

169 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Northern States Power Company, a Minnesota corporation Docket No. ER20-31-000
Mankato Energy Center, LLC
Mankato Energy Center II, LLC

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued December 2, 2019)

1. On October 2, 2019, Northern States Power Company, a Minnesota corporation (Northern States Minnesota), Mankato Energy Center, LLC (Mankato I), and Mankato Energy Center II, LLC (Mankato II) (collectively, Applicants) requested authorization under section 205 of the Federal Power Act (FPA)¹ and sections 35.39(b) and 35.44(a) of the Commission's regulations² to make affiliate sales under two existing power purchase agreements (Existing PPAs) for wholesale electric power sales from the Mankato I and II power plants located in Minnesota. Currently, the Existing PPAs are agreements between unaffiliated third parties, i.e., Mankato I and II sell capacity and energy to Northern States Minnesota; however, Northern States Minnesota is expected to become affiliated with Mankato I and II as a result of a proposed transaction (Proposed Transaction).³ As discussed below, we authorize continued sales under the Existing PPAs after the Proposed Transaction because they were negotiated at arm's-length several years before the Proposed Transaction and, as such, satisfy the Commission's concerns regarding the

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. §§ 35.39(b) and 35.44(a) (2019).

³ In the Proposed Transaction, MEC Holdings, LLC (MEC Holdings), a newly formed company and an affiliate of Northern States Minnesota, intends to acquire Southern Power Company's (Southern Power) ownership interests in Mankato I and II and hold those companies as separate affiliated companies within the Xcel Energy Inc. (Xcel Energy) holding company system. *See* Xcel Energy Inc., Mankato Energy Center, LLC, and Mankato Energy Center II, LLC, Joint Application for Authorization of Transaction under Section 203 of the Federal Power Act, Docket No. EC20-3-000 (filed Oct. 3, 2019).

potential for affiliate abuse. This authorization will take effect as of the date of the consummation of the Proposed Transaction.

I. Background

2. Applicants explain that Northern States Minnesota, a wholly owned subsidiary of Xcel Energy, is authorized to do business in Minnesota, North Dakota, and South Dakota. Applicants state that Northern States Minnesota and Northern States Power Company, a Wisconsin corporation, own or purchase, under long-term contracts, approximately 12,300 megawatts (MW) of generation in the Midcontinent Independent System Operator, Inc. market. Applicants explain that Northern States Minnesota is the buyer under the Existing PPAs.⁴

3. Applicants state that Mankato I is an exempt wholesale generator (EWG) with market-based rate authority and the direct owner of a 375 MW natural gas- and fuel oil-fired, combined-cycle generating facility located in Mankato, Minnesota. Applicants represent that Mankato II is an EWG with market-based rate authority that directly owns a 345 MW expansion of the existing Mankato I plant, which went into operation in June 2019. Applicants explain that the full capacity and energy of the Mankato I and II plants are committed to Northern States Minnesota under the Existing PPAs.⁵

4. According to Applicants, as a result of Northern States Minnesota's 2000-2014 Resource Plan approved by the Minnesota Public Utilities Commission (Minnesota Commission) in 2001, Northern States Minnesota issued a request for proposals for power beginning in 2005-2009. Applicants explain that Calpine Corporation (Calpine) was ultimately selected for a power purchase agreement with Northern States Minnesota. Applicants state that, in 2004, Mankato I, then a wholly owned subsidiary of Calpine, and Northern States Minnesota entered into the 20-year Mankato I Existing PPA, which the Minnesota Commission approved that year. Applicants represent that sales under the Mankato I Existing PPA began in 2006 and will continue until 2026 when the agreement expires.⁶

5. Applicants explain that in 2012, at the request of and pursuant to procedures approved by the Minnesota Commission, Northern States Minnesota issued another request for proposals for power and capacity beginning in 2019. Applicants state that Calpine responded to this request and was selected for this power purchase agreement as

⁴ Applicants October 2, 2019 Filing at 3.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

well. Applicants explain that in 2015, Mankato II, then a wholly owned subsidiary of Calpine, entered into the 20-year Mankato II Existing PPA, which the Minnesota Commission approved that year. Applicants represent that sales under the Mankato II Existing PPA began in June 2019 and will continue for 20 years when the agreement expires.⁷

