

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Minnesota Municipal Power Agency

Docket No. EL06-18-000

v.

Northern States Power Company d/b/a
Xcel Energy Services, Inc., and
Midwest Independent Transmission
System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued January 3, 2006)

1. On November 3, 2005, Minnesota Municipal Power Agency (Minnesota MPA) filed a complaint against Northern States Power Company (Northern States) doing business as Xcel Energy (Xcel) and against Midwest Independent System Transmission Operator Inc. (Midwest ISO). Minnesota MPA requests a finding that Minnesota MPA has the contractual right to provide transmission service to the City of Buffalo (Buffalo) under its grandfathered interconnection agreement and requests an order directing the Midwest ISO to register the Buffalo load under that agreement. Minnesota argues that the Midwest ISO's denial of this right is effectively modifying a grandfathered agreement in violation of the *Mobile-Sierra* doctrine.¹ For the reasons discussed below, the Commission denies Minnesota MPA's complaint.

I. Background

2. Minnesota MPA is a municipal power agency located within the Midwest ISO footprint, and provides wholesale power to its member and customer utilities. Northern States provides wholesale sales and grandfathered transmission service to numerous

¹ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 345 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956) (*Mobile-Sierra*).

municipal utilities and provides wholesale transmission services for third parties pursuant to the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT).

3. Since 1994, Minnesota MPA and Northern States have been parties to an Interconnection and Interchange Agreement whereby Northern States provides transmission service to Minnesota MPA. Minnesota MPA states that under the terms of the Interconnection and Interchange Agreement Minnesota MPA can add additional Minnesota municipalities to its membership² and that over the past eleven years several municipalities have become members or customers of Minnesota MPA thus requiring new service delivery points.

4. In 2004, the Commission issued an order on the Midwest ISO's TEMT³ which, among other things, initiated, under section 206 of the Federal Power Act (FPA),⁴ a three-step process to address the treatment of transmission service provided under grandfathered agreements (GFAs) in the Midwest ISO footprint and offered three options, Options A, B or C, for GFA parties to settle upon.⁵ In the proceedings established in that order Minnesota MPA and Northern States, along with other GFA customers, were encouraged to settle upon either Option A, B or C treatment with respect to TEMT costs related to scheduling, congestion and losses.

5. Under Option B, the option relevant here, the transmission rights contained in the GFA are, in effect, accommodated as firm transmission service, with day ahead scheduling, in the Midwest ISO's security-constrained economic dispatch. The Midwest ISO would keep the GFA customer financially indifferent to the costs of congestion by crediting the GFA transaction at settlement as though the scheduling party had a perfectly matching set of FTRs, thus providing a perfect hedge. To achieve the effect of charging

² Interconnection and Interchange Agreement, section 8.06.

³ The TEMT, implemented on April 1, 2005, allowed the Midwest ISO to initiate Day 2 operations in its 15-state region. The Midwest ISO's Day 2 operations include, among other things, a day-ahead energy market and a real-time energy market, with locational marginal pricing (LMP) and financial transmission rights (FTRs) for hedging congestion costs.

⁴ 16 U.S.C. § 824e (2000).

⁵ *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004) (GFA Procedural Order); *see also Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order), *order on reh'g*, 111 FERC ¶ 61,042 (2005) (GFA Rehearing Order I), *order on reh'g*, 112 FERC ¶ 61,311 (2005) (GFA Rehearing Order II) (collectively GFA Orders).

the GFA customer average, rather than marginal, losses, the Midwest ISO would rebate the difference between the actual marginal losses included in the TEMT transmission charge, and the Midwest ISO's calculation of average losses. These are substantial benefits for those parties that chose Option B treatment for their GFA.

