170 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket Nos. ER14-2154-008
ER15-277-006
(consolidated)

ORDER DENYING REHEARING

(Issued March 27, 2020)

1. On September 20, 2018, in Opinion No. 564,[1] the Commission affirmed an Initial Decision[2] finding that 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). The Commission also affirmed that MISO possessed filing rights, under Appendix K of the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. (Owners Agreement) and section 205 of the Federal Power Act (FPA),[3] to make the filing on October 31, 2014 (October 2014 Filing) to add RPU to Zone 16. On October 22, 2018, the MISO Transmission Owners and Xcel Energy Services Inc. (Xcel), on behalf of Northern States Power Company, a Minnesota corporation (NSP) and Northern States Power Company, a Wisconsin corporation, (collectively, Rehearing Parties) filed separate requests for rehearing of Opinion No. 564. For the reasons discussed below, we deny the requests for rehearing.

[1] *Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 564, 164 FERC ¶ 61,194 (2018) (Opinion No. 564).

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

[3] 16 U.S.C. § 824d (2018).

I. Background

A. Earlier Proceedings

2. This matter involves cost recovery by RPU for its investment in the H-NR Line, of which it is a 14.7% owner.[4] The H-NR Line is one component of the larger Hampton-Rochester-La Crosse transmission project (HRL Project).[5]

3. While two transmission line segments of the HRL Project qualified for regional cost-sharing as Baseline Reliability Projects (whose cost recoveries are not at issue in these proceedings) under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), the H-NR Line did not.[6] Instead, it was classified as "Other," meaning its owners' costs were allocated according to a different formula.[7] NSP and Southern Minnesota Municipal Power Agency (SMMPA) assigned their respective ATRRs associated with their ownership interests in the H-NR Line to Zone 16—where that line is physically located—and Dairyland Power Cooperative (Dairyland) assigned its ATRR for the H-NR Line to Zone 26, where its load is located.[8]

4. On June 9, 2014, in Docket No. ER14-2154-000, MISO requested, as relevant here, Commission approval to revise Attachment FF-4 and Schedules 7, 8, and 9 of its Tariff to incorporate RPU's existing transmission facilities into Zone 20 (June 2014 Filing).[9] On November 28, 2014, the Commission conditionally accepted the June 2014 Filing and set portions of it for hearing and settlement proceedings.[10]

5. On October 31, 2014, in Docket No. ER15-277-000, MISO and RPU sought Commission approval, as relevant here, to modify Schedules 7, 8, and 9 of the Tariff to add RPU as a Transmission Owner to Zone 16, thereby allowing RPU to allocate its ATRR for its investment in the H-NR Line to Zone 16, effective January 1, 2015

---

[4] Opinion No. 564, 164 FERC ¶ 61,194 at P 3. For additional background, see *id.* PP 2-15.

[5] *Id.* PP 2-5.

[6] *Id.* PP 4-5.

[7] *Id.* P 5.

[8] *Id.*

[9] *Id.* P 6.

[10] *Id.*

(October 2014 Filing).[11] On December 30, 2014, the Commission conditionally accepted the October 2014 Filing, setting it for hearing and settlement, and consolidating it with the June 2014 Filing.[12]

6. On April 16, 2016, RPU and SMMPA filed a partial offer of settlement in Docket Nos. ER14-2154-005 and ER15-277-004, which included a settlement agreement that resolved all issues set for hearing 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 (Partial Settlement).[13] The Settlement Judge certified the Partial Settlement to the Commission, which the Commission approved, 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, to be litigated.[14]

7. The parties were unable to agree, settlement procedures were terminated, and the Presiding Judge conducted a hearing on those issues.[15] On May 22, 2017, he issued an Initial Decision finding that RPU's ATRR for the H-NR Line should be recovered in Zone 16[16] and that MISO possessed filing rights to make the October 2014 Filing.[17] Several parties, including Xcel and MISO Transmission Owners, filed briefs on or opposing exceptions.[18]

B. Opinion No. 564

8. On September 20, 2018, the Commission issued Opinion No. 564, affirming the Presiding Judge's findings in relevant part.[19] The Commission explained that Schedules 7, 8, and 9 of the Tariff set forth the default rules for: (1) recovering a Transmission Owner's ATRR for a transmission facility; (2) that is classified as "Other";

---

[11] *Id*. P 7.

[12] *Id*.

[13] *Id*. P 11.

[14] *Id*.

[15] *Id*. PP 12, 14.

[16] *E.g.,* Initial Decision, 159 FERC ¶ 63,016 at PP 81-82, 126.

[17] *E.g., id.* PP 234, 238.

[18] Opinion No. 564, 164 FERC ¶ 61,194 at P 15.

[19] *Id*. P 1.

(3) where the Transmission Owner participates in multiple pricing zones; and (4) has transmission facilities in multiple pricing zones.[20] The Commission determined that Section 8(b) of Schedules 7 and 8 and Section 3(b) of Schedule 9 (Sections 3(b) and 8(b)):

> [e]xpressly address[] 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.[21]

9. The Commission found that the H-NR Line is physically located in Zone 16.[22] Accordingly, it held that Sections 3(b) and 8(b) require that RPU's ATRR associated with the H-NR Line should be recovered through Zone 16 rates.[23] The Commission thus affirmed the Presiding Judge's ruling that the proposed cost allocation is just and reasonable.[24]

10. The Commission also affirmed the Presiding Judge's finding that MISO has the filing rights to make the October 2014 filing adding RPU as a Transmission Owner to Zone 16.[25] Although the Owners Agreement delineates certain exceptions to MISO's "full and exclusive right" to submit section 205 filings, the Commission determined that

---

[20] *Id*. P 133.

