

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Docket Nos. ER06-586-000
Operator, Inc. and Southern Minnesota ER06-586-001
Municipal Power Agency

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued May 26, 2006)

1. In this order we address a proposed revised transmission formula rate template to Attachment O to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission and Energy Markets Tariff (TEMT) to reflect its application to Southern Minnesota Municipal Power Agency (SMMPA). As discussed below, we will accept the proposed revised formula rate for filing and suspend it for a nominal period, effective April 1, 2006, as requested, subject to refund and subject to condition.

I. Background

2. On January 31, 2006, Midwest ISO and SMMPA (Applicants) proposed revisions, pursuant to section 205 of the Federal Power Act (FPA),¹ to the *pro forma* Attachment O formula rate template under the Midwest ISO's TEMT for the purpose of determining SMMPA's annual transmission revenue requirements (ATRR) more accurately.

3. Applicants state that SMMPA is a joint action agency comprised of eighteen (18) member municipalities in Minnesota that own and operate municipal electric systems. They also state that as a non-profit political subdivision of the State of Minnesota organized under Chapter 453 of the Minnesota Statutes, SMMPA is not subject to the full scope of Commission jurisdiction. Applicants note that SMMPA became a Transmission Owning Member of the Midwest ISO effective April 1, 2006.²

¹ 16 U.S.C. § 824d (2000).

² During its April 2006 meeting, the Midwest ISO Board of Directors accepted SMMPA's application to become a Transmission Owning member of the Midwest ISO effective April 1, 2006. Concurrent to that, SMMPA began taking transmission service under the Midwest ISO's TEMT effective April 1, 2006.

4. Applicants state that SMMPA was a participant in the proposed TRANSLink Transmission Company. As part of that proposal, Applicants state that SMMPA completed the generic Attachment O formula rate template and discovered that certain aspects of the generic template³ did not apply to SMMPA's unique circumstances. In the instant filing, Applicants propose four specific changes to the Attachment O formula rate to reflect these circumstances.

5. The first change to the *pro forma* Attachment O formula rate that Applicants propose relates to payments made to transmission owners for access to their systems so that SMMPA's load may be served. Applicants maintain that these payments constitute payments for transmission rights that were made in lieu of building facilities and thus, should be accounted for as transmission rather than as intangible plant. The direct assignment of intangible plant to transmission requires the addition of two lines in the Attachment O formula rate template: line 4a "Intangible-Direct Transmission" and line 19 "Intangible Transmission."

6. The second proposed departure would utilize a personnel work activity study to determine the wages and salary (W&S) allocation factor. Applicants assert that as a joint action agency, SMMPA's employees are classified as Administrative and General (A&G) even though some employees spend the majority of their time on generation and transmission functions. Applicants argue that because SMMPA's A&G employees exceed the number of generation, transmission or distribution employees in a utility, the use of the default General Plant (GP) allocator within Attachment O would grossly understate SMMPA's transmission labor costs. Applicants propose a W&S allocator of 35.1 percent for SMMPA based on a 1994 personnel work activity study.

7. The third proposed change from the generic Attachment O formula rate template directly assigns the transmission amount of the interest portion of commercial paper costs as a component of Debt Service Cost. Applicants state that SMMPA has the ability to isolate the transmission portion of commercial paper issued and therefore, it can determine the interest cost for that commercial paper. Because Applicants believe that these costs are measurable and directly assignable to transmission, they assert that inclusion of these costs produces a more accurate statement of SMMPA's ATRR than the generic Attachment O formula rate template.

³ The generic versions of Attachment O in the Midwest ISO's TEMT may use one of three different data sources (FERC Form 1, RUS Form 12, and EIA-DOE Form 412). As a joint action agency serving municipal member customers, SMMPA uses the Cash Flow formula rate template found in Attachment O of the Midwest ISO's TEMT sourcing to the EIA-DOE Report No. 412.

8. The fourth change Applicants propose is using functionally identifiable Payments in Lieu of Property Taxes for transmission instead of the GP allocator to derive the transmission amount. Applicants claim that this treatment would result in a more accurate result than the GP allocator.⁴

9. Applicants request that the proposed revisions be accepted to become effective April 1, 2006.

10. On March 15, 2006, the Director, Division of Tariffs and Market Development-Central, acting pursuant to delegated authority, issued a deficiency letter requesting additional information from Applicants for the purpose of evaluating the four proposed changes to the *pro forma* Attachment O formula rate. Specifically, Applicants were directed to submit actual ATRR and rates derived from both the *pro forma* Attachment O formula rate and the Attachment O formula rate proposed by the Filing Parties utilizing historical cost data from SMMPA's most recent EIA-DOE Report No. 412. Additionally, Applicants were directed to explain how the transmission revenue credit that SMMPA receives from the Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP Companies), pursuant to a settlement agreement,⁵ would be treated in the proposed Attachment O formula rate template.

