

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Minnesota Municipal Power Agency

v.

Docket No. EL06-18-001

Northern States Power Company d/b/a
Xcel Energy Services, Inc., and
Midwest Independent Transmission
System Operator, Inc.

ORDER GRANTING REHEARING

(Issued June 1, 2006)

1. In this order, we grant the alternative request for rehearing filed by Minnesota Municipal Power Agency (Minnesota MPA) of the Commission's January 3, 2006 Order in this proceeding,¹ which denied the Minnesota MPA's complaint against Northern States Power Company (Northern States) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

I. Background

2. Since 1994, the Minnesota MPA and Northern States have been parties to an Interconnection and Interchange Agreement identified in Attachment P to the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT)² as Grandfathered Agreement No. 362 (GFA 362), whereby Northern States provides transmission service to the Minnesota MPA.

¹ *Minnesota Municipal Power Agency v. Northern States Power Co.*, 114 FERC ¶ 61,004 (2006) (January 3, 2006 Order).

² The TEMT, implemented on April 1, 2005, allowed the Midwest ISO to initiate Day 2 operations in its 15-state region. The Midwest ISO's Day 2 operations include, among other things, a day-ahead energy market and a real-time energy market, with locational marginal pricing and financial transmission rights (FTR) for hedging congestion costs.

3. In 2004, the Commission issued an order on the Midwest ISO's TEMT which, among other things, initiated, under section 206 of the Federal Power Act (FPA),³ a three-step process to address the treatment of transmission service provided under grandfathered agreements (GFA) in the Midwest ISO footprint and offered three options (Options A, B, or C) for GFA parties to settle upon.⁴ Briefly, Option A entitles the GFA Responsible Entity to nominate the capacity for FTRs, but that entity also may be charged for the costs of transmission congestion and losses. Under Option B, the transmission rights contained in the GFA are, in effect, accommodated as firm transmission service, with day-ahead scheduling in the Midwest ISO's security-constrained economic dispatch. The Midwest ISO would keep the GFA customer financially indifferent to the costs of congestion by crediting the GFA transaction at settlement as though the scheduling party had a perfectly matching set of FTRs, thus providing a perfect hedge. To achieve the effect of charging the GFA customer average, rather than marginal, losses, the Midwest ISO would rebate the difference between the actual marginal losses included in the TEMT transmission charge and the Midwest ISO's calculation of average losses.⁵

4. On November 3, 2005, the Minnesota MPA filed a complaint against Northern States and the Midwest ISO requesting a finding that the Minnesota MPA has the contractual right to provide transmission service to the City of Buffalo (Buffalo) under its GFA and directing the Midwest ISO to register Buffalo load under GFA 362. The Minnesota MPA argued that the Midwest ISO's denial of this right is effectively modifying a GFA in violation of the *Mobile-Sierra* doctrine.⁶ The Minnesota MPA explained that, under the terms of GFA 362, the Minnesota MPA can add Minnesota municipalities to its membership.⁷

5. The Minnesota MPA stated that, in May 2005, pursuant to the notice provisions in GFA 362, it notified Northern States that it intended to add Buffalo as a new member. Currently Buffalo's load is served by Northern States under Midwest ISO's TEMT. The Minnesota MPA notified Northern States that, as of January 1, 2006, it would be

³ 16 U.S.C. § 824e (2000).

⁴ *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004) (GFA Procedural Order); *see also Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order), *order on reh'g*, 111 FERC ¶ 61,042 (2005) (GFA Rehearing Order I), *order on reh'g*, 112 FERC ¶ 61,311 (2005) (GFA Rehearing Order II) (collectively, GFA Orders).

⁵ GFA Rehearing Order II, 112 FERC ¶ 61,311 at P 8 n.12.

⁶ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 345 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956) (*Mobile-Sierra*).

⁷ Complaint at P 3 (citing to Interconnection and Interchange Agreement § 8.06).

replacing Northern States as Buffalo's wholesale supplier and that it would be providing transmission service under GFA 362. The Minnesota MPA stated that it was then notified by Northern States that the change would be subject to the Midwest ISO and/or the Commission allowing the transfer of the Buffalo load from the TEMT to GFA 362. The Minnesota MPA also stated that the Midwest ISO replied that it would not accept registration of Buffalo's load under GFA 362, because transmission service under the TEMT could not be converted to service under a GFA.

6. On January 3, 2006, the Commission denied Minnesota MPA's complaint, finding that Buffalo's load could not be added to GFA 362 under Option B because it would be inconsistent with Option B being a limited-availability settlement incentive provided strictly to existing customers during a specified period to encourage settlement.⁸ Moreover, the Commission found that expanding the loads served under Option B would not be in the public interest, and, therefore, it was unnecessary to decide whether the just and reasonable or public interest standard of review applied to GFA 362.⁹

II. Rehearing Request

7. On February 2, 2006, the Minnesota MPA requested rehearing of the January 3, 2006 Order. The Minnesota MPA contends that the Commission should reverse its finding and direct the Midwest ISO to register Buffalo's load under GFA 362; Buffalo's load should be included under Option B like other cities whose loads are already included under GFA 362. In the alternative, the Minnesota MPA requests the Commission to clarify that the January 3, 2006 Order provides that Buffalo's load may be included in GFA 362 under Option A, leaving the rest of GFA 362 load under Option B.

III. Discussion

8. We grant rehearing with respect to the Minnesota MPA's alternative request and find that the Minnesota MPA may register Buffalo's load under GFA 362 with Option A treatment, as discussed below.

9. Option A treatment is appropriate here; only Option B treatment was no longer available as an option after July 28, 2004.¹⁰ The Commission's concerns in the January 3, 2006 Order revolved around the detrimental impact an expansion of Option B treatment would cause to the market and the corresponding cost-shifting associated with providing the congestion cost hedge. Option A treatment, however, was not provided as an incentive to settle and, therefore, remains open to market participants. Moreover,

⁸ January 3, 2006 Order, 114 FERC ¶ 61,004 at P 22 -26.

⁹ *Id.*

¹⁰ GFA Rehearing Order I, 111 FERC ¶ 61,042 at P 123.

Option A treatment does not present the same cost shift concerns, as the Minnesota MPA (*i.e.*, the GFA Responsible Entity) will be required to nominate FTRs and be responsible for all credits and debits for congestion costs.¹¹ Accordingly, we will grant the Minnesota MPA's request to register Buffalo's load under GFA 362 with Option A treatment.

10. The remainder of the load under GFA 362 may retain Option B treatment, consistent with the earlier settlement.¹²

The Commission orders:

The Minnesota MPA's alternative request for rehearing is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹¹ See TEMT, Module C, Second Revised Sheet Nos. 445-446, § 38.8.3.a.

¹² GFA Order, 108 FERC ¶ 61,236 at P 275-80.