

108 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER04-738-000
ER04-738-001

ORDER ACCEPTING FOR FILING AND SUSPENDING
NOTICE OF SUCCESSION FILING AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 6, 2004)

I. Introduction

1. In this order we accept for filing Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed Notice of Succession to succeed Ameren Energy Services Company (Ameren) as the transmission provider under certain transmission service agreements previously administered under Ameren's Open Access Transmission Tariff (OATT) (Notice of Succession), suspend it for a nominal period, and establish hearing and settlement judge procedures. This order benefits customers because it provides parties with a forum to address issues associated with expansion of a regional transmission organization (RTO), which will promote more effective competition in regional wholesale power markets, assuring non-discriminatory transmission service and improve reliability.

II. Background

2. On April 15, 2004, as amended on May 7, 2004, Midwest ISO¹ filed the proposed Notice of Succession regarding the Ameren service agreements. These service agreements were originally entered into by Ameren, as agent for its electric utility affiliates, Union Electric Company and Central Illinois Public Service Company, and its various transmission customers. The proposed Notice of Succession was made to implement Ameren's participation in Midwest ISO as part of GridAmerica LLC.² Midwest ISO requests waiver of the Commission's sixty-day prior notice requirement³ to allow the service agreements to become effective under the Midwest ISO OATT on May 1, 2004.

III. Notice of Filing and Pleadings

3. Notice of Midwest ISO's April 15, 2004 filing was published in the Federal Register,⁴ with motions to intervene and protests due on or before May 6, 2004. Notice of Midwest ISO's May 7, 2004 amendment was published in the Federal Register,⁵ with motions to intervene and protests due on or before May 28, 2004. MidAmerican Energy Company filed a timely motion to intervene, raising no substantive issues. Archer-Daniels-Midland Company (Archer) and Westar Energy, Inc. (Westar) filed timely motions to intervene and protests. On May 21, 2004, Central Iowa Power Cooperative (CIPCO) filed a motion to intervene out-of-time and protest.

¹Midwest ISO is a Commission-approved RTO that provides transmission service pursuant to the rates, terms and conditions of Midwest ISO's OATT. On December 15, 2001, Midwest ISO commenced commercial operations and on February 1, 2002, began providing point-to-point transmission service and network integration transmission service under its OATT.

² See Midwest Independent Transmission System Operator, Inc., 106 FERC ¶ 61,293 (2004).

³ 18 C.F.R. § 35.3 (2003).

⁴ 69 Fed. Reg. 22,784 (2004).

⁵ 69 Fed. Reg. 29,291 (2004).

4. On May 21, 2004, Midwest ISO filed an answer to Archer's and Westar's protests. On May 27, 2004, Archer filed an answer to Midwest ISO's answer. On June 7, 2004, Midwest ISO filed an answer to CIPCO's protest. On June 22, 2004, CIPCO filed an answer to the answer of Midwest ISO.

5. In its protest, Archer explains that its production facilities located in Decatur, Illinois, are interconnected with the transmission system of Illinois Power Company (Illinois Power) which is not a part of the Midwest ISO transmission system. Until May 1, 2004, Ameren delivered power to the Illinois Power border pursuant to a network integration transmission service agreement with Archer. The power is then delivered to the Decatur production facilities over the Illinois Power system pursuant to another network service agreement; this one with Illinois Power. Archer raises two issues in its protest. First, it states that its network integration transmission service agreement with Ameren has been excluded from the Notice of Succession and should have been included. Second, it states that it has been informed that the network integration transmission agreement has been assigned to Midwest ISO but that the service has been converted to point-to-point transmission service under the Midwest ISO OATT because, unlike the Ameren OATT, the Midwest ISO OATT does not allow the designation of network loads external to the transmission provider's system.⁶ Archer objects to the conversion of its service over the Ameren system to point-to-point transmission service under the Midwest ISO OATT. Under the point-to-point agreement, Archer would have to reserve and pay for 311 megawatts (the amount of transmission capacity associated with the Ameren service agreement), while prior to May 1, 2004, Archer was required to pay for transmission up to its monthly coincident peak load, which was 220 megawatts. According to Archer, this amounts to a \$200,000 per month additional cost. Archer also expresses concern that, under the point-to-point agreement, it may be more susceptible to curtailment than under the existing network transmission service agreement.

6. In its protest, Westar objects to the proposed Notice of Succession because under the Midwest ISO OATT, Westar is required to pay Midwest ISO's Regional Through and Out Rate (RTOR) which applies to transmission service associated with transactions which sink in a control area outside Midwest ISO's footprint. Westar states that the sink associated with its transmission service over the Ameren system is located outside of

⁶ See Midwest ISO's May 21, 2004 Answer at 8, in which it claims, "The cumulative effect of these provisions is that the Decatur Facilities are not Network Load and the Midwest ISO cannot provide [network integration transmission service] to serve them, at least as long as [Illinois Power] is not a Transmission Owner under the Midwest ISO OATT and its grid is not part of the Midwest ISO Transmission System."

Midwest ISO's transmission system. Westar contends that the imposition of the RTOR would result in an 88 percent increase in Westar's rates for its firm transmission service. Westar protests that Midwest ISO should be bound by the same obligations inherent in Westar's contract with Ameren.

7. Westar further states that Midwest ISO will allow customers with partial path transactions that start in Ameren and sink within another Midwest ISO control area to have the option to terminate rather than become subject to RTORs. Westar contends that this option would be unduly discriminatory, because there is no reason to allow partial path customers to have this option and not Westar.