11. On March 30, 2006, SMMPA filed a response to the Commission's letter order including Attachment O formula rate templates with numerical inputs from SMMPA's 2004 EIA-DOE Report No. 412, as well as related supporting data. In addition, SMMPA proposes excluding the revenues received from the NSP Companies from its Attachment O inputs. In support of such treatment, SMMPA argues that SMMPA will stop receiving payments from the NSP Companies on March 31, 2006 and therefore, by including the revenue credit to reduce the ATRR would be an improper offset of historic revenues and would create an under-collection of revenues during the present period; and that it is appropriate to differentiate between revenues received by SMMPA for facilities in the NSP Companies control area and those received by SMMPA for third-party use of its system.

⁴ See Testimony of John D. Winter at 11 (January 31, 2006).

⁵ See Northern States Power Co.(Minnesota) and Northern States Power Co. (Wisconsin), OA97-25-000, *et al.*, Letter Order issued May 17, 2000; Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin), OA97-25-000, *et al.*, Letter Order issued December 20, 1999.

II. Notices of Filings and Responsive Pleadings

12. Notice of Applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 8,295 (2006), with interventions and protests due on or before February 21, 2006. Dairyland Power Cooperative (Dairyland) filed a timely motion to intervene. Great River Energy (Great River) filed a timely motion to intervene and comments. Xcel Energy Services Inc. (Xcel Energy) on behalf of its utility operating company affiliates NSP Companies filed a timely motion to intervene and conditional protest; SMMPA filed an answer to Great River's comments and Xcel Energy's conditional protest.

13. Notice of Applicants' response to the deficiency letter was published in the *Federal Register*, 71 Fed. Reg. 19,720 (2006), with interventions and protests due on or before April 20, 2006. Xcel Energy and Great River filed a timely, joint protest. SMMPA filed an answer to the joint protest.

14. On May 4, 2006, Alliant Energy Corporate Services, Inc. (Alliant) filed a motion to intervene out-of-time.

15. In their respective protests, Xcel Energy and Great River argue that SMMPA should include the NSP Companies' transmission revenue credits in Attachment O. They assert that the exclusion of the transmission credits has not been shown to be just and reasonable or consistent with Commission precedent,⁶ which they describe as precluding multiple transmission owners located in the same pricing zone from having different treatments in calculating ATRR. In addition, Xcel Energy and Great River argue that SMMPA's exclusion of the credits violates the use of the historic test-year concept and results in an excessive ATRR. They state that the purpose of the formula rate is to identify the transmission revenue requirement by looking at actual costs and any actual offsetting revenues. Thus, they assert, SMMPA should also be required to revise its Attachment O in such a way that includes transaction revenues that are shared among all Midwest ISO Transmission Owners, but were not received in the historic test years used to calculate Midwest ISO rates in 2006.

16. Also, Xcel Energy and Great River argue that despite SMMPA's claims to the contrary, there is no difference between the NSP Companies' transmission credits and the revenues provided through other third-party transactions. They state that like any other third party transaction, the NSP Companies compensate SMMPA for the use of its transmission facilities. Xcel Energy and Great River argue that if all the costs for the transmission facilities that are used to facilitate the SMMPA-NSP agreement are in the

⁶ Citing *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,053 at P 15 (2006) (Wolverine Order).

formula rate, to then exclude the transmission payments results in an inflated historic revenue requirement by not recognizing third-party transaction revenues as an offset to the costs.

17. Additionally, both protesters question the validity of the 1994 labor study that SMMPA is using to justify its proposed 35.1 percent W&S allocator.

18. In its answers, SMMPA contends that it has provided Great River and Xcel Energy sufficient information to enable them to estimate the cost impacts of the transmission credits in their respective pricing zones. Additionally, SMMPA states that it does not oppose Great River's and Xcel Energy's request for an updated personnel work activity study so long as the Commission approves SMMPA's petition to utilize a W&S allocator based on the specifics of SMMPA's actual personnel activities rather than the GP allocator. Finally, SMMPA suggests that despite the claims of the protesters, Commission rules allow for adjustments to test period data to reflect "known and measurable" changes occurring subsequently.⁷ According to SMMPA, the NSP Companies transmission credits reflect a change in revenues occurring before the proposed effective date of April 1, 2006, which was known and measurable at the time of SMMPA's application for Commission approval.

