

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Illinois Power Cooperative

Docket No. EL06-31-000

v.

Midwest Independent Transmission
System Operator, Inc.

ORDER GRANTING COMPLAINT, AND ORDERING REFUNDS TO
PARTIES TO CARVED-OUT GRANDFATHERED AGREEMENTS

(Issued March 2, 2006)

1. On December 20, 2005, Southern Illinois Power Cooperative (Southern Illinois) filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 206 of the Federal Power Act (FPA).¹ Southern Illinois alleges that the Midwest ISO violated its Open Access Transmission and Energy Markets Tariff (TEMT) and prior Commission orders by assessing Revenue Sufficiency Guarantee (RSG) charges and Revenue Neutrality Uplift (RNU) charges to Southern Illinois for transactions under its carved-out Grandfathered Agreements (GFAs). Southern Illinois requests that the Commission direct the Midwest ISO to cease assessing RSG and RNU charges to carved-out GFAs in violation of the TEMT and prior Commission orders, and to refund charges that have been inappropriately assessed to it.
2. The Commission will grant the complaint and require the Midwest ISO to refund to Southern Illinois, and to parties to all carved-out GFAs, RSG and RNU (if any) charges which it has assessed to them since April 1, 2005.

Background

3. On March 31, 2004, the Midwest ISO filed its proposed TEMT pursuant to section 205 of the FPA.² In accepting the TEMT, effective April 1, 2005, the Commission

¹ 16 U.S.C. § 824e (2000).

² 16 U.S.C. § 824d (2000).

generally approved the Midwest ISO's proposal to assess RSG charges³ and RNU charges⁴ to participants in its markets.⁵

³ 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.

The day-ahead RSG charge is “a charge to market participants based on Resources that are committed in the Day-Ahead Energy Market divided by the sum of the total cleared Demand Bids, Virtual Bids, and External Bilateral Transaction Schedules for Exports, in MWh, of all Market Participants scheduled in the Day-Ahead Energy Market.” *See* section 1.160a of the TEMT, Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, First Revised Sheet No. 63.

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.

On October 27, 2005, the Midwest ISO filed proposed changes to the real-time 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.

⁴ RNU charges are assessed to transactions by the Midwest ISO to cover revenue shortfalls or surpluses from a number of sources as detailed below.

⁵ *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) (August 6 Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005).

4. However, in that proceeding, the Commission determined it appropriate that some GFAs be carved-out of the Midwest ISO energy markets; that is, 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.⁶ Further, the Commission directed the Midwest ISO to include the GFA parties' non-binding schedules in the Reliability Assessment Commitment process.⁷

5. In the GFA Rehearing Order, the Commission specified which charges would be applicable to carved-out GFAs. Specifically, the Commission distinguished between imbalances associated with deviations in real-time from the carved-out GFAs' non-binding day-ahead schedules, and imbalances associated with deviations between real-time injections into and real-time withdrawals from the transmission system. In that order, the Commission clarified that the Midwest ISO may not charge parties to a carved-out GFA for any deviation from the day-ahead schedule, as long as injections and withdrawals are balanced in real-time, and that any costs associated with schedule changes post day-ahead when the carved-out GFAs allow for such changes cannot be charged to the carved-out GFA load through uplift.⁸ In addition, the Commission ruled that, where the real-time injections associated with a carved-out GFA do not match what is withdrawn, these imbalances must be handled in the real-time spot market, as either a sale or purchase.⁹ Finally, the Commission directed the Midwest to file tariff provisions reflecting that load served pursuant to carved-out GFAs would not pay uplift charges.¹⁰

Southern Illinois' Complaint

6. In its complaint, Southern Illinois alleges that the Midwest ISO is inappropriately assessing RSG and RNU charges to Southern Illinois' carved-out GFAs,¹¹ in violation of

⁶ *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).

⁷ GFA Order at P 145.

⁸ GFA Rehearing Order at P 372-73.

⁹ *Id.*

¹⁰ *Id.* at P 349.