6. During the first step in the three-step process, established by the Commission to address the treatment of transmission service under GFAs, Minnesota MPA and Northern States submitted a joint settlement selecting Option B treatment, which the Commission approved.⁶ The Commission found that Option B was just and reasonable for those GFA holders settled on Option B during the early stages of the proceeding, and was not just and reasonable for those parties that did not, but instead waited.⁷

7. The Interconnection and Interchange Agreement in dispute here is identified in Appendix B of that Commission order and Midwest ISO's TEMT in Attachment P as Grandfathered Agreement No. 362 (GFA 362). Minnesota MPA states that, in May 2005, pursuant to the notice provisions in GFA 362, it notified Northern States that it intended to add Buffalo as a new member. Currently Buffalo's load is serviced by Northern States under Midwest ISO's TEMT. Minnesota MPA notified Northern States that as of January 1, 2006, it would be replacing Northern States as Buffalo's wholesale supplier and that it would be providing transmission service under GFA 362. Minnesota MPA states that it was then notified by Northern States that adding Buffalo as a new member would not be technically detrimental to Northern States' system, but that the change would be subject to Midwest ISO and/or the Commission's allowing the transfer of the Buffalo load from the TEMT to GFA 362. Minnesota MPA states that the Midwest ISO replied that it would not accept registration of Buffalo load under GFA 362, because transmission service under the TEMT could not be converted to service under a GFA.

II. Complaint

8. Minnesota MPA filed this complaint seeking both a finding that Minnesota MPA has the right to provide transmission service to Buffalo under GFA 362, and an order directing Midwest ISO to register the Buffalo load under GFA 362. Minnesota MPA states that, under GFA 362, it has the right to add Buffalo as a member and that, by denying Minnesota MPA that right, Midwest ISO has effectively modified the Agreement violating the *Mobile-Sierra* doctrine. Minnesota MPA also asserts that Midwest ISO lacks regulatory authority over the Agreement. Finally, Minnesota MPA argues that, since Buffalo will be a member of Minnesota MPA and Minnesota MPA is a Midwest

⁶ GFA Order, 108 FERC ¶ 61,236 at P 275, 280; *see also id.* at Appendix B, page 260.

⁷ GFA Rehearing Order, 111 FERC ¶ 61,042 at P 104.

ISO Market Participant, adding Buffalo to GFA 362 will not detrimentally affect the Midwest ISO markets.

9. Minnesota MPA states that section 8.06(b)(1) of GFA 362 expressly provides that:

[Minnesota MPA] contemplates that additional Minnesota municipalities may seek to become members or customers of [Minnesota MPA]. [Minnesota MPA] shall give [Northern States] at least 90 days notice of its desire to add additional members or customers for service under this Agreement...

Further, section 8.06(b)(2) provides that:

[Northern States] shall be under no obligation to provide services to [Minnesota MPA] for [Minnesota MPA] to provide service to these new members if [Northern States] determines in its sole technical judgment that such service by [Northern States] to [Minnesota MPA] could detrimentally affect [Northern States'] electrical system.

10. Minnesota MPA states that it provided timely notice to NSP in May 2005. Minnesota MPA asserts that since Northern replied that no impact study was needed, its acceptance of Buffalo as a member would not detrimentally affect Northern States' electrical system. Therefore, Minnesota MPA argues that, under the terms of GFA 362, it had the right to add Buffalo as a member and convert Buffalo's load to service under GFA 362. Consequently, Northern States' conditions of acceptance -- Midwest ISO and/or the Commission approval-- were inappropriate.

11. Minnesota MPA argues that, by refusing to register the Buffalo load to GFA 362, Midwest ISO illegally modified the contract. Additionally, Minnesota MPA argues that only the Commission and the courts have the authority to interpret and enforce GFA 362, not Midwest ISO. Minnesota MPA asserts that the Commission has stated "that it will modify a valid grandfathered transmission contract only when the public interest requires it."⁸ Furthermore, Minnesota MPA argues that the Commission has already determined that, in regards to the Midwest ISO Day 2 markets and the grandfathered agreements, the public interest does not require modifying GFA 362. However, Minnesota MPA argues that, by denying Minnesota MPA's right to serve Buffalo, Midwest ISO has effectively modified GFA 362 illegally; Minnesota MPA states that effectively Midwest ISO has stated that Minnesota MPA no longer has the right to add any new members under GFA 362 regardless of its terms.

