternative, Request to Establish an Escrow Account and Request for Expedited Relief of Xcel, *Midcontinent Independent System Operator, Inc.*, Docket Nos. ER15-277-000 and ER14-2154-000 (filed Jan. 6, 2016) (Xcel Stay Request).

refunds ordered by the Commission resulting from a reduction in the MISO base return on equity (ROE), which, at the time, was the subject of a complaint in Docket No. EL14-12-000.¹⁹ Xcel alternatively sought rehearing if the Commission declined the requested clarification.²⁰

9. Xcel sought rehearing of the Commission's acceptance of MISO's Tariff revisions to include RPU as a Transmission Owner in Zone 16, arguing that the Commission in the December 2014 Order failed to address Xcel's arguments that MISO and RPU lacked the necessary rights under FPA section 205 to propose revisions affecting Zone 16 and that the Commission failed to require RPU to make a compliance filing to provide refund protection related to the ongoing ROE complaint proceeding.²¹ Xcel argued that, because MISO and RPU were not Transmission Owners in Zone 16, they both lacked the authority under section 205 to propose changes to Zone 16 rates as specified in Appendi-x K to the TOA, which governs the distribution of section 205 filing rights among MISO and the Transmission Owners.²²

10. In its stay request, Xcel requested a stay or, in the alternative, authorization to establish an escrow account, arguing that the Commission's conditional acceptance of the Tariff revisions placing RPU in Zone 16 created a conflict for Xcel between distributing transmission revenues to RPU per the Commission's December 2014 Order and complying with the Zone 16 Joint Pricing Zone Revenue Allocation Agreement (Zone 16 JPZ Agreement), an NSP rate schedule on file with the Commission that governs revenue distribution among the existing Zone 16 Transmission Owners.²³ Xcel explained that

¹⁹ See *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014).

²⁰ Xcel Clarification Request at 3-7.

²¹ Xcel Rehearing Request at 6-16.

²² *Id.* at 6-13.

²³ Xcel Stay Request at 12. Xcel explained that, if it distributed Zone 16 revenues per the Zone 16 JPZ Agreement only to Zone 16 Transmission Owners, RPU could file a complaint against Xcel, and if Xcel distributed revenues to RPU per the December 2014 Order, it could face a complaint from other Zone 16 Transmission Owners for noncompliance with the terms of the Zone 16 JPZ Agreement. *Id.*

RPU was not a party to the Zone 16 JPZ Agreement and, accordingly, was not included in the zonal revenue distribution governed by that agreement.²⁴

11. On April 16, 2016, RPU and SMMPA filed a partial offer of settlement and settlement agreement in Docket Nos. ER14-2154-005 and ER15-277-004 that resolved all of the issues set for hearing in these consolidated proceedings except for the proposed revisions to Schedules 7, 8, and 9 to add RPU as a Transmission Owner to Zone 16 and to thereby enable RPU to allocate its ATRR for the H-NR Line to Zone 16.²⁵ The Settlement Judge certified the Partial Settlement to the Commission on May 19, 2016,²⁶ which the Commission later approved,²⁷ leaving only the issue of adding RPU as a Transmission Owner to Zone 16 and related issues (including the FPA section 205 filing rights of MISO and RPU) remaining to be litigated or otherwise resolved.

12. On May 19, 2016, the Settlement Judge reported that the participants had reached an impasse in their settlement negotiations regarding the proposed revisions to Schedules 7, 8, and 9 to make RPU a Transmission Owner in Zone 16 for its investment in the H-NR Line. On May 23, 2016, the Chief Administrative Law Judge terminated settlement procedures and assigned Presiding Judge Philip C. Baten to conduct an evidentiary hearing in Docket Nos. ER14-2154-006 and ER15-277-005. Presiding Judge Baten convened an evidentiary hearing on January 24, 2017, but, before the presentation of evidence, orally ruled that the hearing should be held in abeyance until the Commission ruled on the Xcel Rehearing Request. However, on January 26, 2017, the Chief Administrative Law Judge issued an order declining to hold the hearing in abeyance and designating Judge David H. Coffman as Presiding Judge.

13. On February 3, 2017, the Commission: (1) granted the Xcel Clarification Request regarding RPU's obligation to provide refunds, with interest, based on the outcome of the

²⁴ *Id.* at 8-11.

²⁵ Settlement Agreement of RPU and SMMPA, *Midcontinent Indep. Transmission Sys. Operator, Inc.*, Docket Nos. ER14-2154-005 and ER15-277-004, §§ 2.1, 4.2

(Apr. 15, 2016) (stating that the settlement resolves all issues except for the "Hampton Reserved Issues" described in section 4.2 of the Settlement Agreement) (Partial Settlement).

²⁶ *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 155 FERC ¶ 63,018 (2016).

²⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,144 (2017) (Partial Settlement Order).

ROE complaint proceeding in Docket No. EL14-12-000;²⁸ (2) denied the Xcel Rehearing Request but clarified that the Commission in the December 2014 Order had set the section 205 filing rights issue for hearing;²⁹ (3) denied the Xcel Stay Request (including its alternative request to establish an escrow account);³⁰ (4) established an investigation in Docket No. EL17-44-000, pursuant to FPA section 206,³¹ to examine whether RPU's exclusion from the Zone 16 JPZ Agreement renders the agreement unjust and unreasonable to the extent that it fails to distribute revenues to all Transmission Owners included in Zone 16 under Schedules 7, 8, and 9 of the Tariff as accepted by the Commission in the December 2014 Order;³² and (5) as part of its FPA section 206 proceeding, requested briefing on whether revisions to the Tariff or TOA may be necessary to prevent denial, through exclusion from a joint pricing zone agreement, of recovery of Commission-accepted transmission rates.³³

14. On February 6, 2017, the Presiding Judge resumed the evidentiary hearing, which concluded on February 8, 2017. The Presiding Judge issued several orders taking official notice of various definitions set forth in the Tariff and TOA.³⁴ The Presiding Judge convened an oral argument on the merits on April 18, 2017, at which counsel for RPU, Xcel, and Commission Trial Staff (Trial Staff) presented arguments, and counsel for

²⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,143, at P 17 (2017) (February 2017 Order).

²⁹ *Id.* P 19. The Commission stated that it “intended to set for hearing and settlement judge procedures the issue of whether RPU possesses the requisite section 205 filing rights in order to make the proposed revisions to Attachments O and GG and Schedules 7, 8, and 9.” *Id.* The Commission also reiterated its clarification that RPU's ROE is subject to the outcome of the ROE complaint proceeding. *Id.* P 20.

³⁰ *Id.* PP 41-42.

³¹ 16 U.S.C. § 824e.

³² February 2017 Order, 158 FERC ¶ 61,143 at PP 43-44.

³³ *Id.* P 45.

³⁴ *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER14-2154-006, *et al.*, Order Taking Official Notice (May 9, 2017); *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER14-2154-006, *et al.*, Order Taking Official Notice (Apr. 20, 2017); *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER14-2154-006, *et al.*, Order Taking Official Notice (Apr. 14, 2017); *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER14-2154-006, *et al.*, Order Taking Official Notice (Feb. 14, 2017).

MISO and SMMPA answered questions from the bench.³⁵ On May 22, 2017, the Presiding Judge issued his Initial Decision.

15. Briefs on exceptions were filed by Xcel, MISO Transmission Owners (MISO TOs),³⁶ Dairyland, and Trial Staff on June 21, 2017. Dairyland submitted a corrected version of its brief on exceptions on June 22, 2017. MISO TOs submitted an errata to their brief on exceptions on July 10, 2017. Briefs opposing exceptions were filed by RPU, MISO, and SMMPA on July 11, 2017. RPU submitted an errata to its brief opposing exceptions on July 14, 2017.³⁷

³⁵ Initial Decision, 159 FERC ¶ 63,016 at P 60.

³⁶ The participating MISO TOs are: Ameren Services Company; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland; Duke Energy Business Services, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; 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; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, Light & Power); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Wolverine Power Supply Cooperative, Inc. American Transmission Company LLC joins only the argument set forth in section IV.B of the MISO TOs' brief on exceptions and related exceptions. Dairyland intervened separately from the MISO TOs in Docket No. ER15-277-000, but joined the MISO TOs' brief on exceptions.

³⁷ For purposes of this order, when we refer to the briefs of RPU, MISO TOs, and Dairyland, we are referring to the corrected versions of these briefs.

II. Issue No. 1: Whether the Amendments to Schedules 7, 8, and 9 of the Tariff Adding RPU as a Transmission Owner to Zone 16, and Thereby Enabling RPU to Recover Its ATRR for the H-NR Line through Zone 16 Transmission Rates, Are Just and Reasonable

A. Initial Decision

1. Tariff Interpretation

16. The Presiding Judge explained that, because the H-NR Line was classified in the MTEP08 Report as an “Other” project, its ATRR is eligible for recovery under Attachment O of the Tariff.³⁸ The Presiding Judge noted that Attachment FF of the Tariff states that a project classified as “Other” “shall be eligible for recovery pursuant to Attachment O of [the Tariff] by the Transmission Owner(s) . . . paying the costs of such project”³⁹ The Presiding Judge stated that the rates calculated under Attachment O are recovered through charges imposed under Schedules 7, 8, and 9 of the Tariff for, respectively, firm point-to-point, non-firm point-to-point, and network transmission service.⁴⁰ He concluded that the ATRR for the H-NR Line “must be recovered through charges imposed under Schedules 7, 8, and 9 of the [] Tariff.”⁴¹

17. The Presiding Judge noted that Schedules 7, 8, and 9, in turn, prescribe how the ATRRs for Attachment O facilities are to be allocated among the MISO pricing zones.⁴² The Presiding Judge noted that section 8(b) of Schedules 7 and 8 and section 3(b) of Schedule 9 (Sections 3(b) and 8(b)) apply to each pricing zone with Transmission Owners that own transmission facilities in more than one pricing zone. He explained that Sections 3(b) and 8(b) apply to RPU’s allocation of its ATRR for the H-NR Line to Zone 16 because RPU is a “Transmission Owner” under the Tariff and Zone 16 is a pricing zone with Transmission Owners that own facilities in more than one pricing zone.⁴³ The Presiding Judge noted that two largely identical sentences included in

³⁸ Initial Decision, 159 FERC ¶ 63,016 at PP 33, 61.

³⁹ *Id.* P 33 (quoting Ex. RPU-16 at 30-31).

⁴⁰ *Id.* (citing *Prairie Power, Inc. v. Ameren Services Company*, 144 FERC ¶ 61,193, at P 26 (2013) (*Prairie Power*)).

⁴¹ *Id.* P 61 (citing *Prairie Power*, 144 FERC ¶ 61,193 at P 26).

⁴² *Id.* P 33 (citing Ex. RPU-29 at 13-15, 32-33, 45-46).

⁴³ *Id.* PP 62-66.

Sections 3(b) and 8(b) direct RPU to allocate the ATRR for the H-NR Line to the pricing zone in which that facility is located:

- i. Within each such pricing zone, 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 . . .*
- ii. Unless otherwise authorized by the Commission upon application by a Transmission Owner in one of the pricing zones identified [within this subsection], each Transmission Owner's total Net Revenue Requirement . . . *is allocated proportionately to each pricing zone in which the Transmission Owner owns Attachment O zonal transmission facilities based on the gross transmission plant value of all of its transmission facilities that are recovered in Attachment O zonal transmission rates located in that pricing zone . . .*^[44]

18. Based on this language, the Presiding Judge found that Sections 3(b) and 8(b) direct that, absent authorization from the Commission of an alternative arrangement, a Transmission Owner that owns Attachment O transmission facilities in more than one pricing zone must allocate its ATRR for each such facility to the pricing zone in which the facility is physically located.⁴⁵

19. The Presiding Judge disagreed with Xcel's argument that the fact that the term "located" in Sections 3(b) and 8(b) is not preceded by the adverb "physically" supports Xcel's position that the term does not refer to a facility's physical location.⁴⁶ Xcel also noted that, by contrast, section 1 of Schedule 9 uses the term "physically located" in reference to the location of load. The Presiding Judge found that, contrary to Xcel's contention, the fact that the pertinent sentences in Sections 3(b) and 8(b) do not use the

⁴⁴ *Id.* PP 68-69 (quoting Ex. RPU-29 at 13-14, 32-33, 45-46) (emphasis added by Presiding Judge).

⁴⁵ *Id.* P 79.

⁴⁶ *Id.* P 110.

adverb “physically” to modify the phrase “located in/within” is immaterial.⁴⁷ The Presiding Judge found that the plain meaning of “located” and the physical, tangible nature of transmission facilities make the use of the adverb “physically” to modify the adjective “located” redundant.⁴⁸ The Presiding Judge also noted that section 1 of Schedule 9 uses the phrase “physically located” and the term “located” interchangeably.⁴⁹ Further, the Presiding Judge observed that, although the adverb “physically” modifies the term “located” in section 1 of Schedule 9, it is absent from otherwise identical sentences in section 1 of Schedules 7 and 8.⁵⁰ The Presiding Judge noted that these provisions all

⁴⁷ *Id.* P 105.

⁴⁸ *Id.* P 106.

⁴⁹ *Id.* P 109. The Presiding Judge noted that section 1 of Schedule 9 provides in part:

The Transmission Customer taking Network Integration Transmission Service shall pay the firm monthly zonal rate . . . for the zone based upon where the load is *physically located* If a Transmission Customer has load in separate zones, the customer shall pay the rate for each zone in which its load is *located*

Id. P 109 n.142 (quoting Ex. RPU-29 at 37-38) (emphasis added by Presiding Judge).

⁵⁰ *Id.* P 109 (citing Ex. RPU-29 at 2, 20, 37). Section 1 of Schedule 7 provides in part:

The Transmission Customer shall pay the zonal rate . . . based upon the zone where the load is located for (1) Firm Point-To-Point Transmission Service where the generation source is outside the Transmission System Region and the load is located within the Transmission System Region and (2) Firm Point-To-Point Transmission Service where both the generation source and the load are located within the Transmission System Region.

Ex. RPU-29 at 2 (internal footnote omitted). Section 1 of Schedule 8 provides in part:

The Transmission Customer shall pay the zonal rate . . . based upon the zone where the load is located within the Transmission System for (1) Non-Firm Point-To-Point

specify that transmission customers shall pay the zonal rate or demand charge for the applicable transmission service based upon the location of the customer's load. The Presiding Judge concluded that, given the virtually identical functions of these provisions, it is unlikely that the drafters of the Tariff intended for the word "located" in section 1 of Schedules 7 and 8 to have a different meaning from the phrase "physically located" contained in section 1 of Schedule 9.

20. In addition, the Presiding Judge cited to section 3.7 of MISO's Business Practices Manual (BPM) 21 to validate his conclusion. The Presiding Judge noted that section 3.7 states that the Tariff generally directs Transmission Owners with facilities in multiple zones to allocate the ATRRs for each facility to the pricing zone where the facility is "physically located."⁵¹ He explained that, given that section 3.7 is describing the operation of the Tariff, the qualifier "in general" limits this section's applicability to the situation in which the Commission authorizes an allocation of an Attachment O transmission facility's ATRR to a zone other than that in which the facility is located. He

Transmission Service where the generation source is outside the Transmission System Region and the load is located within the Transmission System Region and (2) Non-Firm Point-To-Point Transmission Service where both the generation source and the load are located within the Transmission Provider Region.

Id. at 20.

⁵¹ Initial Decision, 159 FERC ¶ 63,016 at P 70. Section 3.7 provides:

- Transmission Owners may own transmission facilities located in more than one pricing Zone. In general, the Tariff provides for the Attachment O net revenue requirement of each Transmission Owner to be allocated to each of the applicable pricing Zones based on the gross transmission plant value of the Transmission Owner's transmission plant physically located in each pricing Zone. . . .
 - In conjunction with their annual Attachment O update, Transmission Owners should identify the gross transmission plant value physically located in each pricing Zone.

Ex. RPU-17 at 3.

noted that Sections 3(b) and 8(b) of the Tariff do not permit any other exceptions to their prescribed allocation methodology.⁵²

21. The Presiding Judge rejected arguments by Xcel and Trial Staff that Sections 3(b) and 8(b) do not require the allocation of RPU's ATRR for the H-NR Line to Zone 16. He noted that Xcel interpreted the phrase "facilities located in/within that pricing zone" as meaning "facilities . . . that are included in the ATRR of a zone for ratemaking purposes."⁵³ The Presiding Judge disagreed with this interpretation. He determined that the ordinary meaning of "located," as reflected in its dictionary definition, is "existing in a particular place."⁵⁴ The Presiding Judge explained that, under that definition, the phrase "facilities located in/within that pricing zone" may be interpreted as "transmission facilities that exist in that pricing zone," which cannot be equated to the phrase "facilities . . . that are included in the ATRR of a [pricing] zone for ratemaking purposes."⁵⁵

22. In addition, the Presiding Judge noted that Xcel's counsel acknowledged that Xcel's interpretation amounts to an attempt to equate the phrase "located in" to the phrase "allocated to."⁵⁶ The Presiding Judge found this interpretation to be unworkable, as the terms "located" and "allocated" are not remotely similar.⁵⁷

23. Further, the Presiding Judge observed that the terms "allocated" and "located" both appear in a single sentence in Sections 3(b) and 8(b), which indicated to the Presiding Judge that their meanings are not identical.⁵⁸ Moreover, the Presiding Judge found that substituting "allocated to" for "located in" in the below sentence would lead to a circular, cumbersome result:

[E]ach Transmission Owner's total Net Revenue Requirement
is *allocated* . . . to each pricing zone in which the

⁵² Initial Decision, 159 FERC ¶ 63,016 at P 72.

⁵³ *Id.* P 85 (citing Xcel Initial Brief at 27 (filed Mar. 14, 2017)).

⁵⁴ *Id.* P 98 (citing MacMillan Dictionary, *Located*, <http://www.macmillandictionary.com/dictionary/british/located>).

⁵⁵ *Id.*

⁵⁶ *Id.* P 99 (citing Tr. 445:21-25; 446:1-447:9).

⁵⁷ *Id.* PP 100, 104.

⁵⁸ *Id.* P 104.

Transmission Owner owns Attachment O zonal transmission facilities based on the gross transmission plant value of all [such] facilities . . . *allocated to* that pricing zone relative to the gross transmission plant value of all [such] facilities^[59]

24. The Presiding Judge also disagreed with Xcel’s characterization of MISO pricing zones as rate concepts and not physical or electrical boundaries. The Presiding Judge found that this characterization is undermined by the ordinary meaning of the word “zone.”⁶⁰ He noted that a dictionary defined “zone” as “a region or area set off or characterized as distinct from surrounding or adjoining parts” and “one of the sections or divisions of an area or territory created for a particular purpose.”⁶¹

25. The Presiding Judge noted that Schedules 7, 8, and 9 use the word “zone” and the phrase “pricing zone” interchangeably.⁶² He explained that the manner in which these schedules use these words further supports the conclusion that, for purposes of these schedules, “zones” or “pricing zones” are geographic areas. For example, the Presiding Judge found that the fact that the operative phrase at issue in Sections 3(b) and 8(b)—i.e., “facilities located in/within that pricing zone”—uses both the word “facilities” and “zone” supports this conclusion.⁶³ He explained that transmission facilities are tangible, inanimate objects that can only be “located” (i.e., “exist”) in a geographic area. The Presiding Judge observed that, similarly, section 1 of Schedules 7, 8, and 9 states that transmission customers shall pay the zonal rate for the zone in which the load is “physically located” or “located.”⁶⁴ The Presiding Judge reasoned that, if end-users are “located” or “physically located” in zones, then the zone in which the load is “located” or “physically located” must necessarily be a geographic area.

26. In addition, the Presiding Judge found that the testimony of RPU witness Smith that MISO pricing zones evolved from service areas supports the conclusion that pricing

⁵⁹ *Id.* P 102 (quoting Ex. RPU-29 at 14, 33, 46) (emphasis added by Presiding Judge).

⁶⁰ *Id.* P 111.

⁶¹ *Id.* P 112 (quoting Webster’s Dictionary at 2660).

⁶² *Id.* P 113.

⁶³ *Id.* P 114.

⁶⁴ *Id.* P 115 (citing Ex. RPU-29 at 2, 20, 37-38).

zones are, like service areas, geographic areas.⁶⁵ In addition, the Presiding Judge observed that a map introduced by SMMPA witness Geschwind depicts MISO Pricing Zones 1, 8, 16, and 20 as defined geographic areas.⁶⁶ Further, in the Presiding Judge's discussion of Issue No. 2, he noted that section II.C.3 of Appendix K to the TOA is titled "Zone Boundaries."⁶⁷ He determined that this title indicates that section II.C.3 addresses only the realignment, elimination, or reconfiguration of the physical boundaries of pricing zones and that the title further reinforces the conclusion that pricing zones are geographic areas and not "rate concepts."

27. The Presiding Judge noted that, in support of Trial Staff's general contention that the location of a transmission facility does not determine the pricing zone to which the ATRR for the facility is to be allocated, Trial Staff had cited, *inter alia*, a MISO response to an Xcel discovery request (MISO Data Response).⁶⁸ The MISO Data Response provides in part:

The [] Tariff neither requires nor precludes the allocation of transmission costs to the Pricing Zone or [Local Balancing Authority (LBA)] Area in which a transmission facility is physically located for transmission projects that do not qualify for regional cost-sharing or other allocation methods.^{69]}

The Presiding Judge found the MISO Data Response unpersuasive and entitled to little weight because, among other considerations, it focused solely on Attachment FF, and said nothing about Schedules 7, 8, or 9.⁷⁰ The Presiding Judge also afforded little weight to the MISO Data Response because the MISO employee who provided the data response was not subject to cross-examination.

⁶⁵ *Id.* P 116 (citing, *inter alia*, Ex. RPU-23 at 6).

⁶⁶ *Id.* (citing Ex. SMP-2).

⁶⁷ *Id.* P 215 (citation omitted). Issue No. 2 is discussed below in section III of this order.

⁶⁸ Initial Decision, 159 FERC ¶ 63,016 at PP 127, 129.

⁶⁹ Ex. XES-46 at 2.

⁷⁰ Initial Decision, 159 FERC ¶ 63,016 at P 133.

28. In addition, the Presiding Judge found that, contrary to Xcel's contention, the fact that RPU, Xcel, SMMPA, and Dairyland have allocated the ATRRs for some of their facilities to pricing zones other than those in which the facilities are located does not undermine the conclusion that Sections 3(b) and 8(b) require RPU's allocation of its H-NR Line ATRR to Zone 16.⁷¹ He explained that Sections 3(b) and 8(b) set forth one exception to the default methodology: if "authorized by the Commission upon application by a Transmission Owner," the ATRR for an Attachment O transmission facility may be allocated to a zone other than that in which the facility is located.⁷² The Presiding Judge concluded that, under this exception, Transmission Owners may negotiate a bilateral agreement for the allocation of an ATRR for a facility to an alternative pricing zone (i.e., a pricing zone in which the facility is not physically located) if the affected Transmission Owners agree, assuming approval from the Commission.⁷³ He explained, however, that, absent such an agreement, the Tariff prescribes a "default" methodology that requires the allocation of the ATRR to the zone in which the facility is located.⁷⁴

29. Further, the Presiding Judge found that the evidence that the H-NR Line is located in Zone 16 is compelling.⁷⁵ For example, the Presiding Judge noted that the participants agreed that the H-NR Line is physically located in the NSP LBA area, and he also found that the NSP LBA area is contiguous with Zone 16.⁷⁶ In addition, he noted that several witnesses expressly testified that the H-NR Line is physically located in Zone 16 and observed that no witness testified that the H-NR Line is located in a zone other than Zone 16.⁷⁷

30. Finally, the Presiding Judge found that the parties have not agreed to, and the Commission has not authorized, RPU's allocation of its ATRR for the H-NR Line to any

⁷¹ *Id.* P 120.

⁷² *Id.* PP 69, 121 (quoting Ex. RPU-29 at 14, 33, 46).

⁷³ *Id.* PP 122, 132.

⁷⁴ *Id.* P 122.

⁷⁵ *Id.* P 75.

⁷⁶ *Id.* P 78 (citation omitted). Although the Presiding Judge used the word "contiguous" and the participants address the Presiding Judge's use of this term in their briefs, we believe the proper term is "coextensive," i.e., having the same boundaries.

