

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

Southwest Power Pool, Inc.) Docket No. ER12-1179-006

**ANSWER OF SOUTHWEST POWER POOL, INC.
IN OPPOSITION TO MOTION OF NEBRASKA PUBLIC POWER DISTRICT
FOR CLARIFICATION OR IN THE ALTERNATIVE REHEARING OF ORDER
ESTABLISHING SETTLEMENT JUDGE PROCEDURES**

In an order issued on June 6, 2013,¹ the Commission established settlement judge procedures to provide a forum for the Omaha Public Power District (“OPPD”) and Southwest Power Pool, Inc. (“SPP”) to resolve issues relating to OPPD’s grandfathered agreements (“GFAs”) with “partial paths” within the SPP footprint. In establishing the settlement proceedings, the Commission suggested that an initial Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) practice concerning partial path transmission reservations could “serve as a model for SPP and OPPD as they engage in settlement negotiations.”² Nebraska Public Power District (“NPPD”) now seeks clarification or rehearing of the June 6 Order, so as to have the Commission not just offer a suggestion to the parties as to how to settle outstanding disputes concerning GFAs, but also to direct that the former Midwest ISO practice regarding partial paths also apply to other parties with non-grandfathered transmission service.³

SPP opposes NPPD’s motion for clarification. SPP opposes NPPD’s motion not only because NPPD seeks to elevate a simple Commission suggestion of a settlement

¹ *Sw. Power Pool, Inc.*, 143 FERC ¶ 61,219 (2013) (“June 6 Order”).

² June 6 Order at P 19 (citing *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,131 (2005) (“WPSC FTR Order”).

³ Motion for Clarification, or in the Alternative Rehearing of Nebraska Public Power District, Docket No. ER12-1179-006 (June 19, 2013) (“NPPD Motion”).

course for GFAs in the June 6 Order to a directive for addressing *non-GFA* transmission service, but also because, as discussed below, the Court of Appeals for the District of Columbia Circuit reversed and vacated the underlying orders that led to the Commission's acceptance of the Midwest ISO practice cited in the June 6 Order as the basis for the settlement suggestion. As a result, neither the Commission nor any other party can rely on the prior, vacated Midwest ISO practice as precedent for how GFAs or any other services should be evaluated in settlement discussions or any ultimate resolution of the issues in this proceeding.

At the outset, SPP notes that there is no need for the Commission to take any affirmative action on the NPPD Motion. In the June 6 Order, the Commission did nothing more than grant a request to establish settlement judge procedures. The Commission did not make any rulings on contested issues, and, therefore, there is nothing for the Commission to clarify or reconsider at this stage of the proceeding. At most, the Commission offered a suggestion to the parties to consider a former Midwest ISO procedure for addressing partial path GFAs. The Commission said only that the former Midwest ISO practice "can serve as a model for SPP and OPPD as they engage in settlement negotiations."⁴ There is nothing in this procedural order that determines with finality any issue.

More importantly, even if the Commission were to address the merits of the NPPD Motion, the Commission must deny the motion because the Commission's approval of the Midwest ISO practice in question was based on orders that the Court of Appeals for the District of Columbia Circuit reversed and vacated. As such, the Midwest

⁴ June 6 Order at P 19.

ISO precedent cannot be relied upon as the basis for a settlement or any other ultimate resolution of the issues in this proceeding.

The sequence of the Commission's orders concerning the Midwest ISO is critical. As correctly described by the Commission in the June 6 Order, initially "in MISO, when new load-serving entities joined the existing market, MISO allocated financial rights to hedge congestion by creating partial path reservations and establishing pseudo settlement locations, and thereby was able to preserve the underlying transmission entitlements of the parties."⁵ However, the Commission's approval of these allocations of financial rights on partial paths stemmed from earlier Commission orders in which the Commission had held that two Midwest ISO members, Northern States Power ("NSP") and Wisconsin Public Service Company ("WPSC"), each was entitled to maintain its GFA contractual rights and associated rollover rights on partial paths that pre-dated the formation of the Midwest ISO.⁶ In these initial, partial path orders, the Commission denied a complaint by WPSC seeking to roll the two partial paths of NSP and WPSC into one complete reservation, which would have eliminated NSP's partial path rights.⁷ When the Commission denied the complaint, WPSC sought judicial review of the Commission's preservation of NSP's partial paths.⁸

⁵ *Id.*

⁶ WPSC FTR Order at P 2 (citing *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,255, at P 2 (2003) ("WPSC Partial Path Order"), *order denying reh'g*, 106 FERC ¶ 61,203 (2004), *rev'd*, 161 Fed. Appx. 2 (D.C. Cir. 2005)).