[21] *Id*. P 134 (quoting Sections 3(b) and 8(b), Ex. RPU-29 at 13-14, 32-33, 45-46 (citing Initial Decision, 159 FERC ¶ 63,016 at P 122)).

[22] *Id*. P 136.

[23] *Id*.

[24] *Id*.

[25] *Id*. PP 215-220.

MISO Transmission Owners and Xcel had not demonstrated that any such exception applies in these circumstances.[26]

C. Requests for Rehearing

11. Rehearing Parties claim that the Commission erred in Opinion No. 564 by: (1) interpreting the Tariff as requiring the assignment of RPU's ATRR for the H-NR Line to Zone 16; (2) disregarding longstanding ratemaking principles, including the cost causation principle and "beneficiary pays" requirement; and (3) finding that MISO had the requisite filing rights under Appendix K to the Owners Agreement to make the October 2014 Filing amending Schedules 7, 8, and 9 of the Tariff to add RPU as a Transmission Owner to Zone 16.

II. Discussion

A. MISO Appropriately Assigned RPU's ATRR to Zone 16

1. MISO's Tariff is Determinative

12. Rehearing Parties reiterate their challenges to the assignment of RPU's ATRR for its investment in the H-NR Line to Zone 16, and they argue that Opinion No. 564 could result in adverse consequences for current and future cost allocation under the Tariff.[27] Rehearing Parties contend that Sections 3(b) and 8(b) do not require assignment of RPU's ATRR to Zone 16. Specifically, they reason that the Presiding Judge and the Commission erred in construing those provisions' references to "facilities" and "zones" to mean *physical* facilities and *geographic* zones.[28]

13. We deny rehearing for the reasons set forth in Opinion No. 564, and continue to find that the Presiding Judge appropriately determined 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 that participate in joint pricing zones and have facilities in more than one zone, and thus is just and reasonable.[29]

---

[26] *Id*.

[27] MISO Transmission Owners Rehearing Request at 2-3, 13-14.

[28] Xcel Rehearing Request at 11, 23-26, 30; MISO Transmission Owners Rehearing Request at 10, 13, 25.

[29] Opinion No. 564, 164 FERC ¶ 61,194 at P 118.

14. As an initial matter, because the H-NR Line is classified as an "Other" facility, RPU's ATRR for that transmission facility is eligible for cost recovery under Attachment O of the Tariff.[30] As the Presiding Judge observed, 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 . . . ."[31] The rates calculated under Attachment O are recovered through charges imposed according to the rules set forth in Schedules 7, 8, and 9 of the Tariff for, respectively, firm point-to-point, non-firm point-to-point, and network transmission service.[32] Thus, RPU's recovery of its ATRR for its investment in the H-NR Line turns on the interpretation of the language in those schedules.[33]

15. We continue to agree with the Presiding Judge that Sections 3(b) and 8(b) determine RPU's cost allocation here.[34] Those provisions apply to each pricing zone with Transmission Owners that own transmission facilities in more than one pricing zone.[35] Specifically, Sections 3(b) and 8(b) provide that:

> 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 . . . .
>
> 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

[30] *Id*. P 16.

[31] *Id*. (quoting Initial Decision, 159 FERC ¶ 63,016 at PP 31, 61 (quoting Ex. RPU-16 at 30-31)).

[32] Opinion No. 564, 164 FERC ¶ 61,194 at P 16.

[33] *Id*.

[34] *Id*. P 17; Initial Decision, 159 FERC ¶ 63,016 at PP 67-69.

[35] Opinion No. 564, 164 FERC ¶ 61,194 at P 17.

> its transmission facilities that are recovered in Attachment O zonal transmission rates located in that pricing zone . . . .[36]

16. Rehearing Parties claim that the Commission erred in finding that, under Sections 3(b) and 8(b), for Attachment O transmission facilities owned by Transmission Owners that participate in joint pricing zones and have facilities in more than one zone, the costs of such facilities should be allocated to the transmission pricing zone in which the facilities are physically located. We disagree and continue to find that the Presiding Judge appropriately determined that the operative phrase "facilities located within that pricing zone," as used in Sections 3(b) and 8(b), is reasonably interpreted as meaning those facilities *physically* located in a pricing zone.[37] We base our conclusion on the text, context, and structure of Schedules 7, 8, and 9. First, the ordinary, common meaning of the word "located" is "existing in a particular place."[38] Contrary to Rehearing Parties' arguments, consulting dictionary definitions is both rational and consistent with the Commission's prior practice.[39] Second, the word "located" modifies the word "facilities" in the operative phrase "facilities located within that pricing zone."[40] As the Commission explained in Opinion No. 564, because transmission facilities are tangible, they are physical objects that cannot be moved from zone-to-zone; therefore, interpreting "located" to mean "existing in a particular place" is logical.[41]

17. Xcel counters that interpreting "located" to mean "physically located" is not compelled by the Tariff language because "transmission facilities" are "ethereal concepts" that might "simply represent certain legal concepts and rights (such as rate schedules) and not fixtures of steel."[42] Even assuming for purposes of argument that Xcel's counterintuitive, counter-textual interpretation is a plausible reading of the Tariff,

---

[36] *Id*. (quoting Sections 3(b) and 8(b), Ex. RPU-29 at 13-14, 32-33, 45-46 (emphasis added)).