¹¹ Attachment P of the Midwest ISO's TEMT lists Southern Illinois' carved-out GFAs as Contract Nos. 331 through 341.

the Midwest ISO's TEMT and prior Commission orders. Southern Illinois states that, from April 1, 2005 (the implementation date of the Midwest ISO energy markets) through November 21, 2005, it was inappropriately assessed roughly \$1.2 million for RSG and RNU charges on its carved-out GFAs.¹² Southern Illinois complains that it continues to be inappropriately assessed such charges.

7. With respect to RSG charges, Southern Illinois claims that the Midwest ISO is assessing RSG charges to all market participants for differences between day-ahead schedules and real-time usage or generation, without taking into account whether the transactions take place under a carved-out GFA. Southern Illinois states that this practice violates prior Commission orders on treatment of carved-out GFAs, as well as the TEMT. Specifically, Southern Illinois contends that the GFA Order and the GFA Rehearing Order state that day-ahead schedules submitted for carved-out GFAs are to be financially non-binding and that charges are not to be levied on carved-out GFA transactions for deviations between day-ahead schedules and real-time generation and load. Thus, according to Southern Illinois, carved-out GFAs are exempt from RSG and RNU charges as long as their loads and resources are matched in real-time.

8. Southern Illinois also states that the Midwest ISO's practice of assessing RSG charges violates the TEMT. It states that section 38.8 of the TEMT states unambiguously that carved-out GFAs shall be subject only to section 38.8.4 of the tariff and that section 38.8.4.6 states that, except as otherwise set forth in section 38.8, parties to carved-out GFAs shall not be subject to charges under this tariff except charges under Schedules 10, 17, and 18.

9. Further, it states that section 38.8.4.3 provides that parties to carved-out GFAs shall provide non-binding day-ahead schedules, and that section 38.8.4.5 provides that where generation schedules and load under a carved-out GFA are balanced in real-time, deviations from the day-ahead schedules will not clear in the real-time market.

10. With respect to RNU charges, Southern Illinois notes that there are six components of the RNU charges: (1) credits for uninstructed deviation charge penalty revenues; (2) uplift to recover payments made under the Midwest ISO's Joint Operating Agreement with PJM Interconnection, LLC that are not funded by congestion collections; (3) uplift to fund congestion rebates to holders of carved-out GFAs; (4) uplift to fund

¹² Southern Illinois states that its records indicate that for this period it paid a total of \$113,098 in day-ahead RSG charges, \$1,394,758 in real-time RSG charges, and \$139,862 in RNU charges for its entire load. This totals about \$1.6 million. The \$1.2 million estimate is 74 percent of the total because, according to Southern Illinois, 74 percent of its load is served pursuant to carved-out GFAs. *See* Southern Illinois' Complaint at 18.

congestion rebates to holders of Option B GFAs; (5) uplift to fund real-time RSG obligations that are not recovered by the real-time RSG charges; and (6) uplift associated with revenue inadequacy resulting from the net of all market settlements each hour.¹³ Southern Illinois argues that components (2), (3) and (4) are associated with congestion costs and that their assessment to carved-out GFAs violates explicit Commission instructions that the Midwest ISO may not assess any uplift associated with congestion or loss charges to transactions under carved-out GFAs, and that component (5) is part of real-time RSG and is, therefore, inapplicable to carved-out GFAs for the reasons explained above.

11. Thus, it concludes, assessing RSG charges and RNU charges, other than the RNU charge component for credits for uninstructed deviation charge penalty revenues, against carved-out GFAs, violates the Midwest ISO's tariff.

Notice, Interventions And Responsive Pleadings

12. Notice of Southern Illinois' complaint was published in the *Federal Register*, 71 Fed. Reg. 107 (2005), with interventions and protests due on or before January 9, 2006. Timely motions to intervene and comments were filed by Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC (collectively, Wisconsin Public Service Companies) and Basin Electric Power Cooperative, Central Power Electric Cooperative, Inc. and East River Electric Power Cooperative, Inc. (collectively, Basin Electric Cooperative). The Midwest ISO filed an answer to the complaint. Southern Illinois filed an answer to the Midwest ISO's answer.

