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)

SUPPLEMENTAL PROTEST OF MISSOURI RIVER ENERGY SERVICES

Pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211 & 385.212 (2015), and the Commission's March 30, 2016, Notice of Extension of Time, Missouri River Energy Services ("MRES") respectfully supplements the arguments set forth in its previously submitted protest[1]—and requests a trial-type evidentiary hearing and settlement judge proceedings with regard to—the suite of agreements filed by Allete, Inc. ("Allete"), Great River Energy ("GRE")(collectively, the "Applicants"), and Midcontinent Independent System Operator ("MISO") in the above captioned dockets. These agreements include a: (1) Coordinated Local Planning Agreement; (2) Joint Pricing Zone Revenue Allocation Agreement; (3) Revenue Credit Agreement for the Great Northern Transmission Line (GNTL) Project; and (4) Wholesale Distribution Service Agreement (collectively "Zonal Agreements").

[1] Motions to Intervene and Protest, and For Extension of Time of Missouri River Energy Services (March 24, 2016) ("Initial Protest").

I. Supplement Protest

A. Applicants Have Not Demonstrated Why The Zonal Agreements, As A Package Or Individually, Meet The Commission's Standards For Inclusion Of Assets And Sharing Of Revenues In A MISO Pricing Zone.

Applicants repeatedly state the Zonal Agreements are a "package deal."[2] Applicants characterize their submission as a "black box settlement"[3] and argue that "[i]f ALLETE and GRE had not resolved their differences, they would have been forced to litigate complex and fact-intensive issues concerning MISO pricing zones boundaries, classification of assets for cost allocation under the MISO Tariff and standards that should be applied to cost-sharing by two MISO transmission owners in the same MISO Pricing Zone (such as ALLETE and GRE)."[4] Applicants fail to present any evidence that its "black box settlement" satisfies the MISO Tariff or FERC precedent. Self-servingly, Applicants' merely assert that the JPZ Agreement will have:

> [N]o impact on the revenue requirement or load (and thus potentially a load-ratio share) that would be used to calculate the transmission rate for third party. Therefore, the settlement underlying the JPZ Agreement has no third-party rate impact. Instead, it simply reflects a bilateral settlement agreement between ALLETE and GRE to avoid litigation.[5]

There is no evidence in the record to satisfy Applicants' burden of proof that the Zonal Agreements are just and reasonable and not unduly discriminatory or preferential or otherwise lawful. As a result, there is no basis in the record for the Commission to accept the Zonal Agreements. The Commission should reject Applicants' filing of the Zonal Agreements, or set this matter for hearing and settlement procedures.

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[2] *See e.g., Coordinated Local Planning Agreement, Joint Pricing Zone Revenue Allocation Agreement, and Revenue Credit Agreement for the Great Northern Transmission Line Project, and Wholesale Distribution Service Agreement*, at 1, 2 & 11, Docket No. ER16-1107, *et seq* (filed Mar. 8, 2016 ("Zonal Agreement Filing").

[3] *Id.* at 1.

[4] *Joint Answer of Allete, Inc. and Great River Energy* at 2 (March 29, 2016)

[5] Zonal Agreements Filing at 8 & 9.

B. The Zonal Agreement Cannot Be Approved Without Disclosure And Evaluation Of How The Revenue Requirement Associated With The Transmission Capacity On The GNTL That Is Not Currently Owned By Allete Will Be Recovered.

Applicants' filing of several agreements as a package obscures at least two fundamental issues that should be of great concern to the Commission. First, what standards will the Applicants apply to designate transmission facilities as subject to the functional control of MISO and thus eligible for cost recovery through the MISO Tariff? Second, with particular attention to the Great Northern Transmission Line ("GNTL"), will the Applicants treat this as a merchant line not subject to cost recovery through the MISO Tariff or a *completely open access line* that is subject to cost recovery? Applicants' filing and answer to the MRES initial protest provide no definitive guidance on these threshold questions.