⁷⁷ *Id.* P 76.

zone. Accordingly, the Presiding Judge determined that the Tariff requires RPU to allocate that ATRR to Zone 16, the zone in which the H-NR Line is physically located.⁷⁸

2. Non-Tariff Arguments

31. The Presiding Judge noted that both Xcel and Trial Staff argued that the proposed allocation of the ATRR to Zone 16 conflicts with the Commission's policy of minimizing cost shifts.⁷⁹ Trial Staff was concerned that RPU would bear virtually no cost, since this allocation would shift 99 percent of RPU's costs for its investment in the H-NR Line onto other utilities.⁸⁰ Trial Staff estimated that RPU will make an annual contribution (through payments to SMMPA) of only \$15,824 of the \$2.3 million of RPU's ATRR allocated to Zone 16.⁸¹ Xcel characterized RPU's allocation of the ATRR for the H-NR Line to Zone 16 as a cost shift because: (1) the size of RPU's investment was based on RPU's load-ratio share in the area benefitted by that facility; (2) prior to becoming a member in MISO, RPU was responsible for paying the costs of its transmission investments; and (3) RPU would no longer be responsible for paying the costs of one of those investments.⁸²

32. The Presiding Judge stated that both Xcel and Trial Staff conceded at oral argument that, if the Tariff requires RPU's allocation of the ATRR for the H-NR Line to Zone 16, then their non-tariff related arguments are no longer relevant.⁸³ According to the Presiding Judge, the record compels the conclusion that the Tariff requires that allocation. Therefore, the Presiding Judge found the beneficiary pays principle irrelevant.⁸⁴ He explained that the bulk of the cases raised by Xcel and Trial Staff state that Regional Transmission Organizations (RTOs) must be mindful of the beneficiary pays principle if they wish for the Commission and the courts to find their proposed tariff

⁷⁸ *Id.* P 126.

⁷⁹ *Id.* P 135.

⁸⁰ *Id.* P 136 (citation omitted).

⁸¹ *Id.* P 136 n.169 (citation omitted).

⁸² *Id.* P 150 (citations omitted).

⁸³ *Id.* P 137 (citing Tr. 438:3-439:2).

⁸⁴ *Id.* PP 137, 146.

changes just and reasonable and that in these proceedings, the justness of reasonableness of the Tariff is not at issue.⁸⁵

33. Regarding the allegation of cost shifts, the Presiding Judge found that, in contrast to cases raised by Xcel, in the instant proceedings RPU's ATRR for the H-NR Line adds an entirely new cost, so the proposed allocation of costs could not have been previously borne by any ratepayer.⁸⁶ Therefore, the Presiding Judge concluded that RPU's proposal to allocate these costs to Zone 16 is not a "shift" of any existing costs (i.e., the proposal does not actually shift costs from one group of ratepayers to another).⁸⁷ He also rejected Xcel's argument that section III.A.8 of Appendix C to the TOA, which Xcel claimed attempts to prevent the addition of new Transmission Owners to MISO from creating cost shifts, precludes RPU's proposal.⁸⁸ The Presiding Judge observed that the Commission had noted that this provision "states that the revenue distribution methodology shall minimize cost shifts, not forbid them."⁸⁹ He found that the monetary impact of the proposed allocation is relatively small.⁹⁰ He noted that the proposed addition of RPU's ATRR for the H-NR Line to the Zone 16 ATRR would amount to an increase of less than one percent, so, even if the proposed allocation of RPU's H-NR ATRR to Zone 16 could be described as a cost shift, such a shift would be minor.⁹¹

34. In addition, the Presiding Judge rejected the contention by Xcel and Trial Staff that RPU's attempt to allocate its ATRR for the H-NR Line to Zone 16, where RPU has

⁸⁵ *Id.* P 146 (citing, *inter alia*, *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 474-478 (7th Cir. 2009) (*Illinois Commerce Commission*); *El Paso Electric Co. v. FERC*, 832 F.3d 495, 498 (5th Cir. 2016) (*El Paso*)).

⁸⁶ *Id.* P 164.

⁸⁷ *Id.* PP 154, 164.

⁸⁸ *Id.* PP 160-62; *see also id.* P 153 (citation omitted). Section III.A.8 of Appendix C to the TOA provides in part: "An intra-Zonal revenue distribution methodology shall, 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." Ex. RPU-32 at 10.

⁸⁹ Initial Decision, 159 FERC ¶ 63,016 at P 165 (quoting *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,190, at P 38 (2015) (internal citation omitted)).

⁹⁰ *Id.* P 154.

⁹¹ *Id.* P 165.

no load directly served by MISO, contravenes RPU's alleged commitments to recover this ATRR in a zone in which it had such load.⁹² The Presiding Judge found that the record shows that RPU made no commitments that would preclude it from recovering its ATRR for the H-NR Line in Zone 16. The Presiding Judge explained that Xcel had acknowledged that none of the alleged representations made by RPU constituted binding written contractual commitments.⁹³

35. The Presiding Judge also found that RPU did not renege on any earlier representations that it had committed to recover its ATRR for the H-NR Line from its ratepayers.⁹⁴ Rather, he found that RPU proposed to allocate its ATRR to Zone 16 only after SMMPA had made clear that SMMPA would "exercise its legitimate rights under Sections 3(b) and 8(b) to prevent the allocation of that ATRR to Zone 20."⁹⁵ Moreover, he found that "the record provides no basis for believing that permitting the proposed allocation will jeopardize future coordinated regional transmission projects."⁹⁶

B. Discussion

1. Whether RPU is a Transmission Owner in Zone 16

a. Briefs on Exceptions

36. Xcel argues that the Presiding Judge misunderstood the Tariff changes set for hearing and answered the wrong question.⁹⁷ Xcel asserts that the Presiding Judge does not address whether it would be just and reasonable to add RPU as a Transmission Owner in Zone 16. Xcel argues that because the Presiding Judge assumed that RPU is a Transmission Owner in Zone 16—since, in his view, the H-NR Line is physically located

⁹² *Id.* PP 170, 183.

⁹³ *Id.* P 184.

⁹⁴ *Id.* PP 186, 191.

⁹⁵ *Id.* P 191; *see also id.* P 189.

⁹⁶ *Id.* P 183.

⁹⁷ Xcel Brief on Exceptions at 2, 37.

in Zone 16—the Presiding Judge addressed the dispute as though it were over the allocation of RPU’s transmission facilities between MISO pricing zones.⁹⁸

37. Xcel argues that only after a decision is first made on the justness and reasonableness of adding RPU as a Transmission Owner in Zone 16 should the Presiding Judge have applied the language in Sections 3(b) and 8(b) that govern zonal recovery in those pricing zones.⁹⁹ Xcel contends that the Presiding Judge failed to consider whether the actual MISO-filed changes to add RPU to the description of Zone 16 should be accepted in the first place. Further, Xcel argues that, by failing to make this determination, the Presiding Judge bypassed an opportunity to apply the cost causation principle, which Xcel claims would have excluded RPU from becoming a Transmission Owner in Zone 16.¹⁰⁰

b. Briefs Opposing Exceptions

38. RPU argues that the Presiding Judge correctly recognized RPU as a Transmission Owner.¹⁰¹ RPU disagrees with Xcel’s argument that one must first determine whether it is just and reasonable to add RPU to Zone 16 before one determines whether it is appropriate for RPU to allocate any portion of its ATRR to the zone. RPU asserts that Xcel’s position is backwards and at odds with the plain language of the Tariff and Commission precedent. RPU argues that its status as a Transmission Owner is not governed by the Tariff and is not a function of which pricing zone or pricing zones RPU’s ATRR is added. RPU points out that it is MISO’s independent Board of Directors that votes on and approves the addition of a new transmission-owning member. RPU notes that the Board of Directors approved RPU’s membership application to become a Transmission Owner on August 28, 2014, and that RPU’s integration into MISO as a Transmission Owner became effective as of December 1, 2014. Thus, RPU disagrees with Xcel that the issue in this case is whether it would be just and reasonable to add RPU as a Transmission Owner in Zone 16; RPU argues that the issue is whether RPU’s allocation of its ATRR associated with the H-NR Line to Zone 16 is just and reasonable.

39. RPU also disagrees with Xcel’s contention that only after a decision is first made on the justness and reasonableness of adding RPU as a Transmission Owner in Zone 16 should the Presiding Judge have applied the language in Sections 3(b) and 8(b) that

⁹⁸ *Id.* at 2, 38.

⁹⁹ *Id.* at 38-39.

¹⁰⁰ *Id.* at 40.

¹⁰¹ RPU Brief Opposing Exceptions at 24.

govern zonal recovery in those pricing zones.¹⁰² RPU argues that this contention is at odds with the Tariff language and the Commission's ruling in *Prairie Power*.¹⁰³ RPU asserts that the correct sequence is: (1) RPU first becomes a Transmission Owner, which RPU claims it did as stipulated by the parties and determined by the Presiding Judge; (2) that, in the absence of other Commission-approved arrangements, RPU allocate its ATRR based on the gross investment of facilities in each zone in which its facilities are located; and, (3) RPU recovers from each zone (via MISO), its ATRR allocated to each zone. RPU argues that the last step requires MISO to add RPU to Zone 16 so that MISO could charge rates in Zone 16 that would be based on all ATRRs allocated to Zone 16 by all of the Transmission Owners in that zone, including RPU.

c. Commission Determination Regarding Whether RPU is a Transmission Owner

40. As discussed below, we reject Xcel's argument that the Presiding Judge should have excluded RPU from becoming a Transmission Owner in Zone 16.

41. Xcel argues that the Presiding Judge inappropriately determined that Sections 3(b) and 8(b) apply to RPU's allocation of its ATRR for the H-NR Line to Zone 16 without first determining that RPU was a Transmission Owner in Zone 16. We disagree. As discussed in section II.B.3.e.i of this order, we are affirming the Presiding Judge's determination that the H-NR Line is located in Zone 16 under Sections 3(b) and 8(b) based on a finding that the H-NR Line is physically located in Zone 16. Further, as discussed in section II.B.3.e.ii of this order, we are also affirming the Presiding Judge's finding that, given that the H-NR Line is located in Zone 16, the allocation of RPU's ATRR associated with the H-NR Line to Zone 16 is just and reasonable because such allocation comports with the default cost allocation method set forth in Sections 3(b) and 8(b). Therefore, the addition of RPU as a Transmission Owner in the description of Zone 16 in Schedules 7, 8, and 9 is just and reasonable.

¹⁰² *Id.* at 26 (citing Xcel Brief at 38-39).

¹⁰³ *Id.* at 24-25 (citing *Prairie Power*, 144 FERC ¶ 61,193 at PP 31-32).

2. The Applicability of Schedules 7, 8, and 9 and Xcel's Suggested Alternatives

a. Briefs on Exceptions

42. Xcel argues that the Presiding Judge incorrectly assumed that all RPU Attachment O costs must be recovered under Sections 3(b) and 8(b).¹⁰⁴

43. Xcel states that the Presiding Judge correctly quoted Attachment FF in stating that “Other” projects are “eligible for recovery pursuant to Attachment O.”¹⁰⁵ However, Xcel argues that this language does not mandate the recovery of RPU’s ATRR for the H-NR Line in Zone 16, or in any other pricing zone. Xcel contends that the Tariff provides for several options by which to recover the costs of these facilities. For instance, Xcel argues that RPU could create a subzone within Zone 20 such that the costs of the facility would be directly allocated to RPU’s loads in Zone 20. Xcel argues that the Presiding Judge never discussed this possibility even though recovery in an RPU-only subzone was discussed in testimony and RPU’s ATRR would still be recoverable under Attachment O-RPU. Xcel states that the Presiding Judge instead addressed only recovery in Zone 16.¹⁰⁶

44. Xcel disagrees with the Presiding Judge’s conclusion that because “Other” projects are “eligible for recovery pursuant to Attachment O,” they must therefore be recovered under Attachment O.¹⁰⁷ Xcel notes, for example, that RPU could exclude its ATRR for the H-NR Line from its Attachment O. Xcel notes that Attachment O-RPU expressly includes a line item for costs calculated as part of the ATRR but excluded from RTO rates, which has the effect of directly assigning the costs to RPU. Xcel asserts that this line item indicates that being “eligible” for recovery does not mandate recovery under Schedules 7, 8, and 9 for a pricing zone.¹⁰⁸

¹⁰⁴ Xcel Brief on Exceptions at 40.

¹⁰⁵ *Id.* at 40 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 33).

¹⁰⁶ *Id.* at 41.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 41-42. Xcel also argues that the Presiding Judge’s statement that rates calculated under Attachment O are recovered through charges imposed under Schedules 7, 8, and 9 of the Tariff is generally, but not entirely, correct. *Id.* at 40-41. Xcel notes that Attachment O calculates a utility’s revenue requirement and that MISO uses this revenue to calculate zonal and other rates.

45. Xcel asserts that alternatively, RPU can seek to amend the Tariff and/or the JPZ Agreement for Zone 20 to add RPU's ATRR for the H-NR Line to Zone 20 and thereby recover RPU's disputed ATRR through RPU's Attachment O and the rates for Zone 20.¹⁰⁹ Xcel asserts that because RPU serves load in Zone 20, RPU would thus bear a reasonable share of the costs.

46. Similarly, Trial Staff asserts that RPU's ATRR for the H-NR Line possibly does not properly belong in either Zone 16 or Zone 20.¹¹⁰ Trial Staff notes that Trial Staff witness Poffenberger testified that RPU can directly assign its costs associated with the H-NR Line to its retail ratepayers and also testified that RPU could seek to establish a subzone within Zone 20.¹¹¹

b. Briefs Opposing Exceptions

47. RPU argues that the record supports the Presiding Judge's decision to address only the recovery of RPU's ATRR from Zone 16.¹¹² RPU also argues that the Presiding Judge considered all testimony and arguments put before him, maintaining that if a particular argument is not discussed by the Presiding Judge, the argument lacked merit and did not warrant discussion.

48. RPU asserts that the record evidence shows that Xcel's witness merely mentioned other options that RPU could explore with (or without) other pricing zones, in order to avoid allocating RPU's ATRR to Zone 16, and RPU claims that none of these alternatives was developed, even superficially.¹¹³ RPU also notes that Xcel's witness testified that "Xcel and the NSP Companies are not advocating for any one of these alternatives" and that Xcel reiterated this position in its briefs to the Presiding Judge.¹¹⁴ RPU asserts that it is therefore reasonable and defensible that the Presiding Judge determined that none of these alternatives warranted serious consideration.

¹⁰⁹ *Id.* at 3, 87.

¹¹⁰ Trial Staff Brief on Exceptions at 47 n.179.

¹¹¹ *Id.* (citing Ex. S-1 at 18).

¹¹² RPU Brief Opposing Exceptions at 40-41.

¹¹³ *Id.* at 41 (citing Ex. XES-7 at 31).

¹¹⁴ *Id.* (quoting Ex. XES-7 at 31).

49. RPU claims that these alternatives have no evidentiary basis to support why they would be just and reasonable under the Tariff.¹¹⁵ In addition, RPU suggests that the option of RPU recovering its ATRR associated with the H-NR Line in Zone 20 would be equally as difficult and contentious as the instant proceedings, noting that SMMPA recovers its respective ATRR for the H-NR Line in Zone 16 and not Zone 20.¹¹⁶

50. Similarly, SMMPA argues that the record does not support adoption of the alternative recovery options.¹¹⁷ SMMPA asserts that, in terms of the creation of a subzone, neither Xcel nor Trial Staff offers any details about how such a subzone would work or be structured. Regarding allocating RPU's ATRR to Zone 20, SMMPA asserts that the same arguments for excluding RPU's costs from Zone 16—i.e., to avoid a cost shift and to hold RPU to commitments it allegedly made—would likewise require their exclusion from Zone 20.

51. Further, RPU argues that the option of RPU excluding the ATRR from RPU's Attachment O would deprive RPU as a Transmission Owner the core right to recover its ATRR under the Tariff. RPU asserts that this outcome would effectively discriminate against RPU, treating RPU differently than every other Transmission Owner and MISO transmission customer. RPU asserts that such an outcome is unprecedented and contrary to the Tariff.¹¹⁸

52. RPU disagrees with Xcel's argument that, because RPU has other options available to it, the Presiding Judge's decision that the Tariff requires RPU to allocate its ATRR for the H-NR Line to Zone 16 was erroneous.¹¹⁹ RPU also disagrees with Xcel's argument that RPU's eligibility to recover its ATRR under Attachment O does not mean that the Tariff demands that RPU must recover its ATRR at all, let alone from Zone 16. RPU argues that as a Transmission Owner, RPU is entitled to recover its ATRR for the facilities that it places under MISO's control.

¹¹⁵ *Id.* at 42.

¹¹⁶ *Id.* at 43-44.

¹¹⁷ SMMPA Brief Opposing Exceptions at 8. SMMPA takes no position on whether it is just and reasonable for RPU to include its ATRR for the H-NR Line in Zone 16 and neither supports nor opposes the Presiding Judge.

¹¹⁸ RPU Brief Opposing Exceptions at 45.

¹¹⁹ *Id.* at 45-46 (citing Xcel Brief on Exceptions at 41).

53. Moreover, RPU and SMMPA assert that the Commission need not consider other cost recovery alternatives available to RPU.¹²⁰ They argue that these suggestions are irrelevant to the evaluation of whether RPU's allocation of its ATRR for the H-NR Line to Zone 16 is just and reasonable.¹²¹

c. Commission Determination Regarding Applicability of Schedules 7, 8, and 9 and Xcel's Suggested Alternatives

54. We agree with Xcel that, contrary to the Presiding Judge's finding, the fact that the H-NR Line was classified as an "Other" project and thus, pursuant to Attachment FF, "eligible for recovery pursuant to Attachment O," does not mean that RPU's ATRR associated with the H-NR Line "must be recovered through charges imposed under Schedules 7, 8, and 9."¹²² As Xcel notes, RPU could have excluded its ATRR for the H-NR line from its Attachment O, which would have had the effect of directly assigning the costs to RPU.¹²³ Thus, we believe a better reading from the statement in Attachment FF that "Other" projects are "eligible for recovery pursuant to Attachment O," is that RPU's ATRR associated with the H-NR Line *may* be recovered through Schedules 7, 8, and 9.

55. However, that RPU could have chosen not to seek recovery for its ATRR has no bearing on whether its instant proposal is just and reasonable. Further, as RPU and SMMPA point out, in a section 205 proceeding, the Commission need only consider whether the applicant's proposal is just and reasonable; the availability of alternatives that may also be just and reasonable is irrelevant.¹²⁴ Here, as permitted by Attachment

¹²⁰ RPU Brief Opposing Exceptions at 47; SMMPA Brief Opposing Exceptions at 2, 6.

¹²¹ Also, as discussed further below, RPU argues that RPU allocated its ATRR for the H-NR Line to Zone 16 in compliance with schedules 7, 8, and 9 of the Tariff and MISO BPM 21 and thus that its proposal is just and reasonable.

¹²² Initial Decision, 159 FERC ¶ 63,016 at P 61 (emphasis added).

¹²³ Xcel Brief on Exceptions at 41-42 (citing Ex. XES-7 at 31). In contrast, it appears that Xcel's other two suggested alternatives—the creation of a subzone within Zone 20 to directly allocate the ATRR to RPU's load and the allocation of the ATRR to Zone 20—would involve recovery under Attachment O through Schedules 7, 8, and 9.

¹²⁴ See, e.g., *California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009) ("the issue before the Commission is whether the CAISO's proposal is just and reasonable and not whether the proposal is more or less reasonable than other

FF, RPU proposed to recover its ATRR for the H-NR Line under Attachment O through Schedule 7, 8, and 9 zonal rates, and it sought to allocate its ATRR to Zone 16. To evaluate this proposed allocation, it was appropriate for the Presiding Judge to consider the provisions of Schedules 7, 8, and 9—particularly Sections 3(b) and 8(b), which address the development of joint pricing zone rates.

56. Accordingly, we disagree with Xcel that the Presiding Judge erred in not considering Xcel’s suggested alternatives—i.e., the creation of a subzone, the exclusion or direct assignment of the costs to RPU, or the allocation to Zone 20. RPU did not propose any of these alternatives, and therefore they were not before the Presiding Judge.

3. Interpretation of Sections 3(b) and 8(b)

a. Overview

57. Xcel, MISO TOs, Dairyland, and Trial Staff challenge the Presiding Judge’s interpretation that, in the absence of a Commission-approved alternative, Sections 3(b) and 8(b) require the allocation of RPU’s ATRR for the H-NR Line to Zone 16.¹²⁵ In contrast, RPU argues that the Presiding Judge appropriately determined that allocating RPU’s ATRR for the H-NR Line to Zone 16 conforms to the requirements of Sections 3(b) and 8(b).¹²⁶ There are two main points of contention in the interpretation of Sections 3(b) and 8(b). First, the participants disagree on the interpretation of the phrase “facilities located in/within that pricing zone” as used in Sections 3(b) and 8(b). Second, they disagree on the related question of whether Sections 3(b) and 8(b) establish

alternatives”); *see also OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider “whether a proposed rate schedule is more or less reasonable than alternative rate designs”).

¹²⁵ Xcel Brief on Exceptions at 41-42; MISO TOs Brief on Exceptions at 15; Trial Staff Brief on Exceptions at 25. In contrast to Xcel, MISO TOs, and Trial Staff, Dairyland does not take a position on the Presiding Judge’s finding that the inclusion of RPU’s ATRR for the H-NR Line in Pricing Zone 16 is just and reasonable. MISO TOs Brief on Exceptions at 2 n.3.

¹²⁶ *E.g.*, RPU Brief Opposing Exceptions at 27.

a default cost allocation method. These two questions and related issues are addressed below.

b. Interpretation of the Phrase “Facilities Located in/within that Pricing Zone”

58. Xcel, MISO TOs, and Trial Staff disagree with the Presiding Judge’s finding that the operative phrase “facilities located in/within that pricing zone” refers to facilities that are physically located in a pricing zone.¹²⁷ Rather, these parties interpret this phrase as meaning “facilities . . . that are included in the ATRR of a zone for ratemaking purposes.”¹²⁸ In contrast, RPU supports the Presiding Judge’s interpretation. As described in more detail below, these differences stem from diverging views on the meanings of the terms “located” and “zone.”

i. Use of Dictionary Definitions

(a) Briefs on Exceptions

59. Xcel, MISO TOs, and Trial Staff criticize the Presiding Judge’s use of dictionary definitions to ascertain the meaning of the words “located” and “zone.” MISO TOs and Trial Staff argue that the Presiding Judge’s reliance on dictionary definitions ignores the context of the Tariff.¹²⁹ Xcel notes that the dictionary definitions were neither part of the record in these proceedings nor subject to official notice.¹³⁰

60. Xcel argues that the Presiding Judge did not explain why the dictionary definitions upon which he relied should be chosen over other definitions of the same terms in other dictionaries that are fully consistent with Xcel’s position. Xcel notes, for example, that The American Heritage College Dictionary (Third Edition) defines “locate” as “[t]o determine or specify the position or limits of.”¹³¹ Xcel argues that this alternative definition “does not carry the same physicality” as the definition chosen by the Presiding

¹²⁷ Initial Decision, 159 FERC ¶ 63,016 at P 95.

¹²⁸ Xcel Brief on Exceptions at 26; MISO TOs Brief on Exceptions at 13; Trial Staff Brief on Exceptions at 27-28.

¹²⁹ MISO TOs Brief on Exceptions at 15; Trial Staff Brief on Exceptions at 25.

¹³⁰ Xcel Brief on Exceptions at 26-27, 57-58.

¹³¹ *Id.* at 57 (quoting The American Heritage College Dictionary (3rd Ed.)).

Judge.¹³² Xcel also argues that other definitions of “zone” indicate that the term is often defined in non-geographic terms. Xcel and Trial Staff argue that the lack of clarity created by the use of dictionary definitions calls out for a resolution based on the record evidence and the Tariff terms, not based on dictionary definitions absent from the record.

61. Similarly, Trial Staff asserts that the Presiding Judge ignored the fact that “located” can be defined in ways other than “existing in a particular place.”¹³³ Trial Staff notes that the American Heritage Dictionary defines “located” as “to become established.”¹³⁴ Trial Staff argues that, applying this definition to the language in Sections 3(b) and 8(b), the phrase “transmission facilities that become established in that pricing zone” can be equated to the phrase “facilities . . . that are included in the ATRR of a [pricing] zone for ratemaking purposes.”

62. Trial Staff argues that recourse to the dictionary alone is inadequate because it fails to account for the meaning ascribed to the words at issue by the writers and the Commission.¹³⁵ Trial Staff notes that courts have cautioned against drilling down on words without regard for the larger context.¹³⁶ Trial Staff argues that by reading only Sections 3(b) and 8(b) in a vacuum, the Presiding Judge did not give “careful attention to the nuances and specialized connotations” needed to understand the requirements of the MISO Tariff.¹³⁷

(b) Briefs Opposing Exceptions

63. RPU argues that the Presiding Judge did not err in using dictionary definitions.¹³⁸ RPU observes that the Presiding Judge used the dictionary to counter the efforts of Xcel

¹³² *Id.* at 57-58.

¹³³ Trial Staff Brief on Exceptions at 27.

¹³⁴ *Id.* (citing Locate, *The American Heritage Dictionary of the English Language*, <https://ahdictionary.com/word/search.html?q=Located&submit.x=0&submit.y=0>).

¹³⁵ *Id.* at 28.

¹³⁶ *Id.* at 28-29 (citing, *inter alia*, *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945), *aff'd*, 326 U.S. 404 (1945) (*Cabell*); *U.S. v. Costello*, 666 F.3d 1040, 1044 (7th Cir. 2012) (*Costello*)).

