

113 FERC ¶ 61,048  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeem G. Kelly.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER05-1362-000

ORDER CONDITIONALLY ACCEPTING UNEXECUTED FACILITIES  
CONSTRUCTION AGREEMENT AND DIRECTING COMPLIANCE FILING

(Issued October 17, 2005)

1. In this order the Commission conditionally accepts for filing an unexecuted facilities construction agreement (FCA) among Prairie State Generating Company, LLC (Prairie State or Interconnection Customer), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or Transmission Provider) and Ameren Services Company (Ameren), as agent for its operating company affiliate, Union Electric Company (AmerenUE or Transmission Owner), a transmission-owning member of the Midwest ISO, to become effective August 1, 2005, and directs a compliance filing. We condition our acceptance on the Midwest ISO's bringing certain provisions of the FCA into conformance with the corresponding provisions of the Midwest ISO's *pro forma* Large Generator Interconnection Agreement (LGIA).

**I. Background**

2. On August 18, 2005, the Midwest ISO filed the FCA, which sets forth the terms and conditions that shall govern the construction of network upgrades on the AmerenUE transmission system necessitated by the operation of Prairie State's generating facility, which will interconnect to the transmission system of another Ameren operating company affiliate, Illinois Power Company (AmerenIP), also a transmission-owning member of the Midwest ISO. The Midwest ISO states that Prairie State requested that the FCA be filed with the Commission in unexecuted form because negotiations over the FCA had reached an impasse on the transmission service crediting issue. The Midwest

ISO requests waiver of the Commission's 60-day prior notice requirement,<sup>1</sup> to allow the FCA to become effective August 1, 2005.

3. The FCA provides for transmission service credits in the form of cash repayment equal to the total amount paid to the Transmission Owner for the network upgrades, including any tax gross-up or other tax-related payments associated with the network upgrades, and not otherwise repaid to the Interconnection Customer, to be paid to the Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Midwest ISO tariff for transmission service with respect to Prairie State's generating facility. The Midwest ISO states that the parties do not agree on these transmission service credit provisions and that resolution of this issue has been complicated by a number of factors including the disposition of this issue in the LGIA among Prairie State, the Midwest ISO and AmerenIP, before the Commission in Docket No. ER05-215,<sup>2</sup> and AmerenUE's concern that it will be required to fund transmission service credits owed to the Interconnection Customer without receipt of corresponding transmission revenues from the Interconnection Customer to fund such credits.

4. The Midwest ISO adds that also contributing to the parties' disagreement is the consideration by the Midwest ISO of a proposal soon to be developed by the Midwest ISO Regional Expansion Criteria and Benefits Task Force that is anticipated to provide for the sharing of network upgrade cost responsibility. The Midwest ISO states that Prairie State maintains that the language presently contained in the FCA comports with the corresponding language in its LGIA and with Commission transmission pricing policy, and does not wish for any delay in the installation of network upgrades on the AmerenUE transmission system, which is why it requested the Midwest ISO to file the FCA in unexecuted form.

## **II. Notice of Filings and Responsive Pleadings**

5. Notice of the Midwest ISO's August 18 filing was published in the *Federal Register*, 70 Fed. Reg. 51,031 (2005), with protests and interventions due on or before September 8, 2005. Timely motions to intervene and comments were filed by Prairie

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<sup>1</sup> 18 C.F.R. § 35.3(a) 2005.

<sup>2</sup> See *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,019 (January 14 Order), *order on reh'g and compliance*, 111 FERC ¶ 61,237 (May 20 Order), *order on reh'g and compliance*, 112 FERC ¶ 61,281 (September 15 Order) (2005).

State and Ameren/UE. Southern Illinois Power Cooperative (SIPC) filed a timely motion to intervene and protest. On September 15, 2005, the Midwest ISO filed an answer to SIPC's protest. On September 23, 2005, Prairie State filed an answer to SIPC's protest and Ameren/UE's comments. On October 5, 2005, SIPC filed an answer to Prairie State's and Midwest ISO's answers.

### **III. Discussion**

#### **A. Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's and Prairie State's answers because they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept SIPC's answer.

#### **B. Substantive Matters**

##### **1. Comments**

7. AmerenUE states that the FCA should be modified to make clear that if there is a change to the pricing policy in the Midwest ISO's *pro forma* LGIA that takes effect prior to the date that the Prairie State generation facility becomes commercially operational, this changed policy will govern the pricing for network upgrades under the FCA. Specifically, AmerenUE requests that the following language be added to section 3.2 of the FCA:

Notwithstanding the foregoing Articles 3.2.2 through 3.2.4, the Parties acknowledge that Transmission Provider will make application to FERC to modify the transmission pricing provisions under the Tariff, which may affect the provisions of this Article 3.2.2. In the event that FERC makes effective such modified transmission pricing ("New Pricing Methodology"), the Parties shall immediately adopt such New Pricing Methodology and the Parties agree to amend this Agreement to institute the New Pricing Methodology and Transmission Provider shall submit such amendment to FERC for approval.

