

167 FERC ¶ 61,235  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Southwest Power Pool, Inc.

Docket Nos. ER15-2115-000  
ER15-2115-001

ORDER ON CONTESTED SETTLEMENT

(Issued June 20, 2019)

1. On July 12, 2017, on behalf of the Settling Parties,<sup>1</sup> pursuant to Rule 602 of the Commission's rules of practice and procedure,<sup>2</sup> SPP submitted an offer of settlement (Settlement) in the matter set for hearing and settlement judge procedures in this proceeding.<sup>3</sup> Because the Settlement is contested and cannot be approved under *Trailblazer Pipeline Company*,<sup>4</sup> we reject the Settlement and remand the proceeding to the Chief Judge to resume hearing procedures.

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<sup>1</sup> The Settling Parties are Southwest Power Pool, Inc. (SPP), Northwest Iowa Power Cooperative (NIPCO), Missouri Public Service Commission (Missouri Commission), Basin Electric Power Cooperative (Basin Electric), and MidAmerican Energy Company (MidAmerican).

<sup>2</sup> 18 C.F.R. § 385.602(h) (2018).

<sup>3</sup> SPP represents that the Missouri Commission is a party to the Settlement and supports the resolution of issues set for hearing and settlement proceedings in this docket; however, the Missouri Commission does not take a position on any issues that may arise regarding grandfathered agreements. *See* SPP Transmittal at 1 n.1.

<sup>4</sup> 85 FERC ¶ 61,345 (1998) (*Trailblazer*); *order on reh'g*, 87 FERC ¶ 61,110 (1999) (*Trailblazer Rehearing Order*).

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## **I. Background**

### **A. NIPCO**

2. NIPCO is an electric generation and transmission cooperative owned by six distribution cooperatives and an association of municipal utilities, all located in Iowa, and is a member of Basin Electric. NIPCO serves over 30,000 member consumers of these utilities with over 900 miles of 69 kV transmission lines and 80 distribution substations.

### **B. Procedural History and Settlement**

3. On July 7, 2015, pursuant to section 205 of the Federal Power Act (FPA)<sup>5</sup> and Part 35 of the Commission's regulations,<sup>6</sup> SPP submitted revisions to its Open Access Transmission Tariff (Tariff) to include a Formula Rate Template (Template), including worksheets, and Formula Rate Implementation Protocols (Protocols) (the Protocols and Template are hereinafter referred to as the Formula Rate) on behalf of NIPCO to accommodate the recovery of NIPCO's annual revenue requirement.<sup>7</sup> The proposed revisions were necessitated by NIPCO transferring functional control of its transmission facilities to SPP in order to become a transmission owning member of SPP in pricing Zone 19.

4. On September 30, 2015, the Commission issued an order accepting the proposed SPP Tariff revisions for filing, effective October 1, 2015, subject to refund, and established hearing and settlement judge procedures.<sup>8</sup> After multiple settlement conferences, SPP submitted the Settlement on behalf of the Settling Parties on July 12, 2017.

5. Article I of the Settlement sets forth the procedural history. Article II provides the resolution of the issues, including setting of the returns on equity, capital structures, depreciation rates, and provisions specific to NIPCO. Article III prescribes a rate moratorium. Article IV of the Settlement provides that the various provisions of the Settlement are not severable. Article V provides that the terms of the Settlement are contingent on the Commission's acceptance thereof without modification or condition.

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<sup>5</sup> 16 U.S.C. § 824d (2012).

<sup>6</sup> 18 C.F.R. pt. 35 (2018).

<sup>7</sup> Southwest Power Pool, Inc., Submission of Revenue Requirement, Formula Rate Template and Formula Rate Protocols for Northwest Iowa Power Cooperative (July 7, 2015).

<sup>8</sup> *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,251 (2015) (Hearing Order).

Article VI states that the Settlement will become effective (1) when the Commission issues a final order approving the Settlement without condition or modification, or (2) if the Commission issues an order modifying or imposing conditions on the Settlement, when the Settling Parties accept the alteration as prescribed by Article V. Article VII establishes various reservations of rights. Article VIII establishes the standard of review for changes to the Settlement. Article IX provides that, concurrent with the filing of the Settlement, NIPCO, together with SPP, shall file to implement the revised Formula Rate on an interim basis, subject to refund or surcharge, with interest computed in accordance with 18 C.F.R. § 35.19a, pending Commission action on the Settlement. Article X sets forth the procedures for the calculation and recovery of refunds. Article XI contains certain miscellaneous provisions typically included in settlements.

6. NIPCO, MidAmerican, and Basin Electric filed comments in support of the Settlement (collectively, the Supporting Parties). Commission Trial Staff (Trial Staff), Missouri River Energy Services (Missouri River), and Western Area Power Administration (Western) (collectively, the Contesting Participants) filed comments opposing the Settlement's treatment of two grandfathered service agreements (GFAs). Missouri River filed reply comments making additional arguments against the Settlement's rate treatment of the GFAs. American Electric Power Service Corporation (AEP) filed reply comments generally supporting certain participants' opposition to the Settlement's treatment of GFAs. NIPCO, MidAmerican, and Basin Electric filed reply comments defending the Settlement's GFA treatment.

7. In his report on the Settlement, the Settlement Judge states that the Contesting Participants oppose the Settlement on the grounds that the rate treatment of the GFAs is unjust and unreasonable and inconsistent with Commission precedent.<sup>9</sup> The Settlement Judge reports that the Contesting Participants do not oppose the Settlement's non-GFA provisions.<sup>10</sup> The Settlement Judge states that, consistent with Commission precedent, the Settlement is contested by virtue of the Contesting Participants' initial and reply comments opposing the Settlement.<sup>11</sup>

8. On June 13, 2018, NIPCO filed a request for the Commission to take administrative notice, or in the alternate, to reopen the record (Motion) to consider the Commission's opinion in a proceeding in which the Commission approved the inclusion of Tri-State

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<sup>9</sup> See, e.g., *Sw. Power Pool, Inc.*, 161 FERC ¶ 63,013, at PP 49, 98, 309 (2017) (Contested Settlement Report).

<sup>10</sup> See *id.* P 33.

<sup>11</sup> *Id.* P 319.

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Generation and Transmission Association, Inc.’s transmission facilities in SPP Zone 17.<sup>12</sup> On June 18, 2018, MidAmerican filed comments supporting the Motion. On June 28, 2018, Missouri River and Trial Staff filed answers opposing the Motion. On July 13, 2018, Basin Electric filed an answer to Missouri River and Trial Staff’s answers.