Midwest ISO's Answer and Southern Illinois' Answer

13. The Midwest ISO states that it has been assessing RSG charges to Southern Illinois' carved-out GFAs, as well as to all carved-out GFAs, since the commencement of its energy markets and that it continues to do so. The Midwest ISO contends that neither the TEMT nor the Commission's prior orders preclude it from doing so and that it is justified in doing so. With respect to the TEMT, the Midwest ISO explains that it interprets the TEMT as to not preclude it from assessing RSG charges to the carved-out GFAs.

14. The Midwest ISO argues that it is justified in assessing RSG charges to the carved-out GFAs, including Southern Illinois' carved-out GFAs, because: (1) the Commission's orders preclude uplift only of deficiencies in revenues that fund rebates of

¹³ Detailed descriptions of these RNU charge components are set forth in the Midwest ISO's Business Practices Manual for Market Settlements, Attachment A, section D.11.

congestion or loss charges to carved-out GFAs; (2) the Commission required that carved-out GFAs be included in the Reliability Assessment Commitment process, which forms the basis for RSG charges; and (3) RSG charges are properly assessed to carved-out GFAs based on the shared benefit of increased system reliability and efficiency that parties to these GFAs receive from the Reliability Assessment Commitment process.

15. With respect to the Commission's prior orders, the Midwest ISO argues that while the GFA Rehearing Order precludes it from charging uplift charges to carved-out GFAs,¹⁴ such uplift charges do not include RSG charges. Therefore, the Midwest ISO concludes, the GFA Rehearing Order does not preclude the Midwest ISO from assessing RSG charges to the carved-out GFAs.

16. The Midwest ISO further explains that the RSG charges are associated with its Reliability Assessment Commitment process, into which the Commission, in the GFA Order, directed the Midwest ISO to incorporate carved-out GFA schedules. It states that RSG payments are intended to encourage and facilitate the commitment of generation in the Reliability Assessment Commitment process and the day-ahead energy market, to ensure the adequacy of least-cost energy sources. Thus, it claims, its assessment of RSG charges to carved-out GFAs is consistent with the Commission's directive to incorporate such GFAs into the Reliability Assessment Commitment procedures.

17. Next, it argues that assessing RSG charges to carved-out GFAs is appropriate in order to allocate to them a fair share of the costs of maintaining a more efficient and reliable transmission system, from which the parties to carved-out GFAs benefit. It states that, in approving the Midwest ISO's proposal to assess RSG charges to self-scheduling entities, the Commission declared that the services supported by RSG charges are necessary for reliability and that all loads benefit from reliable operation of the transmission system. It asserts that the Commission's rejection of attempts to exempt self-scheduling entities from RSG charges is consistent with the Commission's refusal to exempt self-scheduling entities, bilateral transactions and carved-out GFAs from Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) charges, finding that such entities receive system-wide benefits as a result of the Midwest ISO's energy markets. According to the Midwest ISO, for the same reasons that imposition of both RSG charges and Schedule 17 charges on self-scheduled and bilateral transactions, and imposition of Schedule 17 charges on carved-out GFAs, is warranted, imposition of RSG charges on carved-out GFAs is warranted.

18. The Midwest ISO also argues that assessment of RSG charges on carved-out GFAs is consistent with the TEMT. It notes that, while section 38.8.4.6 states that carved-out GFAs are only subject to Schedule 10, 17 and 18 charges, this provision is subject to the qualification: "[e]xcept as otherwise set forth in this section 38.8." It further notes that, while section 38.8 provides that "[c]arved-out GFAs shall be subject

¹⁴ See GFA Rehearing Order at P 349.

only to section 38.8.4 of this tariff,” section 38.8.4.4 provides that “[c]arved-out GFA schedules and related Generation Offers shall be incorporated into the Reliability Assessment Commitment process *in the same manner as other schedules.*” [Emphasis added.] The Midwest ISO argues that, because section 38.8 otherwise provides for the inclusion of carved-out GFA schedules in the Reliability Assessment Commitment process in the same manner as other schedules, which are subject to RSG charges, its assessment of RSG charges to carved-out GFAs is consistent with the TEMT.