¹³⁷ *Id.* at 29 (quoting *Costello*, 666 F.3d at 1044).

¹³⁸ RPU Brief Opposing Exceptions at 14.

who, according to RPU, denied the plain meaning of the applicable language in Sections 3(b) and 8(b) by arguing that “physical location” means something different than “location,” and that “allocated to” and “located in” are synonymous. RPU argues that, but for Xcel’s arguments, there would be no need for the Presiding Judge to refer to dictionary definitions of very simple, everyday words that are not terms of art. RPU argues that the meaning of these words cannot be seriously disputed.

ii. **“Located”**

(a) **Briefs on Exceptions**

64. Xcel and MISO TOs disagree with the Presiding Judge’s finding that the fact that the applicable language in Sections 3(b) and 8(b) does not use the word “physically” to modify the word “located” is immaterial.¹³⁹ They repeat that the absence of the adverb “physically” indicates that it was not intended for the term “located” to refer to physical location in a geographic area.

65. MISO TOs argue that canons of contract interpretation mandate that the absence of the word “physically” in these sections, as compared to its use in other sections, is both intentional and meaningful.¹⁴⁰ MISO TOs note that the Presiding Judge omitted the fact that Attachment FF of the Tariff uses the term “physically located” when discussing the cost allocation of Baseline Reliability Projects. Further, MISO TOs observe that section 1 of Schedule 9 refers to the “physical location” of load for purposes of determining which zonal rate a load will pay, while Section 3(b) of Schedule 9 addressing transmission facility cost recovery does not qualify the term “location” with the word “physically.”¹⁴¹

66. In addition, MISO TOs disagree with the Presiding Judge’s statement that section 1 of Schedules 7, 8, and 9 all use “located” and “physically located” interchangeably.¹⁴² They note that, while section 1 of Schedules 7 and 8 do not use the word “physically” when discussing the location of load, both refer to a load’s location “within the Transmission System Region,” which implies a geographic (i.e., physical) location within the MISO region. MISO TOs note that, in contrast, section 8(b) of

¹³⁹ Xcel Brief on Exceptions at 27-28, 63; MISO TOs Brief on Exceptions at 19-20.

¹⁴⁰ MISO TOs Brief on Exceptions at 20.

¹⁴¹ *Id.* at 18.

¹⁴² *Id.* at 21 n.50.

Schedules 7 and 8 contain no such geographic qualification in discussing the proper “location” for recovery of transmission facility costs.¹⁴³

67. Similarly, Xcel asserts that Schedule 9 itself refers to “physical” location when it means to do so.¹⁴⁴ Xcel argues that, despite the Presiding Judge’s claims to the contrary, the use of “physically” in section 1 of Schedule 9 is directly relevant because load and transmission facilities (and cost allocation) differ. Xcel notes that load receives service in an identifiable physical location, and, as such, the physical location of a load within an LBA area would identify the “host” pricing zone. Xcel also notes that, in contrast, transmission facilities installed and used to provide transmission service can be, and often are, widely dispersed across the transmission system. Xcel argues that, given that fact, the facilities must be allocated to a pricing zone. Further, Xcel asserts that, as with the HRL Project facilities, different loads in different locations and zones may benefit from the exact same facilities. Xcel argues that, therefore, the choice to refer to the physical location of load but not the physical location of transmission facilities is relevant.¹⁴⁵

(b) Briefs Opposing Exceptions

68. RPU argues that the Presiding Judge correctly held that the word “physically” adds nothing to the word “location.”¹⁴⁶ RPU agrees with the Presiding Judge that in the applicable language of Sections 3(b) and 8(b) “located” can only mean “physically located.” RPU asserts that transmission facilities are large physical objects that are located where they are constructed. RPU asserts that transmission facilities are not ethereal concepts and are not portable devices that can be moved from location to location or from zone to zone.¹⁴⁷

¹⁴³ *Id.*

¹⁴⁴ Xcel Brief on Exceptions at 55.

¹⁴⁵ *Id.* at 63.

¹⁴⁶ RPU Brief Opposing Exceptions at 18.

¹⁴⁷ *Id.*

iii. **“Zone”**

(a) **Briefs on Exceptions**

69. Xcel, MISO TOs, and Trial Staff argue that pricing zones are rate concepts and are not physical constructs (i.e., not geographic areas).¹⁴⁸ Further, Xcel argues that, because pricing zones are not physical constructs, the H-NR Line is not physically located in Zone 16.¹⁴⁹

70. Xcel argues that, in concluding that pricing zones are physical or geographic constructs, rather than rate constructs, the Presiding Judge departed from the language of the Tariff and reached an illogical conclusion not supported by the record evidence.¹⁵⁰ Xcel asserts that the language of the Schedule 9 does not support the Presiding Judge’s conclusion that pricing zones are physical constructs with physical boundaries and notes that there is no reference to the “physical” location of transmission facilities in Schedule 9. Xcel also notes that the key term in that rate schedule—“pricing zone”—is not capitalized, which, according to Xcel, indicates that it does not refer to the defined term “Zone” in the TOA¹⁵¹ or the defined term “Transmission Pricing Zone” in the Tariff.¹⁵²

71. In addition, Xcel argues that the Presiding Judge’s claim that LBA area boundaries can be determinative of the cost allocation of transmission facilities is inconsistent with

¹⁴⁸ Xcel Brief on Exceptions at 55; MISO TOs Brief on Exceptions at 26; Trial Staff Brief on Exceptions at 27. Xcel appears to use the term “rate constructs” synonymously with the term “rate concepts,” and the term “physical constructs” synonymously with the term “physical concepts.” For purposes of this order, we will assume that each pair of terms has the same meaning.

¹⁴⁹ Xcel Brief on Exceptions at 54-55.

¹⁵⁰ *Id.* at 55.

¹⁵¹ *Id.* (citing Ex. RPU-32 at 3 (defining “Zone”)). Appendix C to the TOA defines “Zone(s)” as “the transmission pricing zone(s) identified in the Tariff as it (they) maybe changed pursuant to this Appendix C.”

¹⁵² *Id.* (citation omitted). The Tariff defines “Transmission Pricing Zone” as “[t]he pricing zones that the Transmission Provider uses to allocate revenues for services, such as Reactive Supply and Voltage Control.” Tariff, Module A, § 1.T; *see also Midcontinent Indep. Sys. Operator, Inc.*, Order Taking Official Notice, Docket Nos. ER14-2154-006 and ER15-277-005, at P 1 (Apr. 14, 2017) (unpublished order).

how the metered boundaries of LBA areas are established.¹⁵³ Xcel argues that the Presiding Judge's approach would cause transmission facility cost allocations to flow directly from LBA area metering point decisions, even though there is no record evidence that LBA area metering point decisions are even considered as a basis for cost allocation under the Tariff. Xcel asserts that LBA area metering points should be based on operational and reliability concerns and not on the impact on transmission facility cost allocations.

72. Xcel agrees with the Presiding Judge that pricing zones in MISO are generally consistent with LBA areas.¹⁵⁴ However, Xcel asserts that the fact that most of the facilities in the NSP LBA area are located in Zone 16 for rate recovery purposes does not mean that every facility in the NSP LBA area is in Zone 16. Xcel argues that, despite evidence that there is only general overlap between the NSP LBA area and Zone 16, the Presiding Judge concludes to the contrary that "the NSP LBA [area] is contiguous with Zone 16."¹⁵⁵ Xcel notes that, at the post-hearing oral argument, counsel for MISO acknowledged that there is no map of the MISO pricing zones.¹⁵⁶ Xcel asserts that, if pricing zones were contiguous with LBA areas, MISO could have simply acknowledged that the LBA area maps could be used.¹⁵⁷

73. Xcel disagrees with the Presiding Judge's finding that the map of pricing zones in Minnesota put forward by SMMPA witness Geschwind demonstrates the physical boundaries of pricing zones.¹⁵⁸ Xcel argues that SMMPA witness Geschwind described it as a map of SMMPA's members and the pricing zones where those members have load and that he did not claim that it was a map of the physical boundaries of pricing zones or LBA areas. Xcel notes that the map does not identify a single transmission asset in any of the identified pricing zones. Xcel notes that, in contrast, Xcel provided a map of the NSP Companies transmission facilities for which the ATRR is recovered in Zone 16, with a map of the NSP LBA area superimposed on those transmission facilities.¹⁵⁹ Xcel

¹⁵³ Xcel Brief on Exceptions at 62.

¹⁵⁴ *Id.* at 59.

¹⁵⁵ *Id.* at 59 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 78).

¹⁵⁶ *Id.* at 61 (citing Tr. at 417:24-418:23).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 62 (citing Ex. SMP-2; Initial Decision, 159 FERC ¶ 63,016 at P 116).

¹⁵⁹ *Id.* at 46 (citing Ex. XES-15), 62.

asserts that this map indicates that in many cases there are transmission facilities located in distant regions from NSP's own LBA area but that are nevertheless recovered in Zone 16 for cost recovery purposes because those facilities were built in order to serve NSP load.

74. Further, Xcel disagrees with the Presiding Judge's observation that no witness testified that the H-NR Line is located in a zone other than Zone 16.¹⁶⁰ Xcel argues that the Presiding Judge overlooked the testimony of Xcel witness Wetterlin. Xcel argues that the purpose of witness Wetterlin's testimony was to demonstrate that pricing zones are rate concepts and not physical concepts, and that the ATRR for RPU's share of the H-NR Line should be recovered in a different pricing zone or directly allocated to RPU.¹⁶¹ Similarly, Trial Staff notes that witness Wetterlin testified that, under the Tariff, "pricing zones" are rate concepts, rather than physical/electrical regions of the transmission system.¹⁶² Trial Staff noted that witness Wetterlin further testified that it is "pricing zone placement (not LBA location) of the facility [that] matters for rate purposes."¹⁶³

75. MISO TOs agree with Xcel's characterization of pricing zones as rate constructs and not geographic constructs.¹⁶⁴ MISO TOs assert that pricing zones serve no function other than to allocate and recover costs and are not used for any operational purpose. MISO TOs assert that, in contrast, LBA areas are physical areas that are used for operational purposes to ensure reliable operation of transmission facilities and generation resources to serve loads physically located within them. MISO TOs argue that, while, in general, pricing zones are often based on the boundaries of LBA areas, this does not mean that pricing zones are a physical, geographic concept with defined borders. MISO TOs assert that the Presiding Judge's conclusion that the term "zone" necessarily conveys a physical concept is unsupported.¹⁶⁵

¹⁶⁰ *Id.* at 60 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 76).

¹⁶¹ *Id.* (citing, *inter alia*, Ex. XES-7 at 43-46).

¹⁶² Trial Staff Brief on Exceptions at 27 (citing Ex. No. XES-7 at 29).

¹⁶³ *Id.* (quoting Ex. No. XES-7 at 29).

¹⁶⁴ MISO TOs Brief on Exceptions at 26.

¹⁶⁵ *Id.*

(b) Briefs Opposing Exceptions

76. RPU disagrees with the argument of Xcel, MISO TOs, and Trial Staff that pricing zones are rate concepts and not geographic areas with actual boundaries.¹⁶⁶ RPU asserts that this argument defies the core license plate zonal structure of MISO's system. RPU notes that the Commission initially approved MISO's proposal to become an RTO using license plate structure in which "[a]ll customers will pay a single rate to use the entire system. Initially, the rate will be based on the costs of the local service area where the point of delivery is located."¹⁶⁷

77. RPU explains that, according to Xcel, if a transmission line is physically located in zone A but its costs are allocated to zone B, the line is "located in" zone B for rate purposes.¹⁶⁸ RPU asserts that it is on this premise that Xcel argues that certain remotely-located lines that Xcel owns, the costs of which Xcel has elected to allocate to Zone 16, are "located" in Zone 16. RPU argues that this reflects Xcel's mixing of the terms "allocated to" versus "located in." RPU asserts that allocating the costs of a facility does not change the location of that facility, as one allocates costs and not locations.¹⁶⁹

78. RPU asserts that, because Xcel and Trial Staff also admit that the H-NR Line is located within the NSP LBA area, no serious or credible claim can be made that the H-NR Line is not located in Zone 16.¹⁷⁰ Further, RPU argues that the notion that pricing zones have no boundaries is contrary to the Tariff and makes no practical sense.¹⁷¹ RPU observes that Schedules 7, 8, and 9 provide that a transmission customer shall pay the rates of the zone in which its load is physically located, thereby connoting boundaries.

¹⁶⁶ RPU Brief Opposing Exceptions at 21.

¹⁶⁷ *Id.* at 21 n.80 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at 62,166 (1998); (citing *Alliance Cos.*, 99 FERC ¶ 61,105, at 61,444 (2002) ("The Commission has consistently approved the use of license plate rates for regional transmission service as a transitional mechanism to avoid abrupt cost shifts that would serve as an impediment to RTO formation. Such license plate rates have typically reflected the embedded cost of transmission per unit of load and pricing zones that reflect the service areas of individual transmission owners or groups of transmission owners"))).

¹⁶⁸ *Id.* at 22 (citing Xcel Brief on Exceptions at 34).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 23; *see also id.* at 15 n.50.

RPU asserts that the allocation of costs of remote facilities to a zone neither alters the zonal boundaries nor changes the zone in which a customer's load is located.

79. In addition, RPU argues that the Presiding Judge also correctly observed that the notion that pricing zones have physical boundaries is supported by the express language in the TOA, Appendix K, section II.C.3, "Zone Boundaries."¹⁷² RPU asserts that the Presiding Judge appropriately observed that the title indicates that this section addresses realignment, elimination, or reconfiguration of the physical boundaries of pricing zones, and reinforces the conclusion that pricing zones are geographic areas, and not rate concepts.¹⁷³

c. **Whether Sections 3(b) and 8(b) Set Forth a Cost Allocation Method**

i. **Briefs on Exceptions**

80. Xcel and Trial Staff argue that, in contrast to the Presiding Judge's ruling, Sections 3(b) and 8(b) do not specify how to allocate a transmission facility to a particular pricing zone; they assert that, rather, these provisions merely specify how to calculate a Transmission Owner's zonal ATRR when the location of a given transmission facility has been determined.¹⁷⁴ Xcel disagrees with the Presiding Judge that the applicable language of Sections 3(b) and 8(b) produces a "circular, cumbersome result."¹⁷⁵ Xcel asserts that putting the applicable language in Sections 3(b) and 8(b) in a simple mathematical equation shows that the language is in fact not circular. Xcel explains that, under Sections 3(b) and 8(b), in order to calculate a Transmission Owner's ATRR in a given pricing zone, the Transmission Owner's gross transmission plant in the pricing zone is divided by that Transmission Owner's total gross transmission plant in all pricing zones. Xcel explains that this calculation provides the proportion of the Transmission Owner's Attachment O ATRR that is recovered in the specific pricing zone. Xcel states that this proportion is then multiplied by the Transmission Owner's total Attachment O ATRR to provide the Transmission Owner's ATRR recovered in the

¹⁷² *Id.* at 23.

¹⁷³ *Id.* at 23-24 (citing Initial Decision, 159 FERC ¶ 63,016 at P 215).

¹⁷⁴ Xcel Brief on Exceptions at 44; Trial Staff Brief on Exceptions at 3, 26. Trial Staff argues that Sections 3(b) and 8(b) can also be read to mean, consistent with BPM 21, that cost allocations are "in general" determined by physical location. Trial Staff Brief on Exceptions at 26.

¹⁷⁵ Xcel Brief on Exceptions at 44.

specific pricing zone. Xcel provides the following formula to illustrate these calculations:

$$\frac{\text{Gross Transmission Plant in Zone}}{\text{Total Gross Transmission Plant in Attachment O}} * \text{Att O ATRR} = \text{Zonal ATRR}.$$

81. Xcel notes that, although the Total Gross Transmission Plant and total Attachment O ATRR is available in Attachment O, the gross transmission plant “located in that pricing zone” at issue is not otherwise specified.¹⁷⁶ Xcel argues that the language of Sections 3(b) and 8(b) “does not mandate how a transmission facility is ‘located in’ a Pricing Zone.”¹⁷⁷ As discussed above, Xcel, MISO TOs, and Trial Staff believe that the phrases “facilities located in/within that pricing zone,” as used in Sections 3(b) and 8(b), mean “facilities . . . that are included in the ATRR of a zone for ratemaking purposes.”¹⁷⁸ Thus, under their interpretation of Sections 3(b) and 8(b), physical location of a facility is not dispositive of the pricing zone in which the facility is located for cost allocation purposes.

82. Trial Staff argues that, if it were the case that the Tariff dictated the outcome of these proceedings, there would have been no need to set this matter for hearing.¹⁷⁹ Trial Staff asserts that, if this matter turned on the language in the Tariff and the physical location of the H-NR Line, the Commission could have disposed of this litigation years ago instead of issuing a hearing order.

83. Trial Staff argues that Sections 3(b) and 8(b) alone form the basis for the Presiding Judge’s determination that the Tariff requires RPU to allocate its ATRR for the H-NR Line to the zone in which the H-NR Line is located.¹⁸⁰ Trial Staff argues that the Presiding Judge erred by not considering the language of Sections 3(b) and 8(b) in the context of the entire Tariff.

¹⁷⁶ *Id.* at 45.

¹⁷⁷ *Id.* at 44.

¹⁷⁸ Similarly, Xcel argues that “located in” can be substituted for the phrase “allocated to.” *See, e.g., id.* at 45 n.166.

¹⁷⁹ Trial Staff Brief on Exceptions at 3.

¹⁸⁰ *Id.* at 25.

ii. Briefs Opposing Exceptions

84. RPU disagrees with the arguments of Xcel and Trial Staff that Sections 3(b) and 8(b) do not explain how to allocate transmission facilities to particular pricing zones.¹⁸¹ RPU asserts that this argument denies that the Tariff says what it says: RPU observes that the essence of the argument is that language expressly stating how to allocate the costs does not actually explain how to allocate costs. RPU argues that the Presiding Judge appropriately determined that “located in” means located in.

85. RPU asserts that Xcel’s argument that the language of Sections 3(b) and 8(b) does not mandate how a transmission facility is “located in” a pricing zone is a truism. According to RPU, this Tariff language “does not mandate how a transmission facility is ‘located in’ a Pricing Zone” because it cannot do so; RPU argues that the location is a matter of physical situs and not of Tariff language.¹⁸² RPU asserts that Sections 3(b) and 8(b) use the facility’s location as the basis for allocating the facility’s ATRR between pricing zones when the owner has facilities located in more than one pricing zone.

d. Other Issues Regarding the Interpretation of Sections 3(b) and 8(b)

i. BPM

(a) Briefs on Exceptions

86. Xcel, MISO TOs, and Trial Staff argue that BPM 21 does not compel the allocation that the Presiding Judge claims.¹⁸³ They argue that, by adding the qualifier “in general,” to the discussion of transmission allocation in BPM 21, MISO is explicitly acknowledging that, in some circumstances, physical location is not followed when allocating transmission facilities for revenue recovery purposes. Trial Staff asserts that the modifier “in general” is important because the phrase would have no meaning if the Tariff strictly required cost allocation based on physical location.¹⁸⁴ Xcel disagrees with the Presiding Judge’s finding that the qualifier “in general” only refers to instances where the Commission has specifically authorized a different allocation, noting the large

¹⁸¹ RPU Brief Opposing Exceptions at 19.

¹⁸² *Id.* at 20 (quoting Xcel Brief on Exceptions at 44).

¹⁸³ Xcel Brief on Exceptions at 51; MISO TOs Brief on Exceptions at 21-22; Trial Staff Brief on Exceptions at 3, 26.

¹⁸⁴ Trial Staff Brief on Exceptions at 3.

number of transmission facilities for which this is not the case—including Dairyland’s portion of the H-NR Line and RPU’s portion of the North Rochester-Chester 161 kV line.¹⁸⁵

87. MISO TOs object to the Presiding Judge’s reliance on BPM 21 to support his interpretation that the use of the word “located” in Sections 3(b) and 8(b) means “physically located.”¹⁸⁶ MISO TOs note that the Tariff is the “filed rate” and that when the BPM conflicts with the Tariff—which, according to MISO TOs, does not mandate allocation based on physical location—the Tariff controls. MISO TOs argue that a more reasonable interpretation of BPM 21 is that it does not dictate cost allocation, but rather merely reflects the reality that the costs of most transmission facilities end up being allocated to and recovered in the pricing zone associated with the LBA area in which the facilities are physically located, and that the Tariff does not preclude recovery of the costs of such facilities in other pricing zones.¹⁸⁷

(b) Briefs Opposing Exceptions

88. RPU argues that, although MISO TOs’ argument that the Tariff has superiority over the BPM is correct in principle, this argument is of no consequence in this instance, because the Presiding Judge’s ruling, like RPU’s position, is grounded on the express language of Sections 3(b) and 8(b).¹⁸⁸ RPU argues that BPM 21 confirms the reading of this language and that BPM 21 neither alters nor supersedes it.

89. RPU asserts that the use of the phrase “in general” in BPM 21 also tracks the language of Sections 3(b) and 8(b).¹⁸⁹ RPU argues that the Presiding Judge correctly tied the “in general” language of BPM 21 to the “unless otherwise authorized” prefatory phrase in Sections 3(b) and 8(b). RPU asserts that, consistent with Sections 3(b) and 8(b), BPM 21 thus recognizes that allocation of a Transmission Owner’s ATRR based on the physical location of the Transmission Owner’s facilities is not an absolute mandate because Sections 3(b) and 8(b) allow for alternative arrangements if agreeable to the affected Transmission Owners and approved by the Commission.

¹⁸⁵ Xcel Brief on Exceptions at 52.

¹⁸⁶ MISO TOs Brief on Exceptions at 11-12, 21-22.

¹⁸⁷ *Id.* at 22 (citation omitted).

¹⁸⁸ RPU Brief Opposing Exceptions at 18.

¹⁸⁹ *Id.*

ii. **Use of Commission Ratemaking Principles to Interpret the Tariff**

(a) **Briefs on Exceptions**

90. Xcel, MISO TOs, Dairyland, and Trial Staff argue that Commission ratemaking principles—such as cost causation and beneficiary pays—should guide the interpretation of Sections 3(b) and 8(b).¹⁹⁰ Xcel argues that, because the Tariff does not explain how to determine in which zone a facility is located, precedent on just and reasonable rates applies, particularly the cost causation principle.¹⁹¹ Xcel asserts that, because Schedules 7, 8, and 9 must comply with the cost causation principle to be just and reasonable, it is illogical to conclude that these schedules ignore the cost causation principle.¹⁹² Xcel states that Schedules 7, 8, and 9 can reasonably be interpreted to follow cost causation. Xcel argues that MISO transmission cost allocation follows the beneficiary pays principle, asserting that every type of MISO cost allocation is connected to the benefits flowing from the transmission facilities being allocated.¹⁹³

91. MISO TOs assert that, when a Tariff provision is subject to differing interpretations, it should be interpreted in a manner consistent with Commission policy.¹⁹⁴ MISO TOs claim that the Presiding Judge’s interpretation would permit physical location to trump other legitimate considerations. They argue that, in contrast, Xcel and Trial Staff’s interpretation of the Tariff’s use of the terms “physically located” and “located” is consistent with the Commission’s cost causation principle. Further, MISO TOs argue that the cost causation and beneficiary pays principles are relevant because the Tariff language contemplates that the costs of transmission facilities may be allocated to zones other than the zone in which the facility is physically located. MISO TOs assert that, accordingly, Transmission Owners can and have come up with arrangements to allocate facility costs to the zone where the benefitting load resides, even when the facility is not physically located within that zone.

¹⁹⁰ Xcel Brief on Exceptions at 64-67; MISO TOs Brief on Exceptions at 3, 22-23; Dairyland Brief on Exceptions at 6-7; Trial Staff Brief on Exceptions at 23, 41-43.

¹⁹¹ Xcel Brief on Exceptions at 45.

¹⁹² *Id.* at 66.

¹⁹³ *Id.* at 23.

¹⁹⁴ MISO TOs Brief on Exceptions at 22-23.

92. Similarly, Trial Staff argues that, in contrast to the Presiding Judge's approach to interpreting Sections 3(b) and 8(b), Trial Staff's approach produces a result that is consistent with the Commission's broader responsibilities and policy objectives.¹⁹⁵ Trial Staff asserts that the Commission should be guided by fundamental ratemaking principles, including the cost causation principle, and reject the Presiding Judge's cramped reading of the Tariff that assigns cost responsibility based solely on physical location.¹⁹⁶ Trial Staff argues that approving RPU's proposal would result in an undue preference for RPU over ratepayers located in Zone 16.

(b) Briefs Opposing Exceptions

93. RPU asserts that the Presiding Judge appropriately ruled that, where the Tariff dictates cost allocation, the beneficiary pays principle is irrelevant.¹⁹⁷ RPU observes that Xcel and Trial Staff conceded that the beneficiary pays principle would come into play only if there were no operative tariff provision governing the allocation.¹⁹⁸ RPU asserts that the Presiding Judge correctly concluded that overarching arguments invoking the generic beneficiary pays principle cannot and do not trump the Commission-approved Tariff that already includes cost allocation language.