### C. NIPCO GFAs

9. As part of the proposed Tariff revisions, SPP amended Attachment W (Grandfathered Agreements) of the SPP Tariff to list two GFAs; GFA numbers 806 and 807.<sup>13</sup> Each of these agreements is between NIPCO and MidAmerican, a transmission owner located in the Midcontinent Independent System Operator, Inc. (MISO). The GFAs provide for transmission service over NIPCO’s transmission facilities to MidAmerican to serve MidAmerican’s load located in SPP, and for transmission service over MidAmerican’s transmission facilities in MISO to NIPCO to serve its load located in MISO. NIPCO allows MidAmerican to use NIPCO-owned network facilities located in SPP to serve MidAmerican loads located on MidAmerican-owned radial lines also located in SPP. Conversely, MidAmerican allows NIPCO to use MidAmerican-owned network facilities located in MISO to serve NIPCO loads located on MidAmerican-owned radial lines also located in MISO. Such service under the agreements is contemplated to be provided on a reciprocal or in-kind basis. The agreements also allow the parties to coordinate planning and construction of additional facilities that can be used to serve each other’s loads.<sup>14</sup>

10. The electric energy that NIPCO delivers on behalf of MidAmerican in SPP Zone 19 is referred to as NIPCO’s “GFA transmission load.” NIPCO’s GFA transmission load under GFA Nos. 806 and 807 totals approximately 33 megawatts on a 12-month coincident peak basis. GFA No. 806 contemplates that NIPCO’s GFA transmission load will exceed MidAmerican’s GFA transmission load and provides that MidAmerican shall provide NIPCO monetary compensation for the imbalance. Essentially, MidAmerican pays NIPCO a contract rate applied to the net difference between the two GFA transmission loads. During 2014, MidAmerican paid NIPCO \$344,364 under that GFA. GFA No. 807 does not contemplate any such imbalance and, therefore, does not provide for monetary compensation.<sup>15</sup>

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<sup>12</sup> *Sw. Power Pool, Inc.*, Opinion No. 562, 163 FERC ¶ 61,109 (2018) (*Tri-State*).

<sup>13</sup> The SPP Tariff defines GFAs to include “agreements providing long-term firm transmission service executed prior to April 1, 1999.” SPP Tariff, Definitions, G.

<sup>14</sup> Contested Settlement Report, 161 FERC ¶ 63,013 at P 40.

<sup>15</sup> *Id.* PP 41-42.

#### **D. Transmission Service Ratemaking and the SPP Tariff**

11. Under Commission precedent and policy, there are two methods of accounting for service in the development of transmission rates: revenue crediting and allocating costs through inclusion of associated load or demand in the rate divisor. Under a revenue crediting approach, the monetary value of the transmission service is credited against the revenue requirement, reducing the numerator of the formula rate. In contrast, including the load or demand in the rate divisor treats the transaction as part of system load and fully allocates costs to the service.

12. In Order No. 888, the Commission established the general policy that firm transmission service should be cost allocated through including the load or demand in the rate divisor, while revenue from non-firm services should continue to be reflected as a revenue credit in order to prevent over-recovery of costs.<sup>16</sup> This policy is also embodied in the provisions of the Order No. 888 *pro forma* Open Access Transmission Tariff (OATT) that require transmission providers to include all firm service in their load ratio calculations for billings under network service.<sup>17</sup> However, in Order No. 888-A, the Commission recognized that the decision whether discounted firm transmission transactions should be revenue-credited or cost-allocated is properly addressed on a case-by-case basis.<sup>18</sup> Because pre-Order No. 888 GFAs may not always provide service whose quality is entirely consistent with the qualities of network service and firm and non-firm point-to-point services provided under the *pro forma* OATT, the Commission

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<sup>16</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,738 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>17</sup> See Order No. 888, FERC Stats. & Regs. ¶ 31,036, Appendix D, section 1.16 (defining Load Ratio Share as the ratio of a transmission customer's network load to the transmission provider's total load); section 1.47 (defining the transmission provider's Monthly Transmission System Peak as the maximum firm usage of the transmission system); and section 34.3 (defining the transmission provider's monthly total load in terms of its Monthly Transmission System Peak).

<sup>18</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,256.

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has also allowed consideration of whether transmission service under pre-Order No. 888 GFAs should be revenue-credited or cost-allocated on a case-by-case basis.

13. For example, in *Idaho Power Co.*, the Commission rejected Idaho Power Company's proposal to credit revenues from pre-Order No. 888 GFAs in the numerator rather than apply a cost allocation method by including the load in the rate divisor, and found that Idaho Power had not adequately demonstrated that the quality of its transmission service was inferior to firm, long-term service.<sup>19</sup> The Commission reached a similar conclusion in *Consumers Energy Co.*, finding that load under a pre-Order No. 888 reciprocal arrangement for firm transmission service should be included in the divisor.<sup>20</sup>

14. SPP uses a license-plate rate design (i.e., zonal rate design) for transmission service under the SPP Tariff, with its footprint separated into a number of transmission pricing zones. Transmission service rates for load located within the SPP region are based, in part, on the sum of the revenue requirements for each transmission owner within the zone in which the load is located. The SPP Tariff specifies a zonal revenue requirement for each SPP transmission pricing zone. Upon joining SPP, NIPCO's proposed revenue requirement became part of Zone 19, a multi-owner transmission pricing zone.

15. SPP assesses a monthly demand charge on each network customer<sup>21</sup> for network service under Schedule 9 of the SPP Tariff. SPP calculates that charge by multiplying the network customer's load ratio share<sup>22</sup> by the combined revenue requirement for all transmission owners in the zone, and then dividing the resulting product by 12.<sup>23</sup> Unless the transmission owner elects to take network service to meet its obligations to its GFA customers, SPP excludes the GFA load from the transmission owner's Network Load

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<sup>19</sup> *Idaho Power Co.*, 126 FERC ¶ 61,044, at PP 166-168 (2009) (*Idaho Power*).

<sup>20</sup> *Consumers Energy Co.*, 86 FERC ¶ 63,004, at 65,031-32 (1999), *aff'd in relevant part*, Opinion No. 456, 98 FERC ¶ 61,333, at 62,410 (2002) (*Consumers*).

<sup>21</sup> The SPP Tariff defines "Network Customer" as any entity receiving network service thereunder.

<sup>22</sup> SPP calculates each Network Customer's Load Ratio Share by dividing the customer's Network Load by SPP's total firm load in the zone. Network Load is the load that a Network Customer "designates for [network service] under Part III of the SPP Tariff." SPP Tariff, Part I, Section I, Definitions N.

