

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

Southern Illinois Power Cooperative  
v.

Docket No. EL06-31-001

Midwest Independent Transmission  
System Operator, Inc.

ALLETE, Inc.  
v.

Docket No. EL06-42-001

Midwest Independent Transmission  
System Operator, Inc.

ORDER DENYING REQUESTS FOR REHEARING

(Issued August 2, 2006)

1. This order denies requests for rehearing of two orders<sup>1</sup> issued in the above captioned proceedings. In the Southern Illinois Order, the Commission required the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to refund to Southern Illinois Power Cooperative (Southern Illinois), and to parties to all carved-out Grandfathered Agreements (GFAs), Revenue Sufficiency Guarantee (RSG) charges and Revenue Neutrality Uplift (RNU) charges (if any) that the Midwest ISO assessed to them since April 1, 2005. In the ALLETE Order, the Commission dismissed ALLETE, Inc.'s (ALLETE) complaint as moot because the relief sought by ALLETE was granted in the Southern Illinois Order.

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<sup>1</sup> *Southern Illinois Power Cooperative v. Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,234 (2006) (Southern Illinois Order). *ALLETE, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,325 (2006) (ALLETE Order).

## **Background**

2. On March 31, 2004, the Midwest ISO filed its proposed Transmission and Energy Markets Tariff (TEMT) pursuant to section 205 of the FPA.<sup>2</sup> In accepting the TEMT, effective April 1, 2005,<sup>3</sup> the Commission generally approved assessing RSG charges<sup>4</sup> to Midwest ISO's members. The Commission also recognized that some GFAs would be

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<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> Midwest Independent Transmission System Operator, Inc., 107 FERC ¶ 61,191 (2004) (May 26 Order), order on reh'g, 111 FERC ¶ 61,042 (2005); Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,163 (2004) (August 6 Order), order on reh'g, 109 FERC ¶ 61,157 (2004) (November 8 Order), order on reh'g, 111 FERC ¶ 61,043 (2005) (April 15 Order), reh'g denied, 112 FERC ¶ 61,036 (2005).

<sup>4</sup> The Midwest ISO defines RSG charges as a guarantee by the transmission provider to ensure the minimum recovery of a resource's start-up, no-load and energy offers for a resource committed and scheduled by the transmission provider. *See* section 1.227 of the TEMT.

A Market Participant that purchases any energy in the day-ahead energy market will be charged a day-ahead revenue sufficiency guarantee that for any given day "shall equal the product of: (i) the Market Participant's total cleared Demand Bid, Virtual Bids, and External Bilateral Transaction Schedules for Exports (in MWh) scheduled in the Day-Ahead Energy Market and (ii) the per unit Day-Ahead revenue sufficiency guarantee charge." (*See* Second Revised Sheets 511-512 of the TEMT)

A Market Participant that withdraws any energy in real-time will be charged a real-time revenue sufficiency guarantee charge that for any given hour "shall equal the product of: (i) the Market Participant's total Load purchased in the Real-Time Energy Market during the Operating Day (in MWh), all Virtual Supply for the Market Participant in the Day-Ahead Energy Market, and Resource Uninstructed Deviation quantities (MWh), and (ii) the per unit Real-Time revenue sufficiency guarantee charge." (*See* Second Revised Sheets 577 - 578 of the TEMT).

carved out of the Midwest ISO energy markets,<sup>5</sup> but the Commission nevertheless specified that certain charges would still be applicable to carved-out GFAs.<sup>6</sup>

3. On March 2, 2006, the Commission issued the Southern Illinois Order. The Commission: (1) found that by assessing RSG charges to carved-out GFAs, the Midwest ISO violated its TEMT and the Commission's orders on the treatment of GFAs in the Midwest ISO's markets; and (2) required the Midwest ISO to refund, not only to Southern Illinois, but to all parties to carved-out GFAs, any RSG charges which the Midwest ISO assessed to them since the implementation of the Midwest ISO energy markets on April 1, 2005.