94. RPU asserts that the Presiding Judge did not approve a new cost allocation, but rather applied the already approved cost allocation mechanism articulated in the Tariff.¹⁹⁹ RPU argues that the Tariff modifications at issue in these proceedings do not alter the cost allocation mechanism articulated in the Tariff and are nothing more than ministerial changes to add RPU to the listing of Transmission Owners identified in Zone 16. RPU notes that the justness and reasonableness of the Tariff is not challenged in these proceedings.

¹⁹⁵ Trial Staff Brief on Exceptions at 29.

¹⁹⁶ *Id.* at 5.

¹⁹⁷ RPU Brief Opposing Exceptions at 47.

¹⁹⁸ *Id.* at 4 (citing Tr. 437:24-439:2).

¹⁹⁹ *Id.* at 48.

iii. **Allocations of ATRRs by Other Transmission Owners**

(a) **Briefs on Exceptions**

95. Xcel, MISO TOs, and Trial Staff argue that the Presiding Judge’s interpretation of Sections 3(b) and 8(b)—i.e., that pricing zones are geographic areas and that, absent authorization from the Commission permitting an alternative arrangement, the ATRR for a facility must be allocated to the pricing zone in which the facility is physically located—disregards the course of dealing of Transmission Owners in MISO.²⁰⁰ They note that there are numerous facilities for which Transmission Owners in MISO have made a cost allocation correlated with load, regardless of the physical location of the investment. As discussed above, Xcel presented a map of the NSP LBA area superimposed on NSP’s transmission facilities, which Xcel argues demonstrates that there are transmission facilities that are located outside the NSP LBA area but are allocated to Zone 16 because they serve NSP load.²⁰¹

96. Further, Xcel, MISO TOs, and Trial Staff point to the cost allocation of the two transmission lines that make up the HRL Project, which MISO classified as “Other” projects, to support their positions that zones are rate concepts and that the Tariff does not require the allocation of the ATRR for the H-NR Line to a single pricing zone, whether based on physical location or otherwise.²⁰² They note that, although Xcel and SMMPA recover their respective ATRRs for the H-NR Line in Zone 16, Dairyland recovers its ATRR for the same facility in Zone 26. Xcel also notes that the ATRR for the North Rochester-Chester 161 kV line, a facility which is also located within Xcel’s LBA area, is being recovered in three pricing zones: Zone 16 (Xcel’s ATRR), Zone 20 (SMMPA and RPU’s ATRR), and Zone 26 (Dairyland’s ATRR).²⁰³

97. MISO TOs assert that the Presiding Judge ignored this evidence of existing cost allocations of “Other” transmission facilities to pricing zones other than the zone in

²⁰⁰ *E.g.*, Xcel Brief on Exceptions at 28, 58; MISO TOs Brief on Exceptions at 30-31; Trial Staff Brief on Exceptions at 22-24.

²⁰¹ Xcel Brief on Exceptions at 80 n.315 (citing Ex. XES-15).

²⁰² *Id.* at 57; MISO TOs Brief on Exceptions at 24; Trial Staff Brief on Exceptions at 22.

²⁰³ Xcel Brief on Exceptions at 47.

which the facilities are located.²⁰⁴ They observe that, without any citation to the record or Commission orders, the Presiding Judge suggested that such arrangements necessarily must have been accomplished only under the exception clause (i.e., the “unless otherwise authorized” prefatory phrase) in Sections 3(b) and 8(b). They argue that, contrary to the Presiding Judge’s implication otherwise, the record in these proceedings demonstrates that MISO and Transmission Owners have long implemented Schedules 7, 8, and 9 in a manner consistent with Xcel and Trial Staff’s interpretation of the Tariff.²⁰⁵

98. Additionally, Dairyland and Trial Staff argue that the Presiding Judge’s interpretation that the Tariff requires RPU to allocate its ATRR for the H-NR Line to Zone 16 is erroneous because RPU has no load in Zone 16.²⁰⁶

(b) Briefs Opposing Exceptions

99. RPU asserts that the fact that Dairyland elected to allocate its ATRR for the H-NR Line to Zone 26 does not mean that the facility is not located in Zone 16, or that Zone 16 has no boundaries.²⁰⁷ Additionally, RPU asserts that Dairyland’s allocation also does not mean that the Zone 26 boundaries changed to capture Dairyland’s ATRR for the H-NR Line. Rather, RPU argues that Dairyland’s allocation means nothing more than that the Tariff allows transmission owners flexibility to allocate the costs of a facility to a zone other than that in which it is located if the affected owner(s) agree, and if the Commission approves such alternative allocation.

100. RPU argues that the fact that some Transmission Owners in MISO have allocated ATRRs for some of their facilities to pricing zones other than those in which the facilities are located does not undermine the conclusion that in this case the Tariff requires allocation to Zone 16.²⁰⁸ RPU asserts that the Presiding Judge recognized that the parties have not agreed to, and the Commission has not authorized, RPU’s allocation of its ATRR for the H-NR Line to any zone other than the zone in which the H-NR Line is located. RPU argues that, therefore, applying the relevant language of the Tariff, the

²⁰⁴ MISO TOs Brief on Exceptions at 24.

²⁰⁵ *Id.* at 24.

²⁰⁶ Dairyland Brief on Exceptions at 5-6; Trial Staff Brief on Exceptions at 14-15.

²⁰⁷ RPU Brief Opposing Exceptions at 22.

²⁰⁸ *Id.* at 28.

Presiding Judge appropriately concluded that RPU's allocation of its ATRR for the H-NR Line must be to Zone 16, where the H-NR Line is located.²⁰⁹

101. Further, RPU contends that the Tariff does not require a Transmission Owner to serve load in a zone in order to recover its ATRR from that zone.²¹⁰ RPU notes that Dairyland does not cite a specific Tariff provision to justify its argument that there is a load requirement in the Tariff. RPU argues that no such Tariff provision exists. RPU asserts that the Tariff's instruction for allocating transmission costs is tied to the location of the transmission facility, and not to whether the Transmission Owner has load in the zone in which the transmission is located.²¹¹

iv. MISO Data Response

(a) Briefs on Exceptions

102. Xcel, MISO TOs, and Trial Staff argue that the MISO Data Response also supports the view that the Tariff does not require the ATRR for a facility to be allocated to the zone where it is physically located.²¹² They assert that the Presiding Judge erred in disregarding this response.

103. Xcel argues that its interpretation of the Tariff matches the guidance from MISO. Xcel notes that MISO stated in the MISO Data Response that physical location does not govern the pricing zone in which the costs of a transmission facility must be recovered.²¹³ Xcel argues that MISO's interpretation is plain and directly contradicts the Presiding Judge's conclusion that physical location mandated recovery. Xcel believes that the Presiding Judge should have credited MISO's interpretation of its own Tariff.

104. Xcel asserts that the Presiding Judge improperly refused to consider MISO's guidance because the MISO Data Response did not specifically address Schedules 7, 8, or 9 and the MISO employee providing the MISO Data Response was not cross-

²⁰⁹ *Id.* at 30.

²¹⁰ *Id.* at 53.

²¹¹ *Id.* at 54.

²¹² Xcel Brief on Exceptions at 47-48; MISO TOs Brief on Exceptions at 24-25; Trial Staff Brief on Exceptions at 30.

²¹³ Xcel Brief on Exceptions at 48.

examined.²¹⁴ Xcel also claims that disregarding MISO's explanation because it did not specifically discuss Schedules 7, 8, or 9 imposed "an impossible barrier" because MISO's statement was that nothing in the Tariff mandates how such facilities are allocated.²¹⁵ According to Xcel, the MISO Data Response cited Attachment FF and not Schedules 7, 8, or 9 because Attachment FF is the only portion of the Tariff that addresses the recovery of "Other" projects. Further, Xcel argues that only RPU could have called the MISO employee as a witness given the Commission's precedent discouraging friendly cross-examination.²¹⁶

105. Similarly, MISO TOs argue that the MISO Data Response, if nothing else, serves as confirmation that MISO has historically interpreted and implemented its Tariff such that cost allocation for "Other" projects is not dictated by the physical location of the transmission facility.²¹⁷ MISO TOs note that the Presiding Judge adopted the testimony of RPU's witnesses as persuasive on the proper interpretation of the Tariff. MISO TOs assert that he failed to explain why the testimony of RPU's hired witnesses should be accorded more credibility than the sworn statement of an employee of MISO, the independent drafter and administrator of its Tariff.

106. Trial Staff argues that the Presiding Judge erred by disregarding record evidence interpreting the Tariff, from an authoritative source, on the grounds that the person providing the MISO Data Response was not called to testify in these proceedings.²¹⁸ Trial Staff argues that tariff interpretations by a tariff administrator are valuable and that the Commission has stated that "as a general matter, an RTO should be considered a

²¹⁴ *Id.*

²¹⁵ *Id.* at 50.

²¹⁶ *Id.* at 49 (citations omitted).

²¹⁷ MISO TOs Brief on Exceptions at 25. In addition to referencing the MISO Data Response, Xcel and MISO TOs also note that in another data response MISO stated: "The Tariff does not prohibit a Transmission Owner from including revenue requirements in its Attachment O for investments in transmission facilities located outside of its physical Local Balancing Authority Area." Xcel Brief on Exceptions at 47-48; MISO TOs Brief on Exceptions at 25 (both quoting Ex. XES-47). Xcel and MISO TOs interpret this other data response as providing additional support that physical location does not govern the pricing zone in which a transmission facility must be recovered.

²¹⁸ Trial Staff Brief on Exceptions at 15, 30.

credible source when it comes to an accurate interpretation of its own tariff.”²¹⁹ Trial Staff maintains that ignoring the tariff administrator’s tariff interpretations diminishes the ability of interested parties to seek guidance from the RTO.

107. Trial Staff asserts that, by excluding the MISO Data Response because the author was not cross-examined, the Presiding Judge set a new standard for using discovery responses as evidence, which would unreasonably complicate hearing proceedings.²²⁰ Trial Staff warns that this standard for live testimony would “bog down hearings with superfluous testimony” and would require a revision of the Commission’s common rule against friendly cross-examination.²²¹

(b) Briefs Opposing Exceptions

108. RPU supports the Presiding Judge’s affording little to no weight to the MISO Data Response.²²² RPU observes that the courts and Commission have consistently given deference to the presiding administrative law judge to determine the credibility of witnesses and evidence and the amount of weight to be accorded to particular testimony or evidence. RPU argues that this deference is appropriate as the presiding administrative law judge is in the best position to evaluate factors such as motive or intent.²²³

109. RPU notes that, although Trial Staff argues that Commission precedent considers RTOs as credible sources in matters concerning interpretation of their respective tariffs, none of the cases cited by Trial Staff imposes an obligation on presiding administrative law judges to give deference to the RTO’s interpretation of its Tariff, particularly upon finding inconsistencies in such interpretation as the Presiding Judge found.²²⁴ RPU also

²¹⁹ *Id.* at 30 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at P 58 (2006) (citing *PPL EnergyPlus, LLC v. New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,383, at P 29 (2006))).

²²⁰ *Id.* at 20, 35-36.

²²¹ *Id.*

²²² RPU Brief Opposing Exceptions at 32.

²²³ *Id.* at 31 (citing *Williams Natural Gas Co.*, 41 FERC ¶ 61,037, at 61,095 (1987)).

²²⁴ *Id.* at 34.

notes that the MISO Data Response did not address the operative language of the Tariff, i.e., Schedules 7, 8, and 9.

110. RPU disagrees with the argument of Xcel and Trial Staff that the Presiding Judge's concern about the inability to cross-examine the MISO employee sponsoring the response was inappropriate because—due to the Commission's rules against friendly cross-examination—only RPU could have called the MISO employee as a witness.²²⁵ RPU observes that MISO had not taken a substantive position in the case, making it impossible to presume the nature of the cross-examination of a MISO witness. Further, RPU argues that the Commission does not have a rule that specifically prohibits friendly cross-examination.²²⁶ RPU notes that presiding administrative law judges in other cases have allowed some degree of friendly cross-examination.²²⁷ RPU asserts that the decision by Xcel, MISO TOs, and Trial Staff not to cross-examine the MISO employee who provided the MISO Data Response and not to cross-examine RPU's witnesses about the MISO Data Response is a reflection of their respective strategies, but is not an appropriate assignment of error to the Presiding Judge.²²⁸

111. Finally, RPU objects to Trial Staff's assertion that the Presiding Judge's ruling would impose a new standard for using discovery responses as evidence.²²⁹ RPU asserts that Trial Staff fails to cite any existing standard that a presiding judge must use when considering how to weigh evidence because none exists. RPU argues that the record reflects that the Presiding Judge examined the MISO Data Response at length during oral argument and found that it held little value.²³⁰

²²⁵ *Id.* at 34-35 (citations omitted).

²²⁶ *Id.* at 35.

²²⁷ *Id.* (citing *Entergy Services, Inc.*, 149 FERC ¶ 63,022, at P 213 (2014)).

²²⁸ *Id.*

²²⁹ *Id.* at 7.

²³⁰ *Id.* at 8 (citing Tr. at 454:7-460:10; Initial Decision, 159 FERC ¶ 63,016 at P 133).

v. **Xcel's "Application"**

(a) **Briefs on Exceptions**

112. Xcel argues that, even assuming the Presiding Judge correctly interpreted Sections 3(b) and 8(b) as requiring the ATRR for a facility to be allocated to the pricing zone in which the facility is physically located, “[u]nless otherwise authorized by the Commission upon application by a Transmission Owner in one of the pricing zones,” the Presiding Judge failed to consider whether the exception to the default cost allocation method applies in these proceedings.²³¹ Xcel argues that NSP—a Transmission Owner in Zone 16—has sought an alternative allocation through Xcel’s numerous filings in these proceedings. Xcel notes that it has asked the Commission, on behalf of NSP, to find that RPU’s ATRR for the H-NR Line be recovered in a zone other than Zone 16, or be directly allocated to RPU. Xcel argues that these filings qualify as an “application,” given that they were filed with the Commission and that an “application” is undefined in Sections 3(b) and 8(b). Therefore Xcel argues that the Commission should render a decision as to whether to “authorize” a different allocation from the default cost allocation.²³²

(b) **Briefs Opposing Exceptions**

113. RPU argues that the Presiding Judge correctly concluded that the parties have not agreed to, and the Commission has not authorized, allocation of RPU’s ATRR for the H-NR Line to any zone other than Zone 16.²³³

114. RPU also asserts that, contrary to Xcel’s claim, there is no “application before the Commission” seeking authorization to allocate the ATRR for the H-NR Line to a zone other than Zone 16.²³⁴ RPU notes that Xcel never raised this claim until Xcel’s Brief on Exceptions. RPU also argues that this claim contradicts the testimony of Xcel and Trial Staff’s witnesses, noting that, during the hearing, Xcel witness Wetterlin and Trial Staff witness Poffenberger testified that there is no pending application, including in these proceedings, seeking Commission authorization for RPU to recover its ATRR for the

²³¹ Xcel Brief on Exceptions at 52-53.

²³² *Id.* at 54.

²³³ RPU Brief Opposing Exceptions at 36.

²³⁴ *Id.*

H-NR Line from any zone other than Zone 16.²³⁵ Additionally, RPU notes that Rule 204 of the Commission’s Rules of Practice and Procedure provides that “[a]ny person seeking a license, permit, certification or similar authorization or permission, must file an application to obtain that authorization or permission.”²³⁶ RPU also notes that Rule 202 of the Commission’s Rules of Practice and Procedure lists the types of pleadings that are submitted to the Commission and that Rule 202 distinguishes an “application” from other types of pleadings, including protests, answers, and motions.²³⁷ Therefore, RPU concludes that there is no “application” in these proceedings.

vi. “Veto” Right

(a) Briefs on Exceptions

115. Xcel disagrees with the Presiding Judge’s suggestion that a single utility in a pricing zone can veto the ability of an external facility to be allocated to that zone.²³⁸ Xcel notes that RPU originally sought to recover its ATRR for the H-NR Line from Zone 20, where RPU’s load is located and where RPU therefore pays for transmission service. Xcel explains that SMMPA, the “host” Transmission Owner in Zone 20, objected to this proposed allocation. Xcel disagrees with the Presiding Judge’s conclusion that SMMPA’s decision was an “exercise [of] its legitimate rights . . . to prevent the allocation of that ATRR to Zone 20.”²³⁹ Xcel argues that adopting the Presiding Judge’s interpretation would give Transmission Owners a veto right over cost allocations that are commensurate with benefits.

116. In addition, Xcel asserts that the Presiding Judge effectively concludes that Transmission Owners in Zone 16 have no comparable right to prevent RPU’s allocation of its ATRR for the H-NR Line to Zone 16.²⁴⁰ Xcel argues that this conclusion is illogical. Xcel argues that the Commission, and not Transmission Owners, has the authority and responsibility to determine in which zone an ATRR should be recovered in

²³⁵ *Id.* at 37-39 (citing Tr. 245:3-12; Tr. 375:8-376:6).

²³⁶ *Id.* at 40 (quoting 18 C.F.R. § 385.204).

²³⁷ *Id.* (citing 18 C.F.R. § 385.202).

²³⁸ Xcel Brief on Exceptions at 35 (citing Initial Decision, 159 FERC ¶ 63,016 at PP 186, 189).

²³⁹ *Id.* at 7 n.24, 30, 35 (all quoting Initial Decision, 159 FERC ¶ 63,016 at P 191).

²⁴⁰ *Id.* at 35 & n.143.

the event of a dispute. Xcel asserts that, if the Presiding Judge’s decision is not overturned, there is no room for negotiation because one set of stakeholders—the Transmission Owners in a pricing zone where a transmission facility is not located—would have a veto that can be used to reject any allocation to their pricing zone, even if the Transmission Owners in that zone benefit from the facility. Xcel argues that the Commission should reject the Presiding Judge’s interpretation and find that affected Transmission Owners and pricing zones may seek to negotiate a resolution consistent with cost causation principles, with the Commission available to resolve a dispute through a proceeding initiated under FPA section 206 if the parties are unable to agree.²⁴¹

(b) Briefs Opposing Exceptions

117. MISO notes Xcel’s concern that, under the Presiding Judge’s interpretation of Sections 3(b) and 8(b), a single Transmission Owner in a pricing zone can veto the ability of an external facility to be allocated to that zone.²⁴² MISO explains that this concern arises in zones with multiple Transmission Owners, such as Zone 16 and Zone 20. MISO asserts that, as construed by Xcel, such a “veto” could pose a problem. MISO observes, however, that the Presiding Judge’s statement about SMMPA’s “legitimate rights” appears merely to reflect the fact that SMMPA declined to ask the Commission to include RPU’s ATRR for the H-NR Line in Zone 20. MISO asserts that the operative language in Sections 3(b) and 8(b) refers to “application by a Transmission Owner in one of the pricing zones identified [within this subsection].” MISO observes that this language does not state, for example, that Xcel would need to seek consent of all of the Transmission Owners in its zone before an external “Other” facility can be allocated to Zone 16. MISO requests that, if the Commission affirms the default physical allocation rule, the Commission should clarify that the rule should not be interpreted expansively and that no “veto” rights exist.²⁴³

e. Commission Determination Regarding Interpretation of Sections 3(b) and 8(b)

118. As discussed below, we affirm the Presiding Judge’s finding that the allocation of RPU’s ATRR for the H-NR Line to Zone 16 conforms to the requirements set forth in Sections 3(b) and 8(b), which address the calculation of the rates of Transmission Owners

²⁴¹ *Id.* at 36.

²⁴² MISO Brief Opposing Exceptions at 31 (citing Xcel Brief on Exceptions at 35).

²⁴³ *Id.* at 31-32.

that participate in joint pricing zones and have facilities in more than one zone,²⁴⁴ and thus is just and reasonable. As a general matter, we disagree with Xcel that the Presiding Judge's finding relies on dictionary definitions instead of record evidence, which we understand to include contextual analysis of how terms (i.e., "located" and "zones") are used in the Tariff, the course of dealing of Transmission Owners in MISO, and general Commission ratemaking principles. As shown below, we find that Sections 3(b) and 8(b) provide a default cost allocation method that is based on a facility's physical location, and we find that the course of dealing of Transmission Owners and Commission ratemaking principles are not determinative where the Tariff is prescriptive.

i. Interpretation of the Phrase "Facilities Located in/within that Pricing Zone"

119. Contrary to the arguments of Xcel, MISO TOs, and Trial Staff, we agree with the Presiding Judge that the operative phrase "facilities located in/within that pricing zone" used in Sections 3(b) and 8(b) is more reasonably read as meaning those facilities physically located in a pricing zone rather than "facilities . . . that are included in the ATRR of a zone for ratemaking purposes."²⁴⁵ As discussed below, we are unpersuaded by arguments seeking to differentiate the use of the word "located" in different contexts with respect to the interpretation of Sections 3(b) and 8(b). Such arguments stray from the ordinary meaning of the word and also introduce additional problems, notably different interpretations of the word "zones" with respect to the location of load and the location of transmission facilities.

120. As the Presiding Judge found, the absence of the adverb "physically" to modify the operative phrase "facilities located in/within that zone" is inconsequential. We agree with the Presiding Judge that in this operative phrase "located" means "physically located." First, as the Presiding Judge noted, the ordinary, common understanding of the word "located" typically means "existing in a particular place."²⁴⁶ Indeed, in common parlance, the related word "location" is used as a synonym for the word "place."

121. Second, in the operative phrase "facilities located in/within that pricing zone," the word "located" modifies "facilities." As the Presiding Judge recognized, transmission

²⁴⁴ Revisions to the Tariff establishing joint pricing zones provided that revenue requirements associated with facilities owned by Transmission Owners be borne in the zone(s) where the facilities are located. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,186, at PP 2, 5 (2008).

²⁴⁵ Initial Decision, 159 FERC ¶ 63,016 at P 97.

²⁴⁶ *Id.* P 98.

facilities are tangible, physical objects.²⁴⁷ Transmission facilities are not ethereal concepts but fixtures that cannot be moved from zone to zone. Accordingly, given this context, interpreting the word “located” as “existing in a particular place” is logical.

122. We find unavailing the criticisms of Xcel, MISO TOs, and Trial Staff regarding the Presiding Judge’s use of a dictionary to interpret the word “located” and other terms. Although, as Trial Staff admonishes, dictionaries should not be the sole tool in interpreting a tariff,²⁴⁸ it is proper to consult a dictionary as an aid, and contrary to Xcel’s suggestion, it is not necessary for the Presiding Judge to take official notice of dictionary definitions. The Commission has previously used dictionary definitions to interpret terms in Commission-jurisdictional tariffs without taking official notice of such definitions.²⁴⁹ Moreover, we disagree with Xcel’s characterization that the Presiding Judge presented no opportunity to provide additional definitions; participants had ample opportunity to offer their interpretations of “located” and other key terms in their evidentiary presentations and briefs, as well as during the hearing and oral argument.²⁵⁰

123. Neither the Presiding Judge nor we rely solely on dictionary definitions to determine in the first instance that RPU’s allocation of its ATRR for the H-NR line is just and reasonable.²⁵¹ Rather, the Presiding Judge based his interpretation on the ordinary meaning of “located” and other terms and on how these terms were used in Section 3(b)

²⁴⁷ *Id.* P 110.

²⁴⁸ See Trial Staff Brief on Exceptions at 28-29 (citing, *inter alia*, *Cabell*, 148 F.2d at 739; *Costello*, 666 F.3d at 1044).

²⁴⁹ See, e.g., *FirstEnergy Solutions Corp.*, 148 FERC ¶ 61,140, at P 30 (2014) (using Black’s Law Dictionary to interpret the meaning of “i.e.” as used in the PJM Interconnection, L.L.C. Open Access Transmission Tariff); *Texican N. La. Transport, LLC v. S. Natural Gas Co.*, 132 FERC ¶ 61,167, at P 46 (2010) (using Webster’s Ninth New Collegiate Dictionary to interpret the meaning of “aggregate” as used in, *inter alia*, Southern Natural Gas Company’s FERC Gas Tariff). *But see TC Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,205, at P 46 (2010) (disagreeing that “variable” as used in the New York Independent System Operator, Inc. Services Tariff should be defined according to its common, dictionary meaning).

²⁵⁰ Tr. 445:21-25; see also *id.* 446:1-447:9 (discussing the impact of substituting “allocated to” for “located in” in one of the pertinent sentences in Schedule 9).

²⁵¹ See, e.g., Initial Decision, 159 FERC ¶ 63,016 at P 82.

and 8(b).²⁵² As RPU notes, the Presiding Judge used dictionary definitions to respond to Xcel who denied the plain meaning of the language by arguing that “located” did not mean “physically located.” As discussed below in the instant section of this order, we also have looked beyond the mere dictionary definitions such as by taking into account the physical nature of transmission facilities and considering other language in Schedules 7, 8, and 9.

