

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Allete, Inc., Great River Energy, )	Docket No. ER16-1107
Midcontinent Independent System )	Docket No. ER16-1108
Operator, Inc. )	Docket No. ER16-1116
	(Not consolidated)

**MOTIONS TO INTERVENE AND PROTEST, AND FOR EXTENSION OF TIME OF  
MISSOURI RIVER ENERGY SERVICES**

Pursuant to Rules 212, 214, and 2008 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R §§ 385.212, 385.214, and 385.2008 (2015), Missouri River Energy Services (“MRES”) respectfully, moves for:

- (a) Leave to intervene and protest, and
- (b) A 14-day extension, until April 12, 2016, to submit additional comments. Currently, the comment deadline is March 29, 2016.

MRES submits that good cause exists to grant these Motions for the reasons set forth below.

**I. Communications**

Documents and correspondence relating to these dockets should be served upon the persons listed below:

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## **II. Procedural Background**

On March 8, 2016, Allete, Inc. (“Allete”), Great River Energy (“GRE”), and Midcontinent Independent System Operator (“MISO”) (collectively, the “Applicants”) submitted for acceptance three contracts, a: (1) Coordinated Local Planning Agreement; (2) Joint Pricing Zone Revenue Allocation Agreement; and (3) Revenue Credit Agreement for the Great Northern Transmission Line Project. On the same day, MISO submitted for acceptance a Wholesale Distribution Service Agreement,<sup>1</sup> and Allete and MISO submitted a Notice of Cancellation of a grandfathered Network Integration Transmission Service Agreement between Allete and GRE.<sup>2</sup> Applicants’ filings effect the revenue requirements collected in the MP Pricing Zone of MISO. The Commission issued Notices of Filing on March 8, 2016 in Docket Nos. ER16-1107 and ER16-1108, and on March 9, 2016 in Docket No. ER16-1116, providing until March 29, 2016 for interested parties to respond.

## **III. Basis for Motion to Intervene**

MRES is a municipal joint action agency formed under Chapter 28E of the Iowa Code and existing under the joint action laws of the States of Iowa, Minnesota, North Dakota, and South Dakota. MRES comprises 60 member municipalities owning distribution electric utilities located in these four states. MRES provides firm supplemental wholesale power supply and transmission to 57 of those member municipalities; partial requirements to a municipality in each of Iowa and Minnesota; and, full power supply to a municipality in Iowa. MRES also provides additional transmission service pursuant to various contractual arrangements with several of its

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<sup>1</sup> The Coordinated Local Planning Agreement; Joint Pricing Zone Revenue Allocation Agreement; and Revenue Credit Agreement for the Great Northern Transmission Line Project were submitted in Docket No. ER16-1107. While the filing letter indicates that the Wholesale Distribution Service Agreement was also submitted in that docket MISO actually submitted the Wholesale Distribution Service Agreement in Docket No. ER16-1108.

<sup>2</sup> Docket No. ER16-1116.

members located within the MISO footprint. MRES joined MISO as a transmission owning member in 2011 and has been a market participant in the MISO energy market since its inception. MRES has executed a Network Integrated Transmission Service Agreement (“NITS”) with MISO and has network loads within multiple pricing zones of MISO. In the MP Pricing Zone, MRES has two member communities - Wadena Electric and Water (“Wadena”) and City of Staples (“Staples”) - with load under grandfathered transmission service agreements listed in the MISO Tariff.<sup>3</sup>

Wadena and Staples each own and operate a municipal electric utility, which is engaged in the business of distributing electric power and energy within its incorporated area in the State of Minnesota. Wadena and Staples each purchase a portion of its power supply from MRES. Transmission service is purchased by Wadena and Staples from Minnesota Power pursuant to a grandfathered transmission service agreement.<sup>4</sup> MRES administers the transmissions service for Wadena and Staples. In the event the grandfathered service agreements terminate, Wadena and Staples’ loads would be added to MRES’ NITS within the MP Pricing Zone.