<sup>23</sup> SPP Tariff § 34.1.

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total and thus from Schedule 9 network service charges. This avoids the transmission owner having to pay itself for service under the SPP Tariff to meet its obligations under the GFA. However, GFA load for which the transmission owner has not elected to take network or firm point-to-point service is included in Resident Load under the SPP Tariff, which is subject to Schedule 11 Base Plan Zonal and Region-wide charges for transmission projects.<sup>24</sup> This ensures that a transmission owner with GFA load compensates other transmission owners for their share of Schedule 11 Base Plan Zonal and Region-wide charges.

16. Pursuant to Attachment L of the SPP Tariff,<sup>25</sup> SPP distributes revenues collected under Schedule 9 to each transmission owner in a multi-owner zone in proportion to the owner's share of the zonal revenue requirement in order for owners to recover their annual revenue requirements.<sup>26</sup> Section II.B.2(c) provides that where the transmission owner has not already reduced its revenue requirement by the amount of charges associated with GFAs, "the Transmission Provider [SPP] shall compute hypothetical [network service] payments equal to the cost to serve ... long-term customers served under Grandfathered Agreements . . . as if those customers were paying for service under Schedule 9."<sup>27</sup> The imputed revenues would offset, for the purpose of zonal revenue distribution, the revenue shortfall that would otherwise result by including GFA load in the zonal rate divisor when calculating the zonal rate, but exempting the GFA load from the Schedule 9 charge. This ensures that a transmission owner with GFA load in a multi-owner zone compensates the other transmission owners in the zone for their share of the Schedule 9 zonal charge.

17. Alternatively, Section II.B.2(e) of Attachment L requires that where a transmission owner reduces its revenue requirement by the amount of revenues received from its GFAs, i.e. revenue-credits, it will attempt to reach agreement with the GFA

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<sup>24</sup> SPP Tariff, Part V, Section 41.

<sup>25</sup> Attachment L is titled "Distribution of Transmission Service Revenues Associated with the Zonal Annual Transmission Revenue Requirement."

<sup>26</sup> SPP Tariff, Attachment L Section II.B.2(a).

<sup>27</sup> SPP Tariff, Attachment L Section II.B.2(c).

counterparties on a treatment of the GFA that results in appropriate compensation to the other transmission owners in the zone.<sup>28</sup>

18. Attachment L does not specifically address whether one approach (crediting GFA revenue to the zonal revenue requirement or including GFA load in the zonal rate divisor) may be more appropriate for a particular GFA transmission service and, thus, does not prescribe the ratemaking treatment of GFA load in the determination of a transmission owner's revenue requirement or calculation of the zonal transmission rate. However, Section 34.5 of the Tariff does prescribe the treatment of GFA load in the zonal transmission rate by defining the zone's Monthly Transmission System Peak, i.e., the divisor used to calculate the zonal Schedule 9 rate, as "[t]he maximum firm usage of the Transmission Provider's Transmission System in a calendar month," which would include GFA load if such load is served with firm transmission service.<sup>29</sup> Therefore, if the GFA load is firm, it would be included in the zonal rate divisor and a revenue crediting approach would be inappropriate, as it would produce a rate that would not be sufficient to allow each transmission owner to recover its full transmission cost of service.

## **II. Comments**

### **A. Initial Comments – The Supporting Parties**

19. The Supporting Parties argue that the Settlement represents a just and reasonable resolution of all issues set for hearing and that the Settlement's rate treatment of the GFAs, i.e. one that continues to credit all GFA revenues against NIPCO's revenue

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<sup>28</sup> Section II.B.2(e) states:

The treatment described in paragraphs II.B.2(b)-(d) above is premised on the assumption that the annual transmission revenue requirement of the Transmission Owner that is the seller under a Grandfathered Agreement has not been reduced by the amount of the charges associated with the Grandfathered Agreement. In such circumstances, the parties to the Grandfathered Agreement will attempt to reach agreement on a treatment of the Grandfathered Agreement that results in appropriate compensation to the Transmission Owners in the Zone while preventing the imposition of excessive costs on others. If the Transmission Owners in the Zone are unable to reach agreement, either Transmission Owner may invoke the dispute resolution procedures of the Tariff or seek a determination from FERC as to the appropriate treatment of the Grandfathered Agreement charges.

<sup>29</sup> SPP Tariff, Definitions T.

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requirement, is consistent with the SPP Tariff.<sup>30</sup> NIPCO and MidAmerican assert that any attempt by non-settling parties to seek relief inconsistent with the SPP Tariff provisions properly applied in this docket would amount to collateral attacks on the SPP Tariff.<sup>31</sup>

20. NIPCO argues that Missouri River previously sought clarification regarding the rate treatment of the GFAs, and that all of Missouri River's GFA-related concerns have been satisfactorily addressed.<sup>32</sup> First, NIPCO explains that all of its own loads, including SPP transmission service for NIPCO's loads in MISO, are included in its Network Load and are assessed SPP Schedule 9 Network Service charges.<sup>33</sup> NIPCO adds that, in two dockets implementing agreements designed to incorporate NIPCO's load into SPP, the Commission confirmed NIPCO's understanding of how its load and the GFA loads would be treated in SPP.<sup>34</sup> NIPCO states that its customer service loads (i.e., MidAmerican's GFA loads) are properly included as non-network Resident Load, and, according to NIPCO, are thus not included in the divisor for SPP network service charge calculations.<sup>35</sup> The Supporting Parties state that, in response to Missouri River's comments in the Network Service Order proceedings, SPP explained "[b]ecause loads being served by a [GFA] are not being served by SPP Network Integration Transmission Service, those loads are not included in the Service Agreement."<sup>36</sup> NIPCO states that SPP further explained, "[a]s for how the load is being accounted for, Section 41 of the

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<sup>30</sup> NIPCO Initial Comments at 14; MidAmerican Initial Comments at 5.

<sup>31</sup> NIPCO Initial Comments at 14, 16; MidAmerican Initial Comments at 6-8.

<sup>32</sup> NIPCO Initial Comments at 7-9.

<sup>33</sup> *Id.* at 12.

<sup>34</sup> *Id.* at 7-9 (citing *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,355 (2015); *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,368 (2015) (Network Service Orders)).

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.* at 8 (citing SPP Answer, Docket No. ER16-245-000, at 3 (filed Dec. 8, 2015); SPP Answer, Docket No. ER16-241-000, at 3 (filed Dec. 9, 2015)); MidAmerican Initial Comments at 4.