124. Xcel and Trial Staff argue that other dictionaries define “locate” in other ways. Xcel notes, for example, that The American Heritage College Dictionary (Third Edition) defines “locate” as “[t]o determine or specify the position or limits of.”²⁵³ Xcel argues that this alternative definition “does not carry the same physicality” as the definition chosen by the Presiding Judge. We disagree. Parsing Xcel’s alternative definition demonstrates that even this alternative definition can still signify a physical area. For example, the first definition listed for the word “position” in The American Heritage College Dictionary of the English Language, the dictionary relied up by Trial Staff, defines “position” as “a place or location.”²⁵⁴

125. Similarly, Trial Staff asserts that one of the alternative definitions of “located” in American Heritage College Dictionary of the English Language is “to become established.” Yet Trial Staff does not present the full entry for this alternative definition, which reads: “To become established; settle: *new businesses that have located in town.*”²⁵⁵ Thus, even under this definition, the word “locate” seems to imply a geographic area. Moreover, contrary to Trial Staff’s claim, it is not altogether apparent that a transmission facility “becom[ing] established” in a pricing zone can be equated with “facilities . . . that are included in the ATRR of a [pricing] zone for ratemaking purposes.” Given that transmission facilities are physical objects, one possible understanding of a transmission facility “becom[ing] established” in a pricing zone would be in reference to a facility being built in a pricing zone, which again suggests that “located” means “physically located.”

²⁵² *E.g., id.* PP 106, 110.

²⁵³ Xcel Brief on Exceptions at 57 (quoting The American Heritage College Dictionary (3rd Ed.)).

²⁵⁴ *Position*, The American Heritage Dictionary of the English Language, <https://www.ahdictionary.com/word/search.html?q=position>.

²⁵⁵ *Locate*, The American Heritage Dictionary of the English Language, <https://ahdictionary.com/word/search.html?q=Located&submit.x=0&submit.y=0> (emphasis in original).

126. Further, as the Presiding Judge recognized, the language of section 1 of Schedules 7, 8, and 9 provides additional support that, as used in the phrase “facilities located in/within that zone” in Sections 3(b) and 8(b), “located” means “physically located.”²⁵⁶ Section 1 of Schedule 9 uses the phrase “physically located” and the term “located” interchangeably in reference to the location of load.²⁵⁷ In addition, “physically” modifies “located” in section 1 of Schedule 9, but is absent from parallel sentences in section 1 of Schedules 7 and 8.²⁵⁸

127. Xcel and MISO TOs think it significant that “physically located” is used in Schedule 9, section 1 with respect to the location of load while this phrase is not used with respect to the location of facilities in Sections 3(b) and 8(b).²⁵⁹ For example, as summarized above, Xcel asserts that the physical location of a load within an LBA area would identify the “host” pricing zone while transmission facilities that serve that load are often widely dispersed. However, in making these arguments, Xcel and MISO TOs have essentially conceded that, as used section 1 of Schedules 7, 8, and 9, the word “zone” refers to a geographic area. As the Presiding Judge recognized, if end-users are “located” or “physically located” in zones, then the zone in which the load is “located” or “physically located” must necessarily be a geographic area.²⁶⁰ The notion of load being “physically located” in a zone would not make sense if “zone” itself did not refer to a physical space, as well.

128. Further, there is no express language in Schedules 7, 8, and 9 that would demonstrate that the word “zone” is used differently in different sections, i.e., a geographic area with respect to the location of load and not a geographic area with

²⁵⁶ Initial Decision, 159 FERC ¶ 63,016 at P 109.

²⁵⁷ Section 1 of Schedule 9 provides:

The Transmission Customer taking Network Integration Transmission Service shall pay the firm monthly zonal rate . . . for the zone based upon where the load is *physically located* If a Transmission Customer has load in separate zones, the customer shall pay the rate for each zone in which its load is *located*

Ex. RPU-29 at 37-38 (emphasis added).

²⁵⁸ Compare *id.* at 37, with *id.* at 2, 20.

²⁵⁹ Xcel Brief on Exceptions at 56; MISO TOs Brief on Exceptions at 18-20.

²⁶⁰ Initial Decision, 159 FERC ¶ 63,016 at P 115.

respect to the location of facilities in Sections 3(b) and 8(b).²⁶¹ Thus, it would be internally inconsistent in the interpretation of Schedules 7, 8, and 9 to apply the same term, “zone,” differently with respect to the location of transmission facilities and the location of load. It is therefore reasonable to conclude that, consistent with the Presiding Judge’s interpretation, “zone” refers to a geographic area in the operative phrase “facilities located in/within that pricing zone” in Sections 3(b) and 8(b).

129. Additionally, the specific wording of Sections 3(b) and 8(b) supports our finding that “located” means “physical located” and “zone” refers to a geographic area. In consecutive sentences in Sections 3(b) and 8(b), the terms “located” and “zone” are used together to describe “load” and then “facilities,” with no indication for different meanings for either of these terms in different contexts:

The portion of each Transmission Owner’s total Load that is served by that Transmission Owner in each pricing zone is included in the rate calculations of the *pricing zone in which the Load is located*. The pricing zones with Transmission Owners that own *facilities located in other pricing zones* are:
 . . .^[262]

Given that the phrase “pricing zone in which the Load is located” refers to a geographic area where the load is physically located—as Xcel and MISO TOs have essentially conceded—it is logical to conclude that in the similar phrase in the very next sentence, “facilities located in other pricing zones,” the term “pricing zones” refers to geographic areas where the facilities are located. Conversely, we do not believe it is reasonable to interpret the phrase “pricing zone in which the Load is located” as referring to a geographic area where the load is physically located while, at the same time, interpreting the phrase in the next sentence, “facilities located in other pricing zones,” as referring to “facilities . . . that are included in the ATRR of a zone for ratemaking purposes.” Such a reading would require a different interpretation of the words “located” and “zone” from one sentence to the next. It would stand to reason that, if pricing zones were

²⁶¹ MISO TOs do note that section 1 of Schedules 7 and 8 both refer to a load’s location “within the Transmission System Region,” which they argue implies a geographic location within the MISO region, and they note that section 8(b) of Schedules 7 and 8 contain no such geographic qualification in discussing “location” in reference to facilities. Yet given that this phrase is not used in section 1 of Schedule 9 with respect to a load’s (physical) location, the absence of this phrase in Sections 3(b) and 8(b) also must not change the interpretation of the word “zone” as a geographic area.

²⁶² Ex. RPU-29 at 15, 33, 46 (emphasis added).

fundamentally different with respect to the location of the load and the location of the facilities, then the phrase would be bifurcated into multiple terms, which it is not.

130. Further, given that we have affirmed the Presiding Judge's finding that, as used in Sections 3(b) and 8(b), "located" means "physically located" and "zone" refers to geographic area, we also affirm the Presiding Judge's finding that the H-NR Line is located in Zone 16. As the Presiding Judge noted, the participants agreed that the facility is physically located in the NSP LBA area,²⁶³ and the record shows that pricing zones are generally coextensive with the metered boundaries of the LBA area of the pricing zone's designated Transmission Owner—e.g., NSP in the case of Zone 16.²⁶⁴ In addition, as the Presiding Judge also noted, several RPU witnesses expressly testified that the H-NR Line is physically located in Zone 16,²⁶⁵ and Trial Staff witness Poffenberger also acknowledged this fact.²⁶⁶ Xcel is the only participant in these proceedings who has argued that the H-NR Line is not physically located in Zone 16, based on Xcel witness Wetterlin's testimony that a "zone" is not a geographic area.²⁶⁷ Given that we have affirmed the Presiding Judge's interpretation of "zone" as the term is used in Sections 3(b) and 8(b), we reject this argument.

131. Xcel disagrees with the Presiding Judge's interpretation that a zone is a geographic area, arguing that, if pricing zones are contiguous with LBA areas, MISO could have simply acknowledged that the LBA area maps could be used to illustrate the pricing zones.²⁶⁸ Xcel also asserts that the Presiding Judge's claim that LBA area boundaries can be determinative of the cost allocation of transmission facilities is inconsistent with how

²⁶³ Initial Decision, 159 FERC ¶ 63,016 at P 75 (citing Ex. XES-7 at 29; Ex. XES-15; Ex. S-1 at 7; Tr. 252:15-253:2 (Wetterlin) (discussing Ex. XES-15); Joint Stipulated Facts 26, 48 (explaining that RPU assigned the book value of its gross plant located in the NSP LBA area, i.e., the book value of its interest in the H-NR Line, to Zone 16).

²⁶⁴ *Id.* (citing Ex. RPU-2 at 3, Ex. RPU-12 at 2-3; Ex. RPU-23 at 6; Ex. XES-7 at 6, 8, 22; Tr. 216:20-218:7 (Smith)).

²⁶⁵ Initial Decision, 159 FERC ¶ 63,016, at P 76 (citing Ex. RPU-3 at 5; Ex. RPU-11 at 4; Ex. RPU-12 at 23; Ex. RPU-23 at 2, 6-7, 9).

²⁶⁶ *Id.* (citing Ex. S-1 at 4).

²⁶⁷ Xcel Brief on Exceptions at 54-55, 60; *see also* Ex. XES-7 at 29.

²⁶⁸ Xcel Brief on Exceptions at 61.

the metered boundaries of LBA areas are established.²⁶⁹ Xcel argues, *inter alia*, that LBA area metering points should be based on operational and reliability concerns and not on the impact on transmission facility cost allocations. However, as we have determined above, under Sections 3(b) and 8(b), the zonal location of transmission facilities is determined in the same manner as the zonal location of load, which is undisputedly based on LBA area boundaries.

132. Further, as discussed in the next section below, we agree with the Presiding Judge's interpretation of Sections 3(b) and 8(b) that, unless the Commission were to agree to exceptions, the ATRRs for facilities must be allocated to the zones where the facilities are physically located. Those exceptions, of which there appear to be many,²⁷⁰ explain why there is no map of pricing zones, notwithstanding that MISO has maps of LBA areas. To the extent that Xcel disagrees with how Sections 3(b) and 8(b) delineate such pricing zones, including consideration of the LBA area boundaries, we believe that these arguments more reflect Xcel's dissatisfaction with these provisions themselves—the justness and reasonableness of which is not at issue (other than the proposed Tariff revisions to add RPU as a Transmission Owner in Zone 16)—than with the Presiding Judge's application of these provisions in these proceedings. Lastly, we find beyond the scope of these proceedings Xcel's arguments regarding upon which factors LBA area metering points should be based.

ii. Whether Sections 3(b) and 8(b) Set Forth a Cost Allocation Method

133. Given that we have determined that the phrase “facilities located in/within that pricing zone” means facilities physically located in that pricing zone, we agree with the Presiding Judge that Sections 3(b) and 8(b) establish a default cost allocation method for Attachment O transmission facilities (including “Other” project facilities) owned by Transmission Owners that participate in joint pricing zones and have facilities in more than one zone. Sections 3(b) and 8(b) provide the following allocation language:

Unless otherwise authorized by the Commission upon application by a Transmission Owner in one of the pricing zones identified [within this subsection], each Transmission Owner's total Net Revenue Requirement is *allocated proportionately to each pricing zone* in which the Transmission Owner owns Attachment O zonal transmission facilities *based on the gross transmission plant value of all of*

²⁶⁹ *Id.* at 62.

²⁷⁰ *See, e.g.*, Ex. XES-15.

its transmission facilities that are recovered in Attachment O zonal transmission rates *located in that pricing zone* relative to the gross transmission plant value of all of its transmission facilities that are recovered in Attachment O zonal transmission rates in all pricing zones, as reflected in Attachment O.^[271]

134. As noted above, Xcel and Trial Staff have argued that Sections 3(b) and 8(b) do not explain how to allocate transmission facilities to particular pricing zones. We disagree. As RPU explains, this argument denies that the Tariff says what it says;²⁷² the above-quoted language from Sections 3(b) and 8(b) expressly addresses how to allocate a Transmission Owner's ATRR for a given facility to a given pricing zone: i.e., "unless otherwise authorized by the Commission upon application by a [Transmission Owner]," the ATRR will be "allocated proportionately to each pricing zone . . . based on the gross transmission plant value of all of [the Transmission Owner's] transmission facilities . . . located in that pricing zone." In other words, as the Presiding Judge recognized, unless the Commission were to authorize the Transmission Owner to do otherwise, this language requires the allocation of the ATRR for a facility to the zone in which the facility is physically located.²⁷³

135. We also agree with RPU that Xcel's argument that the language of Sections 3(b) and 8(b) does not mandate how a transmission facility is "located in" a pricing zone is a truism. As RPU explains, a facility's location is determined by where it is constructed.²⁷⁴ Under the default cost allocation method set forth by Sections 3(b) and 8(b), the physical

²⁷¹ Ex. RPU-29 at 14, 33, 46 (emphasis added).

²⁷² RPU Brief Opposing Exceptions at 19.

²⁷³ See, e.g., Initial Decision, 159 FERC ¶ 63,016 at P 122.

²⁷⁴ RPU Brief Opposing Exceptions at 20.

location of the facility determines where the ATRR associated with that facility is allocated.²⁷⁵

136. Accordingly, as we affirm the Presiding Judge's finding that the H-NR Line is physically located in Zone 16, we also affirm the Presiding Judge's determination that, absent authorization from the Commission permitting an alternative arrangement, Sections 3(b) and 8(b) require the allocation of RPU's ATRR for the H-NR Line to Zone 16.²⁷⁶ We thus affirm the Presiding Judge's ruling that RPU's proposed allocation is just and reasonable.²⁷⁷

iii. Other Issues Regarding the Interpretation of Sections 3(b) and 8(b)

137. As discussed below, we also find unavailing the other arguments raised by Xcel, MISO TOs, Dairyland, and Trial Staff, that Sections 3(b) and 8(b) do not specify a default cost allocation.

(a) BPM

138. Xcel, MISO TOs, and Trial Staff criticize the Presiding Judge's reliance on BPM 21,²⁷⁸ arguing that the "in general" qualifier undercuts the Presiding Judge's determination that, under Sections 3(b) and 8(b), the ATRR for a facility must be allocated to the zone where the facility is physically located. As an initial matter, we find that BPMs, which are not approved by the Commission as part of the Tariff, are entitled to limited weight in interpreting the Tariff beyond providing context. Nonetheless, we find that BPM 21 supports the Presiding Judge's interpretation of Sections 3(b) and 8(b). As the Presiding Judge recognized, section 3.7 of BPM 21 simply describes the actual operation of the Tariff, and Sections 3(b) and 8(b) do not specify any other exceptions to

²⁷⁵ This finding applies only to facilities whose costs are recovered through Attachment O pursuant to Schedules 7, 8, and 9 zonal rates, such as those designated as "Other" projects.

²⁷⁶ See Initial Decision, 159 FERC ¶ 63,016 at P 81.

²⁷⁷ Regarding Trial Staff's argument that if the Tariff dictated the outcome of these proceedings there would have been no need to set this matter for hearing, we appropriately wanted to elicit all facts and arguments on this complicated matter before making a decision.

²⁷⁸ See *supra* note 51.

the zonal cost allocation method.²⁷⁹ Therefore, as the Presiding Judge explained, the “in general” qualifier “is best interpreted as referring to the language in Sections 3(b) and 8(b) that permits Transmission Owners to allocate the ATRR for a facility to a zone other than that in which the facility is located if the Commission authorizes the allocation.”²⁸⁰ We also note that, notwithstanding the interpretation of “in general,” section 3.7 of BPM 21 uses the phrase “physically located in each pricing Zone,” which provides further support that zones are geographic areas.

(b) Use of Commission Ratemaking Principles to Interpret the Tariff

139. As summarized above, Xcel, MISO TOs, Dairyland, and Trial Staff argue that the Presiding Judge’s interpretation of Sections 3(b) and 8(b) is improper because it conflicts with Commission ratemaking principles—such as cost causation and beneficiary pays.²⁸¹ MISO TOs assert that, when a Tariff provision is subject to differing interpretations, it should be interpreted in a manner consistent with Commission policy.²⁸²

140. As discussed further below,²⁸³ given our reading that Sections 3(b) and 8(b) establish a default cost allocation method, and given that RPU’s proposed allocation of the ATRR for the H-NR Line to Zone 16 conforms to that method, these ratemaking principles are not determinative here.²⁸⁴ Indeed, as RPU notes, Xcel and Trial Staff have conceded that the beneficiary pays principle comes into play only if there is no operative tariff provision governing the allocation.²⁸⁵ Further as RPU notes, the Presiding Judge did not approve a new cost allocation, but rather applied the default cost allocation

²⁷⁹ Initial Decision, 159 FERC ¶ 63,016 at PP 72, 108.

²⁸⁰ *Id.* P 108.

²⁸¹ Xcel Brief on Exceptions at 55; MISO TOs Brief on Exceptions at 23; Dairyland Brief on Exceptions at 6; Trial Staff Brief on Exceptions at 18.

²⁸² MISO TOs Brief on Exceptions at 22-23.

²⁸³ *See* section II.B.4 of this order.

²⁸⁴ These principles would be relevant if, for example, RPU did not propose the follow the default cost allocation method under Sections 3(b) and 8(b) and instead sought an allocation that deviated from the zone in which H-NR Line was physically located, pursuant to the exception to this default method.

²⁸⁵ RPU Brief Opposing Exceptions at 3-4 (citing Tr. at 437:24-439:2).

method articulated in the Tariff.²⁸⁶ Therefore, the justness and reasonableness of this existing method is not at issue in these proceedings.

(c) **Allocations of ATRRs by Other Transmission Owners**

141. As noted above, Xcel, MISO TOs, and Trial Staff argue that the Presiding Judge's interpretation of Sections 3(b) and 8(b)—i.e., that pricing zones are geographic areas and that, absent authorization from the Commission permitting an alternative arrangement, the ATRR of a facility must be allocated to the pricing zone in which the facility is physically located—disregards the course of dealing of Transmission Owners in MISO.²⁸⁷ They note that there are numerous facilities for which Transmission Owners in MISO have made a cost allocation correlated with load, regardless of the physical location of the investment. They also argue that the cost allocation of the H-NR Line and the North Rochester-Chester 161 kV line support their positions that zones are rate concepts and that the Tariff does not require the allocation of the ATRR for the H-NR Line to a single pricing zone.

142. We disagree. Contrary to the positions of Xcel, MISO TOs, and Trial Staff, the fact that the ATRRs associated with the H-NR Line and the North Rochester-Chester 161 kV line are not being exclusively allocated to Zone 16, where the transmission lines are physically located, does not contradict the Presiding Judge's ruling that Sections 3(b) and 8(b) require in this case that RPU's ATRR for the H-NR Line be allocated to the Zone 16. Those other allocations fall under the exception to the default method set forth in Sections 3(b) and 8(b): the ATRR of an Attachment O transmission facility may be allocated to a zone other than that in which the facility is located if the Commission authorizes such application.²⁸⁸

143. We also disagree with the argument that the allocation of the ATRRs associated with the H-NR Line and the North Rochester-Chester 161 kV line demonstrates that a facility can be "located" in more than one zone. This argument conflates "location" and "allocation." We agree with RPU that the allocation of costs of remote facilities to a zone neither alters the zonal boundaries nor changes the zone in which a customer's load is located. Nor does such allocation change the location of a facility: the fact that the ATRR of a facility is allocated to a given pricing zone does not mean that the facility is

²⁸⁶ *Id.* at 48.

²⁸⁷ *E.g.*, Xcel Brief on Exceptions at 52-53; MISO TOs Brief on Exceptions at 12; Trial Staff Brief on Exceptions at 22-24.

²⁸⁸ *See* Partial Settlement Order, 158 FERC ¶ 61,144; *N. States Power Co., a Minn. corp.*, Docket No. ER13-784-000 (Mar. 8, 2013) (delegated order).

located in that pricing zone under Sections 3(b) and 8(b). As noted above, transmission facilities are not ethereal concepts but fixtures that cannot be moved from zone to zone.

144. Further, the fact that NSP and other Transmission Owners have allocated the respective ATRRs for their facilities to zones in which the facilities are not physically located does not negate the Presiding Judge's interpretation of Sections 3(b) and 8(b). Again, as the Presiding Judge noted, those allocations could have been made under the exception to the default cost allocation method. This corresponds to our interpretation that, as a default, costs for facilities physically located within a pricing zone are borne by ratepayers within that zone. In addition, RPU is not bound by the Tariff interpretations of other Transmission Owners or by their course of dealing.

145. We also disagree with the suggestion that "Other" transmission facilities and other Attachment O facilities must be allocated to the zone or zones where their respective owner has load. Sections 3(b) and 8(b) do not contain an explicit requirement that cost allocation follows the loads of, or the benefits accrued to, Transmission Owners for Attachment O transmission facilities.

(d) MISO Data Response

146. Xcel, MISO TOs, and Trial Staff assert that the Presiding Judge's interpretation of Sections 3(b) and 8(b) conflicts with the MISO Data Response.²⁸⁹ As noted above, the MISO Data Response stated that the Tariff "neither requires nor precludes" allocation to the pricing zone in which a facility is physically located.²⁹⁰ We find that the MISO Data Response does not in fact contradict the Presiding Judge's interpretation of Sections 3(b) and 8(b), given that Sections 3(b) and 8(b) permit an exception to the default cost allocation method. In light of this exception, we find that the Tariff does not require a particular cost allocation, consistent with the MISO Data Response, though it does provide for a default method in the absence of Commission authorization of an alternative allocation.²⁹¹

²⁸⁹ Xcel Brief on Exceptions at 48; MISO TOs Brief on Exceptions at 24-25; Trial Staff Brief on Exceptions at 30-31.

²⁹⁰ Ex. XES-46 at 2.

²⁹¹ Similarly, given the exception to the default cost allocation method, the Presiding Judge's interpretation of Sections 3(b) and 8(b) is also not contradicted by the other data response cited by Xcel and the MISO TOs, in which MISO stated, "The Tariff

147. Further, as the MISO Data Response does not discuss the operative Tariff provisions—i.e., Schedules 7, 8, and 9 and, in particular, Sections 3(b) and 8(b)—we find that the Presiding Judge did not err in affording the MISO Data Response little weight. Xcel argues that the MISO Data Response does not address Schedules 7, 8, and 9 specifically because there are no relevant provisions in those schedules responsive to the question asked of MISO regarding the Tariff’s treatment of transmission facilities that do not qualify for regional cost-sharing or the other allocation methods specified in Attachment FF.²⁹² However, even if Xcel were correct, absent a statement from MISO to this effect, we cannot conclusively draw this inference.

(e) Xcel’s “Application”

148. We also find that the Presiding Judge did not err in finding that the exception to the default cost allocation method does not apply in these proceedings.²⁹³ Contrary to Xcel’s arguments, Xcel’s filings in these proceedings do not amount to an “application” seeking an alternative cost allocation under the exception to the default cost allocation method. Xcel’s claim that it has made an application in these proceedings is not credible, given that Xcel first made this claim in its Brief on Exceptions. Further, as RPU points out, the testimony of Xcel witness Wetterlin and Trial Staff witness Poffenberger refute Xcel’s claim by noting that there is no pending application, including in these proceedings, seeking Commission authorization for RPU to recover its ATRR for the H-NR Line from any zone other than Zone 16.²⁹⁴

(f) “Veto” Right

149. We agree with Xcel and MISO that, contrary to the Presiding Judge’s suggestion, under the exception to the default cost allocation in Sections 3(b) and 8(b), a Transmission Owner in MISO does not have a “veto” right to preclude the allocation of a facility’s ATRR to a zone in which the facility is not located.²⁹⁵ The operative language

does not prohibit a Transmission Owner from including revenue requirements in its Attachment O for investments in transmission facilities located outside of its physical Local Balancing Authority Area.” *See* Ex. XES-47.

²⁹² Xcel Brief on Exceptions at 50.

²⁹³ *See* Initial Decision, 159 FERC ¶ 63,016 at P 73.

²⁹⁴ RPU Brief Opposing Exceptions at 37-39 (citing Tr. 245:3-12; Tr. 375:8-376:6).

²⁹⁵ *See* Initial Decision, 159 FERC ¶ 63,016 at PP 122, 191.

for the exception to the default cost allocation method refers to “application by a Transmission Owner in one of the pricing zones identified [within this subsection].”²⁹⁶ As MISO observes, this language does not state that a Transmission Owner would need to seek consent of all of the Transmission Owners in a zone before an external “Other” facility can be allocated to that zone.²⁹⁷ Thus, we disagree with the Presiding Judge’s conditional statement that “the [Tariff] expressly allows the allocation of such ATRRs to an alternative pricing zone *if the affected Transmission Owners agree* (assuming approval by the Commission).”²⁹⁸

150. Accordingly, we disagree with the Presiding Judge’s statement that SMMPA had “legitimate rights” under Sections 3(b) and 8(b) to prevent RPU’s allocation of its ATRR for the H-NR Line to Zone 20.²⁹⁹ This is not to say that SMMPA would not have had the right to challenge such an allocation; however, such a challenge would not necessarily have been fatal to RPU’s application. In any event, the Presiding Judge’s incorrect statement regarding the applicability of the exception to the default cost allocation method has no bearing on the ultimate disposition of the matter. In these proceedings, RPU did not seek to allocate its ATRR for the H-NR Line to Zone 20, and, thus, as discussed above, we need not consider this alternative in assessing RPU’s proposal to recover its ATRR in Zone 16.