As a transmission customer with loads within the MP Pricing Zone, MRES has a direct interest in Applicants’ filings which affect the MP Pricing Zone rates. MRES’ interests will not be adequately represented by any other party. Therefore, MRES respectfully requests that the Commission grant its motion to intervene.

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<sup>3</sup> The grandfathered transmission service agreements are listed as #289 in Attachment P of the MISO Tariff and correspond with OASIS transmission service reservation (“TSR”) #76359469.

<sup>4</sup> Id.

#### IV. Initial Protest

##### A. Contrary to Applicants' Assertions Third-parties May Be Affected by Their Proposal.

Applicants characterize their filings as a “comprehensive ‘black box’ settlement between Allete and GRE to resolve many separate (but related) issues concerning the way that Allete and GRE compensate each other ...”<sup>5</sup> While the Applicants’ suggest that these agreements will not affect the revenue requirements collected through MISO NITS service in the MP Pricing Zone,<sup>6</sup> neither that fact nor the question whether such revenue requirements will be affected if the Commission requires changes in any of these agreements is self-evident to MRES. If such arrangements will affect Minnesota Power’s revenue requirements within the MP Pricing Zone, MRES and its members are likely to be affected. MRES, as a transmission customer with load within the MP Pricing Zone, may be impacted by changes to the revenue requirements included within the MP Pricing Zone, especially considering the long-term nature of the agreements submitted by the Applicants for acceptance.

##### B. Applicants' Black Box Settlement has Shrouded an Accounting of a Majority of the GNTL's Transmission Capacity and Revenue Requirement, Which Raises Questions as to Potential Future Efforts to Allocate the Costs of the GNTL to Unwilling Parties.

MRES is diligently trying to understand Applicants’ purported “black box settlement,” which was reached outside of Commission processes and the extents to which the terms and conditions of the proposed agreements, viewed individually and together, are consistent with FERC’s open access transmission rules and rate precedent. MRES protests Applicants’ filings on

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<sup>5</sup> Filing Letter at page 2.

<sup>6</sup> Id. at page 3 (“Moreover, as explained below, because the load and transmission facilities included in the MP Pricing Zone are not changing as a result of the ‘settlement,’ there is no rate impact on third parties and an August 1, 2013 effective date will not harm third-parties.”)

a number of grounds that including but are not limited to those set forth below, and reserves the right to submit additional comments.

Among the issues addressed in the settlement is the manner in which the Great Northern Transmission Line Project<sup>7</sup> (“GNTL”) is included in Allete’s revenue requirement. GNTL will have approximately 883 MW of transmission capacity<sup>8</sup> of which Minnesota Power has committed to purchase a portion of the transmission capacity but the quantity of capacity included in its revenue requirement is unclear.<sup>9</sup> The remainder of Minnesota Power’s transmission capacity in the GNTL and its corresponding revenue requirement is not accounted for in the black box settlement, and must be in order to evaluate Applicants’ proposals. Also unaccounted for is the remainder of GNTL’s excess, unsold transmission capacity (57% or 500 MW). It is unclear where and how the revenue requirement associated with the excess, unsold GNTL transmission capacity is being collected. This excess, unsold GNTL transmission capacity and the corresponding revenue requirement(s) of the owners/users of the transmission capacity must be accounted for in order to evaluate Applicants’ proposals.

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<sup>7</sup> The Great Northern Transmission Project is a 500 kV transmission line and substation that is being developed by Allete through its subsidiary Minnesota Power to bring hydropower generated by Manitoba Hydro into the United States. Link to project website: <http://www.greatnortherntransmissionline.com/>.