⁷ WPSC Partial Path Order at PP 1, 8.

⁸ *Wis. Pub. Serv. Corp. v. FERC*, 161 Fed. Appx. 2, 3 (D.C. Cir. 2005); *see* WPSC FTR Order at P 2 n.2 (noting the WPSC Partial Path Order was on appeal).

While WPSC's appeal of the underlying partial path decision was pending, Midwest ISO next addressed the allocation of financial rights to NSP on its previously-approved partial paths.⁹ WPSC filed a further complaint, this time regarding the financial rights allocations,¹⁰ which the Commission denied, thereby permitting to stand the financial rights allocations to NSP for its partial paths.¹¹ However, just two days before the Commission approved the financial rights allocations to NSP's partial paths, the D.C. Circuit, apparently unbeknownst to the Commission, had vacated and remanded the initial orders that had allowed NSP's partial paths to persist.¹² Consequently, WPSC requested rehearing of the Commission's subsequent financial rights allocation order, which relied upon the vacated orders, and the Commission granted rehearing for the purpose of further consideration.¹³

Ultimately, following the court's vacating the decision continuing NSP's partial paths, and while the rehearing request was pending regarding the financial rights allocation to the partial paths, the parties settled the dispute.¹⁴ The Commission never further addressed the judicial remand or the rehearing request concerning the financial

⁹ WPSC FTR Order at P 3.

¹⁰ *Id.*

¹¹ *Id.* at P 23.

¹² *Wis. Pub. Serv. Corp.*, 161 Fed. Appx. at 3.

¹³ *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL05-51-001 (June 30, 2005) (order granting rehearing for further consideration).

¹⁴ *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,093 (2005) ("Midwest ISO Order Approving Settlement").

rights allocations to partial paths.¹⁵ The parties' settlement provided that the financial rights allocated to NSP's partial paths would stand *for only seven months*.¹⁶ During those seven months, NSP and WPSC were to convert NSP's partial paths to WPSC network integration transmission service, and after the seventh month, the NSP partial paths no longer were to be awarded financial rights allocations.¹⁷ The Commission approved the settlement.¹⁸

Because no final, non-reviewable orders concerning financial rights allocations to partial paths were ever issued (except the order reversed by the D.C. Circuit), the vacated Midwest ISO financial rights allocations are not precedent for any settlement of the partial path dispute in this proceeding. The vacated reasoning behind the Commission's prior orders cannot act as precedent for resolution of this case. At most, the Midwest ISO proceeding stands for the proposition that a financial rights allocation to partial path GFA customers for a short transitions period (seven months in Midwest ISO) is just and reasonable. Even this conclusion is based only on a settlement approved by the Commission, which generally is not precedential. Certainly, neither the Commission's

¹⁵ See *Id.* (accepting settlement without comment on the judicial remand or rehearing request concerning the financial rights allocations to partial paths).

¹⁶ *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL05-51-001, at P 4 (June 29, 2005) (Stipulation and Settlement Agreement of the Midwest ISO, WPSC, and Xcel Energy Services Inc.) (stating that NSP would retain financial rights for its partial paths through the initial allocation period and the first two months of the second allocation period, i.e., from April 1, 2005 to October 31, 2005); see FTR Allocation Results of Midwest Indep. Transmission Sys. Operator, Inc., Docket No. EL04-104-000, at 2 (Jan. 31, 2005) (reporting the dates set for the first Midwest ISO financial rights allocation period as April 1, 2005 to August 31, 2005).

¹⁷ *Id.*

¹⁸ Midwest ISO Order Approving Settlement at P 2.

Midwest ISO orders nor the settlement of that case are a basis for allowing NPPD to obtain financial rights allocations for *non-GFA* partial path reservations for any period of time.

Accordingly, the Commission should deny NPPD's request for clarification or rehearing, confirm that the June 6 Order's reference to the Midwest ISO's initial, vacated financial rights allocations to partial paths is only a suggested course for the parties to consider, and, to the extent necessary, clarify that the vacated Midwest ISO process is not precedent for any contested resolution of the issues in this case.

Respectfully submitted,

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July 3, 2013

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 this proceeding.

Dated at Washington, D.C., this 3rd day of July, 2013.

/s/ Victoria M. Lauterbach
Victoria M. Lauterbach

**Attorney for
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Document Content(s)

070313_SPP_Answer_to_NPPD_Motion_for_Clarification_FINAL.PDF.....1-7