

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ALLETE, Inc.

Docket No. EL06-42-000

v.

Midwest Independent Transmission
System Operator, Inc.

ORDER DISMISSING COMPLAINT AS MOOT

(Issued March 30, 2006)

1. On January 5, 2006, ALLETE, Inc.¹ filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 206 of the Federal Power Act (FPA).² ALLETE alleges that the Midwest ISO improperly assessed Revenue Sufficiency Guarantee (RSG) charges to ALLETE, as a transmission-owning member of the Midwest ISO, for imbalances stemming from transactions under a carved-out grandfathered transmission service agreement (GFA) to which ALLETE is a party. ALLETE requests that the Commission direct the Midwest ISO to cease assessing RSG charges on transactions under its carved-out GFA and to refund charges that have been inappropriately assessed to it since April 1, 2005.

2. The Commission will dismiss the complaint as moot, because the relief that ALLETE requests has already been granted to ALLETE and other parties to carved-out GFAs in a recent Commission order in another complaint proceeding.³

¹ Minnesota Power, formerly know as Minnesota Power, Inc., notified the Commission of its name change to ALLETE, Inc. on July 18, 2001. The Commission accepted the name change in a letter order issued on August 21, 2001.

² 16 U.S.C. §§ 824e (2000).

³ *Southern Illinois Power Cooperative v. Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,234 (2006) (*Southern Illinois*) (Order Granting Complaint and Ordering Refunds to Parties to Carved-Out Grandfathered Agreements).

Background

3. On March 31, 2004, the Midwest ISO filed its proposed Open Access Transmission and Energy Markets Tariff (TEMT) pursuant to section 205 of the FPA.⁴ In accepting the TEMT, effective April 1, 2005, the Commission generally approved the Midwest ISO's proposal to assess RSG charges⁵ to participants in its markets.⁶ However, in that proceeding, the Commission determined that it was appropriate that some GFAs be carved-out of the Midwest ISO energy markets.⁷

4. On March 2, 2006, the Commission issued an order granting a complaint by Southern Illinois Power Cooperative (Southern Illinois), wherein the Commission: (1) found that by assessing RSG charges to carved-out GFAs, the Midwest ISO violated its TEMT and the Commission's orders on the treatment of GFAs in the Midwest ISO's markets; and (2) required the Midwest ISO to refund not only to Southern Illinois, but to all parties to carved-out GFAs, any RSG charges which the Midwest ISO assessed to them since the implementation of the Midwest ISO energy markets on April 1, 2005.⁸

⁴ 16 U.S.C. § 824d (2000).

⁵ The Midwest ISO defines RSG charges as a guarantee by the transmission provider to ensure the minimum recovery of start-up, no-load and energy offer costs for a resource committed and scheduled by the transmission provider. *See* section 1.227 of the TEMT, Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 109. *See also, Southern Illinois*, at n.3.

On October 27, 2005, the Midwest ISO filed proposed changes to its RSG provisions in section 40.3.3 of the TEMT in Docket No. ER04-691-065. These proposed revisions are currently pending before the Commission.

⁶ Midwest Independent Transmission System Operator, Inc., 107 FERC ¶ 61,191 (2004); Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,163 at P 581-91 (2004), order on reh'g, 109 FERC ¶ 61,157 (2004), order on reh'g, 111 FERC ¶ 61,043 (2005).

⁷ Among other things, parties to such carved-out GFAs would be required to provide day-ahead schedule information to the Midwest ISO but such schedules would not be financially-binding to the extent that they were revised between the day-ahead schedule deadline and real-time. *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 at P 141-50 (2004) (GFA Order), order on reh'g, 111 FERC ¶ 61,042 (2005) (GFA Rehearing Order), order on reh'g, 112 FERC ¶ 61,311 (2005).

⁸ See *infra* note 2.

ALLETE's Complaint

5. In its complaint, ALLETE alleges that the Midwest ISO is improperly assessing RSG charges to a carved-out GFA to which it is a party, even though ALLETE has no ability to submit accurate day-ahead schedules for the transactions under the GFA, and thereby avoid the charges, and the Midwest ISO has been unable to modify its commercial model and business practices to allow ALLETE to submit accurate day-ahead schedules. ALLETE states that, from April 1, 2005 through November 23, 2005, it was inappropriately assessed \$865,940 for RSG charges on its carved-out GFA and complains that it continues to be inappropriately assessed such charges.

