

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Indiana Public Service Company and Docket No. ER06-1260-000
Whiting Clean Energy, Inc.

ORDER GRANTING LIMITED WAIVER OF THE CODE OF CONDUCT

(Issued September 15, 2006)

1. On July 19, 2006, Northern Indiana Public Service Company (NIPSCO) and its affiliate, Whiting Clean Energy, Inc. (Whiting) (collectively, the Applicants), filed an application requesting that the Commission grant waiver of the codes of conduct contained in their market-based rate tariffs. In this order, the Commission grants limited waiver of the codes of conduct in the Whiting and NIPSCO market-based rate tariffs to the extent necessary to allow NIPSCO to carry out its responsibilities as a Balancing Authority.

Background

2. NIPSCO is an Indiana corporation that engages in the generation, transmission, and distribution of energy at wholesale and retail rates. The Applicants state that NIPSCO owns and operates generation facilities with a total capacity of approximately 3,000 MW located within its control area. They further state that on October 1, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) assumed functional control of NIPSCO's transmission assets. The Applicants state that NIPSCO's affiliate, Whiting, owns and operates a 525 MW cogeneration facility located in the NIPSCO service territory.

3. The Applicants state that NIPSCO is a Balancing Authority as defined in the Functional Model of the North American Electric Reliability Council (NERC).¹ The

¹ NIPSCO states that as a Balancing Authority, NIPSCO must comply with the obligations imposed by NERC, ReliabilityFirst (a NERC-approved regional reliability organization) and the Midwest ISO, which serves as NIPSCO's Reliability Coordinator.

Applicants state that as a Balancing Authority, NIPSCO must balance the generation resources and the energy flows into and out of its control area with the load requirements within the control area. The Applicants state that as a Balancing Authority NIPSCO must have access to real-time information regarding the amount of energy being delivered to the NIPSCO system from all sources.

4. The Applicants state that the Whiting facility is located in NIPSCO's territory and therefore NIPSCO must have access to real-time information regarding the amount of energy being produced at the Whiting facility in order to balance the system. The Applicants state that Whiting provides this information to NIPSCO by means of a direct computer link between the Whiting facility and NIPSCO's control center and that under normal operating circumstances Whiting employees do not speak with NIPSCO employees when providing the information on real-time output. The Applicants state that Whiting employees may communicate directly with NIPSCO employees if the plant is experiencing operational problems or at the direction of the Midwest ISO if the transmission system is undergoing an emergency. The Applicants state that employees known as Generation System Supervisors are located at NIPSCO's control center and these employees use the real-time information to ensure that NIPSCO's system remains in balance. The Applicants further state that no NIPSCO employees engaged in wholesale marketing or in the sale or purchase of transmission service are located in the control center and no Whiting employees are located in the control center. The Applicants go on to state that, consequently, no NIPSCO marketing personnel have access to Whiting's real-time information provided to NIPSCO's Generation System Supervisors.

5. The market-based rate tariffs of NIPSCO and Whiting contain codes of conduct that prohibit Whiting and NIPSCO from sharing market information.² The codes of conduct define market information as including all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. The Applicants state that the Commission should grant waivers of the codes of conduct found in the Applicants' market-based rate tariffs in order to permit Whiting to provide real-time generation information to NIPSCO operating personnel to allow NIPSCO to carry out its duties as a Balancing Authority. The Applicants note that the type of information shared between NIPSCO and Whiting is identical to the information NIPSCO must have from its own generating units or from generating units owned by third parties within its Balancing Authority Area in order to comply with its obligations as a Balancing Authority. The

² *Northern Indiana Public Service Co.*, Docket No. ER00-2173-000 (May 10, 2000) (unpublished letter order); *Whiting Clean Energy, Inc.*, Docket No. ER01-1300-000 (May 24, 2001) (unpublished letter order).

Applicants state that granting the waivers will have no effect on wholesale markets because no NIPSCO employees engaged in marketing activities will have access to the Whiting information.

Notice of Filing and Responsive Pleadings

6. Notice of the Applicant's July 19, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 43,142 (2006), with interventions and protests due on or before August 9, 2006. Mittal Steel USA Inc. (Mittal Steel) filed a motion to intervene and protest and a request for technical conference. On August 23, 2006, the Applicants filed an answer to the Mittal Steel protest.