[37] *Id*. P 119.

[38] *Id*. P 120 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 97 (quoting MacMillan Dictionary, *Located*, http://www.macmillandictionary.com/dictionary/british/located)).

[39] Opinion No. 564, 164 FERC ¶ 61,194 at P 122 n.249 (collecting cases).

[40] *Id*. P 121.

[41] *Id*.

[42] Xcel Rehearing Request at 29.

we find that the Presiding Judge's interpretation that the Commission affirmed is the more appropriate reading of that language.

18. Context also supports our interpretation of "located" as referring to a geographic area. Rehearing Parties argue that, because Section 1 of Schedule 9 uses the term "physically located," the unmodified term "located" in Sections 3(b) and 8(b) should be construed differently.[43] But Section 1 of Schedule 9 uses "physically located" and "located" interchangeably.[44] Specifically, Section 1 states that "[t]he 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* . . . ."[45] It is undisputed that "load"—i.e., customers that are manifestly "tangible"—can only be *physically* located somewhere. Further, the use of both "physically located" and "located" to modify the same term "load" undermines any argument that the unmodified term "located" *must* mean something other than *physical* location.[46]

19. Nor do we find persuasive Rehearing Parties' argument that the word "zone" in Sections 3(b) and 8(b) refers to something other than a geographic area.[47] Because end-users (load) are physically located in zones, the zone in which the load is located must be a geographic area.[48] That interpretation applies with equal force to the location of

---

[43] *Id*. at 30; MISO Transmission Owners Rehearing Request at 10.

[44] Opinion No. 564, 164 FERC ¶ 61,194 at P 126.

[45] *Id*. P 126 n.257 (quoting Section 1 of Schedule 9, Ex. RPU-29 at 37-38 (emphasis added)).

[46] Our conclusion dispenses with another of Xcel's arguments. Xcel observes that Schedules 7 and 8 involve rates for point-to-point transmission service, which service is not directly tied to any particular load being served, whereas Schedule 9 involves service to load, which must, by definition, be physically located somewhere. Xcel Rehearing Request at 31. But this distinction does not compel the conclusion that the phrase "located in" in Schedules 7 and 8 must mean something other than *physical* location. And for the various reasons described, such a reading is unreasonable.

[47] Xcel Rehearing Request at 24-25; MISO Transmission Owners Rehearing Request at 11.

[48] Opinion No. 564, 164 FERC ¶ 61,194 at P 127.

transmission facilities.[49] Indeed, nothing in Schedules 7, 8, or 9 suggests that "zone" is used differently across the schedules when paired with "facilities" rather than "load."[50] To the contrary, Sections 3(b) and 8(b) use the terms "located" and "zone" together to describe *both* "load" *and* "facilities," without suggesting a different meaning for either "located" or "zone" in the two 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: . . . .[51]

Because "zone"—whether used in the context of "load" or "facilities"—reasonably refers to a geographic area, we affirm our prior determination that "zone" refers to a geographic area in the operative phrase "facilities located within that pricing zone."[52] And because "pricing" modifies "zone," we further affirm our prior determination that the term "pricing zones" refers to geographic areas where those facilities are located.[53] Putting it all together, where Sections 3(b) and 8(b) apply, a Transmission Owner should—"[u]nless otherwise authorized by the Commission"—recover its ATRR for a transmission facility through the pricing zone in which the transmission facility is physically located. We refer to this as the default rule.

20. Applying our interpretation of "pricing zone" to mean a geographic location, and applying our interpretation of "located" to mean "physically located"—as those terms are used in Sections 3(b) and 8(b)—we further affirm our prior determination that the H-NR Line is located in Zone 16.[54] The participants in the proceeding before the Presiding Judge agreed that the H-NR Line is physically located in the NSP Local Balancing Authority (LBA) area, and the record reflects that pricing zones generally track the metered boundaries of the LBA area of the pricing zone's designated Transmission

---

[49] *Id*. P 128.

[50] *Id*.

[51] *Id*. P 129 (quoting Sections 3(b) and 8(b), Ex. RPU-29 at 15, 33, 46 (emphasis added)).

[52] *Id*. PP 128-29.

[53] *Id*. P 129.

[54] *Id*. P 130.