4. Non-Tariff Arguments

a. Cost Causation/Beneficiary Pays

i. Briefs on Exception

151. Xcel disagrees with the Presiding Judge’s determination that, where the Tariff dictates cost allocation, the beneficiary pays principle is irrelevant.³⁰⁰ Xcel points out that its counsel noted at oral argument that only if the Tariff provided no other alternative could the non-Tariff related arguments of Xcel and Trial Staff be considered irrelevant. However, Xcel contends that the Tariff does not mandate rate recovery based on physical location, and therefore, cost causation is relevant to determine the allocation of RPU’s

²⁹⁶ Ex. RPU-29 at 14, 33, 46.

²⁹⁷ MISO Brief Opposing Exceptions at 31.

²⁹⁸ See Initial Decision, 159 FERC ¶ 63,016 at P 122 (emphasis added).

²⁹⁹ *Id.* P 191.

³⁰⁰ *E.g.*, Xcel Brief on Exceptions at 64-66.

ATRR for the H-NR Line. According to Xcel, it is thus illogical for the Presiding Judge to conclude that Schedules 7, 8, and 9 can ignore the cost causation principle because the Schedules must comply with the principles to be just and reasonable.³⁰¹ Xcel contends that even independent transmission companies, which might not have their own retail load, allocate the costs of their zonal transmission facilities in a manner that respects cost causation.³⁰²

152. Xcel explains that, under the cost causation principle, all utilities benefiting from the H-NR Line should bear costs that are roughly commensurate with their load-ratio share, and Xcel asserts that the Presiding Judge ignored this precedent.³⁰³ Xcel argues that court precedent requires the Commission to ensure that costs are “roughly commensurate” with benefits when approving cost allocations.³⁰⁴ Xcel contends that the beneficiary pays principle is a cornerstone of Order No. 1000³⁰⁵ and is also the principle upon which the Commission approves regional and sub-regional cost allocation. Xcel argues that it is therefore reasonable to assume that Schedules 7, 8, and 9 are consistent with the principle. Xcel asserts that, if the Presiding Judge’s ruling were to stand, existing cost allocations for non-regional facilities across MISO could be called into question, resulting in the reshuffling of cost allocations and deterring future investments in transmission facilities not eligible for regional or sub-regional cost allocation under the Tariff.³⁰⁶

153. Additionally, Xcel claims that the acceptance of RPU’s cost allocation proposal provides substantial reliability and economic benefits to RPU without requiring its

³⁰¹ *Id.* at 66.

³⁰² *Id.* at 67.

³⁰³ *Id.* at 74.

³⁰⁴ *Id.* at 31, 65 (citing *Illinois Commerce Commission*, 576 F.3d at 477; *El Paso*, 832 F.3d at 505 (explaining that FERC “need only roughly correlate costs to benefits”)).

³⁰⁵ See *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, *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).

³⁰⁶ Xcel Brief on Exceptions at 32-33.

ratepayers to pay for its portion of the H-NR Line.³⁰⁷ Xcel claims that RPU would have trouble reliably serving its load without the H-NR Line, which, according to Xcel, allows RPU to maintain reliability while shutting down older coal-fired generation plants, resulting in an estimated \$44 million in savings over a seven-year period.³⁰⁸ Xcel argues that, if RPU had refrained from participating in the HRL Project, the project might have been routed differently, leaving RPU's reliability issues unresolved.³⁰⁹

154. MISO TOs and Dairyland assert that the Presiding Judge disregarded the Commission's longstanding cost causation and beneficiary pays principles.³¹⁰ Dairyland disagrees with the Presiding Judge that the cost causation and beneficiary pays principles are irrelevant.³¹¹ Further, as noted above,³¹² MISO TOs posit that, when a Tariff provision is subject to differing interpretations, the Commission should interpret it consistently with Commission policy, and MISO TOs argue that the cost causation and beneficiary pays principles are relevant because the Tariff language contemplates that transmission facility costs may be allocated to pricing zones other than where the facility is physically located.³¹³ Dairyland and Trial Staff also argue that the Presiding Judge's determination is contrary to Commission precedent. For example, they note that the Commission provided in Order No. 890:

Our decisions regarding transmission cost allocation reflect the premise that “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.” *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945). We therefore allow regional flexibility in cost allocation and, when considering a dispute over cost allocation, exercise our judgment by weighing several factors. *First, we consider whether a cost allocation proposal fairly assigns costs among participants, including*

³⁰⁷ *Id.* at 67-71.

³⁰⁸ *Id.* at 13-14, 71-72 (citations omitted).

³⁰⁹ *Id.* at 72-73 (citations omitted).

³¹⁰ MISO TOs Brief on Exceptions at 22-23; Dairyland Brief on Exceptions at 5-8.

³¹¹ Dairyland Brief on Exceptions at 5.

³¹² *See supra* P 91.

³¹³ MISO TOs Brief on Exceptions at 22-23.

those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we consider whether the proposal is generally supported by State authorities and participants across the region.^[314]

155. Dairyland argues that, for cost allocations to be considered just and reasonable, the costs of transmission facilities must be allocated in a way that satisfies the cost causation principle.³¹⁵ Dairyland notes that the Commission explained in Order No. 1000, “[T]he cost causation principle requires that the cost allocated to a beneficiary be at least roughly commensurate with the benefits.”³¹⁶ Dairyland asserts that the Commission’s cost causation principle precludes RPU from recovering its ATRR for the H-NR Line from Zone 16 because RPU has no load in Zone 16. According to Dairyland, RPU should recover its ATRR for the H-NR Line in Zone 20, where all of RPU’s load is located.³¹⁷ Dairyland asserts that the HRL Project was planned in part in order to serve RPU and its load.

156. Trial Staff argues that the Presiding Judge erred in finding that the beneficiary pays principle is irrelevant in regard to the allocation of RPU’s ATRR for the H-NR Line to a MISO pricing zone.³¹⁸ Trial Staff argues that the beneficiary pays principle is a lynchpin of Order No. 1000, the Commission’s cost allocation and ratemaking decisions, and the Tariff.³¹⁹ Therefore, Trial Staff warns that if the Presiding Judge were correct in

³¹⁴ Dairyland Brief on Exceptions at 7; Trial Staff Brief on Exceptions at 36 (quoting *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 559, *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 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (emphasis added by Dairyland and Trial Staff).

³¹⁵ Dairyland Brief on Exceptions at 6.

³¹⁶ *Id.* (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 504 (internal footnote omitted); citing *Illinois Commerce Commission*, 576 F.3d 470).

³¹⁷ *Id.* at 7.

³¹⁸ Trial Staff Brief on Exceptions at 36.

³¹⁹ *Id.* at 18.

his interpretation, allocation decisions that have previously assigned costs for remotely located facilities could be inconsistent with the Tariff.³²⁰ Trial Staff also argues that the Presiding Judge's decision may create a "free rider" problem by disregarding the beneficiary pays principle, disrupting the regional transmission planning process, and discouraging joint projects.³²¹

157. Trial Staff also argues that, while RPU invested in the H-NR Line to improve its reliability in the Rochester area, RPU proposes to avoid 99 percent of the cost responsibility for its portion of that facility in contravention of the Commission's cost allocation policy for regional transmission planning.³²² Moreover, Trial Staff points out that there is evidence in the record that the HRL Project was reconfigured to specifically address RPU's reliability concerns. For example, both Xcel and Trial Staff note that RPU witness Nickels conceded that "it is possible that the project would have been routed differently."³²³

ii. Briefs Opposing Exception

158. RPU argues that the Presiding Judge appropriately dismissed all other arguments opposing RPU's recovery of its ATRR from Zone 16. RPU disagrees with the arguments alleging that the Presiding Judge's decision violated the beneficiary pays principle. Rather, RPU asserts that the generic beneficiary pays principle does not supersede the Commission-approved Tariff with cost allocation language and that, in this case, the application of the Tariff language means that RPU's ATRR for the H-NR Line must be allocated to Zone 16.³²⁴ Therefore, according to RPU, the Tariff revisions to add RPU to the list of Zone 16 Transmission Owners are merely ministerial.³²⁵

³²⁰ *Id.*

³²¹ *Id.* at 17, 43.

³²² *Id.* at 37-38.

³²³ Xcel Brief on Exceptions at 72; Trial Staff Brief on Exceptions at 40 (both quoting Ex. RPU-5 at 8).

³²⁴ RPU Brief Opposing Exceptions at 48.

³²⁵ *Id.* at 49.

159. In contrast to Xcel, RPU agrees with the Presiding Judge's finding that *Illinois Commerce Commission* and *El Paso* do not apply to these proceedings.³²⁶ RPU explains that those cases address evidentiary issues with the Commission's approval of new rate designs for allocating costs of regional transmission facilities, while the instant proceedings do not involve a new rate design for regional cost allocation and no participant has challenged either MISO's existing rate design or its zonal license plate structure.³²⁷

160. RPU also objects to Xcel, Trial Staff, and Dairyland's argument that, under the current proposal, RPU would experience substantial benefits from the H-NR Line without paying its share.³²⁸ RPU counters that the Tariff requires all load to pay for its share of transmission usage.

161. In addition, RPU disputes the arguments by Xcel, Dairyland, and Trial Staff that implicate RPU as a driver for the H-NR Line.³²⁹ According to RPU, the CapX2020 Vision Team pursued the HRL Project beginning in 2005, which was before RPU decided to join the project. RPU states that it preferred the addition of 161 kV lines as a solution to its transmission needs, rather than the H-NR Line.³³⁰

162. RPU disagrees with Dairyland's argument that RPU's load would have been responsible for the costs of RPU's share of the HRL Project (including the H-NR Line) if RPU had not joined MISO as a Transmission Owner.³³¹ RPU considers it significant that: the H-NR Line did not qualify for regional costs allocation; the project underwent the MTEP process, during which RPU never gave up its right to become a Transmission Owner; RPU never waived its right to recover its transmission costs under the Tariff, and RPU was a Transmission Customer, meaning that its load was already within MISO.

163. RPU contends that, if MISO had determined that load in other zones benefitted from the H-NR Line, then MISO would have allocated some or all of the costs to load

³²⁶ *Id.* at 49-50.

³²⁷ *Id.* (citing *Illinois Commerce Commission*, 576 F.3d at 477; *El Paso*, 832 F.3d at 507).

³²⁸ *Id.* at 50.

³²⁹ *Id.* at 54-55.

³³⁰ *Id.* at 55.

³³¹ *Id.* at 51-52.

outside of Zone 16.³³² Further, RPU contends that receiving some benefit from the H-NR Line is not a reason to override the existing Tariff since, under the MISO zonal structure, all MISO customers benefit from facilities located in zones where they have no load.³³³

164. MISO takes no position on whether RPU's allocation of its H-NR Line ATRR to Zone 16 is just and reasonable.³³⁴ However, MISO agrees with Xcel that application of the Presiding Judge's decision to other cases might raise valid concerns.³³⁵ MISO explains that Attachment FF contains detailed, Commission-approved cost allocation methodologies that often are based on factors other than physical location. MISO asserts that, if the Commission upholds the Presiding Judge's interpretation of Sections 3(b) and 8(b), the Commission should make clear that the default physical location requirement found by the Presiding Judge has no application beyond "Other" projects. Further, MISO asks that the Commission ensure that the Presiding Judge's decision does not result in an involuntary reshuffling of existing cost allocations for "Other" projects by finding that the default "physical location" rule has no retroactive application.³³⁶

b. Cost Shifts

i. Briefs on Exception

165. Xcel argues that the Presiding Judge disregarded cost shifts without a rational explanation.³³⁷ Xcel disagrees with the Presiding Judge's finding that, because RPU's ATRR for the H-NR Line added a new cost, the proposal to allocate these costs did not constitute a cost shift from one group of ratepayers to another. According to Xcel, the Commission has found that a cost shift can occur if utilities building a project can push costs onto one another.³³⁸ Additionally, Xcel argues that the estimated annual cost of RPU's ATRR for the H-NR Line is not "minor," as the Presiding Judge concluded based

³³² *Id.* at 52.

³³³ *Id.* at 52-53.

³³⁴ MISO Brief Opposing Exceptions at 4.

³³⁵ *Id.* at 30.

³³⁶ *Id.*

³³⁷ Xcel Brief on Exceptions at 75-77.

³³⁸ *Id.* at 75 (citing *Pub. Serv. Co. of Colorado*, 151 FERC ¶ 61,128, at P 57 (2015) (*Pub. Serv. Co. of Colorado*)).

on the relative size of the cost shift compared to the total ATRR for Zone 16. Rather, Xcel argues that RPU's ATRR for the H-NR Line adds significant costs to Zone 16 without providing benefits to ratepayers and the size of the rate increase does not determine whether it is just and reasonable.

166. Xcel disputes the Presiding Judge's claim that the cost shift cannot be decisive because SMMPA's recovery of its ATRR for the H-NR Line also shifts costs to Zone 16. Xcel argues that, because SMMPA has load in Zone 16, SMMPA's allocation to Zone 16 is consistent with the beneficiary pays principle. Xcel states that the relationship between costs and benefits need not be perfect, but there needs to be *some* relationship. Xcel explains that, since RPU has no load in Zone 16, RPU's proposal results in no relationship between benefits and costs.³³⁹ Additionally, Xcel argues that the Presiding Judge ignored that RPU benefitted financially from SMMPA rejecting the inclusion of RPU's ATRR for the H-NR Line in Zone 20. Xcel explains that, if RPU's ATRR is included in Zone 20, RPU would bear approximately 43 percent of the costs of the H-NR Line while, in Zone 16, the ATRR is almost completely shifted away from RPU to the NSP ratepayers.³⁴⁰

167. Dairyland disagrees with the Presiding Judge's finding that, because the proposed allocation was required by the Tariff, the Commission's policy to minimize cost shifts was irrelevant.³⁴¹ Dairyland counters that section III.A.8 of Appendix C to the TOA specifies that "intra-Zonal revenue distribution methodology shall, 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."³⁴² According to Dairyland, transmission owners will be discouraged from participating in RTOs if, by shifting cost recovery, RTO Tariffs require load in a pricing zone to pay for projects from which they do not benefit. Further, Dairyland states that RPU was not a Transmission Owner when the HRL project was planned, and, despite RPU joining MISO, RPU's load should remain responsible for the costs of its share of the HRL project under section III.A.8 of Appendix C to the TOA.³⁴³

³³⁹ *Id.* at 77 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 88 ("[N]othing requires the Commission to ensure full or perfect cost causation")).

³⁴⁰ *Id.* at 30 & n.142.

³⁴¹ Dairyland Brief on Exceptions at 5, 8.

³⁴² *Id.* at 8 (quoting Ex. RPU-32 at 10).

³⁴³ *Id.* at 9.

168. Dairyland argues that, in finding that the policy of minimizing cost shifts only applied to the proposed allocation of costs that have not previously been borne by any ratepayer, the Presiding Judge interpreted this policy extremely narrowly.³⁴⁴ Dairyland asserts that RPU's recovery of its ATRR for the H-NR Line in Zone 16 results in a cost shift to Zone 16's load.³⁴⁵ Further, Dairyland disagrees with the Presiding Judge's conclusion that, even if the proposed allocation of RPU's H-NR Line ATRR to Zone 16 were a cost shift, the amount of the proposed allocation was relatively small and did not result in a prohibited cost shift. Dairyland cautions that using the size of the monetary impact as a determinant of a cost shift may result in increased litigation.³⁴⁶

169. Similarly, Trial Staff asserts that the Presiding Judge misconstrued the term "cost shift."³⁴⁷ Instead, Trial Staff asserts that inappropriate cost shifting is where "some portion of the customers on whose behalf the investments were made are somehow excused from having to pay their portion of that recovery."³⁴⁸ Trial Staff argues that the Presiding Judge erred in justifying the cost shift created by allowing RPU to allocate its ATRR for the H-NR Line to Zone 16 as not actually shifting costs from one group of ratepayers to another and as relatively small.³⁴⁹ Like Dairyland, Trial Staff argues the Presiding Judge adopted an overly narrow view of cost shifts.³⁵⁰ Further, Trial Staff argues that the Presiding Judge improperly focused on the impact of the cost shift to Zone 16 rather than the rate impact to RPU, resulting in the conclusion that any cost shift in this case was relatively small.³⁵¹ Trial Staff believes that it is misguided to permit beneficiaries to avoid their cost responsibility because the amount is minor when compared to the ATRR in a pricing zone. Trial Staff cautions that, under this view, rate proposals and allocations, which are not cost justified or are unrepresentative of cost responsibility, could be justified, if their financial impact is relatively small compared to

³⁴⁴ *Id.*

³⁴⁵ *Id.* at 5, 8-9.

³⁴⁶ *Id.* at 10.

³⁴⁷ Trial Staff Brief on Exceptions at 42.

³⁴⁸ *Id.* (quoting *Central Vermont Pub. Serv. Corp.*, 95 FERC ¶ 63,005, at 65,068 (2001) (initial decision) (*Central Vermont*)) (internal quotation omitted).

³⁴⁹ *Id.* at 15, 41 (citing 159 FERC ¶ 63,016 at P 154).

³⁵⁰ *Id.* at 19.

³⁵¹ *Id.* at 18-19 (citations omitted).

the market ATRR.³⁵² Further, according to Trial Staff, this interpretation undermines the principles of basic fairness, which promote cooperative approaches to regional transmission planning.³⁵³

170. According to Trial Staff, if the link between transmission investment and cost allocation were broken for projects with multiple beneficiaries such as the H-NR Line, then transmission owners might be discouraged from undertaking future projects.³⁵⁴ Trial Staff asserts that a shift of \$2.3 million annually is sufficiently large to affect future planning decisions and that it would be inappropriate to enable ratepayers to avoid cost responsibility for investments just because the rate impact on another zone would be relatively small. Trial Staff notes that the Commission regularly sets for hearing and settlement procedures under FPA sections 205 and 206 matters relating to revenue requirements whose zonal or system-wide impact would be relatively minor.³⁵⁵ In addition, Trial Staff argues that the Presiding Judge did not properly consider the Commission's policy that membership as a Transmission Owner does not justify cost shifts that would allow RPU to escape its cost responsibility for transmission investment.³⁵⁶

ii. Briefs Opposing Exception

171. RPU supports the Presiding Judge's conclusion that the allocation of RPU's ATRR for the H-NR Line to Zone 16 is not an improper cost shift.³⁵⁷ RPU notes that, in particular, the Presiding Judge found that no cost shift could occur where no ratepayer had previously borne the costs attributed to a transmission investment. RPU states that

³⁵² *Id.* at 19.

³⁵³ *Id.* at 43.

³⁵⁴ *Id.* at 17.

³⁵⁵ *Id.* at 43-44.

³⁵⁶ *Id.* at 19-20 (citing *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063 (2007), *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082, *order denying reh'g*, 124 FERC ¶ 61,033 (2008)).

³⁵⁷ RPU Brief Opposing Exceptions at 5, 56.

Xcel incorrectly cites to the ruling in *Pub. Serv. Co. of Colorado* to support Xcel's claim that a cost shift can occur if utilities building a project can push costs onto one another.³⁵⁸ RPU states that Xcel misunderstands the Commission's ruling in the case, which was not about a cost shift among future customers but about allowing public utilities to avoid a binding cost allocation based on the estimated cost increase of a re-evaluated transmission project when the regional re-evaluation process selected the project as the most cost-effective solution to identified transmission needs.³⁵⁹

172. RPU supports the Presiding Judge's conclusion that, if RPU's proposal were a cost shift, the small size of the ATRR in Zone 16 was relevant to the Commission precedent that the TOA aimed to minimize cost shifts, not prohibit them. Though Xcel, Dairyland, and the Trial Staff argue that the cost shift is an issue of fairness and may result in litigation, RPU responds that the size of the cost shift is important, since cost allocation is imperfect. RPU dismisses the claims that the proposal could discourage future cooperation among Transmission Owners and create free rider concerns; as discussed below,³⁶⁰ RPU argues that it never made commitments to allocate the cost to its ratepayers.³⁶¹

173. RPU disagrees with the arguments that the Presiding Judge's interpretation of section III.A.8 of Appendix C to the TOA regarding the minimization of cost shifts was extremely narrow and could discourage participation in RTOs.³⁶² RPU argues that the purpose of the TOA was to ensure that Transmission Owners received the same revenues that they would have received absent MISO. RPU argues that Xcel's agreement to SMMPA's allocation of its larger respective ATRR for the H-NR Line to Zone 16 is inconsistent with its opposition to RPU's smaller allocation. Additionally, RPU notes that Xcel has created its own independent transmission company subsidiaries, which invest in transmission outside of Zone 16 and serve no load. RPU emphasizes that it is contradictory for Xcel to argue that, because RPU serves no load in Zone 16, RPU should not recover its ATRR for the H-NR Line from that zone when Xcel has created subsidiaries to accomplish that very objective (i.e., to recover ATRRs in zones in which

³⁵⁸ *Id.* at 56-57 & n.201 (citing *Pub. Serv. Co. of Colorado*, 151 FERC ¶ 61,128 at P 57).

³⁵⁹ *Id.* at 57.

³⁶⁰ *See infra* P 179.

³⁶¹ RPU Brief Opposing Exceptions at 59.

³⁶² *Id.* at 60-62.

the subsidiaries do not have load). Additionally, RPU asserts that its ATRR recovery in Zone 16 does not affect the other Transmission Owners' ATRR recovery but simply increases the overall ATRR in that zone. According to RPU, the Commission needs to ensure that the regulatory framework is applied indiscriminately to new transmission owners to encourage participation in RTOs. RPU argues that, therefore, rejecting RPU's proposal would create uncertainty about the ability of utilities to recover their ATRRs when they are contemplating investing in transmission or joining RTOs. RPU also states that the cost shift arguments ignore the fact that, because the H-NR Line is located in Zone 16, that zone is a major user of the facility.³⁶³

174. Further, RPU disputes Trial Staff's argument that the Presiding Judge misconstrued the term "cost shift," noting that Trial Staff cited to an initial decision ruling to support this argument.³⁶⁴ RPU asserts both that initial decisions are not Commission precedent and that the cited initial decision is inapposite because it addresses a different issue. According to RPU, Trial Staff offered no precedent or argument to rebut the Presiding Judge's conclusion that it is not possible to shift costs that have not previously been allocated to ratepayers.

175. SMMPA asserts that any commitments that RPU made regarding its cost recovery would apply equally to Zone 16 and Zone 20. In particular, SMMPA argues that, if the Commission were to determine that RPU promised to have its retail customers bear the H-NR Line costs, then that promise would apply equally to both zones.³⁶⁵

c. RPU's Representations

i. Briefs on Exceptions

176. Xcel asserts that the Presiding Judge erred in finding that RPU did not renege on its original commitment that its load would bear the cost of its portion of the H-NR Line.³⁶⁶ Xcel argues that it submitted evidence, such as statements by RPU's then General Manager, that RPU committed that its load would bear the cost of RPU's investment, and that costs would not be shifted to NSP. Xcel argues that, under RPU's current proposal, RPU's load will not bear its share as the costs would be shifted to

³⁶³ *Id.* at 61-62.

³⁶⁴ *Id.* at 57-58 (citing *Central Vermont*, 95 FERC ¶ 63,005 at 65,068).

³⁶⁵ SMMPA Brief Opposing Exceptions at 14-15.

³⁶⁶ Xcel Brief on Exceptions at 29, 61.

Zone 16.³⁶⁷ Xcel explains that its witness Mogensen testified that RPU backing out of its commitments would undercut trust and discourage future cooperation among transmission owners, but that the Presiding Judge ignored this evidence.³⁶⁸

177. Trial Staff argues that the Presiding Judge erred by failing to give any weight to RPU's public acknowledgement that its load would pay for RPU's interest in the H-NR Line at the time it committed to fund the project and by finding that "the record provides no basis for believing that permitting the proposed allocations will jeopardize future coordinated regional transmission projects."³⁶⁹ According to Trial Staff, CapX2020 participants established that "a non-MISO member participant will align its CapX2020 investments 'consistent with a load based benefit analysis to be developed for the benefit of each of the CapX2020 projects.'"³⁷⁰ Trial Staff notes that, because RPU was a non-MISO member when the ownership shares for the HRL Project were negotiated in 2006, RPU investments were not subject to recovery under the Tariff. Citing instances when RPU stated its load would pay for its costs incurred for its CapX2020 transmission investments, Trial Staff maintains that RPU should be held accountable for its investments in the H-NR Line, despite its current status as a Transmission Owner.³⁷¹

178. Trial Staff questions the Presiding Judge's finding that RPU did not renege on its earlier representations that it committed to recover its ATRR for the H-NR Line from its ratepayers. Trial Staff notes that, as discussed above,³⁷² that conclusion was based on the theory that RPU allocated its ATRR for the H-NR Line in Zone 16 only after SMMPA made clear that SMMPA would "exercise its legitimate rights under Sections 3(b) and 8(b) to prevent the allocation of that ATRR to Zone 20."³⁷³ Trial Staff avers that the Presiding Judge provided no citation for this conclusion other than SMMPA's June 30,

³⁶⁷ Xcel Brief on Exceptions at 29.