7. Mittal Steel states that more information is required to ensure that NIPSCO employees are not in a position to use the information received from NIPSCO's affiliate, Whiting, to improperly favor Whiting as a source of balancing energy over other suppliers, or to improperly inflate costs to NIPSCO's customers. Mittal Steel also states that the Applicants should be directed to explain how they have been handling balancing activities in the past with respect to sharing information that is restricted in the codes of conduct of the Applicants' market-based rate tariffs. Lastly, Mittal Steel suggests that a technical conference would provide a forum to examine these issues and to develop safeguards against any potential for affiliate abuse created by granting the requested waivers.

8. In their answer, the Applicants state that granting waiver of the information sharing provision in the codes of conduct will not result in NIPSCO using this information to inflate costs to its customers or to improperly favor Whiting as a source of balancing energy over other suppliers. The Applicants state that NIPSCO only uses NIPSCO-owned generation when performing its duties as the Balancing Authority. The Applicants further state that the Whiting facility is dispatched by the Midwest ISO, not NIPSCO, and that because NIPSCO does not dispatch the Whiting facility nor use generation from the Whiting facility to balance the system there is no ability to improperly favor Whiting. Finally, the Applicants state that a technical conference is not necessary in this proceeding because they have fully explained their proposal and provided sufficient information for the Commission to issue an order regarding the requested waivers.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make Mittal Steel a party to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Applicants' answer because it provides information that assisted us in our decision-making process.

Commission Determination

11. The Commission has waived the market-based rate code of conduct in cases where there are no captive customers (and thus no potential for affiliate abuse) or where the Commission is satisfied that the utility's captive wholesale and retail customers are adequately protected against affiliate abuse.³ As discussed below, based on the facts and circumstances presented, we will grant waiver of the codes of conduct of Whiting and NIPSCO to the limited extent necessary to allow NIPSCO to carry out its responsibilities as a Balancing Authority.

12. The Applicants' codes of conduct require, among other things, that all market information shared between NIPSCO and Whiting must be simultaneously disclosed to the public. Here, Applicants seek waiver of their codes of conduct in order to permit Whiting to share real-time information with NIPSCO to allow NIPSCO to carry out its responsibilities as a Balancing Authority. They submit that under the circumstances presented here, waiver of the codes of conduct will not result in any potential for affiliate abuse because NIPSCO does not dispatch the Whiting facility nor use generation from the Whiting facility to balance the system.

13. Based on the Applicants' representations that NIPSCO will only use NIPSCO-owned generation to perform its duties as Balancing Authority and that Whiting is dispatched by the Midwest ISO, the Commission will grant the request to waive the codes of conduct of NIPSCO and Whiting to the limited extent necessary to permit Whiting to provide NIPSCO with the real-time information needed by NIPSCO to carry out its responsibilities as a Balancing Authority in order to reliably operate the transmission system in accordance with the requirements of NERC, Reliability First, and the Midwest ISO. Our decision here is consistent with the exception in the standards of conduct permitting information that is necessary to maintain the operations of a transmission system to be shared between Transmission Providers and their Energy Affiliates.⁴ We emphasize that the limited waiver of the code of conduct that we grant herein applies only with regard to real-time information provided by Whiting to NIPSCO,

³ See, e.g., *CMS Marketing, Services and Trading Co.*, 95 FERC ¶ 61,308 (2001); *Green Power Partners I LLC*, 88 FERC ¶ 61,005 (1999).

⁴ See 18 C.F.R. § 358.5 (b)(8) (2006).

and only such information as is required by NIPSCO to perform its duties as a Balancing Authority. We expect NIPSCO to continue to abide by its obligation to not share market information with Whiting without simultaneously disclosing such information to the public. We remind the NIPSCO employees who perform the balancing duties that they are prohibited from being a conduit for improperly sharing Whiting's generation information. Further, we expect both NIPSCO and Whiting to abide by the remaining provisions of their codes of conduct.

14. Based on the limited nature of the code of conduct waiver that we grant here, and our finding that such limited waiver will not raise any affiliate abuse concerns, we reject as unnecessary Mittal Steel's request for a technical conference.

The Commission orders:

Limited waiver of the codes of conduct in the Whiting and NIPSCO market-based rate tariffs is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.