8. In response to Archer and Westar, Midwest ISO argues that it is bound to follow its OATT and Business Practices and cannot grant arbitrary exemptions. However, Midwest ISO states that it is participating in discussions with Ameren, Archer and Westar to find an acceptable solution to the issues raised by Archer and Westar.

9. According to CIPCO, in January 2004, Ameren Energy Marketing Company (Ameren Energy Marketing) began selling power to the Resale Power Group of Iowa (RPGI), a group of Iowa cities located on the transmission system of Alliant Energy Corporate Services, Inc. (Alliant). CIPCO states that service to RPGI necessitates using portions of CIPCO's transmission facilities that are integrated with the transmission system of Alliant. CIPCO further asserts that neither Ameren, nor RPGI nor Midwest ISO has agreed to pay CIPCO for use of CIPCO's facilities. CIPCO asserts that its attempts to resolve this issue with the parties have not been successful. Specifically, CIPCO protests a point-to-point service agreement with Ameren Energy Marketing listed in Midwest ISO's proposed Notice of Succession, noting that the transaction specification sheet indicates that the service represents a partial-path reservation utilized to deliver Ameren Energy Marketing's power sales to RPGI. CIPCO states that it is protesting the instant filing because it does not want to risk having the acceptance of the Notice of Succession preclude it from seeking compensation for use of its facilities by the Ameren Energy Marketing-RPGI transactions. Alternatively, if the instant filing does not involve the agreement under which Ameren's power is transmitted by Midwest ISO to RPGI, then CIPCO requests that the Commission require Midwest ISO to file the applicable service agreement so that CIPCO would have the opportunity to challenge it.

10. Midwest ISO responds that the issue raised by CIPCO is beyond the scope of this proceeding. It contends that the instant filing does not involve service over CIPCO's facilities.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. Midwest ISO argues that CIPCO has not shown good cause for its late intervention. However, since CIPCO filed its motion to intervene prior to the due date for interventions established in the notice of filing of Midwest ISO's May 7, 2004 amended filing, we deem its motion to intervene to be timely, and we will accept it.⁸

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests unless otherwise ordered by the decisional authority.⁹ We will accept the answers filed by Midwest ISO, Archer and CIPCO, because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

13. With respect to the RTOR issue raised by Westar, in previous cases, the Commission has allowed RTORs to replace pre-RTO rates under individual-company OATTs, even when the RTORs represented a rate increase.¹⁰ However, in view of the Midwest ISO's ongoing discussions on this issue and the issues raised by Archer, we encourage these parties to continue their discussions, and we will provide for settlement judge procedures, as ordered below.

14. With respect to CIPCO's argument, the Commission has previously stated that CIPCO may seek compensation for use of its facilities that are integrated with the Alliant system when a service agreement for transmission service using its facilities is filed under the relevant OATT.¹¹ However, the service agreements that are the subjects of the

⁷ 18 C.F.R. § 385.214 (2003).

⁸ *See, e.g.*, ISO New England, Inc., 103 FERC ¶ 61,320 at P 11 & n.9 (2003).

⁹ 18 C.F.R. § 385.213(a)(2) (2003).

¹⁰ *See* PJM Interconnection, L.L.C., *et al.*, 106 FERC ¶ 61,252 (2004); PJM Interconnection, L.L.C. and Allegheny Power Co., 96 FERC ¶ 61,060 (2001).

¹¹ IES Utilities, Inc., *et al.*, 81 FERC ¶ 61,187 at 61,839 (1997).

proposed Notice of Succession do not involve the use of Alliant's facilities, and, therefore, do not involve use of CIPCO's facilities. Rather, the instant service agreements involve service over Ameren's facilities. Therefore, the issue raised by CIPCO is beyond the scope of this proceeding.

15. Further, we deny CIPCO's alternative request to direct Midwest ISO to file a service agreement involving the service to RPGI. This argument is also beyond the scope of this proceeding. If CIPCO wishes to raise its compensation issue concerning that service in the absence of a filing of the applicable service agreement, CIPCO may file a complaint.

16. We find that the Archer and Westar have raised issues of material fact concerning the proposed Notice of Succession that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

17. Our preliminary analysis indicates that the proposed Notice of Succession has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The proposed Notice of Succession is required to effectuate the integration of Ameren's system into Midwest ISO. Its acceptance for filing will ensure that customers being served under Ameren's OATT will not experience in any interruption of service. For that reason, Midwest ISO has requested an effective date of May 1, 2004, the date Ameren was expected to commence operation as part of GridAmerica. Ameren, in fact, did commence operation as part of Midwest ISO on May 1, 2004. Accordingly, we will grant waiver of the sixty-day prior notice requirement and accept the proposed Notice of Succession for filing, suspend it for a nominal period, to become effective on May 1, 2004, subject to refund, and set it for hearing as ordered below.

18. Although we are setting this proceeding for a trial-type evidentiary hearing, we encourage the parties to attempt to negotiate a mutually-acceptable agreement that will resolve the matters at issue. Accordingly, to aid the parties in their efforts at settlement, we will hold the evidentiary hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹² If the parties desire, they may, by mutual agreement, request a specific judge as the

¹² 18 C.F.R. § 385.603 (2003).

settlement judge in this proceeding. Otherwise, the Chief Judge will select a settlement judge.¹³

The Commission orders:

(A) Midwest ISO's proposed Notice of Succession is hereby accepted for filing, to become effective on May 1, 2004, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the issues discussed herein. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designated the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within 60 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days

¹³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov click on Office of Administrative Law Judges).

thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.