³⁶⁸ *Id.* at 29, 76.

³⁶⁹ Trial Staff Brief on Exceptions at 15, 44 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 183).

³⁷⁰ *Id.* at 44 (citing Ex. XES-7 at 15 (citing *Southeast Twin Cities-Rochester-La Crosse Transmission Project Memorandum of Understanding* (Aug. 4, 2006))).

³⁷¹ Trial Staff Brief on Exceptions at 45-47.

³⁷² *See* sections II.A.2 and II.B.3.d.vi of this order.

³⁷³ Trial Staff Brief on Exceptions at 46 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 189).

2014 “Motion to Intervene and Comments” in Docket No. ER14-2154-000. Trial Staff asserts that all SMMPA said in this pleading was that “MISO should be required to clarify which, *if any*, of RPU’s existing facilities MISO proposes to include in Zone 20 for ratemaking purposes, and if so the timing and manner in which the related costs would be included in Zone 20 rates.”³⁷⁴ Trial Staff notes that, at the time, there was uncertainty regarding RPU’s intentions.

ii. Brief Opposing Exceptions

179. RPU argues that it did not breach any commitment to allocate costs to its ratepayers because there was no such commitment.³⁷⁵ RPU notes that Xcel and SMMPA are recovering their respective ATRRs for the H-NR Line from Zone 16. RPU argues that there is no binding commitment that dictates that RPU would recover its ATRR for the H-NR Line differently than other Transmission Owners, or that dictate a result other than that which the Tariff produces under Schedules 7, 8, and 9.³⁷⁶ RPU asserts that the Presiding Judge appropriately found that it made no commitments that would preclude it from recovering its ATRR for the H-NR Line in Zone 16.³⁷⁷

d. Commission Determination Regarding Non-Tariff Arguments

180. We find that the cost causation and beneficiary pays arguments are not determinative in this instance. As discussed above, we agree with the Presiding Judge that Sections 3(b) and 8(b) state that, in the absence of alternative, Commission-approved arrangements, the ATRRs of Attachment O transmission facilities must be allocated to the pricing zone in which they are located. In addition, the justness and reasonableness of this default cost allocation method is not at issue in these proceedings. Accordingly, the Tariff requires the recovery of RPU’s ATRR for the H-NR Line in Zone 16. Similarly, we find that arguments as to whether there is a cost shift and the nature of any such a cost shift are also not determinative in this instance, given the default cost allocation method set forth in Sections 3(b) and 8(b). We also agree with the Presiding Judge that none of the alleged representations made by RPU constituted binding written

³⁷⁴ *Id.* at 46-47 (quoting SMMPA, Motion to Intervene and Comments, Docket No. ER14-2154-000, at 4 (filed June 30, 2014)) (emphasis added by Trial Staff).

³⁷⁵ RPU Brief Opposing Exceptions at 59.

³⁷⁶ *Id.* at 57.

³⁷⁷ *Id.* at 59 (citing Initial Decision, 159 FERC ¶ 63,016 at P 170).

contractual commitments that would preclude it from recovering its ATRR for the H-NR Line in Zone 16.

III. Issue No. 2: Whether MISO Possessed the Right under Appendix K to the TOA and FPA Section 205 to Make the October 2014 Filing

A. Initial Decision

181. The Presiding Judge noted that, in 2004, MISO and the Transmission Owners filed a unilateral offer of settlement with the Commission,³⁷⁸ which was “intended to resolve issues relating to the allocation of section 205 filing rights between individual [Transmission Owners], the [Transmission Owners] as a group, and [MISO].”³⁷⁹ The Presiding Judge noted that the filing consisted of, as relevant here, a transmittal letter, an Explanatory Statement, and a Settlement Agreement (Appendix K Settlement), with attachments. He noted that the attachments included revisions to the TOA, including an Appendix K to be incorporated therein. Further, he noted that the Commission approved the Appendix K Settlement on March 29, 2005.³⁸⁰

182. Appendix K to the TOA delineates section 205 filing rights and imposes restrictions on the section 205 filing rights of MISO and Transmission Owners.³⁸¹ The Presiding Judge noted that section II.L of Appendix K recognizes MISO’s authority to

³⁷⁸ Initial Decision, 159 FERC ¶ 63,016 at P 202 (citing MISO, Filing, Docket No. RT01-87-010 (filed Nov. 30, 2004) (Appendix K Settlement Offer)).

³⁷⁹ *Id.* (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,380, at PP 6-7 (2005) (Appendix K Settlement Order)).

³⁸⁰ *Id.* (citing Appendix K Settlement Order, 110 FERC ¶ 61,380).

³⁸¹ Article I of Appendix K defines Transmission “Owner” as:

The owner of, and/or holder of FPA section 205 filing rights with respect to, transmission facilities, service over which is provided by MISO under the Tariff and functional control over which has been transferred to MISO, and who is a signatory to the Settlement Agreement Between Owners and Midwest ISO on Filing Rights, filed with FERC on November 30, 2004 in Docket Nos. RT01-87, ER02-106, and ER02-108. Only Owners that are public utilities under the FPA are included within this definition of Owner when the term is used to specify filing rights under FPA section 205.

make all section 205 filings regarding the Tariff except in certain specified instances.³⁸² The Presiding Judge concluded that no provision in Appendix K eliminated or restricted MISO's right to make the October 2014 Filing.³⁸³

183. The Presiding Judge found that MISO is a "public utility" under section 201 of the FPA,³⁸⁴ and as such possesses an independent right to make Tariff filings with the Commission under section 205.³⁸⁵ Additionally, he found that, as a Commission-approved RTO, MISO has authority to propose rates, terms, and conditions pursuant to its Tariff to provide independent and non-discriminatory transmission service.³⁸⁶ However, he observed that as a public utility, MISO "may choose to voluntarily give up, by contract, some of [its] rate-filing freedom under section 205."³⁸⁷

184. The Presiding Judge noted that Xcel had argued that the Explanatory Statement to the Appendix K Settlement Offer contains language indicating that rate filings affecting multiple Transmission Owners may only be made with the consent of all such affected owners.³⁸⁸ He further noted that Xcel quoted language from the Explanatory Statement stating that the allocation of section 205 filing rights set forth in the Appendix K Settlement:

is premised on the basic understanding that (i) individual Transmission Owners should possess the full and exclusive

³⁸² Initial Decision, 159 FERC ¶ 63,016 at PP 204, 236 (citation omitted). Section II.L provides: "Provisions Not Addressed in Article II, sections A-K of this Appendix K. Except as provided herein, MISO shall have the full and exclusive right to submit filings under FPA section 205 with regard to its Tariff and related documents." Ex. XES-29 at 12.

³⁸³ Initial Decision, 159 FERC ¶ 63,016 at P 236.

³⁸⁴ 16 U.S.C. § 824(e) (2012).

³⁸⁵ Initial Decision, 159 FERC ¶ 63,016 at P 200 (citing 16 U.S.C. § 824d; *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002) (*Atlantic City*) ("Section 205 of the [FPA] gives a utility the right to file rates and terms for services rendered with its assets.")).

³⁸⁶ *Id.* P 201 (citation omitted).

³⁸⁷ *Id.* P 202 (quoting *Atlantic City*, 295 F.3d at 10).

³⁸⁸ *Id.* P 206.

right to submit filings to establish their own revenue requirements, as well as the rate structures within their own zone(s), *provided other Transmission Owners are not impacted*, (ii) the right to submit rate filings that impact multiple Transmission Owners should generally belong to owners collectively. . . .³⁸⁹

185. The Presiding Judge also noted Xcel's claim that the Appendix K Settlement Order described the premises underlying the allocation of filing rights under the Appendix K Settlement in a similar manner:

(1) [I]ndividual [Transmission Owners] should possess full and exclusive filing authority over their own revenue requirements and rate structures, *so long as other [Transmission Owners] are not impacted*; (2) authority to submit rate filings that impact multiple [Transmission Owners] should belong to the [Transmission Owners] collectively³⁹⁰

186. The Presiding Judge found that these passages are entitled to little weight. The Presiding Judge explained that the quotation from the Explanatory Statement purported to describe the premises under which section 3 of the Appendix K Settlement was drafted.³⁹¹ However, he found that these purported premises are not mentioned in section 3 or any other section of the Appendix K Settlement, or, most importantly, in Appendix K itself. The Presiding Judge concluded that, given that the language appears solely in the Explanatory Statement, it is not entitled to any significant weight in interpreting the Appendix K Settlement, much less Appendix K. The Presiding Judge also concluded that a full reading of the Appendix K Settlement Order language quoted by Xcel demonstrates that the Commission was simply reciting the representations made in the Explanatory Statement, rather than providing an independent interpretation of the Appendix K

³⁸⁹ *Id.* P 207 (quoting Xcel Reply Brief at 32 (filed April 3, 2017) (quoting Appendix K Settlement Offer, Explanatory Statement at 5)) (emphasis added by Xcel).

³⁹⁰ *Id.* P 208 (quoting Xcel Reply Brief at 32 (filed April 3, 2017) (quoting Appendix K Settlement Order, 110 FERC ¶ 61,380 at P 7)) (emphasis added by Xcel).

³⁹¹ *Id.* P 210.

Settlement.³⁹² Accordingly, the Presiding Judge determined that this passage is entitled to minimal weight in interpreting the relevant provisions of Appendix K.³⁹³

187. The Presiding Judge also addressed whether section II.C.3 of Appendix K to the TOA precludes MISO's October 2014 Filing. This provision states that only those Transmission Owners whose zones would be "realigned, eliminated, or otherwise reconfigured" by a filing possess the corresponding section 205 filing rights.³⁹⁴ As noted above in section II.A.1 of this order, the Presiding Judge determined that the title of section II.C.3 of Appendix K, "Zone Boundaries," indicates that this section addresses only the realignment, elimination, or reconfiguration of the physical boundaries of pricing zones.³⁹⁵ The Presiding Judge explained that the key interpretation of section II.C.3 rests on the definitions of "realign" and "reconfigure," which he noted derive from the verbs "align" and "configure."³⁹⁶ The Presiding Judge found that the dictionary definitions of the latter two verbs also support the interpretation that section II.C.3 applies only to filings that seek to alter to physical boundaries.³⁹⁷ He noted that these definitions describe the manipulation or alteration of a physical state or property, rather than changes to an intangible entity. Accordingly, the Presiding Judge concluded that because the October 2014 Filing does no more than inject RPU's ATRR for the H-NR Line into the calculation of Zone 16's transmission rates and did not alter Zone 16's physical boundaries, section II.C.3 does not preclude MISO from submitting the October 2014 Filing.³⁹⁸

³⁹² *Id.* P 211.

³⁹³ *Id.* PP 210-211.

³⁹⁴ Section II.C.3 of Appendix K provides in part: "Zone Boundaries. For filings that propose to realign, eliminate, or otherwise reconfigure rate zones, only those Owners whose zones would be realigned, eliminated, or otherwise reconfigured by a filing shall possess the corresponding FPA section 205 rights." Ex. XES-29 at 4.

³⁹⁵ Initial Decision, 159 FERC ¶ 63,016 at P 215.

³⁹⁶ *Id.* P 216.

³⁹⁷ *Id.* PP 217-218.

³⁹⁸ *Id.* P 219.

188. The Presiding Judge also considered whether section II.E.1 precludes MISO's October 2014 Filing.³⁹⁹ The Presiding Judge noted that section II.E.1 applies only in three specific circumstances, each of which involves attempts by entities that qualify as Transmission "Owners" under Appendix K to recover costs associated with transmission upgrades and new transmission facilities under the Tariff.⁴⁰⁰ The Presiding Judge also noted that Trial Staff had conceded at oral argument that neither MISO nor RPU would ever fall within the Appendix K definition of Transmission "Owner."⁴⁰¹ Accordingly, the Presiding Judge determined that section II.E.1 does not apply to the October 2014 Filing and thus does not impact MISO's authority under section II.L to make that filing.⁴⁰²

189. Further, the Presiding Judge noted that section V.F of Appendix K provides that "[n]othing in this Appendix K forbids MISO, if specifically authorized by an [Transmission] Owner or by multiple [Transmission] Owners, as appropriate, from

³⁹⁹ Section II.E.1 provides:

Each Owner shall possess the full and exclusive right under FPA section 205 to submit filings with regard to transmission upgrades and new transmission facilities that affect only the rates within the applicable Owner's Tariff zone(s). This provision applies to (a) an Owner constructing transmission upgrades or new transmission facilities in its own zone and seeking recovery of costs through rates that apply only to its zone; (b) an Owner constructing, or otherwise assuming financial responsibility for, transmission upgrades or new transmission facilities in a zone other than that Owner's zone and seeking recovery of costs through rates that apply only to its zone; and (c) an Owner's assigned costs associated with transmission upgrades or new transmission facilities and seeking recovery of costs through rates that apply only to its zone.

⁴⁰⁰ Initial Decision, 159 FERC ¶ 63,016 at P 222.

⁴⁰¹ *Id.* P 224.

⁴⁰² *Id.* PP 222-24.

making a filing on behalf of the [Transmission] Owner(s).”⁴⁰³ Therefore, the Presiding Judge found that this section expressly preserves MISO’s authority to submit a section 205 filing on behalf of a requesting Transmission Owner, even if a different provision in Appendix K would preclude MISO from making the filing. The Presiding Judge also rejected Xcel’s contention that, in effect, MISO may not make filings on behalf of non-jurisdictional Transmission Owners that Transmission “Owners” may not make on behalf of themselves.⁴⁰⁴ He observed that Xcel had not pointed to any language in Appendix K that restricts MISO’s filing rights in this way.

190. Moreover, the Presiding Judge determined that, in any event, if RPU were a Transmission “Owner,” RPU would have had authority under section II.A of Appendix K to make the October 2014 Filing.⁴⁰⁵ The Presiding Judge noted that section II.A states that “[e]ach [Transmission] Owner shall possess the full and exclusive right to submit filings under FPA section 205 with regard to its transmission revenue requirements.”⁴⁰⁶ The Presiding Judge rejected Xcel’s argument that, because Schedules 7, 8, and 9 “do not contain RPU’s transmission revenue requirement,” the disputed portion of the October 2014 Filing does not address RPU’s individual revenue requirement.⁴⁰⁷ He explained that section II.A does not limit its reach to filings that “contain” individual revenue

⁴⁰³ Section V.F of Appendix K provides:

MISO Administration of Tariff. Nothing in this Appendix K is intended to eliminate MISO’s responsibility for administering the Tariff in a prudent manner, consistent with the Agreement and FERC requirements. . . . In addition, nothing in this Appendix K is intended to affect the rights MISO possesses to discount transmission service under the Tariff consistent with the provisions of this Appendix K. Additionally, nothing in this Appendix K forbids MISO, if specifically authorized by an [Transmission] Owner or by multiple [Transmission] Owners, as appropriate, from making a filing on behalf of the [Transmission] Owner(s).

Ex. XES-29 at 15.

⁴⁰⁴ Initial Decision, 159 FERC ¶ 63,016 at PP 228-29, 232-34; *see also id.* P 227.

⁴⁰⁵ *Id.* PP 229, 233.

⁴⁰⁶ *Id.* P 229 (quoting Ex. XES-29 at 3).

⁴⁰⁷ *Id.* PP 230-231 (citation omitted).

requirements but instead expressly applies to filings submitted “with regard to” such revenue requirements. The Presiding Judge found that the revisions to Schedules 7, 8, and 9 proposed in the October 2014 Filing allocate a portion of RPU’s ATRR to Zone 16 and that the revisions were therefore made “with regard to” to RPU’s “transmission revenue requirements.”⁴⁰⁸

Discussion

1. Atlantic City and Section II.L

a. Briefs on Exceptions

191. Xcel and MISO TOs assert that the Presiding Judge incorrectly concluded that MISO had the necessary filing rights under section 205 of the FPA to submit the October 2014 Filing on behalf of RPU under Appendix K to the TOA.⁴⁰⁹ Xcel asserts that MISO and RPU have the burden to prove that at least one of them had the right, under section 205 and the TOA, to make the October 2014 Filing.⁴¹⁰ Xcel argues that, aside from the TOA, no source of section 205 filing rights exists under which MISO could have made the October 2014 Filing.⁴¹¹

192. MISO TOs assert that the Presiding Judge misinterpreted *Atlantic City*.⁴¹² MISO TOs disagree with the Presiding Judge’s implication that MISO, and not the individual Transmission Owners joining MISO, voluntarily gave up some of its section 205 filing rights to the Transmission Owners in Appendix K.⁴¹³ MISO TOs assert that it was the Transmission Owners that ceded certain of their section 205 filing rights. MISO TOs argue that in *Atlantic City*, the D.C. Circuit held that public utilities cannot be forced to give up their section 205 filing rights, though they can voluntarily relinquish certain

⁴⁰⁸ *Id.* PP 229, 233.

⁴⁰⁹ *E.g.*, Xcel Brief on Exceptions at 30-31, 78; MISO TOs Brief on Exceptions at 2-3, 11, 27-31.

⁴¹⁰ Xcel Brief on Exceptions at 78 (citation omitted).

⁴¹¹ *Id.* at 85.

⁴¹² MISO TOs Brief on Exceptions at 13-14, 27.

⁴¹³ *Id.* at 27-28.

rights when forming an RTO.⁴¹⁴ According to Xcel, under Appendix K to the TOA, MISO has only those filing rights that the Transmission Owners have not reserved to themselves, and the Transmission Owners have not surrendered the rights to file the changes at issue in these proceedings.⁴¹⁵

193. Xcel and MISO TOs note that, consistent with *Atlantic City*, Appendix K to the TOA divides the section 205 filing rights in the MISO region between MISO and the Transmission Owners.⁴¹⁶ Xcel contends that this division of filings rights under Appendix K differs from the general requirements under 18 C.F.R. § 35.34(j)(1)(iii), in which an RTO has “exclusive and independent authority under section 205 . . . to propose rates, terms and conditions of transmission service provided over the facilities it operates.”⁴¹⁷ Xcel and MISO TOs argue that, by allowing MISO to make any filing under section 205 as long as a Transmission Owner requested the filing on its behalf, the Presiding Judge eliminated this entire division.⁴¹⁸

194. MISO TOs argue that MISO’s filing rights are constrained by Appendix K to the TOA and that therefore MISO does not have the authority to make the October 2014 Filing.⁴¹⁹ MISO TOs argue that the Presiding Judge’s broad view that sections V.F and II.L of Appendix K provide MISO with expansive unilateral authority to make Tariff filings ignores several provisions in Appendix K that constrain those rights.⁴²⁰ MISO TOs argue that the Presiding Judge incorrectly determined that the TOA authorizes MISO to unilaterally make filings to change zonal rates and revenue requirements that impact other Transmission Owners.⁴²¹

⁴¹⁴ *Id.* at 27.

⁴¹⁵ Xcel Brief on Exceptions at 79.

⁴¹⁶ *E.g., id.* at 30-31, 78-79, 85; MISO TOs Brief on Exceptions at 15, 27-28.

⁴¹⁷ Xcel Brief on Exceptions at 85.

⁴¹⁸ *Id.* at 81; MISO TOs Brief on Exceptions at 15.

⁴¹⁹ MISO TOs Brief on Exceptions at 11.

⁴²⁰ *Id.* at 28. Section V.F of Appendix K is further addressed below in section III.B.3 of this order.

⁴²¹ MISO TOs Brief on Exceptions at 27-28.

b. Briefs Opposing Exceptions

195. MISO and RPU argue that the implication of *Atlantic City* is that, once an entity has established itself as a public utility (as MISO has), the burden falls to the challenger to demonstrate if the public utility has relinquished any of those filing rights, and they argue that in this case neither Xcel nor MISO TOs have demonstrated that MISO lacked the section 205 filing rights to make the October 2014 Filing.⁴²² MISO states that Appendix K imposes some limitations on the rate filing freedom of MISO and the Transmission Owners on certain matters, but argues that such limitations do not apply to its filing rights in these proceedings.⁴²³

196. MISO and RPU maintain that MISO had the right to make the October 2014 Filing based on its authority as the Tariff administrator.⁴²⁴ RPU argues that the limited scope of Appendix K and its opening statement that “[t]he following represents the agreement of the [Transmission] Owners and MISO on [section 205 filing rights]” demonstrate that neither the Appendix K Settlement nor Appendix K was intended to limit MISO’s section 205 filing rights.⁴²⁵ RPU also argues that Appendix K contains no restrictions that would prohibit MISO from making its October 2014 Filing. RPU highlights that section V.A of Appendix K authorizes MISO to make filings on behalf of non-jurisdictional Transmission Owners, like RPU, to recover their individual revenue requirements.⁴²⁶

197. MISO concurs with the Presiding Judge that none of the filing right limitations set forth in sections II.A through II.K is applicable to the October 2014 Filing and that MISO’s residual filing authority under section II.L is sufficient.⁴²⁷ RPU asserts that the Presiding Judge correctly notes that section II.L expressly recognizes MISO’s general authority to make section 205 filings, and correctly concludes that MISO’s authority

⁴²² MISO Brief Opposing Exceptions at 15-16; RPU Brief Opposing Exceptions at 62-64.

⁴²³ MISO Brief Opposing Exceptions at 16.

⁴²⁴ *Id.* at 16-17; RPU Brief Opposing Exceptions at 73-74.

⁴²⁵ RPU Brief Opposing Exceptions at 67 (quoting Ex. XES-29 at 1).

⁴²⁶ *Id.* at 73-74 (citing Ex. XES-29 at 14). *See also infra* P 214.

⁴²⁷ MISO Brief Opposing Exceptions at 16.

extends to making all section 205 filings regarding the Tariff except those precluded by Appendix K.⁴²⁸

2. Appendix K Section II.C.3

a. Briefs on Exceptions

198. Xcel objects to the Presiding Judge's finding that no provision in Appendix K eliminated or restricted MISO's right to make the October 2014 Filing and that section II.C.3 of Appendix K only applied to filings seeking to alter the physical boundaries of a pricing zone.⁴²⁹ Xcel counters that, since section II.C.3 requires the consent of existing Transmission Owners in Zone 16, it therefore precluded MISO from submitting the October 2014 Filing. Xcel argues that section II.C.3 requires Transmission Owners in a pricing zone to agree to any proposal that realigns or reconfigures the rate zone before the filing can be submitted under section 205.⁴³⁰ Xcel contends that pricing zones are not physical boundaries in MISO, and as such the addition of a new Transmission Owner to Zone 16 would reconfigure it.⁴³¹ Xcel states that the Presiding Judge was incorrect in finding that, because the October 2014 Filing did not change the physical boundaries of Zone 16, RPU's proposal did no more than inject its ATRR for the H-NR Line into Zone 16's calculations.⁴³²

199. MISO TOs also disagree with the Presiding Judge's holding that, because the October 2014 Filing did not change the physical boundaries of Zone 16, section II.C.3 of Appendix K was not implicated.⁴³³ According to MISO TOs, section II.C.3 limits filing rights in situations involving attempts "to realign, eliminate, or otherwise reconfigure *rate zones*."⁴³⁴ They assert that nowhere in section II.C.3 does the language restrict its applicability to modifications of *physical* zonal boundaries. MISO TOs argue that the

⁴²⁸ RPU Brief Opposing Exceptions at 64-65.

⁴²⁹ Xcel Brief on Exceptions at 30.

⁴³⁰ *Id.* at 30-31, 79-80, 86.

⁴³¹ *Id.* at 30, 79-80.

⁴³² *Id.* at 30 (citing Initial Decision, 159 FERC ¶ 63,016 at P 219).

⁴³³ MISO TOs Brief on Exceptions at 30 (citation omitted).

⁴³⁴ *Id.* (quoting TOA, App. K, § II.C.3 (Ex. XES-29 at 4)) (emphasis added by MISO TOs).

Presiding Judge pointed to the title of this section, “Zone Boundaries,” but failed to identify any provision within the language itself that would define zones based on physical, geographic characteristics. They note that, in contrast, section II.C.3 explicitly states that its limitation applies to, among other things, attempts to reconfigure *rate zones*. MISO TOs argue that this language confirms that pricing zones are a rate concept not necessarily tied to geographic or physical characteristics. MISO TOs also assert that the Presiding Judge failed to explain how adding a new Transmission Owner’s ATRR to an existing “rate zone” does not qualify as “otherwise reconfiguring” the zone.⁴³⁵

200. Xcel argues that the October 2014 Filing’s proposal would reconfigure Zone 16 to encompass RPU’s ATRR for the H-NR Line, which was not previously included in the pricing zone.⁴³⁶ Similarly, MISO TOs assert that adding a new Transmission Owner’s ATRR to a zone can fundamentally change rates within that zone such that the rate zone is no longer configured in the same manner.⁴³⁷ Accordingly, Xcel and MISO TOs claim that, under section II.C.3 of Appendix K, the Transmission Owners in Zone 16 had to agree to the October 2014 Filing before it could be submitted under section 205.