III. Discussion

A. Procedural Matters

19. 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. We will grant Alliant's motion to intervene out-of-time given the early stage of this proceeding, and the absence of any undue delay, prejudice or burden to the parties.

20. 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 a protest or answer unless otherwise ordered by the decisional authority. We will accept SMMPA's answers because they have provided information that assisted us in our decision-making process.

B. Proposed Attachment O

21. We will accept SMMPA's four proposed changes to the *pro forma* Attachment O formula rate template for filing and suspend it for a nominal period, effective April 1, 2006, subject to refund and subject to SMMPA's submission, within sixty (60) days, of

⁷ 18 C.F.R. § 35.13(a)(2)(i)(D) (2005).

an updated personnel work activity study. We share the concern of Xcel Energy and Great River that the 1994 work study that the proposed W&S allocator of 35.1 percent is based on may not be up-to-date.

22. With regard to Xcel Energy's and Great River's arguments that SMMPA should be required to include the NSP Companies' transmission credits in its Attachment O formula rate, we disagree.

23. Both Xcel Energy and Great River assert that SMMPA will over-collect revenues if they are not required by the Commission to include the NSP Companies' transmission credits in their Attachment O formula rate. Specifically, the Commission understands Xcel Energy and Great River to mean that by allowing SMMPA to omit the NSP transmission credits from its customized Attachment O, SMMPA's ATRR will be \$18,489,593 instead of \$13,873,776 as calculated in the *pro forma* Attachment O.⁸ Thus, according to the protesters, the \$4,615,817 difference between the *pro forma* and the proposed Attachment O formula rates is over-collected revenue that Xcel Energy, Great River and other entities would pay.

24. We note that no party disputes that SMMPA received its last NSP Companies' transmission payment on March 31, 2006. This final payment was made prior to SMMPA becoming a transmission owning member of Midwest ISO on April 1, 2006 and the effective date for SMMPA to recover its revenue requirement through the Midwest ISO Attachment O formula rate.⁹

25. We find that the exclusion of these transmission revenue credits is necessary for SMMPA to fully recover its revenue requirement given the change in rate design that necessitated this filing. SMMPA is no longer paying multiple, pancaked rates under agreements giving rise to revenues from the NSP Companies (which would require crediting), but instead will pay license plate rates only to the Midwest ISO (which terminates the revenues from the NSP Companies that would otherwise have been required to be credited).¹⁰ In other words, the exclusion of the credit is justified not simply by the termination of the NSP revenues alone, but by the change in rate design.¹¹

⁸ See Testimony of John D. Winter at 3 (March 30, 2006).

⁹ On March 16, 2006, the Midwest ISO Board of Directors accepted SMMPA's application to become a transmission owning member of the Midwest ISO, effective April 1, 2006.

¹⁰ See also *Midwest Independent Transmission System Operator, Inc., FirstEnergy Services Co.*, 114 FERC ¶ 61,274, *reh'g pending* (Commission conditionally accepts proposed changes to American Transmission's formula rate necessary to account for the permanent elimination of revenues, effective March 31, 2006, from sources other

26. We find that Great River's reference to the Wolverine Order is misplaced. The Wolverine Order required comparable treatment of facilities of multiple transmission owners situated in a *joint* pricing zone, whereas in this proceeding SMMPA, Great River and the NSP Companies all have individual pricing zones. Great River has not demonstrated to the Commission why SMMPA should be held to the joint pricing zone treatment. Each transmission owner may propose modifications as necessary to its individual pricing zone revenue requirement as allowed by the FPA.

The Commission orders:

(A) Applicants' proposed revised Attachment O formula rate is hereby accepted for filing and suspended for a nominal period, effective on April 1, 2006, subject to refund and subject to condition, as discussed in the body of this order.

(B) SMMPA is hereby directed to submit a compliance filing within sixty (60) days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

than the load in its zone resulting from the elimination of through and out rates that resulted in rate pancaking in the Midwest ISO/PJM region, finding "[T]he requested changes to the Attachment O formula rate are necessary to provide American Transmission the opportunity for full recovery of its revenue requirement, given the change in rate design.").

¹¹ The protestors' argument that the inclusion of the credit is justified based on historic test-period concepts is off-point; the Commission is allowing the exclusion of this credit because of the elimination of the former revenues from the NSP Companies due to the change in rate design associated with SMMPA becoming a transmission-owning member of the Midwest ISO and is not because of test-period concepts.