

156 FERC ¶ 61,126  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Midcontinent Independent System Operator, Inc.	Docket Nos.	ER16-1107-001
ALLETE, Inc.		ER16-1107-002
Great River Energy		ER16-1108-001
		ER16-1108-002

ALLETE, Inc.	ER16-1116-001
Midcontinent Independent System Operator, Inc.	

ORDER ON COMPLIANCE AND DENYING REHEARING

(Issued August 23, 2016)

1. On May 6, 2016, the Commission issued an order accepting, subject to condition, four agreements (the Zonal Agreements) governing the obligations of ALLETE, Inc. (ALLETE), Great River Energy (Great River), and Midcontinent Independent System Operator, Inc. (MISO) with respect to local transmission planning, cost allocation, and revenue sharing for certain facilities and load within the Minnesota Power<sup>1</sup> local balancing authority area and the Minnesota Power Pricing Zone. The Commission also accepted a Notice of Cancellation of a prior grandfathered network integration transmission service agreement between ALLETE and Great River.<sup>2</sup> On May 31, 2016, Missouri River Energy Services (Missouri River) filed a request for rehearing of the May 2016 Order.<sup>3</sup> On June 6, 2016, ALLETE, on behalf of itself and Great River, as

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<sup>1</sup> Minnesota Power is an operating division of ALLETE.

<sup>2</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,146 (2016) (May 2016 Order).

<sup>3</sup> Missouri River filed a revised rehearing request on June 1, 2016, to correct a typo.

well as MISO, submitted revisions to the Zonal Agreements in compliance with the May 2016 Order. For the reasons discussed below, we deny Missouri River's request for rehearing and accept the compliance filing.

## **I. Background**

2. As relevant here, the Zonal Agreements include: (1) a Joint Pricing Zone Revenue Allocation Agreement (JPZ Agreement), which governs the allocation of revenues for transmission service taken either within or outside of the Minnesota Power Pricing Zone, and for the "imputed" network services previously provided under the grandfathered agreement for access by ALLETE and Great River to each other's facilities in the Minnesota Power Pricing Zone; (2) a Revenue Credit Agreement for the Great Northern Transmission Line Project (GNTL Credit Agreement), which provides, effective January 1, 2021, for a credit against payments for net imputed transmission service under the JPZ Agreement to reflect ALLETE's and Great River's ownership interests in the Project; and (3) a Local Planning Agreement intended to facilitate coordination between ALLETE and Great River as each company meets its respective local planning obligations under the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). In the May 2016 Order, the Commission accepted the Zonal Agreements for filing to become effective May 8, 2016, instead of ALLETE and Great River's requested effective date of August 1, 2013, subject to the condition that ALLETE and Great River submit a compliance filing to revise the definition of Zonal Transmission Facility in the Local Planning Agreement to expressly reference the MISO Tariff and the Commission's seven-factor test.<sup>4</sup>

3. In its rehearing request, Missouri River argues that the JPZ Agreement and GNTL Credit Agreement allow ALLETE and Great River to provide each other a discriminatory transmission rate discount. Missouri River claims that the credit provided in section 2.3 of the GNTL Credit Agreement and the maximum annual cap on a party's monthly net imputed revenue in section 3.3 of the JPZ Agreement permit the parties to establish transmission rate incentives applicable only to specific transmission providers, and that the Commission's acceptance of these agreements represents an unexplained departure from precedent.<sup>5</sup>

4. As directed in the May 2016 Order, ALLETE and Great River propose in the compliance filing to revise the definition of Zonal Transmission Facility in the Local Planning Agreement to expressly reference the MISO Tariff and the Commission's

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<sup>4</sup> See May 2016 Order, 155 FERC ¶ 61,146 at PP 53-56.

<sup>5</sup> Rehearing Request at 2-7.

seven-factor test for distinguishing between transmission and distribution facilities. In addition, ALLETE and Great River propose to revise all of the Zonal Agreements to reflect the May 8, 2016 effective date.

## **II. Notice of Filing and Responsive Pleadings**

5. Notice of ALLETE and Great River's compliance filing was published in the *Federal Register*, 81 Fed. Reg. 38,166 (2016), with interventions and protests due on or before June 27, 2016. None was filed.

6. ALLETE and Great River filed a joint answer to the rehearing request on June 15, 2016, to which Missouri River filed a response on June 30, 2016. ALLETE and Great River filed a second joint answer to the rehearing request on July 15, 2016.

## **III. Commission Determination**

### **A. Procedural Matters**

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits an answer to a request for rehearing. Accordingly, the answers and responses filed by ALLETE and Great River, and Missouri River are hereby rejected.