201. Additionally, Xcel and MISO TOs oppose the Presiding Judge’s use of dictionary definitions of “realign” and “reconfigure” to support his conclusion that the terms refer to physical location.⁴³⁸ They argue that the Presiding Judge deferred to dictionary definitions rather than reading the words of Appendix K in context and that he sought to inject a “physical” component into the analysis that is not supported by a plain reading of Appendix K. Xcel argues that different definitions of the same terms would result in a different conclusion.⁴³⁹

⁴³⁵ *Id.* at 30-31.

⁴³⁶ Xcel Brief on Exceptions at 79.

⁴³⁷ MISO TOs Brief on Exceptions at 30-31.

⁴³⁸ Xcel Brief on Exceptions at 80; MISO TOs Brief on Exceptions at 30.

⁴³⁹ Xcel Brief on Exceptions at 80. For example, Xcel notes the American Heritage College Dictionary (Third Edition) defines the term “realign” to include “[t]o make new groupings of or working arrangements between.” Xcel Brief on Exceptions at 80 (citation omitted). Xcel argues that the October 2014 Filing falls within this definition.

b. Briefs Opposing Exceptions

202. MISO and RPU argue that section II.C.3 does not prohibit MISO from making the October 2014 Filing.⁴⁴⁰ MISO emphasizes that the October 2014 Filing neither realigned nor reconfigured Zone 16 because no new rate zone was created and no zones were combined or eliminated.⁴⁴¹ Moreover, MISO argues that, following Xcel's logic, each new Transmission Owner added to an existing pricing zone would trigger section II.C.3 and require unanimous consent as a precondition to inclusion. MISO agrees with the Presiding Judge's approach to consult dictionary definitions, as "realign" and "reconfigure" were not defined in the TOA. MISO notes that section II.C.3 expressly refers to "zone boundaries" and "zone boundary changes" and argues that the term "boundary" has a clear physical meaning. MISO and RPU state that Zone 16's boundaries were unaltered by the addition of the H-NR Line, as it is physically located within NSP's LBA area.⁴⁴² In addition, MISO argues that, even under the argument that a MISO pricing zone is a rate construct instead of a geographic area, the boundaries of that construct only alter if the pricing zone is enlarged or reduced at the expense of another pricing zone, which, MISO contends, did not occur with the H-NR Line.⁴⁴³ MISO argues that this is further confirmed by the fact that section II.C.3 refers only to "zones" and "rate zones" rather than a single zone; MISO argues that the plural form shows that the provision was intended to apply only to a realignment, merger, or reconfiguration involving two or more rate zones.⁴⁴⁴

203. MISO argues that the Presiding Judge's conclusion that section II.C.3 does not apply to the October 2014 Filing is also confirmed by an express reference that this provision makes to Appendix C to the TOA.⁴⁴⁵ MISO asserts that the relevant language

⁴⁴⁰ MISO Brief Opposing Exceptions at 4-5, 11-15; RPU Brief Opposing Exceptions at 70-72.

⁴⁴¹ MISO Brief Opposing Exceptions at 15.

⁴⁴² MISO Brief Opposing Exceptions at 5, 13; RPU Brief Opposing Exceptions at 71-72.

⁴⁴³ MISO Brief Opposing Exceptions at 13-14.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.* at 14.

is set forth in sections II.A.1.a⁴⁴⁶ and II.B.1.b⁴⁴⁷ of Appendix C. MISO argues that these provisions do not pertain to the addition of new transmission facilities to an existing zone, but rather with the creation of new zones, combining existing zones, and Transmission Owner withdrawals. Therefore, MISO asserts that, because no new rate zone is created, no zones are combined, and no zones are eliminated under the Tariff revisions proposed in this case, the October 2014 Filing does not involve “reconfiguration” or “realignment” under section II.C.3.⁴⁴⁸

3. Appendix K Section V.F

a. Briefs on Exceptions

204. Xcel and MISO TOs assert that section V.F of Appendix K does not provide MISO with unilateral authority to make Tariff filings.⁴⁴⁹ MISO TOs argue that the Presiding Judge’s interpretation of section V.F undermines the purpose of the allocation of filing rights under Appendix K.⁴⁵⁰ MISO TOs argue that, although section F.F authorizes MISO to make filings on behalf of requesting Transmission Owners, including non-jurisdictional Transmission Owners, such rights relate to the Transmission Owner’s *own* revenue requirements and to zonal rate design in the Transmission Owner’s *own* zone when its facilities “comprise the facilities within a zone,” except in situations involving zones with multiple Transmission Owners.⁴⁵¹ MISO TOs maintain that these distinctions are key to fulfilling the intent of the Appendix K Settlement which, according

⁴⁴⁶ Sections II.A.1.a of Appendix C to the TOA provides in part:

[T]he Zones only may be changed to reflect the effectuation of a merger (or consolidation and reorganization), to add a new owner that operates a balancing authority in existence on or before the date of the initial filing with FERC to establish MISO, or to reflect the withdrawal from MISO of an Owner or Owners.

⁴⁴⁷ Sections II.B.1.b of Appendix C to the TOA contains provisions applicable to MISO’s authority to combine existing Zones.

⁴⁴⁸ MISO Brief Opposing Exceptions at 14.

⁴⁴⁹ Xcel Brief on Exceptions at 30, 83; MISO TOs Brief on Exceptions at 27-31.

⁴⁵⁰ MISO TOs Brief on Exceptions at 28.

⁴⁵¹ *Id.* at 29 (citing App. K, §§ II.A, II.C.1, II.C.2 (Ex. XES-29 at 3-4)).

to MISO TOs, afforded individual Transmission Owners full and exclusive rights to file their own rates as long as those rates do not impact other Transmission Owners.⁴⁵²

205. Xcel disagrees with the Presiding Judge that section V.F expressly preserves MISO's authority to submit a section 205 filing on behalf of a requesting Transmission Owner, even if a different provision in Appendix K would preclude MISO from making the filing.⁴⁵³ Xcel argues that, given that Appendix K is the result of extensive litigation and negotiation between MISO and the Transmission Owners, it is therefore inconsistent to interpret section V.F to mean that MISO may make any filing on behalf of a requesting Transmission Owner. Xcel argues that, rather, the section is intended only to apply to MISO's administration of the Tariff, such as formatting pages and discounting transmission service.

b. Briefs Opposing Exceptions

206. MISO and RPU assert that MISO has affirmative filing rights as the Tariff's administrator under section V.F.⁴⁵⁴ MISO and RPU argue that the proposed revisions to Schedules 7, 8, and 9 are exactly the type of "Tariff administration" filings encompassed by section V.F.⁴⁵⁵ MISO contends that this section also allows any Transmission Owner to request MISO to make a filing on its behalf, and that the October 2014 revisions to the Tariff constitute "Tariff administration" changes contemplated in this language. RPU highlights the opening sentence of section V.F, which states that Appendix K does not intend "to eliminate MISO's responsibility for administering the Tariff," and the closing sentence, which grants MISO broad authority to make filings on behalf of Transmission Owners as long as MISO is "specifically authorized."⁴⁵⁶

⁴⁵² *Id.* (citations omitted).

⁴⁵³ Xcel Brief on Exceptions at 81-82.

⁴⁵⁴ MISO Brief Opposing Exceptions at 16-18; RPU Brief Opposing Exceptions at 68-69.

⁴⁵⁵ MISO Brief Opposing Exceptions at 18; RPU Brief Opposing Exceptions at 69.

⁴⁵⁶ RPU Brief Opposing Exceptions at 69 (quoting Ex. XES-29 at 15).

4. Appendix K Sections II.A and II.C.2

a. Briefs on Exceptions

207. MISO TOs argue that although section II.A of Appendix K expressly authorizes each Transmission Owner to possess the full and exclusive right to submit FPA section 205 filings “with regard to its transmission revenue requirements,” such “full and exclusive” rights are limited by other provisions of Appendix K.⁴⁵⁷ MISO TOs assert that specifically, section II.C.2 limits the authority to file Tariff revisions to address rate design in a zone to the Transmission Owners within that zone. MISO TOs argue that, under section II.C.2 of Appendix K, no party, including MISO on behalf of another entity, may unilaterally file changes to zonal rate design in a multi-owner zone unless: (1) that entity is a Transmission Owner within the zone; and (2) the Transmission Owners in the zone attempted, but failed, to reach agreement on a rate design.⁴⁵⁸ Further, MISO TOs assert that revisions to Schedules 7, 8, and 9 necessarily fall within the definition of changes to zonal rate design because Schedules 7, 8, and 9 set forth the calculation methodology for zonal rates. MISO TOs argue that, therefore, MISO is precluded under section II.C.2 from unilaterally filing changes to Schedules 7, 8, and 9 to implement a rate change in a zone with multiple Transmission Owners.⁴⁵⁹ Thus, MISO TOs suggest that section II.C.2 of Appendix K prohibits the October 2014 Filing.⁴⁶⁰

b. Briefs Opposing Exceptions

208. MISO and RPU disagree with MISO TOs that section II.C.2 of Appendix K bars the October 2014 Filing.⁴⁶¹ RPU argues that section II.C.2 only addresses rate design and that the October 2014 Filing’s addition of RPU’s ATRR to Zone 16’s transmission rates is not a matter of rate design.⁴⁶² RPU argues that adding RPU’s ATRR to Zone 16 did not alter MISO’s existing zonal rate design in any way. In addition, MISO observes that,

⁴⁵⁷ MISO TOs Brief on Exceptions at 28 (quoting TOA, App. K, § II.A (Ex. XES-29 at 3)).

⁴⁵⁸ *Id.* at 29.

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.* at 28-29.

⁴⁶¹ MISO Brief Opposing Exceptions at 25-26; RPU Brief Opposing Exceptions at 72-73.

⁴⁶² RPU Brief Opposing Exceptions at 72-73.

whether or not the proposed revisions are a “rate design change,” section II.C.2 applies only to Transmission “Owners” and argues that therefore this provision neither limits MISO’s filing authority nor applies to RPU.⁴⁶³ Similarly, RPU notes that section II.C.2 does not mention MISO, and RPU disagrees with MISO TOs’ suggestion that MISO waived its section 205 filing rights by implication.⁴⁶⁴ In addition, MISO argues that the Presiding Judge correctly concluded that section II.A does not limit its reach to filings that “contain” individual revenue requirements but instead expressly applies to filings submitted “with regard to” such revenue requirements.⁴⁶⁵

5. Explanatory Statement

a. Briefs on Exceptions

209. Xcel argues that the Presiding Judge’s ruling is inconsistent with the Appendix K Settlement between MISO and the Transmission Owners.⁴⁶⁶ In particular, Xcel highlights the language from the Explanatory Statement, and similar language in the Appendix K Settlement Order, which states that individual Transmission Owners should possess the full and exclusive right to submit filings to establish their own revenue requirements “provided other Transmission Owners are not impacted.”⁴⁶⁷ Xcel argues that the Presiding Judge erred by disregarding these provisions. Xcel counters that the language in the Explanatory Statement outlines the purpose of the settlement between parties and therefore provides evidence regarding what Appendix K means.⁴⁶⁸

210. Further, Xcel disagrees with the Presiding Judge’s conclusion that the premise that Transmission Owners have the exclusive right to submit filings for their revenue requirements “provided other Transmission Owners are not impacted,” is not mentioned

⁴⁶³ MISO Brief Opposing Exceptions at 26.

⁴⁶⁴ RPU Brief Opposing Exceptions at 73.

⁴⁶⁵ MISO Brief Opposing Exceptions at 23 (citing Initial Decision, 159 FERC ¶ 63,016 at P 232).

⁴⁶⁶ Xcel Brief on Exceptions at 82.

⁴⁶⁷ *Id.* at 82-83.

⁴⁶⁸ *Id.* at 35; *see also id.* at 83 (citation omitted).

in the Appendix K Settlement.⁴⁶⁹ Xcel asserts that sections II.C.3 and II.E.1 of Appendix K⁴⁷⁰ illustrate that “the exclusive right [of a Transmission Owner] to submit revenue requirements filings does not apply when other Transmission Owners are affected.”⁴⁷¹ Xcel further argues that under section II.A, Transmission Owners have the exclusive right to submit their own transmission revenue requirement filings and asserts that these filings would not affect the revenue requirements of other Transmission Owners.⁴⁷² In addition, MISO TOs argue that the express protection of Transmission Owners in a multi-owner zone set forth in section II.C.2 contradicts the Presiding Judge’s conclusion that impacts to other Transmission Owners are not addressed in Appendix K.⁴⁷³

b. Briefs Opposing Exceptions

211. MISO argues that the Presiding Judge correctly relied on the text of Appendix K to the TOA in ascertaining its intent.⁴⁷⁴ MISO disagrees with Xcel and MISO TOs that, because the October 2104 Filing “impacts” Xcel and the other Zone 16 Transmission Owners, the October 2014 Filing is contrary to the intent of the Appendix K Settlement, as allegedly evidenced by statements from the Explanatory Statement and Appendix K Settlement Order. MISO supports the Presiding Judge’s rejection of these contentions, noting that the Presiding Judge found the text of Appendix K determinative. MISO

⁴⁶⁹ Xcel Brief on Exceptions (citing Initial Decision, 159 FERC ¶ 63,016 at P 210).

⁴⁷⁰ On brief before the Presiding Judge, Xcel argued that sections II.C.3 and II.E.1 were the only two grants of section 205 filing authority in Appendix K that could conceivably apply, given the zone-specific nature of the proposed rate changes, but that MISO does not have the necessary rights under either one. Xcel Initial Brief at 55 (filed Mar. 14, 2017). In Xcel’s brief on exceptions, Xcel noted that in its protest it had argued that, because MISO owns no facilities and RPU itself is not a Transmission Owner in Zone 16, under section II.E.1 of Appendix K to the TOA, neither RPU nor MISO can propose rate changes that would affect only the rates within Zone 16. Xcel Brief on Exceptions at 18-19. However, Xcel does not challenge the Presiding Judge’s ruling that section II.E.1 does not apply to the October 2014 Filing.

⁴⁷¹ Xcel Brief on Exceptions at 84.

⁴⁷² *Id.*

⁴⁷³ MISO TOs Brief on Exceptions at 29-30 n.71.

⁴⁷⁴ MISO Brief Opposing Exceptions at 24.

argues that the Presiding Judge's ruling is consistent with how the Commission interprets settlement agreements. Further, MISO argues that, although Xcel argues that section II.C.3 and section II.E.1 of Appendix K illustrate that "the exclusive right [of a Transmission Owner] to submit revenue requirements filings does not apply when other Transmission Owners are affected,"⁴⁷⁵ the Presiding Judge reviewed these provisions and found them inapplicable to the present case based on their express terms.⁴⁷⁶

6. Other Arguments

a. Briefs on Exceptions

212. As noted above, Xcel asserts that, under section II.C.3 of Appendix K, when a new Transmission Owner is added or proposed to be added to an existing pricing zone, all of the existing Transmission Owners in that pricing zone must agree to the proposal before a section 205 filing is made.⁴⁷⁷ Xcel argues that the new Transmission Owner must engage in negotiations to be included in the MISO revenue distribution for that pricing zone, and if the Transmission Owners cannot reach an agreement, then under section III.A.8 of Appendix C to the TOA, the Transmission Owners can use the MISO dispute resolution process or a party can file a section 206 complaint. Xcel explains that, historically, the Transmission Owners have negotiated with each other on cost recovery issues and have filed a section 206 complaint if the new Transmission Owner and the existing Transmission Owners disagreed on how to recover the costs of a new facility, which Xcel asserts has typically been a successful process.⁴⁷⁸ Xcel contends that RPU failed to follow this process and that the Presiding Judge should have recognized that this alternative remedy was available to RPU.⁴⁷⁹

⁴⁷⁵ *Id.* at 25 (quoting Xcel Brief on Exceptions at 84).

⁴⁷⁶ *Id.* (citing Initial Decision, 159 FERC ¶ 63,016 at PP 212-224).

⁴⁷⁷ Xcel Brief on Exceptions at 30-31, 79-80, 86.

⁴⁷⁸ *Id.* at 36, 86.

⁴⁷⁹ *Id.* at 86-87.

b. Briefs Opposing Exceptions

213. MISO and RPU assert that the MISO's submission of the October 2014 Filing is consistent with the Commission's ruling in *Prairie Power*.⁴⁸⁰ They note that in that proceeding the Commission directed MISO to revise Schedules 7, 8, and 9 of the Tariff to include Prairie Power, Inc.'s (Prairie Power) transmission facilities in Ameren Illinois Company's joint pricing zone rates, which entailed MISO using its Tariff administrator authority, in order to ensure that Prairie Power could recover its Attachment O ATRR for its transmission facilities.⁴⁸¹ MISO and RPU argue that in this case, MISO similarly had to submit changes to Schedules 7, 8, and 9 to include RPU in Zone 16 in order to effectuate the recovery of RPU's Attachment O ATRR for the H-NR Line.⁴⁸² MISO points out that, like Prairie Power, RPU has a Commission-accepted ATRR and has transferred functional control of the H-NR Line to MISO.⁴⁸³ RPU contends that the October 2014 Filing was ministerial in nature and should not be rejected based on concerns regarding MISO's filing rights.⁴⁸⁴ RPU argues that forcing it to file a complaint under FPA section 206 in order to recover its ATRR for the H-NR Line would contravene the Commission's decision in *Prairie Power*.⁴⁸⁵

214. MISO and RPU also argue that MISO also had the right to make the October 2014 Filing pursuant to its authority to act on behalf of non-jurisdictional Transmission Owners.⁴⁸⁶ As RPU is not a "public utility" under the FPA, RPU cannot independently make filings under section 205, and MISO and RPU contend that MISO may make filings on behalf of RPU, and other non-jurisdictional Transmission Owners, in situations

⁴⁸⁰ *E.g.*, MISO Brief Opposing Exceptions at 6, 18-20; RPU Brief Opposing Exceptions at 25-26, 74-75.

⁴⁸¹ MISO Brief Opposing Exceptions at 6, 18-19; RPU Brief Opposing Exceptions at 25-26 (both citing *Prairie Power*, 144 FERC ¶ 61,193, at PP 31-32).

⁴⁸² MISO Brief Opposing Exceptions at 19-20; RPU Brief Opposing Exceptions at 74.

⁴⁸³ MISO Brief Opposing Exceptions at 20.

⁴⁸⁴ RPU Brief Opposing Exceptions at 75.

⁴⁸⁵ *Id.*

⁴⁸⁶ MISO Brief Opposing Exceptions at 20-24; RPU Brief Opposing Exceptions at 73-74.

where public utilities can make such filings independently.⁴⁸⁷ MISO and RPU note that section V.A of Appendix K provides:

Jurisdiction. Nothing in this Appendix K is intended to provide [the Commission] with jurisdiction over Non-Jurisdictional [Transmission] Owners who may rely on MISO to submit filings for them with regard to their individual revenue requirements or rate designs.^[488]

MISO argues that this provision specifically authorizes MISO to make such filings on behalf of non-jurisdictional Transmission Owners and that it authorizes the October 2014 Filing.⁴⁸⁹ MISO also asserts that this authority has been used by MISO in connection with numerous FPA section 205 filings, including for adding transmission facilities of non-jurisdictional Transmission Owners to existing pricing zones.⁴⁹⁰

B. Commission Determination

215. We affirm the Presiding Judge's finding that MISO possessed the filing rights to make the October 2014 Filing. As the Presiding Judge recognized, section II.L of Appendix K to the TOA expressly states that, aside from the exceptions delineated in sections II.A-II.K of Appendix K, MISO has the "full and exclusive right" to submit section 205 filings.⁴⁹¹ Accordingly, we find that section II.L identifies MISO's general authority to make section 205 filings regarding the Tariff, except in specific

⁴⁸⁷ MISO Brief Opposing Exceptions at 20; RPU Brief Opposing Exceptions at 73.

⁴⁸⁸ MISO Brief Opposing Exceptions at 22; RPU Brief Opposing Exceptions at 73-74 (both quoting Ex. XES-29 at 14). MISO observes that although the Presiding Judge structured his analysis of section II.A of Appendix K as an alternative hypothesis, the same "with regard to their individual revenue requirements" language in section II.A is contained in section V.A. MISO Brief Opposing Exceptions at 23.

⁴⁸⁹ MISO Brief Opposing Exceptions at 23.

⁴⁹⁰ *Id.* at 24 (citing *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER15-466-000 (Jan. 22, 2015) (letter Order) (integrating the City of Alexandria, Louisiana into MISO Pricing Zone 32, Cleco Power, LLC); *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,203 (2011) (integrating Missouri River Energy Services into MISO Pricing Zone 18, Otter Tail Power Company)).

⁴⁹¹ Ex. XES-29 at 12.

circumstances, and Xcel and MISO TOs have not persuaded us that any such circumstance applies here.⁴⁹²

216. We find unavailing arguments made by Xcel and MISO TOs that the addition of RPU's ATRR for the H-NR Line to Zone 16 would "reconfigure" or "realign" Zone 16's boundaries, and that therefore, section II.C.3 precludes the October 2014 Filing. We also disagree with Xcel and MISO TOs' argument that adding RPU as a Transmission Owner in Zone 16 is a "reconfiguration" of that zone. We agree with MISO that the word "boundary" has a physical meaning in the context of section II.C.3. Thus, we find that section II.C.3 applies to the "reconfiguration" or "realignment" of the physical boundaries of rate zones. Accordingly, we find that, because the physical boundaries of Zone 16 were unaltered through the addition of RPU and its ATRR for the H-NR Line, section II.C.3 is inapplicable and does not preclude the October 2014 Filing.

217. Further, we believe that, even if zonal boundaries were not physical boundaries, section II.C.3 would still not apply to the October 2014 Filing. As MISO explains, section II.C.3 refers to the plural terms "zones" and "rates zones" instead of a single zone and therefore can be held to only apply to a realignment, merger, or reconfiguration of two or more zones. There is no evidence that the October 2014 Filing "realign[s], eliminate[s], or otherwise reconfigure[s]" multiple rate zones. We also agree with MISO that, based on the interrelationship between section II.C.3 of Appendix K and sections II.A.1.a and II.B.1.b of Appendix C, the October 2014 Filing does not involve a "reconfiguration" or "realignment" under section II.C.3 because no new rate zone is created, no zones are combined, and no zones are eliminated through the addition of RPU to Zone 16.

218. We also find that section II.C.2 of Appendix K does not apply to the October 2014 Filing. Section II.C.2 addresses "an initial rate design or rate design change for the zone." We do not agree with MISO TOs' suggestion that any proposed revision to Schedules 7, 8, and 9 involves rate design. The October 2014 Filing added RPU's ATRR for the H-NR Line into the calculation of Zone 16's transmission rates but did not change Zone 16's rate design methodology.

219. We also find that the Presiding Judge did not err in affording little weight to language in the Explanatory Statement—as well as similar language in the Appendix K Settlement Order reciting the representations made in the Explanatory Statement—which

⁴⁹² Because MISO, under section II.L, may make section 205 filings aside from the exceptions delineated in sections II.A-II.K of Appendix K, we need not address the interpretations of *Atlantic City* expressed by the Presiding Judge and the parties with respect to this issue.

states that Transmission Owners have the exclusive right to submit filings for their revenue requirements provided that “other Transmission Owners are not impacted.” As the Presiding Judge recognized, this premise is not mentioned in the Appendix K Settlement or in Appendix K itself.⁴⁹³

220. Further, even assuming *arguendo* that such premise can be inferred from various provisions of Appendix K, as Xcel and MISO TOs suggest, we do not believe that it would prohibit the October 2014 Filing. It is not readily apparent from the Explanatory Statement when a revenue requirement filing or other section 205 filing by a Transmission Owner—or by MISO on behalf of a non-jurisdictional Transmission Owner’s behalf—would cause other Transmission Owner to be “impacted.” As Appendix K is the operative document, it is the appropriate guide to determine when another Transmission Owner is “impacted” and thus when a section 205 filing would require collective action. For example, as discussed above, section II.C.3 of Appendix K requires the agreement of all Transmission Owners whose zones would be “realigned, eliminated, or otherwise reconfigured” before a section 205 filing is made. Further, section II.C.2 states that, “If there are multiple [Transmission] Owners within a zone, those [Transmission] Owners should seek to reach agreement on a rate design.” In contrast, no provision in Appendix K states that MISO’s adding a new non-jurisdictional Transmission Owner to a pricing zone and including the non-jurisdictional Transmission Owner’s ATRR in the calculation of rates of that zone, without more, requires the collective action of the other Transmission Owners in that zone.

The Commission orders:

The Initial Decision is hereby affirmed, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁹³ Initial Decision, 159 FERC ¶ 63,016 at P 210.