4. On March 30, 2006, the Commission issued its ALLETE Order dismissing ALLETE's similar complaint as moot because, as a party to a carved-out GFA, the relief ALLETE requested had already been granted in the Southern Illinois Order.

### **Requests for Rehearing**

5. In Docket No. EL06-31-001, the Midwest ISO filed a request for clarification and/or rehearing, and a request for a technical conference. Southern Illinois and Basin Electric Power Cooperative, *et al.* (Basin Electric) filed answers to the Midwest ISO's request for rehearing. Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) filed a motion to intervene out-of-time and an answer to the Midwest ISO's request for a technical conference.

6. In Docket No. EL06-42-001, the Midwest ISO filed a request for clarification and/or rehearing, and a request for a technical conference. ALLETE filed a request for rehearing.

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<sup>5</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order), *order on reh'g*, 111 FERC ¶ 61,042 (2005), *order on reh'g*, 112 FERC ¶ 61,311 (2005).

<sup>6</sup> The Commission distinguished between real-time imbalances stemming from changes made to the carved-out GFAs' non-binding day-ahead schedules, and real-time imbalances due to differences between injections into and withdrawals from the transmission system. The Midwest ISO may not charge a carved-out GFA for deviations from the day-ahead schedule, as long as injections and withdrawals are balanced in real-time. However, where the real-time injection associated with a carved-out GFA does not match what is withdrawn, such imbalances are handled in the real-time spot market as either a sale or purchase. *See* Southern Illinois Order at P 5, 26-27.

## **Discussion**

### **Procedural Matters**

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits an answer to a request for rehearing. We will, therefore, reject the answers.

8. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.<sup>7</sup> Hoosier has not met this higher burden of justifying the late motion to intervene and it is therefore denied. Accordingly, we will also reject Hoosier's answer to the Midwest ISO's request for a technical conference.

### **Substantive Matters**

#### **Carved-out GFAs**

9. In both proceedings, the Midwest ISO requests clarification that the Commission's directive that RSG charges be refunded to carved-out GFAs applies only to certain parts of carved-out GFA transactions. In the event the Commission denies clarification, the Midwest ISO requests rehearing. The Midwest ISO does not dispute the Commission's findings in the Southern Illinois Order that such charges are precluded by a prior Commission order and that any assessment of RSG charges on transactions under carved-out GFAs are in violation of the TEMT. The Midwest ISO also states that it is not seeking rehearing of the directive to refund RSG charges. Rather, the Midwest ISO contends that carved-out GFA treatment should apply only to carved-out GFA *load* and that generation resources serving carved-out GFA load should not receive refunds and should continue to be assessed RSG charges. The Midwest ISO states that it would be unduly preferential and discriminatory to treat generating resources that serve carved-out GFA transactions differently than all other generating resources.

10. In the ALLETE proceeding, the Midwest ISO also argues that the Commission erred in relying on its ruling in the Southern Illinois Order when it dismissed ALLETE's complaint. The Midwest ISO restates the arguments it made in its answer to ALLETE's

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<sup>7</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003); *Florida Power & Light Co.*, 99 FERC ¶ 61,318 at 62,358 (2002); *Garnet Energy LLC*, 99 FERC ¶ 61,165 at 61,672 (2002); *Edison Mission Energy*, 96 FERC ¶ 61,032 at 61,082-83 (2001).

complaint as to why the complaint should be denied. The Midwest ISO also contends that ALLETE's complaint differed from Southern Illinois' complaint, and therefore the Commission should have ruled that ALLETE waived its right to raise arguments that Southern Illinois made, but ALLETE did not make, regarding whether RSG charges should be assessed to ALLETE's carved-out GFA.