<sup>8</sup> Order on Facilities Construction Agreement, 149 FERC ¶ 61,161 at P4 (Nov. 25, 2014) (“The Agreement provides that the Parties have agreed that ALLETE will own 51 percent of the Project, and will be responsible for 46 percent of the Project’s cost; Manitoba will own 49 percent of the Project and fund 54 percent of the Project’s costs. MISO explains that Manitoba’s financing will be through a 49 percent capital contribution as originally contemplated plus a five percent capital contribution to reflect the allocation of costs following an expansion of the Project’s capacity as determined by MISO during the transmission service request studies. The Agreement further provides that Manitoba’s five percent additional capital contribution will finance an unanticipated increase in the Project’s transmission capacity from 750 MW to 883 MW.”) (emphasis added)

<sup>9</sup> The quantity of Minnesota Power’s transmission capacity and quantity included in its revenue requirement is not clear. Previously, Allete has represented to the Commission that it will own “51 percent of the Project, and will be responsible for 46 percent of the Project’s cost”. *Id.* (emphasis added) Yet, OASIS records indicate that Minnesota Power has submitted TSRs totaling 383 MW - TSR #76703672 for 250 MW between 2020-2037, and TSR #79258361 for 133 MW between 2020-2040. Additionally, Minnesota Power represented in its Certificate of Need as follows: “While Minnesota Power will own 51% of the Project, Minnesota Power’s customers will be financially responsible for only 33.3% of the Project’s revenue requirements.” (emphasis added) Link to certificate of need: <http://mn.gov/commerce/energyfacilities/documents/33608/GNTL%20CoN%20application.pdf>

In their 2014 Facilities Construction Agreement filing,<sup>10</sup> the parties stated that the project is being “participant funded” and thus will not be subject to the Commission’s Order No. 1000 processes transmission planning and cost allocation processes. Specifically, the filing parties stated that:

The GNTL is being constructed for the sole purpose of satisfying the transmission service requests (“TSRs”) submitted by ALLETE, Manitoba Hydro and Wisconsin Public Service Company (“WPS”). The GNTL is being “*participant funded*” by ALLETE and Manitoba Sub pursuant to Article III, Section A.2.a and A.2.e of Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“MISO Tariff”). The GNTL therefore is not being proposed as a “Multi-Value Project,” “Market Efficiency Project,” or any other transmission facility that may be eligible for regional cost allocation under Attachment FF of the MISO Tariff. Accordingly, the GNTL is also not eligible for designation as an Open Transmission Project and is not subject to MISO’s Order No. 1000 bidding process for Transmission Developers under MISO’s Attachment FF.<sup>11</sup>

But in the footnote to that sentence, the filing parties state that Allete may seek to roll the GNTL-costs into its rate-base pursuant to Attachment N of the MISO OATT:

. . . Network Upgrades triggered by TSRs are funded under Attachment N of the MISO Tariff, which allows a MISO Transmission Owner to roll costs into its rate base or, if it does not do so, to collect a Network Upgrade Charge from the relevant Transmission Customer. ALLETE may eventually seek to recover its GNTL-related costs by rolling them into its rate base but is not proposing such action in this filing. Manitoba Sub is participant funding the portion of the GNTL needed to satisfy Manitoba Sub’s and WPS’s TSRs. Therefore, Attachment N’s provisions related to the rolling-in of upgrade costs into rate base are not implicated by this filing.<sup>12</sup>

However, the Commission has clearly stated that where an entity “has agreed to participant fund [a] transmission expansion, the Project costs will not be included in the rates for transmission service under [an ISO’s OATT] and other transmission ratepayers will be held harmless from the

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<sup>10</sup> *Filing of Executed Multi-Party Facilities Construction Agreement*, FERC Docket No. ER14-2950 (Sept. 26, 2014) (emphasis added).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* FN 6.

costs of the expansion.”<sup>13</sup> The Applicant’s blackbox settlement and filings in these dockets raise legitimate questions as to whether the Applicants’ proposals comport with Commission policy and whether Applicant’s proposal will hold non-participating transmission ratepayers harmless.

C. Applicants are Classifying Facilities as “Transmission” so their Revenue Requirements can be Collected Through MISO Rates Without Following MISO and FERC Procedures and Precedent.