6. Applicants state that in 2016, Calpine announced the sale of Mankato I and II, including the rights and obligations under the Existing PPAs, to Southern Power, a wholly owned subsidiary of Southern Company. Applicants explain that Southern Power has continued to honor the terms of the Existing PPAs negotiated by Calpine.⁸

7. Applicants state that in November 2018, Southern Power and Northern States Minnesota entered into an agreement for Southern Power to sell 100 percent of the equity interests in Mankato I and II to Northern States Minnesota. Applicants represent that, as part of this transaction, Mankato I and II would have been merged into Northern States Minnesota, with the Mankato I and II plants becoming part of Northern States Minnesota's generation fleet, and that the Existing PPAs would have been terminated because Mankato I and II would have ceased to exist. Applicants explain, however, that in September 2019, the Minnesota Commission denied Northern States Minnesota's request for approval of this transaction.⁹

8. Applicants represent that, in light of this denial, Northern States Minnesota and Southern Power have restructured the acquisition of Mankato I and II. Applicants explain that, in this transaction (i.e., the Proposed Transaction), MEC Holdings will acquire 100 percent of the equity interests in Mankato I and II and hold both as subsidiaries. Applicants add that the Existing PPAs will not be terminated under the Proposed Transaction and that Mankato I and II will continue to make sales to Northern States Minnesota. Applicants therefore maintain that, because the Existing PPAs will become affiliate sales from a market-regulated seller to a franchised public utility with captive customers, Mankato I and II require Commission approval under section 205 of the FPA to continue to make sales to Northern States Minnesota.¹⁰

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

II. Notice of Filing

9. Notice of Applicants' filing was published in the *Federal Register*, 84 Fed. Reg. 54,137 (2019), with interventions and protests due on or before October 23, 2019. None was filed.

III. Discussion

10. At issue here is whether the affiliate sales transactions described above satisfy the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.¹¹ *Edgar* describes three types of evidence that demonstrate a lack of affiliate abuse: (1) evidence of direct head-to-head competition; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers.¹²

11. We find that Applicants have set forth evidence as contemplated in *Edgar* to ensure that the affiliate sales are above suspicion, the market is not distorted, and captive ratepayers are protected. Specifically, the Existing PPAs were negotiated at arm's-length several years ago by unaffiliated parties. The Commission has approved similar affiliate sales associated with long-term power purchase agreements that had been negotiated between parties several years before they became affiliates. In such power purchase agreements, the Commission has found that arm's-length pricing terms constitute evidence of the price purchasers were willing to pay for identical services in the same market from an unaffiliated seller.¹³ Accordingly, this order satisfies the requirement that

¹¹ *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

¹² *Id.* at 62,168-69; see also *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, at P 532 n.544, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

¹³ See, e.g., *DTE Elec. Co.*, 168 FERC ¶ 61,114, at P 8 (2019); *Flat Ridge 2 Wind Energy LLC*, 167 FERC ¶ 61,036, at P 10 (2019).

Mankato I and II must first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates for the affiliate sales discussed herein. We note that Mankato I and II must receive prior approval from the Commission under section 205 of the FPA for any other sales to affiliates with a franchised electric service territory and captive customers.

12. Finally, we direct Mankato I and II to submit compliance filings, within 30 days of the date of the consummation of the Proposed Transaction, notifying the Commission of such consummation and revising the limitations and exemptions section of their market-based rate tariffs to list the specific, limited authorizations granted herein and to include a citation to this order.¹⁴

The Commission orders:

(A) Mankato I and II are hereby authorized to make affiliate wholesale power sales under the Existing PPAs described in their application, effective upon consummation of the Proposed Transaction, as discussed in the body of this order.

(B) Mankato I and II are hereby directed to submit compliance filings within 30 days of date of the consummation of the Proposed Transaction, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ Order No. 697, 119 FERC ¶ 61,295 at App. C; Order No. 697-A, 123 FERC ¶ 61,055 at P 384.