11. We will deny the Midwest ISO's request to assess RSG charges to the generating resource side of carved-out GFA transactions. Most importantly, the Midwest ISO does not explain how it is appropriate to assess RSG charges to any carved-out GFA transactions in contravention of both prior Commission orders and its own TEMT. In this regard, the Midwest ISO is essentially arguing for a change to its TEMT that would allow it to assess RSG charges to generating resources supplying carved-out GFA load. The TEMT does not provide for such charges and the Midwest ISO has not made a filing to amend the TEMT to provide for such charges. The TEMT was proposed and accepted without a provision that would allow the Midwest to assess RSG charges to the generating resource side of carved-out GFA transactions and the instant complaint proceedings are not the proper vehicle for changes to the Midwest ISO's TEMT.

12. Furthermore, the Midwest ISO is wrong to assert that exempting the generating resource side of a carved-out GFA transaction is unduly preferential and discriminatory. Consistent with the findings in the Southern Illinois Order, *all* carved-out GFA transactions will be afforded the same treatment. The generation side of carved-out GFA transactions will not have to pay RSG charges for service provided under carved-out GFAs, just as carved-out GFA load will not have to pay RSG charges for service received under carved-out GFAs. Generating resources serving carved-out GFA load may be treated differently than generating resources not serving carved-out GFA load, as they involve different circumstances, but all generating resources that serve carved-out GFA load and thus that are part of carved-out GFA transactions will be treated the same.

13. In addition, we disagree with the Midwest ISO's assertion that the Commission should not have relied on the Southern Illinois Order in dismissing ALLETE's complaint. While the facts in the ALLETE complaint differed from those in Southern Illinois' complaint, the differences were not relevant to our ruling. Specifically, in the ALLETE proceeding, the Midwest ISO alleged that ALLETE was assessed RSG charges in part because of the lack of sophistication of ALLETE's computer modeling system. Whether this was true or not is immaterial because it does not change the fact, as noted in the Southern Illinois Order, that the Midwest ISO's TEMT does not permit parties to carved-out GFAs to be assessed RSG charges.

14. Nor does it matter that ALLETE did not make all of the same arguments that Southern Illinois made regarding whether it should be assessed RSG charges. The Commission dismissed ALLETE's complaint because the relief ALLETE sought had

already been granted in the Southern Illinois Order. ALLETE did not waive any rights either by filing a complaint or by the Commission's dismissal of the complaint.

15. Accordingly, the requests for rehearing on these issues are denied.

### **Technical Conference**

16. The Midwest ISO requests a technical conference for the purpose of discussing RSG charges. The Midwest ISO states that a technical conference would allow it to better explain RSG charges and the potential effect of the refund directive on market participants that are not parties to carved-out GFAs.

17. In view of our ruling above, the Commission denies the request for a technical conference. No purpose would be served by convening such a technical conference.

### **Interest on Refunds**

18. The Midwest ISO argues that the Commission erred in requiring that interest be paid on the refunds ordered in these proceedings. The Midwest ISO argues that, since it is a non-profit entity, it should not be required to pay interest. The Midwest ISO also contends that it would be unfair to the other market participants if interest must be paid on the refunds because the interest payments would have to be passed on to them. The Midwest ISO argues that proceedings in which the Commission accepted proposed tariff changes subject to refund are distinguishable from the instant proceeding because those proceedings involved proposed tariff changes. Here, the Midwest ISO claims that the instant proceeding is more akin to a billing dispute. As such, the Midwest ISO argues that the Commission should not rely on precedent with respect to refunds associated with proposed tariff provisions, but rather the Commission should exercise discretion and not require that interest be paid on the refunds.

19. Alternatively, the Midwest ISO requests that the Commission clarify that the interest rate shall be the "average prime rate" under 18 C.F.R. § 35.19(a)(2)(iii), and not the nine percent rate under the sub-section (ii) thereof, or any other higher rate.