Applicants attempt to classify transmission facilities that are eligible for cost recovery according to the agreement of a Management Committee<sup>14</sup> rather than by MISO or FERC and its application of its seven factor test.<sup>15</sup> Furthermore, Applicants attempt to include facilities within the MP Pricing Zone based upon an asset list that has not yet been identified, yet alone evaluated against the seven factor test.<sup>16</sup> Importantly, Applicants’ Wholesale Distribution Service Agreement expressly attempts to classify distribution facilities as transmission so they can be included in Allete’s transmission revenue requirement. Minnesota Power, a division of Allete, and GRE, rather than MISO and FERC, made the rate classification, and did so according to criteria they negotiated, rather than the seven-factor test.

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<sup>13</sup> *N.E. Util. Serv. Co. and NSTAR Elec. Co.*, 127 FERC ¶61,179 at P 42 (May 22, 2009)

<sup>14</sup> The Joint Pricing Zone Revenue Allocation Agreement defines Zonal Transmission Facilities by incorporating the definition contained in the Coordinated Local Planning Agreement. The Coordinated Local Planning Agreement includes within its definition of Zonal Transmission Facilities a catch all providing, “The Parties agree that the Management Committee may designate a transmission facility a Zonal Transmission Facility for purposes of this Agreement even if it does not satisfy the above definition but reasonable and agree-upon criteria are used.”

<sup>15</sup> The MISO Business Practice Manual No. 028, Business Practices Manual: Transmission Determination Process for Prospective or Existing Unregulated Transmission Owners’ Facilities (March 1, 2015) quotes the MISO Transmission Owners Agreement and provides that “a determination of which of its facilities are transmission facilities or which are distribution [shall be made] in accordance with the seven (7) factor test set forth in FERC Order no. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any applicable successor test.” Link to the MISO Business Practice Manuals: <https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>

<sup>16</sup> The Revenue Credit Agreement for the Great Northern Transmission Line Project definition of “Former MP Control Area” provides, “The Former MP Control Area includes the loads identified in Attachment C if either MP or GRE are [a-no] longer [a] member of MISO. The Parties have agreed to work together to identify the facilities located in the Former MP Control Area if either MP or GRE are no longer a member of MISO during the Term of this Agreement.”

Applicants' black box settlement therefore contains terms and conditions that are not consistent with the Commission's open access transmission rules and rate precedent and must be rejected.

**V. Basis for Motion for Extension of Time**

These complex, interrelated agreements proposed by the Applicants as a black box settlement that implicitly cannot be "pried apart," present a challenge of analysis because of their complexity and lack of transparency. MRES will not likely be able to complete its evaluation and present organized comments by the Commission's March 29, 2016 deadline. As such, MRES respectfully requests that the Commission expeditiously grant this Motion for a modest extension of time - until April 12, 2016 – to respond to the filings.

Prior to submitting this Motion for Extension of Time, MRES contacted legal counsel for Allete and GRE. Allete and GRE indicated they would not oppose granting MRES a 3-day (72 hour) extension to April 1, 2016. A three-day extension is insufficient for MRES to provide a considered review of how these agreements comport with the Commission's open access requirements and how they fit together; particularly in light of the incomplete treatment of the GNTL. MRES is requesting a 14-day extension. Granting MRES a 14-day extension at this stage in the proceeding will not prejudice the relief requested by Applicants and will afford the Commission with a more complete record upon which it can consider Applicants' filings.

**VI. Requests for Relief**

For the reasons set forth above, MRES requests that the Commission grant its motion to intervene and protest the above-referenced dockets, and grant MRES a 14-day extension, until April 12, 2016, to submit additional comments.



Dated this 24rd day of March 2016.

Respectfully submitted

/s/ David Yaffe

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in FERC Docket Nos. ER16-1107, ER16-1108, and ER16-1116.

Dated this 24<sup>th</sup> day of March 2016.

/s/ Malcolm McLellan

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