⁸ Minnesota MPA complaint at 6.

III. Notice of Filing and Responsive Pleadings

12. Notice of Minnesota MPA's filing was published in the *Federal Register*, 70 Fed. Reg. 68,425 (2005), with interventions and protests due on or before November 25, 2005. Answers were filed by Xcel, on behalf of Northern States, and Midwest ISO.

13. In response, Xcel, requests that the Commission provide guidance on whether GFA customers may convert a load presently served under the transmission service provisions of the TEMT to transmission service under GFAs, and if so, the scope of the GFA customers' ability to selection Options A, B or C or carved out GFA transmission service as established in prior Commission orders.⁹

14. Xcel states that while the terms of GFA 362 give Minnesota MPA a contractual right to add new load to the transmission service provided under the agreement, the Commission's GFA Orders, which prohibit GFAs from switching service under the TEMT to Option B, could be construed to prohibit Minnesota MPA from adding Buffalo since such switching would allow Buffalo to convert its load from TEMT service to Option B.

15. Xcel argues that the Commission also has stated that Option B treatment is no longer available for GFA customers that did not settle their TEMT obligations during the earlier phases of the GFA proceedings. Xcel states that, even though Minnesota MPA is not attempting to convert an entire contract from TEMT service back to GFA status, as the GFA Orders explicitly prohibit, transferring Buffalo's load would effectively circumvent the GFA Orders' prohibition with respect to Buffalo's load. Xcel also argues that Appendix B of the GFA Order appears to limit service under GFA 362 to 247 MW, which would also prevent the addition of Buffalo's additional MWs from being added to GFA 362.

16. Midwest ISO asserts that, as a regional transmission organization, it has the authority to interpret contracts, including GFAs, to the extent necessary to administer the TEMT provisions and Commission orders applicable to the transactions covered by such contracts. Consequently, Midwest ISO had the authority to review the addition of Buffalo's load to GFA 362.

17. Midwest ISO asserts that, under the TEMT,¹⁰ only GFA parties that are currently being served under one of the three GFA options, are allowed to switch to, in this case, either Options A or C, or TEMT treatment. Furthermore, Option B is no longer available

⁹ See *supra* note 5.

¹⁰ TEMT, section 38.2.5.j.

to any GFA that failed to previously choose Option B. Currently Buffalo is not being served under a GFA, but by Northern States under Midwest ISO's TEMT. Consequently, Buffalo's load is not eligible for service under any of the Options, much less Option B.

18. Midwest ISO argues that allowing loads to switch from TEMT service to GFA service would significantly and adversely affect the economic interests of other Market Participants, and would result in shifting congestion or loss costs to other non-GFA Market Participants.

19. Finally, Midwest ISO argues that, contrary to Minnesota MPA's claim, GFA 362 is not subject to the *Mobile-Sierra* public interest standard of review. Midwest ISO asserts that, in the GFA proceedings, Minnesota MPA only claimed that the *Mobile-Sierra* public interest standard covered part of the contract and explicitly stated that the just and reasonable standard would apply to the rates, terms and charges for transmission service under Service Schedule F. Midwest ISO argues that, since Service Schedule F relates to the delivery service between Northern States and each Minnesota MPA city, the issues raised in Minnesota MPA's complaint relate to the rates, terms and charges for transmission service, and therefore, are subject to the just and reasonable standard, not the higher *Mobile-Sierra* public interest standard.