Owner.[55] On rehearing, Xcel continues to observe that the ATRRs for several transmission facilities are recovered in pricing zones that are not associated with the LBAs in which the facilities are physically located.[56] But the fact that *other* Transmission Owners recover their ATRRs irrespective of their facilities' physical locations is consistent with the Tariff's provision allowing for such negotiated arrangements if agreed-to by the parties and authorized by the Commission.[57] Xcel even acknowledges that the "recovery schemes" divorcing facility locations from pricing zones result from negotiations by the relevant parties to recover costs in a way *other than* the default rule.[58] And, contrary to Xcel's suggestion, that parties may negotiate out of the default rule does not somehow negate that rule. This conclusion applies with particular force here, where our reading of Sections 3(b) and 8(b) flows directly from the text, context, and structure of Schedules 7, 8, and 9.[59] Accordingly, the fact that *other* Transmission Owners' course of performance has followed something other than the default rule does not, contrary to Xcel's contention, vitiate the legal force of that rule.[60]

---

[55] *Id*.; *see also* Initial Decision, 159 FERC ¶ 63,016 at P 75 (discussing testimony establishing that MISO pricing zones are generally based on LBA areas, and that a pricing zone typically includes facilities located within a particular LBA).

[56] Xcel Rehearing Request at 35 n.96.

[57] Opinion No. 564, 164 FERC ¶ 61,194 at P 142. The Tariff provides that, "[u]nless 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" shall be calculated according to the default rule, described herein. *Id*. P 133 (quoting Sections 3(b) and 8(b)).

[58] Xcel Rehearing Request at 37. Xcel claims that the Commission "provides no evidence that MISO Transmission Owners have known that they were required to file to seek approval when allocating distant transmission facilities built for their benefit to their own pricing zone." *Id*. at 38. This is incorrect. *See* Opinion No. 564, 164 FERC ¶ 61,194 at P 142 (citing *N. States Power Co., a Minn. Corp.*, Docket No. ER13-784-000 (Mar. 8, 2013) (delegated letter order approving NSPM-SMMPA settlement)); *see also* Opinion No. 564, 164 FERC ¶ 61,194 at P 5 & n.10 (noting other allocations agreed to by the owners of the H-NR Line). And, even if the Commission did not formally approve all such alternative arrangements, that does not negate the Commission's reasonable interpretation of the Tariff here.

[59] Opinion No. 564, 164 FERC ¶ 61,194 at P 130.

[60] *Cf.* Xcel Rehearing Request at 37.

21. Xcel also argues that Opinion No. 564 fails to conform to the principles of contract interpretation set forth in the Restatement (Second) of Contracts.[61] The Restatement (Second) of Contracts provides that "express terms" of a contract are accorded greater weight than extrinsic evidence—e.g., parties' course of performance—and that "an interpretation which gives a reasonable, lawful, and effective meaning to all the terms [of a contract] is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect."[62] As discussed above, the "express terms" of Sections 3(b) and 8(b) support our conclusion that the H-NR Line is located in Zone 16.[63] Further, our interpretation gives all terms—e.g., "zone," "located," "facilities," "load"—independent effect.[64] Accordingly, the Restatement (Second) of Contracts bolsters our determination.

22. MISO Transmission Owners claim that the Commission misinterpreted the MISO Business Practices Manual (BPM) in affirming the Presiding Judge's determination that BPM 21 supports the Presiding Judge's interpretation of Sections 3(b) and 8(b).[65] We disagree. While of limited weight, BPM 21, Section 3.7, explains that a Transmission Owner with facilities in multiple pricing zones should, "in general," allocate its ATRRs for each facility to the pricing zone in which each facility is "*physically* located."[66] As explained in Opinion No. 564, the modifier "in general" is best interpreted as acknowledging the exception to the default rule—namely, that a Transmission Owner may allocate the ATRR for a facility to a zone other than the zone in which the facility is

---

[61] *Id*. at 20-21.

[62] *Id*. at 20; Restatement (Second) of Contracts § 203(a).

[63] For this reason, Xcel's citation to cases discussing the probative value of parties' course of performance lacks relevance. *See* Xcel Rehearing Request at 37 n.105. While parties' course of performance may be probative in some instances, it does not supersede the Tariff's text. *See* Restatement (Second) of Contracts § 203(b) (2009) (explaining that "express terms [of a contract] are given greater weight than course of performance, course of dealing, and usage of trade"); *see also Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 703 (D.C. Cir. 2010) (relying on the Restatement (Second) of Contracts in construing a tariff subject to the Commission's jurisdiction).

[64] Nor does the fact that Xcel and RPU have offered "dueling interpretations" of the Tariff mean the disputed language equally supports Xcel's interpretation, as Xcel contends. Xcel Rehearing Request at 27. It means only that the parties disagree on the proper interpretation.

[65] MISO Transmission Owners Rehearing Request at 18.

[66] Opinion No. 564, 164 FERC ¶ 61,194 at P 20 (emphasis added).

physically located.[67] Further, that Section 3.7 of BPM 21 uses the phrase "*physically* located in each pricing Zone" supports our finding that zones are geographic areas, and that the phrase "facilities located within that pricing zone" in Sections 3(b) and 8(b) means facilities *physically* located in a pricing zone.[68]

23. Xcel argues that the Commission's interpretation of Sections 3(b) and 8(b) creates an inconsistency with Section 3(a) of Schedule 9 and Section 8(a) of Schedules 7 and 8.[69] Those provisions require calculating transmission rates for a pricing zone based on the sum of the revenue requirements for transmission "facilities located within the pricing zone." Xcel interprets this language to "make[] clear that it is the 'revenue requirements' of a given Transmission Owner that are located 'within the pricing zone' and must be identified for a proper calculation of rates under these schedules."[70]

24. We are not persuaded by Xcel's argument, which is untethered to the actual language of Sections 3(a) and 8(a). Those provisions do not inform *whether* a Transmission Owner's revenue requirement is tied to a particular pricing zone. For that information, we look to Sections 3(b) and 8(b). Instead, Sections 3(a) and 8(a) merely explain that the transmission rate shall be based on the aggregate of the revenue requirements that are assigned to a particular pricing zone, as determined by Sections 3(b) and 8(b).