8. AmerenUE argues that the Midwest ISO has recognized that its pricing policy would result in “inequitable results” and adopted it only on an interim basis. Ameren asserts that the proposed revisions to the FCA that it requests may protect the load within the AmerenUE pricing zone from having to pay for network upgrades associated with the Prairie State generation facility if AmerenUE does not receive the transmission service revenues associated with delivery of the output of the Prairie State generation facility or if there are changes to the transmission pricing policy under the Midwest ISO *pro forma* LGIA.

9. Prairie State states that the language in the FCA providing for transmission service credits corresponds to the language that was accepted in the Prairie State LGIA that was the subject of Docket No. ER05-215 and is consistent with the Commission’s general transmission pricing policy. Prairie State states that there is no basis for adopting a different transmission service crediting procedure in the instant filing than was adopted in the LGIA proceeding.

10. SIPC, a transmission-owning member of the Midwest ISO, states that the FCA addresses network upgrades on the transmission system owned by AmerenUE that will be affected by the interconnection of Prairie State’s generating facility to the transmission system of AmerenIP. SIPC asserts, however, that the FCA fails to address network upgrades to the SIPC transmission system that will be required before Prairie State’s generating facility can go online. SIPC argues that a recently completed system impact study conducted on behalf of the Midwest ISO to study the impact of the Prairie State generating facility on the SIPC transmission system determined that certain SIPC transmission facilities would experience overloads due to the interconnection and operation of the Prairie State generating facility. However, SIPC states, the FCA does not address these negative impacts on the SIPC transmission system. SIPC states that it is ready to work with Prairie State and the Midwest ISO to resolve these issues. Accordingly, SIPC requests that the Commission: (1) set this matter for hearing; (2) permit SIPC an opportunity to demonstrate the negative impacts that the proposed Prairie State generating facility will have on the SIPC transmission system; (3) permit SIPC to identify the network upgrades that are necessary to relieve these impacts; and (4) order the Midwest ISO to expand the FCA to include SIPC as a party and provide for upgrades to the SIPC transmission system that are necessary to preserve reliability.

11. In its answer, Prairie State asserts that AmerenUE’s proposed transmission pricing provisions are identical to provisions that AmerenIP sought, and which the Commission rejected, in Docket No. ER05-215. Prairie State states that these provisions should be rejected because they are not based on unique circumstances or operating conditions and thus do not meet the standard for acceptable nonconforming LGIA provisions.

12. Prairie State also explains in its answer that SIPC's protest is inappropriate in the instant proceeding. Prairie State argues that even if SIPC's system requires upgrades, a contention with which Prairie State does not agree, the improvements would require a separate three-party agreement between Prairie State, the Midwest ISO and SIPC. Prairie State asserts that SIPC's concerns lie with the Midwest ISO and the Midwest ISO's policy for determining whether upgrades are necessary to accommodate generation interconnections.

13. Prairie State also alleges in its answer that the version of the FCA filed in the instant proceeding includes an incorrect version of the single-line diagram, in Appendix C, showing the facilities to be constructed under the FCA. Prairie State argues that AmerenUE prepared Appendix C just prior to the filing of the FCA and Prairie State did not have an opportunity to review the diagram prior to filing. Prairie State maintains that the diagram should be revised to clearly identify three future interconnections for which Prairie State bears no cost responsibility. Prairie State contends that AmerenUE agreed with Prairie State on this matter and that the FCA would be amended prior to making the filing. Prairie State requests that Appendix C be revised to clarify the cost responsibility for the three future interconnections under the FCA.

14. In its answer, the Midwest ISO states that the Commission should accept the FCA as filed. Moreover, the Midwest ISO argues that it is not appropriate for its *pro forma* transmission service crediting policy to be further considered in the instant proceeding. The Midwest ISO states that the Commission has already decided the transmission service credit issue in the Prairie State LGIA proceeding in Docket No. ER05-215. The Midwest ISO also argues that the Commission should deny SIPC's request to expand the scope of the FCA to address impacts on SIPC's transmission system. It states that the instant filing only concerns upgrades to the AmerenUE system and that it is not appropriate to address upgrades to the SIPC transmission system in this filing.