SPP Tariff requires Transmission Owners to report GFA load as part of the Resident Load reporting obligations.”<sup>37</sup>

21. NIPCO asserts that the Commission found that SPP had adequately explained how GFA load is accounted for in the calculation of load in Zone 19.<sup>38</sup> NIPCO adds that all of its loads served from GFAs will be fully allocated costs under its revenue requirement and that MidAmerican customer GFA load in SPP, i.e., NIPCO’s GFA transmission loads, are not allocated Schedule 9 charges, given their GFA status.<sup>39</sup>

22. NIPCO also represents that all of its loads, including those served from facilities built as part of the joint planning processes under the GFAs and its loads in MISO that are served through transmission in SPP, pay Schedule 9 charges, as well as SPP Schedule 1A, 11 and 12 charges. NIPCO adds that, given their GFA status, the MidAmerican loads that NIPCO serves in Zone 19 are not allocated Schedule 9 charges.<sup>40</sup>

23. NIPCO states that assurance that its GFAs would be preserved was a material factor in its decision to join SPP and become a transmission owner.<sup>41</sup>

#### **B. Initial Comments – The Contesting Participants**

24. The Contesting Participants argue that the Settlement’s rate treatment of the GFAs is unjust and unreasonable. According to Trial Staff, the Commission has not created a uniform policy for treatment of GFAs, but has determined the best treatment on a fact-specific, case-by-case basis.<sup>42</sup> The Contesting Participants argue that Order No. 888-A<sup>43</sup>

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<sup>37</sup> NIPCO Initial Comments at 8 (citing SPP Answer, Docket No. ER16-245-000, at 3 (filed Dec. 8, 2015); SPP Answer, Docket No. ER16-241-000, at 3 (filed Dec. 9, 2015)).

<sup>38</sup> NIPCO Initial Comments at 9 (citing *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,355 at P 15; *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,368 at P 21).

<sup>39</sup> *Id.* at 12.

<sup>40</sup> *Id.* at 12-13.

<sup>41</sup> *Id.* at 6-9.

<sup>42</sup> *See* Trial Staff Initial Comments at 13-14.

<sup>43</sup> *See, e.g., id.* at 12-13 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,256).

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requires inclusion of all firm load, including that of the transmission owner, in the divisor.<sup>44</sup> According to Trial Staff, here, the transmission service provided under the GFAs is firm and, therefore, NIPCO should include the GFA loads in the zonal rate divisor.<sup>45</sup> The Contesting Participants argue that Commission precedent supports requiring NIPCO to include the GFA load in the zonal rate divisor.<sup>46</sup>

25. Missouri River states that if the Commission determines that the record contains sufficient information on which to base a decision, SPP should follow the process described in Section II.B.2(c) of Attachment L and calculate hypothetical network service payments.<sup>47</sup> Trial Staff and Western also point to the calculation of hypothetical payments under Section II.B.2(c) as a potential mechanism for adjusting NIPCO's revenue requirement.<sup>48</sup>

26. Western contends that, prior to NIPCO placing its transmission facilities under SPP's control, the cost impacts of the transmission service provided under the GFAs (less the Annual Net Capacity Charge received for MidAmerican loads above the netted service amount under GFA 806) were entirely the responsibility of NIPCO. Western asserts that now, however, NIPCO's proposed rate treatment of the MidAmerican GFA loads in its rate filing shifts the costs of serving them to the Zone 19 transmission owners.<sup>49</sup>

27. The Contesting Participants argue that the Settlement's improper ratemaking treatment of the GFAs, if accepted, will result in excessive rates. Missouri River argues

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<sup>44</sup> *Id.* at 13-15; Missouri River Initial Comments at 18; Western Initial Comments at 9-10.

<sup>45</sup> Trial Staff Initial Comments at 13-15.

<sup>46</sup> *See id.* at 14-15 (citing *American Elec. Power Serv. Corp.*, 80 FERC ¶ 63,006, at (1997); *aff'd in relevant part*, 88 FERC ¶ 61,141, at 61,449 (1999) (*AEP I*); *Idaho Power*, 126 FERC ¶ 61,044 at PP 74, 79, 133); Western Initial Comments at 10 (citing *Idaho Power*, 126 FERC ¶ 61,044); Missouri River Initial Comments at 20-21 (citing *Consumers*, 86 FERC at 65,031-32, *aff'd in relevant part*, Opinion No. 456, 98 FERC ¶ 61,333 at 62,410).

<sup>47</sup> Missouri River Initial Comments at 28-29.

<sup>48</sup> Trial Staff Initial Comments, Attachment A at 19; Western Initial Comments at 12.

<sup>49</sup> Western Initial Comments at 6-7.

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that this improper GFA rate treatment results in a NIPCO revenue requirement that is 24 percent higher than the one that would result from properly allocating the costs of serving the GFA loads to NIPCO. Missouri River contends that, moreover, the transmission customers located in SPP's pricing Zone 19 will bear the costs of this excessive revenue requirement in their rates.<sup>50</sup>

28. Missouri River represents that for the year ending December 31, 2014, the amount of those credits totaled less than \$350,000. Missouri River states that, in contrast, NIPCO would have to pay annual Schedule 9 charges of at least \$1.7 million for the delivery of its GFA load over its Zone 19 facilities.<sup>51</sup>

29. Missouri River contends that the proposed credit for GFA revenues will afford Zone 19 customers only approximately 20 percent of the value (in the form of lower transmission charges) than they would receive from a "full allocation of costs" to NIPCO for its service to MidAmerican GFA loads.<sup>52</sup>

30. Trial Staff also argues that in *AEP I*,<sup>53</sup> the Commission rejected the transmission provider's proposal to credit its revenues from a GFA against its revenue requirement and instead required the transmission provider to include the demand for all firm transmission service in the demand divisor, and only credit revenues from non-firm transmission service against the cost of service. Similarly, Trial Staff asserts that in *Idaho Power*,<sup>54</sup> the Commission considered the appropriate rate treatment of GFAs in the transmission provider's proposed formula rate template and found that, based on the firm characteristics of the grandfathered load and the cost-shift that would occur to other

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<sup>50</sup> Missouri River Initial Comments at 1-2 (citing Ex. MRE-001 thereto at P 15; Ex. MRE-004, Table 3). Mr. Terry J. Wolf appears to interpret Section 37.3 as permitting NIPCO to exclude its GFA load from its Network Load, thus reducing its annual NITS payment by the \$1.7 million figure. That provision states, in pertinent part: "A Transmission Owner shall be obligated to take [NITS] from the Transmission Provider . . . for any sales to wholesale load the Commission requires to be unbundled unless such service . . . is pursuant to a [GFA]."