25. Finally, Rehearing Parties' interpretation of Sections 3(b) and 8(b) would undercut the force and effect of those provisions, rendering them uninformative and circular. Sections 3(b) and 8(b) establish rules for calculating a Transmission Owner's ATRR for a particular transmission facility. If, as Rehearing Parties argue, "facilities" merely refers to "legal concepts and rights" rather than tangible objects, and "located" means something other than a geographic location, then the provisions' significance would be entirely undermined: the Tariff would leave unanswered the question of *whether* a transmission facility is located in a particular pricing zone, and thus would provide no guidance on how to allocate a Transmission Owner's ATRR. Rehearing Parties' interpretation, in effect, alters the text of Sections 3(b) and 8(b) to state the following: "each transmission owner's total Net Revenue Requirement . . . is allocated proportionately to each pricing zone in which the [transmission owner's Net Revenue Requirement is allocated for its transmission facilities]." We agree with the Presiding

---

[67] *Id*. P 138.

[68] *Id*.

[69] Xcel Rehearing Request at 28.

[70] *Id*.

Judge that this is a "circular, cumbersome result,"[71] and decline to read the Tariff in such an anomalous way.[72]

2. Other Ratemaking Principles are Not Determinative

26. Rehearing Parties' rehearing requests repeat the argument that, regardless of the Tariff requirements, the Commission should have determined cost allocation for the H-NR Line according to the cost causation and beneficiary pays principles.[73] They contend that the cost of transmission facilities should be allocated to the loads that benefit from those facilities in a way that is roughly commensurate with the benefits received, rather than based on the location of the facilities.[74] Xcel argues that failure to adhere to cost causation allows RPU to be a free rider, and ultimately results in an unjust and unreasonable allocation of costs.[75] It reasons that RPU derives reliability and economic benefits from the H-NR Line by allowing RPU to better serve its load in the Rochester area, providing the opportunity to shut down older coal-fired generation in Rochester, and by allowing it to rely on the MISO wholesale market for generation capacity.[76] Xcel cites other Transmission Owners benefitting from the H-NR Line that charge their share

---

[71] Opinion No. 564, 164 FERC ¶ 61,194 at P 23 (quoting Initial Decision, 159 FERC ¶ 63,016 at P 102).

[72] *See Validus Reinsurance, Ltd. v. United States*, 786 F.3d 1039, 1045-46 (D.C. Cir. 2015) (avoiding interpretations "that bring about an anomalous result when other interpretations are available" (internal quotations omitted)); *see also Colo. Interstate Gas*, 599 F.3d at 703 (where practicable, courts read a tariff in a way that gives effect to all its provisions); *DC Energy*, 138 FERC ¶ 61,165 at P 76 (2012) (rejecting tariff interpretation that would render it circular); *Pub. Serv. Co. of New Hampshire*, 86 FERC ¶ 61,174 at 61,598 (1999) ("It is well established in contract law that a contract should be construed so as to give effect to all of its provisions and to avoid rendering any provision meaningless."); Restatement (Second) of Contracts § 203(a)).

[73] Xcel Rehearing Request at 40-49; MISO Transmission Owners Rehearing Request at 11-12.

[74] Xcel Rehearing Request at 42; MISO Transmission Owners Rehearing Request at 11-12.

[75] Xcel Rehearing Request at 43-44. MISO Transmission Owners take no position on whether inclusion of RPU's ATRR for its investment in the H-NR Line in transmission Zone 16 results in just and reasonable rates. MISO Transmission Owners Rehearing Request at 3.

[76] Xcel Rehearing Request at 44-45.

of costs to the loads they serve rather than to Zone 16,[77] as well as MISO's own statements that it would not prohibit Transmission Owners from allocating costs to pricing zones other than the LBAs in which the pertinent transmission facilities are located.[78]

27. As the Commission explained, Rehearing Parties' invocation of cost causation rests on an erroneous premise: that Tariff Sections 3(b) and 8(b) do not set forth a default cost allocation method.[79] As discussed above, we hold that they do. Nonetheless, Xcel relies on precedent explaining that, under the beneficiary pays principle, the relationship between the costs of a facility shouldered by ratepayers must be "roughly commensurate" with the benefits those ratepayers receive from that facility.[80] However, in those cases, the issue was the justness and reasonableness of a proposed rate design. Here, by contrast, no party challenges MISO's rate design, codified in Sections 3(b) and 8(b) and already approved by the Commission.[81] Xcel is, instead, challenging MISO's *implementation* of a rate design that already exists. Indeed, taking Xcel's approach would be particularly inappropriate here because, as discussed, adopting its interpretation of Sections 3(b) and 8(b) would deprive those provisions of independent meaning, thereby violating precepts of tariff interpretation.