Instead, in response to MRES' protest, Applicants argue the Zonal Agreements merely allocate revenues collected from the MP Pricing Zone as required by the MISO Transmission Ownership Agreement.[6] Considerably more is at stake. It is true that Attachment O is the vehicle through which Minnesota Power and GRE's revenue requirement will be collected from transmission customers.[7] However, Applicants' local transmission planning occurs through the Coordinated Local Planning Agreement (the "Planning Agreement"),[8] and the Planning Agreement provides that the Management Committee determines whether facilities are eligible for "cost recovery."[9] Transmission customers cannot challenge such designations because they

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[6] *Id.*at 1.

[7] Joint Pricing Zone Revenue Allocation Agreement at Section 3.1.

[8] Coordinated Local Planning Agreement at Section 4.1.

[9] *Id*. at Section 3.4 ("The Management Committee shall have the following responsibilities . . . (e) Review and approval of Transmission Planning Committee's recommendations regarding whether Transmission Facilities constitute Zonal Transmission Facilities or Sole-Use Transmission Facilities for purposes of the JPZ Agreement or a successor Revenue Sharing Agreement"). The Planning Agreement defines "Zonal Transmission Facility" as "Transmission Facilities that are eligible for cost recovery and revenue sharing under A Revenue Sharing Agreement."

do not have a seat at the Management Committee table, and cannot utilize the dispute resolution provisions in these agreements.[10] Moreover, it appears that the only time FERC will review the designation of "Zonal Transmission Facilities" is if there is a dispute between Minnesota Power and GRE.[11] Applicants are attempting to bias, in their favor, the process for including facilities in the revenue requirement, which will be collected through Attachment O.[12]

GNTL's costs are significant. In a prior docket, Allete represented to the Commission that "GNTL is being 'participant funded' by Allete and Manitoba Sub" and that "MISO, the Transmission Provider, will provide transmission service over the GNTL and will assume 'functional control' of the project once it enters commercial operation."[13] However, the instant filings purports to allocate revenues Applicants receive for use of only part of the GNTL. The filings provide no guidance about the use or cost recovery from the Manitoba Sub portion of the GNTL. Absent from the filing is a discussion of whether the GNTL is truly a merchant line or an open access line.

Allete's participant funding representations imply that Manitoba Sub will receive transmission rights over GNTL, corresponding to its funding of 54% of GNTL's costs. A consequence of this is that there should be no available transmission capacity on the Manitoba

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[10] Coordinated Local Planning Agreement at Section 3.3 providing that: "The Management Committee shall consist of at least two (2) senior management-level representatives appoint by each Party provided, that with respect to each matter brought before the Management Committee, only one (1) of such representative shall have the right to voite thereon." The Parties to the agreement are Allete and GRE.

[11] *See e.g., Zonal Agreement Filing* at 8, providing that: "Attachments D-1 and E-1 of the JPZ Agreement . . . may be amended to include the facilities and loads identified as part of the transmission planning process underlying the Local Planning Agreement. Attachment D-1 and E-1 are subject to the 'just and reasonable' standard of review. Therefore, the Parties may make a unilateral filing at FERC to amend Attachment D-1 and E-1 to the extent a dispute concerning a facility or load is not resolved through the Local Planning Agreement's dispute resolution process."

[12] *See*, *Order Conditionally Accepting Joint Pricing Zone Agreement*, 151 FERC ¶ 61,190 at P37 (June 1, 2015) (A Joint Prizing Zone Agreement must be consistent with the MISO Tariff.)

[13] *Filing of Executed Multi-Party Facilities Construction Agreemen*t at page 3 – 4 (September 26, 2014), FERC Docket No. ER14-2950. *See also*, *Joint Answer of Allete, Inc. and Great River Energy* at page 7 provides that "Manatoba Sub is responsible for 54% of the GNTL's costs even though it will own 49% of the GNTL."

Sub portion of the GNTL to sell through MISO and no revenue requirement associated with Manitoba Sub's transmission capacity to be collected through MISO.[14] This appears to be the case because Manitoba Sub, a transmission provider, is not a party to the Zonal Agreements. However, the accuracy of these assumptions must be confirmed or corrected by Applicants, or through hearing and settlement procedures. The absence of this information is material. The black box settlement coupled with the omitted information provides no record upon which the Commission may conclude that the Zonal Agreements are just and reasonable and not unduly discriminatory or preferential or otherwise lawful.