<sup>51</sup> Missouri River Initial Comments, Ex. MRE-001 at PP 15, 32-33.

<sup>52</sup> Missouri River Initial Comments at 7-8 (citing Ex. MRE-001 at P 14; Ex. MRE-004, Table 5).

<sup>53</sup> *American Elec. Power Serv. Corp.*, 80 FERC ¶ 63,006 (1997); *aff'd in relevant part*, 88 FERC ¶ 61,141, at 61,447-50 (1999) (*AEP I*).

<sup>54</sup> 126 FERC ¶ 61,044, *reh'g denied*, 137 FERC ¶ 61,235 (2011).

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customers, the utility was required to cost-allocate that load rather than credit the revenue under the GFA against the utility's revenue requirement.<sup>55</sup> Missouri River also argues that the Commission reached the same result in *Consumers*.<sup>56</sup>

31. The Contesting Participants also dispute that the Network Service Orders addressed the issues before the Commission in the instant proceeding. The Contesting Participants assert that the only question genuinely before the Commission in those earlier cases was whether the Western and Basin Electric network service agreements were just and reasonable.<sup>57</sup>

32. The Contesting Participants assert that the Settlement cannot be approved under *Trailblazer*. The Contesting Participants assert that the first *Trailblazer* approach (accepting the Settlement if the record is sufficient to determine that it is just and reasonable) is inapplicable, because approval of a settlement based on this approach is only possible if the record contains substantial evidence on each disputed matter.<sup>58</sup> Trial Staff asserts that many of the essential facts necessary to determine the proper treatment of the GFAs remain unknown, namely, (1) the precise size of NIPCO's GFA Load and the resultant cost shift/subsidization; and (2) the benefits, if any, that the GFAs may confer to the other transmission owners in Zone 19.<sup>59</sup>

33. Western and Missouri River aver that the Settlement cannot be accepted under the second *Trailblazer* approach (that the Settlement would provide an overall result that is just and reasonable and that the contesting party would be in no worse position than if the case were litigated).<sup>60</sup> Trial Staff contends that its witness provided compelling evidence that NIPCO's Settlement revenue requirement is overstated by approximately \$754,992 or 8.54 percent, which, could not be seen as just and

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<sup>55</sup> Trial Staff Initial Comments at 13.

<sup>56</sup> Missouri River Initial Comments at 21-22 (citing 86 FERC at 65,031-32, *aff'd in relevant part*, Opinion No. 456, 98 FERC ¶ 61,333 (2002)).

<sup>57</sup> Trial Staff Initial Comments at 15; Western Initial Comments at 17; Missouri River Initial Comments at 33.

<sup>58</sup> See Trial Staff Initial Comments at 17-18 (citing *Great Lakes Gas Transmission Ltd. P'ship*, 153 FERC ¶ 61,053, at P 53 (2015)); Western Initial Comments at 12-13; Missouri River Initial Comments at 10.

<sup>59</sup> Trial Staff Initial Comments at 11, 17-18.

<sup>60</sup> Western Initial Comments at 13-14; Missouri River Initial Comments at 11.

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reasonable.<sup>61</sup> Missouri River notes that the Commission has rejected a contested settlement where the hearing was held in abeyance and there was no record for the Commission to assess the likely litigated outcome.<sup>62</sup>

34. The Contesting Participants argue that the Settlement cannot be approved under third *Trailblazer* approach, which requires the Commission find that the contesting party's interest is too attenuated, such that a contested settlement may be approved under the fair and equitable standard applicable to uncontested settlements.<sup>63</sup> The Contesting Participants argue that Missouri River and Western have concrete interests in the transmission rate resulting from the Settlement. They argue that because Missouri River, Western, and NIPCO are all situated in Zone 19, the size of NIPCO's revenue requirement has an immediate monetary impact on Missouri River and Western.<sup>64</sup>

35. Trial Staff argues that the Commission could sever the GFA issue, under the fourth *Trailblazer* approach, to allow the participants to develop a record to determine the appropriate remedy.<sup>65</sup> Trial Staff argues that the remainder of the Settlement is supportable and that severance will allow Missouri River, Western, and any other interested participants to develop a record to allow a presiding judge and the Commission to determine the appropriate rate treatment for NIPCO's GFAs.<sup>66</sup>

36. Western argues that the Settlement and the comments addressing the Settlement do not establish a record containing substantial evidence from which the Commission can reach a reasoned decision on the merits of the contested issue. Western states that, instead, as provided for in Rule 602(h)(2) of the Commission's Rules of Practice and

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<sup>61</sup> Trial Staff Initial Comments at 18-19.

<sup>62</sup> Missouri River Initial Comments at 13 (citing *Commonwealth Edison Co.*, 132 FERC ¶ 61,268, at P 50 (2010)).

<sup>63</sup> Trial Staff Initial Comments at 19-20; Western Initial Comments at 14; Missouri River Initial Comments at 13-14.

<sup>64</sup> Trial Staff Initial Comments at 19; Western Initial Comments at 14; Missouri River Initial Comments at 13-14.

<sup>65</sup> Trial Staff Initial Comments at 11, 20-21.

<sup>66</sup> *Id.* at 20-21.

(continued ...)

Procedure,<sup>67</sup> the Commission should establish procedures to receive additional evidence.<sup>68</sup>

### C. Reply Comments – The Supporting Parties

37. NIPCO argues that the proposed treatment of the GFAs is consistent with Tariff provisions regarding GFAs and network service. It asserts that the Contesting Participants seek to require SPP to treat the GFA Loads as Network Loads for network service calculations, but such treatment would require a change to the SPP Tariff that is not appropriate in an individual transmission owner's FPA section 205 proceeding to collect its revenue requirement.<sup>69</sup>

38. NIPCO states that instead, under Section 41(b) of the Tariff, GFA load is included as a component of Resident Load and is assessed Schedule 11 charges (along with Schedule 1A and 12 charges), but is exempt from Schedule 9 charges, and that there is no comparable requirement, and, thus, no basis to include GFA load in the calculation of network service charges under Schedule 9.<sup>70</sup>

39. The Supporting Parties argue that the Contesting Participants' reference to hypothetical network service payments discussed in Section II.B.2(c) of Attachment L ignores the language in subsection (e), which explicitly states that subsection (c) only applies when the transmission owner's revenue requirement has not been reduced by the amount of the charges associated with the GFA. The Supporting Parties also assert that because NIPCO agreed to reduce its revenue requirement by the charges associated with the GFAs, there is no need for any compensation negotiation under subsection (c). NIPCO concludes that, to the extent the Commission decides that Attachment L is ambiguous, any attempt to clarify that provision should be the subject of a future stakeholder or other SPP process on a prospective basis.<sup>71</sup>

40. The Supporting Parties argue that the Contesting Participants' reliance on *Idaho Power* and other precedent is flawed for a number of reasons. Chiefly, they argue that firmness of transmission service was key to the Commission's *Idaho Power* finding that

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<sup>67</sup> 18 C.F.R. § 385.602(h).