28. Xcel contends that, notwithstanding the language of Sections 3(b) and 8(b), the Commission still disregarded cost causation inappropriately because three Transmission Owners—Dairyland, NSP, and SMMPA—charge costs for their investments in various transmission lines to customers outside the zone in which a transmission line is physically located.[82] Xcel argues that MISO allowed those utilities to enact such cost allocations.[83] But MISO's statements merely reflect, as we have determined, that the Tariff contains both a default rule, and an exception to that rule.[84] As discussed above,

---

[77] *Id*. at 46-47.

[78] *Id*. at 47 n.126 (quoting Ex. XES-047)).

[79] Opinion No. 564, 164 FERC ¶ 61,194 at PP 140, 180.

[80] Xcel Rehearing Request at 42 (citing, *inter alia*, *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 505 (5th Cir. 2016); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)).

[81] Opinion No. 564, 164 FERC ¶ 61,194 at PP 140, 180.

[82] Xcel Rehearing Request at 46-48.

[83] *Id*. at 47-48.

[84] MISO stated that: (1) "[t]he Tariff does not *prohibit* a Transmission Owner

NSP and SMMPA assigned their respective ATTRs for the H-NR Line to Zone 16, in accordance with the default rule. That Dairyland looked outside Zone 16 to allocate costs for the H-NR Line says nothing about the reasonable interpretation of Sections 3(b) and 8(b); it merely confirms the exception to the default rule set forth in those provisions.

29. Similarly, Xcel faults the Commission for not addressing *Midwest Independent Transmission System Operator, Inc.*,[85] in which the Commission accepted MISO and Dairyland's proposal, under FPA section 205, to revise the Tariff to reflect the addition of Dairyland as a pricing zone in connection with its integration into MISO.[86] In that proceeding, SMMPA, a party to a bilateral transmission sharing agreement with Dairyland, protested the proposal and argued that the Commission should instead direct Dairyland to enter into a joint pricing zone, to include the shared facilities, under Section III.A.8 of Appendix A to the Owners Agreement.[87] Xcel claims that the Commission, in Opinion No. 564, failed to explain the inconsistency between Opinion No. 564 and its ruling on SMMPA's protest.[88] We note that Xcel cited this case in its brief on exceptions only for the background proposition that "[c]ertain of those new [MISO] members have been added with their own Pricing Zones, typically if the new

---

from including revenue requirements in its Attachment O for investments in transmission facilities located outside of its physical Local Balancing Authority Area," Ex. XES-047 at 3 (emphasis added)), and (2) "Dairyland's inclusion of its HRL Project costs in Zone 26 is not a violation of any MISO cost allocation methodology." *Id*. Similarly, as explained in Opinion No. 564, MISO Transmission Owners' claim that the Presiding Judge erred in discounting the MISO data response—because there was no cross-examination of its author and, in any event, the data response did not address Schedules 7, 8, and 9, Initial Decision, 159 FERC ¶ 63,016 at PP 131, 133—is misguided. The MISO data response stated that the Tariff "neither requires nor precludes" a Transmission Owner's allocation of its ATRR to the pricing zone in which the subject facility is physically located. Opinion No. 564, 164 FERC ¶ 61,194 at P 146 (quoting Ex. XES-46 at 2). This statement is consistent with our conclusion that Sections 3(b) and 8(b) set forth a default cost allocation rule that is subject to an exception.

[85] 131 FERC ¶ 61,187, at P 26 (2010).

[86] Xcel Rehearing Request at 46-47.

[87] 131 FERC ¶ 61,187 at P 26.

[88] Xcel Rehearing Request at 47 ("Opinion No. 564 has no references or citations to this decision.").

member also operated as a [Balancing Authority Area] or LBA."[89] Xcel did not, either on exceptions or now on rehearing, address the Presiding Judge's finding that the Dairyland case is unpersuasive here because "the tariff did not require implementation of that proposal."[90] Specifically, the Presiding Judge correctly found that, unlike the costs at issue here which are governed by Sections 3(b) and 8(b) of the Tariff, "those allocations were governed by a shared transmission facilities agreement between SMMPA and Dairyland, which the Commission determined to be a 'carved-out Grandfathered Agreement.'"[91]

30. Finally, Rehearing Parties contend that Opinion No. 564 will have unintended and undesirable consequences. Xcel argues that our interpretation of Sections 3(b) and 8(b) will upend predictable cost allocations for existing and future transmission projects, while incentivizing disfavored conduct by Transmission Owners.[92] Similarly, MISO Transmission Owners claim that our conclusion could incentivize Transmission Owners to build facilities far from their load, triggering free-rider concerns.[93] They also argue that our conclusion fails to reflect the interconnected nature of the MISO transmission system, which—they somewhat inconsistently argue—already accommodates that very practice: Transmission Owners serve load via facilities that are built in geographic pricing zones other than where their loads are physically located.[94] Xcel predicts that our decision will "encourage[] entities dissatisfied with the existing implementation of the Tariff to come up with new interpretations loosely connected with the language in the [Tariff]."[95]

31. We are unpersuaded. First, we disagree with Xcel's contention that our decision frees parties to "effectively overcome the historical application of a tariff provision by

---

[89] Xcel Brief on Exceptions at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,187).