19. With respect to RNU charges, the Midwest ISO states that it has not assessed these charges to carved-out GFAs.

20. The Midwest ISO states that, while it believes that Southern Illinois’ complaint can and should be summarily dismissed, if the Commission grants the complaint in whole or in part and orders refunds, the Commission may need to hold a hearing to establish the amount of refunds due to Southern Illinois. It notes that Southern Illinois admits that it does not possess all of the information necessary to quantify its alleged harm, and has merely provided estimates thereof.

21. In its answer, Southern Illinois states that, while it believes that the Midwest ISO is assessing its RNU charges on transactions under its carved-out GFA, the Midwest ISO’s invoices do not make it clear as to the actual amount of RNU charges that Southern Illinois is being assessed with respect to its carved-out GFAs. Southern Illinois states that it is willing to work with the Midwest ISO through the Commission’s Dispute Resolution Service (DRS) to determine whether, in fact, Southern Illinois was assessed RNU charges on its carved-out GFAs.

Comments

22. Basin Electric Cooperative supports Southern Illinois’ complaint and urges the Commission to order the Midwest ISO to cease assessing RSG and/or RNU charges to all carved-out GFAs, including those to which Basin Electric Cooperative and/or its members are a party, and direct the Midwest ISO to refund with interest any RSG and/or RNU charges that were inappropriately collected from carved-out GFAs since the start of the Midwest ISO’s energy markets on April 1, 2005.

23. Wisconsin Public Service Companies are concerned that the Midwest ISO may implement a system-wide uplift charge to pay refunds owed to Southern Illinois as a result of this order. Wisconsin Public Service Companies asks 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 and RNU charges in each hour that Southern Illinois was over-charged.

Discussion

Procedural Matters

24. 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 will accept Southern Illinois' answer because it has provided information that assisted us in our decision-making process.

Substantive Matters

25. The Commission will grant Southern Illinois' complaint. The Midwest ISO's practice of assessing RSG charges to carved-out GFAs for deviations between their non-binding day-ahead schedules and real-time is inconsistent with the Commission's prior orders. Moreover, assessment of RSG charges and RNU charges on transactions under carved-out GFAs is inconsistent with the TEMT.

26. In the GFA Rehearing Order, the Commission identified which charges are applicable to carved-out GFAs. Specifically, the Commission distinguished between imbalances associated with deviations from the carved-out GFAs' non-binding day-ahead schedules, and imbalances associated with deviations between real-time injections into and real-time withdrawals from the transmission system. In that order, the Commission clarified that the Midwest ISO may not charge parties to carved-out GFAs for any deviation from their day-ahead schedules, as long as injections and withdrawals are balanced in real-time, and that any costs associated with schedule changes post day-ahead when the carved-out GFAs allow for such changes cannot be charged to the carved-out GFAs through uplift.¹⁵

27. The Midwest ISO's RSG charges recover costs associated with deviations from day-ahead schedules, and, thus, the GFA Rehearing Order precludes the Midwest ISO from assessing RSG charges to carved-out GFAs for deviations from day-ahead schedules.

28. The Midwest ISO's reliance on the Commission's directive, in the GFA Order, to include the non-binding day-ahead schedules of carved-out GFAs in the Reliability Assessment Commitment process, for authority to assess real-time RSG charges on carved-out GFAs is misplaced. There, the Commission accepted the transmission

¹⁵ GFA Rehearing Order at P 372-73.

owners' offer to provide non-financially binding day-ahead schedules in order to address the Midwest ISO's concerns that it have sufficient information upon which to estimate GFA transactions in the Reliability Assessment Commitment process, in order allow the Midwest ISO to reliably implement the carve-out and minimize the impact of the carve-out on its markets.¹⁶ The Commission directed inclusion of the non-binding day-ahead schedules of carved-out GFAs in the Reliability Assessment Commitment process in order to improve the Midwest ISO' accounting for carved-out GFA transactions in its estimation process. However, as discussed above, the orders were clear that those day-ahead schedules are not financially binding.