<sup>68</sup> Western Initial Comments at 1-2.

<sup>69</sup> NIPCO Reply Comments at 19-20.

<sup>70</sup> *Id.* at 21-24.

<sup>71</sup> *Id.* at 40-47; MidAmerican Reply Comments at 5-7.

(continued ...)

GFA load must be placed in the divisor, and that, contrary to the Contesting Participants' assertions, the GFA revenues at issue here should be revenue-credited because their underlying transmission service is inferior to network service. The Supporting Parties contend that the transmission service is not comparable to network service because the contracts do not obligate parties to build additional facilities as necessary, even if the customer is willing to pay, and because the contracts do not explicitly provide for access to the entire Zone 19 or full SPP transmission system.<sup>72</sup> NIPCO also argues that *Idaho Power* is distinguishable because of the large rate impact on other transmission customers under Idaho Power's proposed formula rate.<sup>73</sup>

41. NIPCO argues that the Commission can approve the Settlement under the first three *Trailblazer* approaches. First, it asserts that the record is sufficient for the Commission to address the merits under first *Trailblazer* approach. NIPCO states that the treatment of GFAs is expressly addressed by the Tariff and that NIPCO's filing provides sufficient information to rule in its favor. It represents that it provided evidence to rebut the presumption of any cost shifting.<sup>74</sup>

42. Second, NIPCO argues that the Commission could find that the overall result of the settlement is just and reasonable under second *Trailblazer* approach. NIPCO states that in *Trailblazer*, the Commission clarified that this approach "focuses on the end result of the overall settlement, and involves a balancing of the benefits of the settlement against the costs and potential effect of continued litigation."<sup>75</sup> NIPCO argues that approval under the second *Trailblazer* approach is appropriate as the Commission will be able to determine the likely outcome of litigation on the issues regarding GFAs in favor of the Settling Parties, given controlling Commission precedent. It also makes the following assertions: (1) both Western and Missouri River are similarly situated to the other Zone 19 transmission owners that did not oppose the Settlement; (2) the Settlement's end result establishes rates that are consistent with and in the ballpark of other transmission owners in Zone 19; (3) the Settlement does not leave any party in a better position than another; and, (4) rejection of the Settlement would dispose of just and

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<sup>72</sup> NIPCO Reply Comments at 30-32; MidAmerican Reply Comments at 7-9.

<sup>73</sup> NIPCO Reply Comments at 35-36.

<sup>74</sup> *Id.* at 71-73 (noting that Mr. Cevera's affidavit provides sufficient evidence to rebut cost-shift concerns).

<sup>75</sup> *Id.* at 74 (citing *Trailblazer Rehearing Order*, 87 FERC at 61,439).

(continued ...)



reasonable settlements and the many associated concessions agreed to by NIPCO over the course of one and a half years of negotiations.<sup>76</sup>

43. NIPCO states that under the third *Trailblazer* approach, acceptance is appropriate where the Contesting Participants have another forum to raise objections. It argues that the SPP Tariff supports the GFA loads not being included in network service calculations, and if the Contesting Participants have objections to the Tariff, they are free to raise those in an appropriate stakeholder or other proceeding.<sup>77</sup>

44. NIPCO opposes severing the GFA issue under the fourth *Trailblazer* approach, arguing that it would upset the balance of the bargain achieved through settlement.<sup>78</sup>

#### **D. Reply Comments – The Contesting Participants**

45. Missouri River contends that the comments filed supporting the Settlement make no effort to square NIPCO's proposed treatment of the GFAs for ratemaking purposes with Commission policy. It avers that the provisions of the SPP Tariff require allocation of a share of the Zone 19 costs to NIPCO as the transmission owner responsible for the GFAs.<sup>79</sup>

46. Missouri River addresses the claim that NIPCO's GFA service is not comparable to network service. Rejecting that assertion, Missouri River argues that point-to-point transmission customers have the right to use only a part of the SPP system, yet Order No. 888 made it clear that the costs of the entire transmission system must be allocated to such customers, based on their full reservation amounts.<sup>80</sup> According to Missouri River, Order No. 888-A made it clear that network customers must be allocated a share of transmission system costs for their full load, even if part of that load, being served by local generation, does not make full use of the transmission system.<sup>81</sup>

47. Missouri River contends that, moreover, in *Idaho Power*, the Commission rejected arguments by the transmission provider that the service provided under the GFAs at issue

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<sup>76</sup> *Id.* at 75.

<sup>77</sup> *Id.* at 78-79.

<sup>78</sup> *Id.* at 79.

<sup>79</sup> Missouri River Reply Comments at 1-2.

<sup>80</sup> *Id.* at 4-5 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,738).

<sup>81</sup> *Id.* at 5 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,258-61).

(continued ...)

was not comparable to service under the *pro forma* open access transmission tariff.<sup>82</sup> Missouri River argues that as long as the service provided to under the GFAs is firm, and the load is within the zone, then a full share of Zone 19 costs must be allocated to that service.<sup>83</sup>

### III. Discussion

#### A. Procedural Matters

48. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Basin Electric's answer because it has provided information that assisted us in our decision-making process.

#### B. Substantive Matters

##### 1. Request to Take Administrative Notice or In the Alternative, Limited Motion to Reopen the Record

##### a. Motion and Responsive Pleadings

49. NIPCO asserts that, as relevant to the instant proceeding, in *Tri-State*, the Commission found that even if it accepted the cost shift allegations made in that case, which amounted to an 8 percent potential increase in SPP Zone 17 rates, the proposal to include Tri-State in Zone 17 was just and reasonable in light of all the facts and circumstances of the case. NIPCO states that it submits the Motion to point out that, as in *Tri-State*, if the full value of the GFA-related cost shift alleged by the Contesting Participants with respect to NIPCO's GFAs were taken into account, the result would be a 0.56 per cent cost shift to Zone 19 ratepayers based on data and information already in the record from Missouri River's filings.<sup>84</sup> NIPCO adds that *Tri-State* was issued well after the Settlement was submitted in this proceeding, and contends that it is not in any way seeking to re-argue the points already made in the proceeding or re-address the Contesting Participants' cost shift arguments. NIPCO states that its intent is to instead

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<sup>82</sup> *Id.* (citing *Idaho Power*, 126 FERC ¶ 61,044 at PP 33-34).