[90] Initial Decision, 159 FERC ¶ 63,016 at P 158.

[91] *Id*. (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,187 at PP 20, 26).

[92] Xcel Rehearing Request at 49-55.

[93] MISO Transmission Owners Rehearing Request at 14.

[94] *Id*.

[95] Xcel Rehearing Request at 51.

simply proffering a new interpretation based on their understanding of the words."[96] The Commission's role in this dispute is, indeed, to reasonably interpret the Tariff, in line with applicable interpretive principles. We have done so here. Further, to the extent the default rule triggers free-rider concerns, those concerns were appropriately addressed in the tariff review proceeding resulting in Sections 3(b) and 8(b).[97]

B. MISO Possessed the Right Under Appendix K to the Tariff and FPA Section 205 to Make the October 2014 Filing

32. Rehearing Parties argue that MISO lacks the FPA section 205 filing rights necessary to make the October 2014 Filing amending Schedules 7, 8, and 9 to add RPU as a Transmission Owner to Zone 16.[98] MISO Transmission Owners argue that Section II.C.2 of Appendix K to the Owners Agreement (establishing filing rights as between MISO and MISO Transmission Owners) restricts the authority to file Tariff revisions addressing rate designs in a pricing zone to the Transmission Owners within that zone, and also requires that individual Transmission Owners attempt to reach agreement before unilaterally filing a rate design proposal.[99] Rehearing Parties also contend that statements in the Explanatory Statement accompanying the 2004 unilateral offer of settlement (Appendix K Settlement)[100] between MISO and MISO Transmission Owners—which ultimately resulted in the Owners Agreement—support their position that individual Transmission Owners—not MISO—"possess the full and exclusive right to submit filings to establish their own revenue requirements, as well as rate structures within their own zones."[101]

33. Rehearing Parties argue that Section II.C.3 of Appendix K also precludes MISO's October 2014 Filing because it permits only Transmission Owners whose zones would be

---

[96] *Cf. id*. at 52.

[97] Xcel also speculates that our interpretation of the default rule could "erod[e] investor confidence in the MISO cost allocation process," but provides no support for its supposition. *See* Xcel Rehearing Request at 54.

[98] Xcel Rehearing Request at 56-61; MISO Transmission Owners Rehearing Request at 19-22.

[99] MISO Transmission Owners Rehearing Request at 19-20.

[100] The Commission approved the Appendix K Settlement in *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,380 (2005).

[101] MISO Transmission Owners Rehearing Request at 22 (quoting Appendix K Settlement, Explanatory Statement at 5); *see also* Xcel Rehearing Request at 59-60.

"realigned, eliminated, or otherwise reconfigured by a filing" to make such a filing.[102] Rehearing Parties reason that adding RPU's ATRR to the ATRR for Zone 16 changes the rates within that zone, thereby "reconfigur[ing]" the zone.[103]

34. We are not persuaded by MISO Transmission Owners' argument that Section II.C.2 of Appendix K precludes the October 2014 Filing. That provision states that:

> If there are multiple [Transmission] Owners within a zone, those [Transmission] Owners should seek to reach agreement on a rate *design*. If no agreement is reached, then each [Transmission] Owner within the zone shall have the right to submit a FPA section 205 filing proposing an initial rate *design* or rate *design* change for the zone.[104]

By its terms, Section II.C.2 applies to rate *designs*—and changes thereto—not to the calculation of rates. Adding RPU's ATRR for the H-NR Line affected the Zone 16 *rate*, but MISO Transmission Owners have not demonstrated that MISO also sought a change to the Zone 16 rate *design*, i.e. the calculation methodology.[105] Accordingly, we affirm the Commission's conclusion in Opinion No. 564 that Section II.C.2 does not preclude MISO's October 2014 Filing.[106]

35. We also are not persuaded by Rehearing Parties' argument that Section II.C.3 precludes MISO's October 2014 Filing. Section II.C.3, titled "Zone Boundaries," provides that, "[f]or filings that propose to realign, eliminate, or otherwise reconfigure rate zones, only those [Transmission] Owners whose zones would be realigned, eliminated, or otherwise reconfigured by a filing shall possess the corresponding FPA section 205 rights."[107] We continue to find it reasonable to interpret the terms

---

[102] Ex. XES-29 at 4 (citing Section II.C.3 of App. K to the Owners Agreement).

[103] Xcel Rehearing Request at 57; MISO Transmission Owners Rehearing Request at 21.

[104] Ex. XES-29 at 4 (quoting Section II.C.2 of App. K to the Owners Agreement (emphasis added)).

[105] Opinion No. 564, 164 FERC ¶ 61,194 at P 218.

[106] *Id*.

[107] Ex. XES-29 at 4 (quoting Section 11.C.3 of Appendix K to the Owners Agreement).