20. The Commission disagrees that it erred in ordering that interest be paid on the refunds. Our regulations provide for the payment of interest on refunds<sup>8</sup> and the Midwest ISO has not justified our treating differently what the Commission found to be violations of the TEMT. With respect to the Midwest ISO's status as a non-profit entity, the payment of interest on refunds is intended to make those market participants who receive

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<sup>8</sup> 18 C.F.R. § 35.19a (2006).

refunds whole<sup>9</sup> and the fact that the Midwest ISO is a non-profit entity does not change that analysis. Moreover, the payment of interest on refunds should not adversely impact the Midwest ISO given that the Southern Illinois Order states, “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.”<sup>10</sup>

21. The Southern Illinois Order provides for the payment of interest on the refunds in accordance with 18 C.F.R. § 35.19a (2006).<sup>11</sup> Section 35.19(a)(2)(i) specifies a seven percent interest rate for refunds for rates before October 10, 1974; section 35.19(a)(2)(ii) specifies a nine percent interest rate for refunds for rates for the period October 10, 1974 to September 30, 1979, and section 35.19(a)(2)(iii) specifies a formula interest rate, which includes the average prime rate in the calculation, for refunds for rates for the period on or after October 1, 1979. Since the refunds we ordered here apply to assessments beginning on April 1, 2005, the interest on the refunds must be in accordance with section 35.19a(a)(2)(iii) of our regulations.

### **RNU Charges**

22. The Midwest ISO argues that the Commission erred in requiring it to refund RNU charges (if any) to carved-out GFA customers because neither Southern Illinois, nor any other intervenor, demonstrated that the Midwest ISO assessed RNU charges on carved-out GFA transactions. The Midwest ISO contends that the burden of proof should be on the customers to show that they were erroneously assessed RNU charges, rather than on the Midwest ISO to show that they had not.

23. The Southern Illinois Order required that the Midwest ISO refund the RNU charges, if any. We have no reason to believe that the Midwest ISO assessed RNU charges when it states that it did not. However, Southern Illinois stated that it could not determine whether it had been assessed RNU charges because the bill submitted to it by the Midwest ISO was not sufficiently detailed so that the components comprising the bill could be determined. Because the Midwest ISO, and not carved-out GFA customers, has

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<sup>9</sup> E.g., *Washington Urban League v. FERC*, 886 F.2d 1381, 1386 (3d Cir. 1989); *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 113 FERC ¶ 61,184 at P 40 (2005), *order on clarification*, 114 FERC ¶ 61,059 at P 7 (2006).

<sup>10</sup> Southern Illinois Order at P 32.

<sup>11</sup> Southern Illinois Order at P 30.

the information necessary to determine whether RNU charges are included in the bill, it is the Midwest ISO that is in the position to explain how it arrived at the total bill. The Midwest ISO states that it is willing to clarify the structure and format of its invoices to help all interested parties to carved-out GFAs understand the nature of the charges reflected in their invoices. If RNU charges are not included in the bill, then it is simply a matter of the Midwest ISO demonstrating this to carved-out GFA customers by breaking down all the components comprising their bills.

**Dismissal of ALLETE's complaint**

24. ALLETE contends that, while the Commission dismissed its complaint because the relief ALLETE sought had already been granted in the Southern Illinois Order, the Commission nonetheless should have granted ALLETE's complaint. ALLETE states that it is seeking rehearing on this issue out of caution, because if the Commission grants the Midwest ISO's request for rehearing of the Southern Illinois Order, or otherwise determines that the Southern Illinois Order refund determination does not apply to ALLETE, then ALLETE will have foregone its right to appeal our decision dismissing its complaint.

25. The Commission is not persuaded to change its ruling dismissing ALLETE's complaint. The Commission has denied the Midwest ISO's request for rehearing of the Southern Illinois Order and that order clearly stated that the refund applies to all of the parties to the carved-out GFAs, including ALLETE. This fully addresses ALLETE's concerns.

**The Commission orders:**

The requests for rehearing in Docket Nos. EL06-31-001 and EL06-42-001 are, hereby, denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.