<sup>83</sup> *Id.* at 5-6.

<sup>84</sup> NIPCO Motion at 3-4. NIPCO notes that while it disagrees with all of the Contesting Participants' objections, including that a cost shift exists at all, it includes this figure as it is the largest value of the alleged cost shift presented by any of the Contesting Participants. *Id.* at 4.

(continued ...)

bring to the Commission's attention the percentage rate increase levels that correspond to the similar levels addressed by the Commission in *Tri-State* using existing data and information already in the record.

50. In its comments in support of the motion, MidAmerican makes arguments similar to those made by NIPCO. Conversely, Trial Staff and Missouri River oppose the motion. Trial Staff argues that the motion fails to meet either standard laid out in Rule 508(d) for official notice.<sup>85</sup> Trial Staff also argues that the record should not be re-opened because *Tri-State* has no bearing on this case and NIPCO has not demonstrated good cause to reopen the proceeding.<sup>86</sup>

51. Missouri River notes that official notice is inapplicable here, because it is only permitted after a hearing has concluded, which is not the case here.<sup>87</sup> Missouri River also asserts that the motion repeats arguments that NIPCO already made in its reply comments to the Settlement. Missouri River asserts that NIPCO cited the initial decision that the Commission's opinion in *Tri-State* addressed, in which the presiding judge concluded that that any cost shift allegedly produced by the integration of *Tri-State* into SPP's Zone 17 was not of a magnitude that would have rendered unjust and unreasonable SPP's decision to integrate *Tri-State* into Zone 17.<sup>88</sup>

52. In its answer, Basin Electric assert that the answers filed by Missouri River and Trial Staff contain inaccurate characterizations of the NIPCO Motion that warrant a clarifying response. Basin Electric asserts that Missouri River's argument that NIPCO cited to the *Tri-State* initial decision for the point NIPCO makes in the motion misses the point.<sup>89</sup> Basin Electric asserts that what is relevant here is that the arguments it made

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<sup>85</sup> Trial Staff Answer at 1, 3-6 (explaining that "Rule 508(d) allows the Commission to take official notice of (i) 'any matter that may be judicially noticed by the courts of the United States,' or (ii) 'any matter about which the Commission, by reason of its functions, is expert.'" (citing 18 C.F.R. § 385.508(d) (2018)); Missouri River Answer at 4-5.

<sup>86</sup> *Id.* at 7 (arguing that "[t]he Commission has stated that such circumstances typically only exist in 'extraordinary circumstances' where the need for additional information 'outweigh[s] the need for finality in the administrative process.'" (citing *E. Texas Elec. Coop., Inc.*, 94 FERC ¶ 61,218, at 61,800 (2001)).

<sup>87</sup> Missouri River Answer at 5.

<sup>88</sup> *Id.* at 5-8.

<sup>89</sup> Basin Electric Answer at 3.

(continued ...)

regarding the initial decision in *Tri-State* were subsequently confirmed by the Commission. Basin Electric adds that although it is true that zonal placement was not a concern in this proceeding, the overall impact of the NIPCO revenue requirement on other customers in Zone 19 necessarily implicates cost-shift and rate impact arguments raised by those opposing the Settlement.<sup>90</sup>

**b. Commission Determination**

53. We deny NIPCO's Motion. In *Tri-State*, the Commission found that the potential cost shift associated with Tri-State's placement in Zone 17, in light of all of the facts and circumstances of the case, was not sufficient to render the proposed placement unjust and unreasonable.<sup>91</sup> However, this finding has no bearing on the instant proceeding, which instead concerns whether NIPCO, in light of a different set of facts and circumstances, has reasonably accounted for its GFA load in its proposed revenue requirement. The cost subsidization concerns associated with the zonal placement of transmission facilities in *Tri-State* are thus distinguishable from the issues concerning the treatment of the GFAs in NIPCO's revenue requirement in the instant proceeding. Unlike in *Tri-State*, no party contested SPP's decision to place NIPCO in Zone 19. Accordingly, we deny the Motion.

**2. The Settlement**

54. Rule 602(h)(1)(I) of the Commission's regulations provides that the Commission may decide the merits of a contested settlement only if "the record contains substantial evidence upon which to base a reasoned decision or the Commission determines that there is no genuine issue of material fact."<sup>92</sup> As discussed below, we find that we cannot approve the contested Settlement under any of the first three *Trailblazer* approaches, nor can we sever the contesting parties or contested issues under the fourth *Trailblazer* approach. Accordingly, we reject the Settlement, and remand this proceeding to the Chief Administrative Law Judge to resume hearing procedures.<sup>93</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> See *Tri-State*, 163 FERC ¶ 61,109 at PP 190-208.

<sup>92</sup> 18 C.F.R. § 385.602.

<sup>93</sup> We note that the parties may seek further settlement judge procedures as well.

(continued ...)

a. **First Approach under *Trailblazer***

55. Under the first *Trailblazer* approach, the Commission found that “if there is an adequate record, [it] can address the contentions of the contesting parties on the merits.”<sup>94</sup> This approach requires a merits determination on each contested issue. This approach is appropriate where the issues are primarily policy issues or where the parties have agreed that the record is sufficient to decide the issues on the merits. However, the Commission cannot approve a contested settlement under this approach if some of the contesting parties’ positions are found to have merit or the record lacks sufficient evidence to support a finding on the merits.<sup>95</sup>

56. The Supporting Parties argue that NIPCO has adhered to the Tariff because it is crediting the revenues from the GFAs against its revenue requirement. We find this argument unsupported. The Supporting Parties presume that revenue crediting is the appropriate treatment for the GFAs; however, as noted below, this is not necessarily the case, in part because the firmness of the GFAs is an issue of material fact. Moreover, only one of the two agreements at issue has any revenues to credit<sup>96</sup> and the service under the other non-compensatory GFA is not accounted for at all under the proposed Formula Rate. Accordingly, we find that approval of the Settlement may produce an unjust and unreasonable result.

57. NIPCO contends that a cost allocation approach is infeasible because the GFAs do not provide the equivalent of access to the entire Zone 19 or full SPP transmission system. We disagree. The service provided under the GFAs represents a use of the SPP transmission system, which now includes NIPCO’s facilities, and the SPP Tariff’s definition of Resident Load, and Attachment L of the Tariff, as noted above, specifically provide that a transmission owner with GFA load is responsible for compensating other transmission owners within and outside of its zone for its use of the SPP transmission system in meeting its GFA obligations. Accordingly, we find that a cost allocation approach is feasible under the Tariff for NIPCO’s firm GFA loads.

