

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.

ALLETE, Inc. (d/b/a Minnesota Power)

v.

Docket No. EL06-69-000

Midwest Independent Transmission
System Operator, Inc.

ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND RELEASE OF
DATA PURSUANT TO THE PROTECTIVE ORDER, AS MODIFIED

(Issued October 23, 2006)

1. On September 11, 2006, ALLETE, Inc. (d/b/a Minnesota Power) (Minnesota Power) filed a motion for a protective order and access to confidential information (hereinafter, the Motion) submitted to the Commission by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in this proceeding. In this order, we grant Minnesota Power's Motion and order the Midwest ISO to release all of the confidential information it filed in this proceeding to Minnesota Power, subject to the masking of certain market participant information and to the requirements of the modified protective order filed by the Midwest ISO in response to the Motion, all as explained more fully below.

Background

2. On May 8, 2006, Minnesota Power filed a complaint against the Midwest ISO, seeking a refund of what it contends are excessive charges stemming from an alleged error in the Midwest ISO's Day-Ahead model that resulted in high Day-Ahead Locational Marginal Prices at Minnesota Power's Boise Load Node on September 13, 2005. On May 30, 2006, the Midwest ISO submitted its answer to the complaint, and on June 14, 2006, Minnesota Power responded to the Midwest ISO's answer. On July 11, 2006,

Commission Staff issued a data request to the Midwest ISO seeking additional information to assist the Commission in reaching a decision in this proceeding.

3. On August 10, 2006, the Midwest ISO filed public and non-public versions of its data responses (hereinafter, the August 10 response). The Midwest ISO stated that its responses contained commercially and competitively sensitive information and requested confidential treatment of certain information provided to the Commission.

Motion and Answer

4. In its Motion, Minnesota Power states that it received only a public version of the August 10 response with certain information redacted. Minnesota Power requests in its Motion that the Commission establish a protective order for this proceeding and direct the Midwest ISO to provide a full, unredacted copy of the August 10 response to Minnesota Power, in order to allow it to accurately evaluate information that directly pertains to its complaint. Minnesota Power further explains that it has already requested access to this information pursuant to a non-disclosure agreement, but the Midwest ISO has declined to make any of the redacted information available to Minnesota Power. Minnesota Power appends to its Motion a copy of the Commission's model protective order and suggests that it would provide adequate protections for this proceeding.

5. On September 26, 2006, the Midwest ISO filed an answer (Answer) in response to the Motion, in which it asks the Commission to deny Minnesota Power's request for access to the confidential information submitted with the August 10 response or, alternatively, that the Commission direct the Midwest ISO to provide only a "masked" version of the confidential information (i.e., with market participants' identities masked). If the Commission nevertheless determines that disclosure under a protective order is appropriate in this proceeding, the Midwest ISO requests that the model protective order be modified to ensure against the improper disclosure and use of certain proprietary or commercially sensitive data. The modified protective order filed by the Midwest ISO differs from the Commission's model protective order, in that it includes, among other things, provisions prohibiting access to certain confidential and commercially sensitive information by "Competitive Duty Personnel" except under limited circumstances.¹

¹ Competitive Duty Personnel are defined as "any person whose duties include (i) the marketing or sale of electric power at wholesale, (ii) the purchase or sale of electric power at wholesale, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale." *See* section 3(e) of the modified protective order found at Attachment A of the Midwest ISO's Answer.

Commission Determination

6. We find that the confidential information submitted with the August 10 response is necessary to allow Minnesota Power to accurately evaluate information that directly pertains to its complaint. However, we also find persuasive the Midwest ISO's arguments that confidentiality protections on the released data are needed. Accordingly, we conclude that market participants' names should be masked, because their identities are competitively sensitive and are not necessary to a determination of whether there was a market implementation error by the Midwest ISO, as alleged. Additionally, in order to ensure that other competitively sensitive information is not made public, we will require the Midwest ISO to provide the released data pursuant to a protective order.²

7. Thus, we order the Midwest ISO, pursuant to the terms of the modified protective order, as proposed by the Midwest ISO,³ to provide to Minnesota Power, within five (5) days of the date of this order, all of the confidential data provided to the Commission in this proceeding with masking of the names of market participants but not of any other data fields. We will allow Minnesota Power twenty (20) days after receipt of such information to file with the Commission any additional comments based upon such information.

The Commission orders:

(A) Minnesota Power's motion for protective order and release of data, as modified, is hereby granted, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to provide to Minnesota Power, within five (5) days of the date of this order, the requested data, as modified, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

² See Westar Energy, Inc., 115 FERC ¶ 61,034, at P 7 (2006) ("release under a protective order should be adequate protection against harm.")

³ We have found that, "[a]though the Commission has a model protective order, protective orders are to be drafted in light of the facts in a particular case." *Id.* at P 9.