Additionally, Applicants assert in multiple dockets that only 28.3% of Allete's capital obligations will be recovered through its MISO revenue requirement[15]—an assertion that is critical to transmission customers who will not benefit from all the transmission capacity of the GNTL. Yet, absent from the record is any discussion of how the black box settlement allocates to Allete its revenue requirement (including its 28.3% of Allete's capital obligations for the GNTL). Without that information the Commission lacks a record upon which it can make a determination that the Zonal Agreements are just and reasonable and not unduly discriminatory or preferential or otherwise unlawful.

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[14] *See, Midcontinent Independent System Operator*, 149 FERC ¶ 61,282 at PP38, 53 and 63 (December 30, 2014) ("SMMPA states that the Commission has established that unless an RTO has operational control over transmission facilities and can offer transmission service using those facilities under its open-access tariff, the transmission owner may not include those facilities in its ATRR." (citations omitted)).

[15] Allete will own 51% of the GNTL, but only be responsible for 46% of the project's costs. Only 28.3% of Allete's share of GNTL costs will be recovered in the MP Pricing Zone. *E.g.*, *Filing of Executed Multi-Party Facilities Construction Agreement* at n18. ("One of the ALLETE's power supply agreements with Manitoba Hydro includes a payment from Manitoba Hydro to ALLETE for an additional 17.7% of the GNTL's costs. This payment will be applied towards ALLETE's capital obligations, thereby reducing overall ALLETE's capital obligations from 46% to 28.3%. <u>ALLETE will apply this payment as a credit towards its retail revenue requirements and MISO Attachment O revenue requirement</u> subject to applicable regulatory approvals. ALLETE anticipates that it will submit its power supply agreement with Manitoba Hydro for review by the MPUC later in 2014. Power supply agreements between ALLETE and Manitoba Hydro, to the extent subject to the Commission's regulations, will be filed for Commission review before any actual sales of capacity or energy are made under the agreements (which will not take place until after the GNTL goes into service)." (emphasis added))

C. Applicants' Proposed Revisions to the Zonal Agreements Do Not Make them Just and Reasonable and Not Unduly Discriminatory or Preferential or Otherwise Unlawful.

The Zonal Agreements give Applicants undue discretion to determine which projects are classified as "Transmission." This is despite the changes proposed by Applicants in light of MRES's Initial Protest. As discussed above and pointed out in the Initial Protest, Applicants classify transmission facilities according to the designation of a "Management Committee" rather than by FERC, and based upon NERC's definition of the Bulk Electric System and "reasonable and agreed-upon criteria," rather than the application of the Commission's seven-factor test.[16] Applicants now offer to revise their definition of "Zonal Transmission Facility" to state that Zonal Transmission Facilities must meet ". . . the requirements of the MISO Tariff and FERC precedent, including the 'Seven-Factor Test.'" However, this does not go far enough. Applicants' revisions still call for the Management Committee to designate Zonal Transmission Facilities, rather than FERC. Additionally, despite their proposed revisions, Applicants have not replaced the definition of "Bulk Electric System" with the seven-factor test and corresponding precedent. The inclusion of the Bulk Electric System definition appears to be an effort to increase the likelihood that distribution facilities can be classified as transmission. Given that the only appropriate standard for distinguishing transmission facilities from distribution facilities in the rates context is the Commission's seven-factor test, Applicants' revised definition is not just and reasonable and not unduly discriminatory or preferential or otherwise unlawful.

II. Requests for Relief

For the reasons set forth above and in MRES' initial filing, MRES requests that the Commission:

[16] Initial Protest at Section I.C.

(1) Find that Applicants' filings in the above-captioned dockets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful;

(2) Set this matter for an evidentiary hearing and settlement judge proceedings; and

(3) Grant any other relief deemed appropriate.

Dated this 5th day of April 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 5th day of April 2016.

/s/ Malcolm McLellan

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