58. The Supporting Parties also argue that a cost allocation approach such as that contemplated in Section II.B.2(c) is infeasible because GFA load is treated as Resident Load by the Tariff and, therefore, cannot be included in a transmission owner’s reported network load or, by extension, the zonal divisor. However, the fact that GFA load is included in Resident Load, which is used to bill charges other than Schedule 9 charges, does not mean that it cannot be included in the zonal divisor. On the contrary, per

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<sup>94</sup> *Trailblazer*, 85 FERC at 62,342.

<sup>95</sup> *Id.*

<sup>96</sup> *See supra* section I.C.

Section 34.5 of the SPP Tariff, and consistent with the Commission's determination in Order No. 888, the zonal rate divisor clearly encompasses GFA load served with firm transmission service. Accordingly, the SPP Tariff fully accommodates a cost allocation approach for firm GFAs.

59. In addition, we find that the Contesting Participants have raised issues of material fact regarding whether the transmission service underlying these GFAs is sufficiently firm to warrant a cost allocation rate treatment or whether revenue crediting the GFA revenues is appropriate. As noted, there is no bright-line test for determining whether service under a pre-Order No. 888 contract is firm or is non-firm; the Commission makes such determinations on a case-by-case basis. Here, NIPCO's GFAs appear to be based on mutual coordination in order to minimize the costs of serving load on a long-term basis. In addition, the transmission service reservations in the SPP Open Access Same Time Information System associated with all of the GFAs are categorized as NERC Priority Level 7, which is used to designate firm point-to-point and network service transactions.<sup>97</sup> Further, the Contesting Participants have provided additional evidence indicating that the GFA Loads are served with firm transmission service.<sup>98</sup>

60. Collectively, this preliminarily indicates that the GFA loads are served with firm transmission service, in which case Commission precedent suggests that they should be cost-allocated.<sup>99</sup> Nonetheless, NIPCO argues that the NIPCO GFAs are actually inferior

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<sup>97</sup> Missouri River Initial Comments at Ex. MRE-005; North American Electric Reliability Corporation, Transmission Service Reservation Priorities, <https://www.nerc.com/pa/rrm/TLR/Pages/Transmission-Service-Reservation-Priorities.aspx>.

<sup>98</sup> See, e.g., Missouri River Initial Comments, Ex. MRE-001 at P 27 (“Each of the GFAs refers to the load served under it as ‘firm load’ . . . Given the “FIRM” classification noted on the [OASIS] reservation, SPP treats the GFA deliveries as firm in its transmission models when conducting studies evaluating new transmission service requests and for various other tariff processes.”); Trial Staff Initial Comments, Attachment A at P 8 (“The two specific GFAs that are at issue in this matter are labeled as GFA Nos. 806 and 807 in Attachment W of the SPP Tariff . . . Generally, these agreements are classified as Joint Use or Reciprocal Use Agreements for firm transmission service.”).

<sup>99</sup> Further, we note that even if cost allocation is not appropriate based on firmness of service, the Supporting Parties have not demonstrated the reasonableness of only crediting actual monetary revenues received against NIPCO's revenue requirement, without also accounting for the non-monetary compensation NIPCO receives for the

*(continued ...)*

to firm service because they contain provisions that would not be present in a firm transmission service agreement, such as provisions allowing NIPCO to interrupt delivery under certain circumstances and a carve-out to the parties' requirements to provide transmission service.<sup>100</sup> The disagreement among the parties indicates that the firmness of each GFA is an issue of material fact, and we are unable to resolve this dispute based on the existing record.

**b. Second Approach under *Trailblazer***

61. Under the second *Trailblazer* approach, the Commission may “approve a contested settlement as a package on the grounds that the overall result of the settlement is just and reasonable.”<sup>101</sup> This approach requires the same “detailed and independent cost benefit analysis of approving the settlement versus continued litigation. In the two cases the Commission cited in *Trailblazer* as examples of the use of the second *Trailblazer* approach,<sup>102</sup> the Commission provided detailed explanations of why the Settlement gave the contesting parties at least as good a result as continued litigation. Here, such a finding does not appear possible because certain crucial information needed to evaluate NIPCO's proposed revenue requirement is absent.

**c. Third Approach under *Trailblazer***

62. Under the third *Trailblazer* approach, the Commission may approve a contested settlement “where (i) it determines that the contesting party's interest is sufficiently attenuated that the settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements and (ii) the Commission [makes] an independent finding benefits the directly affected settling parties.”<sup>103</sup> Here, there are two obstacles to this approach: (1) the record is insufficient to determine whether the Settlement's benefits outweigh the objections to it (as discussed above) and, more significantly, and

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large amount of service it provides on a reciprocal basis under the GFAs, e.g., by including imputed monetary revenues for this service in the revenue credit.

<sup>100</sup> See, e.g., NIPCO Reply Comments at 34-35.

<sup>101</sup> *Trailblazer*, 85 FERC at 62,342.

<sup>102</sup> See *Indicated Shippers v. Sea Robin Pipeline Co.*, 79 FERC ¶ 61,072 (1997); *Pacific Gas Transmission Co.*, 76 FERC ¶ 61,246 (1996).

<sup>103</sup> *Trailblazer*, 85 FERC at 62,343.

(continued ...)

(2) the contesting parties are located in Zone 19 and have a direct interest in the Settlement's provisions relating to NIPCO's revenue requirement.

**d. Fourth Approach under *Trailblazer***

63. Finally, under the fourth *Trailblazer* approach, the Commission may approve a settlement as to the non-contesting parties, while allowing the contesting parties to litigate their claims, or sever any contesting issue.<sup>104</sup> Under this approach, even absent a record sufficient to make merits determinations, the Commission may approve the Settlement for consenting parties and sever the contesting party or any contested issue. The fourth *Trailblazer* approach is not applicable if contesting parties raise valid concerns applicable to all parties or concerns involving the overall cost of the service at issue.<sup>105</sup> For the reasons discussed above, we find that the fourth *Trailblazer* approach is not an option here.

The Commission orders:

(A) NIPCO's Motion to Take Administrative Notice or in the Alternative, Limited Motion to Reopen the Record is hereby denied, as discussed in the body of this order.

(B) The proposed Settlement is hereby rejected, as discussed in the body of this order.

(C) The proceeding is hereby remanded to the Chief Administrative Law Judge to resume hearing procedures, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>104</sup> *Id.* at 62,344.

<sup>105</sup> *Id.* (addressing the allocation of rates among an oil pipeline's customers).