### **B. Substantive Matters**

8. Missouri River raised its argument that the JPZ Agreement and GNTL Credit Agreement result in discriminatory transmission rate discounts for the first time on rehearing. While Missouri River's initial pleadings generally alleged that the potential effects of the Zonal Agreements on the allocation of revenue requirements in the Minnesota Power Pricing Zone could impact Missouri River and its members,<sup>6</sup> it did not claim that the JPZ Agreement and GNTL Credit Agreement resulted in unduly discriminatory transmission rate discounts and thus contravened Commission precedent. As a rule, we reject requests for rehearing that raise a novel issue, unless we find that the issue could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.<sup>7</sup>

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<sup>6</sup> See Missouri River March 24 Protest at 4.

<sup>7</sup> Rule 713(c)(3) of our Rules of Practice and Procedure states that any request for rehearing must "[s]et forth the matters relied upon by the party requesting rehearing, if

9. In its request for rehearing, Missouri River does not explain why it could not have raised this new argument regarding purported discriminatory transmission rate discounts prior to the May 2016 Order. Indeed, Missouri River had ample opportunity to raise this concern in the three pleadings it submitted in the underlying proceedings, particularly as the comment period was extended in response to its request.<sup>8</sup> Moreover, Missouri River's assertions in the rehearing request do not appear to be premised on information that was not available to Missouri River at the time it submitted these pleadings. We find no reason why Missouri River could not have advanced this argument before the issuance of the May 2016 Order and thus find it to be procedurally barred.

10. Even if the Commission were to consider the merits of Missouri River's argument, we would reject it. Missouri River argues that the JPZ Agreement and GNTL Credit Agreement produce an "effective zonal transmission rate" that is different from the zonal rate, and that is not available to other transmission customers in the Minnesota Power Pricing Zone.<sup>9</sup> Specifically, Missouri River alleges that when the caps in the agreements are triggered, revenues will be allocated between Minnesota Power and Great River such that the effective transmission rate of one party is less than the zonal rate for the Minnesota Power Pricing Zone, while the effective rate of the other party is higher than the zonal rate – essentially allowing one party to subsidize the other party's transmission customers.<sup>10</sup> However, Missouri River is not a transmission owner in the Minnesota Power Pricing Zone, nor does it take network transmission service under the MISO Tariff

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rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order." 18 C.F.R. § 385.713(c)(3) (2015). *See, e.g., Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 250 (2016) (explaining that novel issues raised on rehearing are rejected "because our regulations preclude other parties from responding to a request for rehearing and such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision") (internal quotations omitted).

<sup>8</sup> Missouri River March 24 Protest; Missouri River April 5 Supplemental Protest; Missouri River April 27 Answer.

<sup>9</sup> Rehearing Request at 2-3 (citing MISO, FERC Electric Tariff, Module A, § 3, Ancillary Services (31.0.0) ("Any offer of a discount made by the Transmission Provider in conjunction with its provision of Transmission Service must be announced to all Eligible Customers solely by posting on the [open access same-time information system].")).

<sup>10</sup> *Id.* at 4-6.

in the Minnesota Power Pricing Zone.<sup>11</sup> Rather, Missouri River's customers are currently served under grandfathered transmission agreements with Minnesota Power. Thus, Missouri River is not similarly situated to Great River at this time. Accordingly, we find Missouri River's claim of undue discrimination to be premature and speculative.<sup>12</sup>

11. In the Statement of Issues section of its rehearing request, Missouri River further asserts that the Commission erred by failing to place the proper evidentiary burden on ALLETE and Great River, and that the acceptance of the Zonal Agreements was based merely upon a black box settlement. Missouri River did not expand on these assertions in the body of its rehearing request.<sup>13</sup> In the May 2016 Order, the Commission found the Zonal Agreements to be just and reasonable and not unduly discriminatory or preferential or otherwise unlawful, and rejected Missouri River's request for an evidentiary hearing.<sup>14</sup> Missouri River has presented no new arguments on rehearing to call this holding into question. Contrary to Missouri River's assertion that the Commission simply relied upon the black box settlement, the Commission analyzed ALLETE and Great River's pleadings and attached agreements, and the pleadings of the intervenors, which presented a sufficient record to establish that the Zonal Agreements are just and reasonable, and we affirm that the applicants met their burden of proof under section 205 of the FPA.

12. Finally, we find that ALLETE and Great River's June 6, 2016 filing satisfies the compliance directive in the May 2016 Order, and therefore accept it, effective May 8, 2016.

The Commission orders:

(A) Missouri River's request for rehearing is hereby denied, as discussed in the body of this order.

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<sup>11</sup> See Missouri River March 14 Protest at 3.

<sup>12</sup> Should the grandfathered agreements be terminated and Missouri River become a network transmission service customer under the MISO Tariff in the Minnesota Power Pricing Zone in the future, Missouri River may avail itself of section 206 of the Federal Power Act (FPA) to raise any remaining concerns regarding disparate pricing impacts at that time.

<sup>13</sup> Rehearing Request at 2.

<sup>14</sup> May 2016 Order, 155 FERC ¶ 61,146 at P 58.

(B) The compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.