## 2. Discussion

15. With regard to AmerenUE's proposed modification regarding transmission pricing, we rejected an identical proposal by AmerenIP in the Prairie State LGIA proceeding, and we will similarly reject AmerenUE's proposal here. As the Commission explained in the May 20 and September 15 Orders in the Prairie State LGIA proceeding, interconnection agreement provisions that do not conform to the *pro forma* LGIA must be supported as necessary due to reliability concerns, novel legal issues, or other unique factors.<sup>3</sup> The circumstances described by AmerenIP in the Prairie State LGIA proceeding

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<sup>3</sup> See May 20 Order at P 17 and September 15 Order at P 14; see also *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 at P 9-11 (2005).

and by AmerenUE in this proceeding do not warrant approval of the proposed nonconforming provisions. The interconnection of the Prairie State generation facility itself is not unusual in the sense that it does not raise unusual reliability concerns or involve other unusual technical characteristics that require changes to the transmission pricing provisions in the Midwest ISO *pro forma* LGIA; nor are novel legal issues involved.<sup>4</sup> Moreover, as we stated in the September 15 Order, since there are numerous interconnection agreements that contain the transmission service credit provisions contained in the Midwest ISO's *pro forma* LGIA, the Prairie State LGIA and FCA could hardly be considered unique or extraordinary.<sup>5</sup> Finally, as the Commission found was the case with the Prairie State LGIA, section 16.5 of the FCA fully preserves the parties' rights to submit proposed revisions to the FCA and have the Commission review those proposed changes under either section 205 or 206 of the FPA. While it is unclear whether a new cost recovery method will be adopted under the Midwest ISO *pro forma* LGIA, it would be premature at this time to revise the FCA to incorporate the changes that AmerenUE seeks here.

16. However, we will require that the FCA be revised in certain respects. The FCA is based on the Midwest ISO *pro forma* LGIA. Specifically, it generally incorporates those provisions of the *pro forma* LGIA that address the construction of and payment for facilities required to accommodate the interconnection request. However, with respect to certain provisions in the FCA, most notably provisions related to Interconnection Costs and Credits; Taxes; and Creditworthiness, Billing and Payments in sections 3.2, 3.3, and 6, respectively, we find both substantive and non-substantive, stylistic and/or typographical variations (*i.e.*, editorial changes) from corresponding provisions in the Midwest ISO's *pro forma* LGIA. While the Commission realizes that certain of the *pro forma* LGIA language does not apply to the FCA, which only provides for the construction of network upgrades, but not for interconnection of the Interconnection Customer's generating facility to the Transmission Owner's transmission system, a number of deviations go beyond what is necessary to reflect this difference and have not otherwise been supported as being just and reasonable.<sup>6</sup> We, therefore, direct the Midwest ISO to file in a compliance filing, within 60 days of the date of this order,

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<sup>4</sup> See September 15 Order at P 14.

<sup>5</sup> *Id.*

<sup>6</sup> See *supra* P 15 and note 3.

revisions to the FCA to conform its provisions to the corresponding provisions in the *pro forma* LGIA or otherwise justify why the proposed language is just and reasonable.<sup>7</sup>

17. Finally, with respect to Prairie State's request that clarifying footnotes be added to the single-line diagram in Appendix C to the FCA, we direct the Midwest ISO to address the requested clarifying language in the compliance filing directed above, within 60 days of the date of this order.

18. We will decline SIPC's request that the Commission establish hearing procedures to determine what network upgrades are required on the SIPC transmission system to address the impacts of Prairie State's generating facility. The FCA addresses network upgrades necessary to remedy reliability and safety impacts on the AmerenUE transmission system. We disagree that the FCA should be expanded to address impacts on the SIPC system. Any measures necessary to address reliability and safety impacts on the SIPC system should be addressed through a separate three-party agreement between SIPC, the Midwest ISO and Prairie State, and that agreement should be negotiated, in the first instance, in accordance with the Midwest ISO's Large Generator Interconnection Procedures (LGIP), including the dispute resolution provisions in the LGIP. Indeed, as we noted in the January 14 Order, the Midwest ISO acknowledged in its filing of the Prairie State LGIA that system impact studies were underway to assess the impacts on the SIPC transmission system and that any such impacts must be addressed before interconnection service can commence and committed to meet with the parties to resolve this matter.<sup>8</sup> If those negotiations fail, the parties may then bring the matter before the Commission, through an appropriate filing (*e.g.*, an unexecuted agreement or a complaint), to resolve their dispute.

19. Accordingly, we will accept the proposed FCA, subject to modification as discussed above, to become effective August 1, 2005, as requested. Granting waiver of our 60-day prior notice requirement to allow the requested effective date is appropriate in this instance, given that the FCA was filed within 30 days of the proposed effective date.<sup>9</sup>

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<sup>7</sup> In view of the fact that the FCA was filed in unexecuted form, the provisions of the amended FCA should conform to the corresponding provisions of the version of the Midwest ISO *pro forma* LGIA in effect as of the date that the FCA was filed.

<sup>8</sup> January 14 Order at P 16.

<sup>9</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

The Commission orders:

(A) The FCA is hereby conditionally accepted for filing, effective on August 1, 2005, as discussed in the body of this order.

(B) The Midwest ISO is directed to file a revised FCA within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.