6. Under the carved-out GFA at issue, between ALLETE and Cyprus Silver Bay Power Corporation (Silver Bay), ALLETE provides Silver Bay transmission service for delivery of 40 MW of power to Xcel Energy Services, Inc. (Xcel).⁹ The 40 MW of output Silver Bay sells to Xcel is delivered to the Midwest ISO-controlled grid at the Silver Bay Node. ALLETE explains that the Silver Bay Node is a "load only" node and, thus, it is unable to accurately schedule injections (generation) into the Midwest ISO grid on a day-ahead basis. As a result, it must submit 0 MW generation schedules day-ahead, and, consequently, it is consistently charged real-time RSG charges¹⁰ for the difference between that day-ahead schedule and the roughly 40 MW of generation that flows in real-time. It believes that the Midwest ISO is inappropriately assessing RSG charges for a situation outside ALLETE's control.¹¹

⁹ The Silver Bay Agreement is listed as carved-out GFA No. 286 in Attachment P of the Midwest ISO's TEMT.

¹⁰ The real-time RSG charge is a charge to market participants based on resources committed in the Reliability Assessment Commitment process, by which the Midwest ISO commits units after the close of the day-ahead market in order to ensure sufficient resources will be available and on-line to reliably meet expected load and other demand requirements in the operating day. See section 40.2.13 of the TEMT, Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 565. Real-time RSG charges are assessed on market participants for withdrawals of energy during the operating day where they did not have a day-ahead energy schedule, and for deviations from their dispatch instructions. See section 40.3.3 of the TEMT, Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 576-578.

¹¹ ALLETE reports that since May 2005, it and the Midwest ISO have discussed potential modifications to the commercial pricing node configuration at the Silver Bay location to allow ALLETE to submit accurate day-ahead generation schedules.

Notice, Interventions And Responsive Pleadings

7. Notice of ALLETE's complaint was published in the *Federal Register*, 71 Fed. Reg. 3,284 (2006), with interventions and protests due on or before January 25, 2006. Timely motions to intervene were filed by Williams Power Company and Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC (collectively, Wisconsin Public Service Companies). The Wisconsin Public Service Companies also filed comments. The Midwest ISO filed an answer to the complaint. ALLETE filed an answer to the Midwest ISO's answer.

8. Wisconsin Public Service Companies are concerned that the Midwest ISO may implement a system-wide uplift charge to pay refunds owed to ALLETE if the Midwest ISO is directed to pay refunds. Wisconsin Public Service Companies ask that, if refunds are ordered, the Commission prohibit the Midwest ISO from employing such a general revenue recovery mechanism. Instead, Wisconsin Public Service Companies suggest that the Commission order the Midwest ISO to charge those market participants that were effectively under-charged RSG charges in each hour that ALLETE was over-charged.

9. In response to the concerns raised in ALLETE's complaint, the Midwest ISO filed an answer stating that the RSG charges to which ALLETE objects are the consequence of ALLETE's earlier decision to represent the source for the carved-out GFA as a "load only" node, rendering ALLETE unable to submit accurate day-ahead schedules for the Silver Bay energy injections. The Midwest ISO states that it neither initiated nor insisted on designating the Silver Bay Node as a "load only" node.

Discussion

Procedural Matters

10. 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 this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept ALLETE's answer and will, therefore, reject it.

Substantive Matters

11. The Commission will dismiss ALLETE's complaint as moot. In *Southern Illinois*, the Commission ruled that the Midwest ISO's assessment of RSG charges on transactions under carved-out GFAs for deviations between day-ahead schedules and real-time is

inconsistent with the GFA Order and the GFA Rehearing Order.¹² Moreover, the Commission found that the assessment of any RSG charges to carved-out GFAs is inconsistent with the TEMT.¹³ Thus, the Commission directed the Midwest ISO to cease assessing RSG charges on transactions under carved-out GFAs and to refund all RSG charges assessed on transactions under the carved-out GFAs since April 1, 2005, with interest.¹⁴

12. ALLETE's carved-out GFA is among those covered by the Commission's ruling in *Southern Illinois*, and, thus, the relief it requests here has already been provided in *Southern Illinois*. Accordingly, we will dismiss its complaint as moot.

13. In *Southern Illinois*, the Commission ruled that refunds, including interest, should be provided from those entities that would otherwise have been assessed the RSG charges, had the Midwest ISO not improperly assessed those charges to parties under carved-out GFAs. Thus, the Commission agrees with Wisconsin Public Service Companies that the Midwest ISO should not merely implement a system-wide uplift charge to pay the refunds ordered herein.

The Commission orders:

ALLETE's complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹² *Southern Illinois* at P 25-28.

¹³ *Id.* at P 29.

¹⁴ *Id.* at P. 30.