"reconfigure" and "realign," in the context of a section addressing "Zone *Boundaries*," as reflecting a change in the physical configuration of a zone—not simply a change in rates.[108] Further—and consistent with our interpretation of pricing zones as geographic constructs—we affirm the finding that the word "boundary" as used in Section II.C.3 is physical in kind.[109] Xcel provides no compelling reason to reject this interpretation of Section II.C.3. Instead, Xcel offers the circular and conclusory statement that "[t]he October [2014] Filing added RPU to Zone 16, thereby reconfiguring or realigning Zone 16 by changing how that zone is defined in the [Tariff]."[110] Because we find Xcel's argument unpersuasive, we reaffirm the Commission's holding in Opinion No. 564 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."[111]

36. We further do not agree with Rehearing Parties' argument that the Explanatory Statement to the Appendix K Settlement between MISO and the MISO Transmission Owners divested MISO of its FPA section 205 filing rights here. The Explanatory Statement provides, in relevant part, that allocation of FPA section 205 filing rights are

> Premised on the basic understanding that (i) individual Transmission Owners should possess the full and exclusive 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 . . . .*[112]

Rehearing Parties cite the italicized language as supporting their argument that MISO could not have filed an ATRR on behalf of RPU because adding RPU's ATRR for the H-NR Line to Zone 16 affected other Transmission Owners in that pricing zone, who

---

[108] Opinion No. 564, 164 FERC ¶ 61,194 at P 216.

[109] *Id*.

[110] Xcel Rehearing Request at 57.

[111] Opinion No. 564, 164 FERC ¶ 61,194 at P 216.

[112] *Midwest Indep. Transmission Sys. Operator, Inc.*, Explanatory Statement at 5, Docket No. RT01-87-010 (Nov. 30, 2004) (emphasis added).

must make such a filing "collectively."[113] As the Commission explained in Opinion No. 564, however, we agree with the Presiding Judge that the Explanatory Statement—which is not reproduced in the operative language of Appendix K—should be afforded little weight.[114]

37. Further, we affirm the Commission's holding that, even if the Explanatory Statement were binding, it would not preclude the October 2014 Filing. It is not clear from the Explanatory Statement what constitutes an "impact[]" to other Transmission Owners, such that rate filings must be submitted "collectively."[115] As the relevant portion of the Explanatory Statement applies to FPA section 205 filing rights, and Appendix K addresses such filing rights, we look to the text of Appendix K in assessing the meaning of the Explanatory Statement. Sections II.C.2 and II.C.3 are the provisions that address filing rights where other Transmission Owners may be "impacted." Section II.C.2 states that, "[i]f there are multiple [Transmission] Owners within a zone, those [Transmission] Owners should seek to reach agreement on a rate design." Section II.C.3 requires the agreement of all Transmission Owners whose zones would be "realigned, eliminated, or otherwise reconfigured" before a section 205 filing is made. As explained in Opinion No. 564, neither section suggests that adding a new Transmission Owner to a pricing zone and including its ATRR in the calculation of rates for that zone, without more, require the collective action of other Transmission Owners in that zone.[116]

38. Other provisions of Appendix K bolster our conclusion that the Explanatory Statement does not preclude MISO's October 2014 Filing. For example, Section II.L broadly confers rate filing authority on MISO, stating that, "[e]xcept as provided herein, MISO shall have the full and exclusive right to submit filings under FPA section 205

[113] Xcel Rehearing Request at 60; MISO Transmission Owners Rehearing Request at 22.

[114] Opinion No. 564, 164 FERC ¶ 61,194 at P 219; *cf. Entergy Servs., Inc. v. FERC*, 375 F.3d 1204, 1209 (D.C. Cir. 2004) (explaining that "language in the preamble of a regulation is not controlling over the language of the regulation itself," particularly where the proposed interpretation of explanatory text is inconsistent with the regulation's text (internal quotations omitted)).

[115] Opinion No. 564, 164 FERC ¶ 61,194 at P 220.

[116] *Id*.

with regard to its Tariff and related documents."[117] Further, Section V.A of Appendix K provides:

> Jurisdiction. Nothing in this Appendix K is intended to provide [the Commission] with jurisdiction over Non-Jurisdictional Owners who may rely on MISO to submit filings for them with regard to their individual revenue requirements or rate designs.[118]

Read together, Sections II.L and V.A indicate that entities described there as "Non-Jurisdictional Owners" like RPU have the right to enlist MISO in making section 205 filings on their behalf to recover their ATRRs. That provision contains no qualifying language indicating that this filing right varies based on impacts to other Transmission Owners. Thus, reading Section II.C.3 as Rehearing Parties do—i.e., by interpreting that provision as triggering a collective filing requirement by Transmission Owners where multiple Transmission Owners' *rates* (rather than a rate design or rate zone reconfiguration or realignment) are affected—would conflict with Section V.A: "Non-Jurisdictional Owners" like RPU would be unable to "collectively" make such a rate filing because they lack independent filing authority. And neither could MISO. Under Rehearing Parties' reading, because MISO is not a Transmission "Owner," it could not participate in the collective rate filing, even if acting on behalf of a "Non-Jurisdictional Owner" like RPU. In effect, Rehearing Parties' interpretation would leave RPU without a clear path for making a rate filing—an unreasonable outcome that finds no support in the record.[119]

---

[117] Ex. XES-29 at 12 (quoting Section II.L of Appendix K to the Owners Agreement).

[118] *Id*. at 14 (quoting Section V.A of Appendix K to the Owners Agreement).

[119] *See Validus*, 786 F.3d at 1045-46 (avoiding interpretations "that bring about an anomalous result when other interpretations are available" (internal quotations omitted)).

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.