IV. Discussion

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

21. In the GFA Procedural Order, the Commission strongly encouraged GFA settlements and stated that it would be receptive to GFA parties voluntarily agreeing, in settlement, to accept one of the Midwest ISO's proposed scheduling and settlement options, including Option B, for treatment of GFA transactions, or to convert their contracts to TEMT service.¹¹ The Commission also stated that "such settlements avoid litigation of GFA issues and further the Commission's goals in facilitating voluntary resolution of these issues prior to the start of the Midwest ISO energy markets."¹² All GFA holders were given the opportunity to settle on Option B and the Commission explained that, if it approved a settlement, it did not intend to later revisit its decision when it addressed the non-settling parties' GFAs.

¹¹ GFA Procedural Order, 107 FERC ¶ 61,191 at P 8.

¹² *Id.* at P 82.

22. The Commission found Option B to be just and reasonable for those parties that voluntarily settled prior to July 28, 2004, in accordance with the GFA Procedural Order, but Option B would no longer be available for parties that did not settle by that date.¹³ Option B was an incentive to settle by receiving a hedge against congestion and marginal loss charges. It would be unfair, the Commission reasoned, to allow this option to those that did not settle first and instead waited (and even litigated) the outcome of this proceeding.¹⁴ Furthermore, the Commission recognized that Option B resulted in uplift costs for all non-Option B parties to cover the costs of congestion and the difference between marginal and average losses.

23. As we stated in the GFA Order, the Commission's decision to grant the limited use of Option B was based on our finding that the possible financial impacts of such activities were outweighed by the benefits to the Day 2 markets by incorporating, under Option B, day-ahead scheduling.¹⁵ Furthermore, the amount of energy associated with the GFAs that settled on Option B was less than 5 percent of the overall market and the amount of uplift associated with these contracts would be correspondingly small.

24. In summary, Option B did result in some cost shifting to non-Option B parties, as a settlement incentive. Furthermore, due to the limited MWs associated with the GFAs that chose Option B along with the regional benefits of developing the Day 2 markets, Option B was found to be just and reasonable. However, as the GFA Orders clearly stated, Option B treatment is no longer available. Consequently, to allow, at this late date, Buffalo to transfer its load from TEMT service to Option B service, under Minnesota MPA's GFA 362, would allow Buffalo to circumvent the Commission's orders. If we were to rule in Minnesota MPA's favor, moreover, this would establish a precedent that would undermine the ability of Midwest ISO markets to function properly as others will seek similar treatment.

25. In the GFA Orders, the Commission sought to preserve the rights of *existing* users and Midwest ISO was directed to keep existing customers whole during the transition.¹⁶ At that time the focus was on protecting customers like Minnesota MPA's rights as balanced against the reliability and economic efficiency benefits of the Day 2 markets. Option B treatment was offered as an option to preserve the rights of those *existing* customers and was intended to be finite treatment. To now expand Option B treatment

¹³ GFA Order, 108 FERC ¶ 61,236 at P 264.

¹⁴ *Id.*

¹⁵ *Id.* at 267.

¹⁶ GFA Procedural Order, 107 FERC ¶ 61,191 at P 46.

would undermine the Midwest ISO's markets resulting in less efficient dispatch and increased cost shifting.¹⁷ This would result in moving backwards and undoing years of progress in increasing reliability and efficiency in this region. Therefore, since allowing Minnesota MPA to include Buffalo's load in GFA 362 would expand the number of MWs being served under Option B status, which would undermine the progress made in the Midwest ISO markets we find, that this expansion is not in the public interest.

26. The Commission finds that it is in the public interest to rule against Minnesota MPA and limit the loads served under Option B to those loads currently being served under the GFAs already approved and registered with Midwest ISO. Since the Commission finds that it is in the public interest to bar Buffalo's load from converting to Option B at this late date, it is unnecessary to decide whether the just and reasonable or the *Mobile-Sierra* public interest standard applies to the provisions of GFA 362.

The Commission orders:

Minnesota MPA's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁷ See March 31, 2004 Testimony of Dr. William Hogan, ER04-691-000 at page 10-12.