29. Further, the TEMT does not provide for the assessment of any RSG or RNU charges to carved-out GFAs. Section 38.8 of the TEMT states that carved-out GFAs shall be subject only to section 38.8.4 of the tariff. Section 38.8.4.6 states that, except as otherwise set forth in section 38.8, parties to carved-out GFAs shall not be subject to charges under this tariff except under Schedules 10, 17, and 18. Further, section 38.8.4.5 provides that where generation schedules and load under a carved-out GFA are not balanced in real-time, excess generation over load or excess load over generation will settle as a spot energy sale or purchase at the real-time Locational Marginal Price. Under the TEMT, RSG charges are defined separately and distinctly from all of these charges.¹⁷ In addition, section 38.8.4.5 provides that generation schedules related to carved out GFAs are subject to the uninstructed deviation penalties set in section 40.3.4 of the TEMT. Section 38.8 provides for no other charges for transactions under carved-out GFAs. Thus, the Midwest ISO's tariff does not authorize it to assess any charges for transactions under carved-out GFAs other than Schedules 10, 17, and 18, the real-time Locational Marginal Price for imbalances between real-time generation and real-time load, and uninstructed deviation penalties. Accordingly, any assessment of RSG or RNU charges on transactions under carved-out GFAs is in violation of the TEMT.

30. Thus, the Commission directs the Midwest ISO to cease assessing RSG and RNU charges on transactions under carved out GFAs and, because the Midwest ISO has been billing in violation of the TEMT, to refund all RSG and RNU charges that have been assessed on transactions on carved-out GFAs since April 1, 2005, with interest,¹⁸ to reflect the proper allocation of RSG and RNU charges under the TEMT.

¹⁶ See GFA Order at P 91, 144.

¹⁷ See, e.g., section 40.3.3, Real-Time Energy Market Settlement, *cited supra* note 3, providing for separate assessments of the real-time Locational Marginal Price and real-time RSG charges for deviations from day-ahead schedules and/or dispatch instructions.

¹⁸ 18 C.F.R. § 35.19a (2005).

31. Southern Illinois states that it paid a total of \$1.6 million in RSG and RNU charges, but is unable to determine the exact amount of those charges that are associated with transactions under its carved-out GFAs. While the Midwest ISO states that no RNU charges have been assessed on transactions under Southern Illinois' carved-out GFAs, it does not indicate the magnitude of RSG charges that have been assessed to Southern Illinois' carved-out GFAs, or the magnitude of RSG and RNU charges, if any, that have been assessed on transactions under other carved-out GFAs. Further, as the Midwest ISO indicates, carved-out GFAs are being assessed RSG charges on a continuing basis. Thus, the Commission cannot determine the appropriate refunds for Southern Illinois or for others. Rather than establish hearing procedures at this time to determine the amount of refunds due, as the Midwest ISO suggests, we will direct the Midwest ISO to calculate and refund the charges improperly assessed to parties to carved-out GFAs, collecting data from the parties to carved-out GFAs that have been assessed such charges, to the extent necessary, to calculate the amount of RSG and RNU charges that have been inappropriately assessed to them.¹⁹

32. The refunds, including interest, should be provided from those entities that would otherwise have been assessed the RSG and RNU charges, had the Midwest ISO not improperly assessed those charges on transactions under carved-out GFAs. To this extent, 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:

(A) Southern Illinois' complaint is hereby granted, as discussed in the body of this order.

(B) The Midwest ISO is hereby ordered to cease assessing RSG and RNU charges on transactions under carved-out GFAs and to refund to Southern Illinois and to parties to all carved-out GFAs, all RSG and RNU charges which it has improperly assessed to them since April 1, 2005, with interest, as discussed in the body of this order.

(C) The Midwest ISO is hereby directed to refund charges improperly assessed to parties to carved-out GFAs, consistent with this order. The refunds, including interest, should be provided from those entities that would otherwise have been assessed the RSG and RNU charges, had the Midwest ISO not improperly assessed those charges to transactions under carved-out GFAs.

¹⁹ The parties are encouraged to contact the Commission's Dispute Resolution Service (DRS) if they are otherwise unable to resolve any disputes that arise, or if they otherwise need assistance, in calculating the refunds due to parties to carved-out GFAs.

(D) The parties are encouraged to contact the Commission's DRS if they need assistance to resolve a dispute, or otherwise facilitate the process, in order for the Midwest ISO to comply with the Commission's directives in this order regarding refunds of charges improperly assessed to parties to carved-out GFAs.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.