

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Ameren Services Company

Docket No. ER07-153-000

ORDER CONDITIONALLY ACCEPTING PROPOSED ANCILLARY SERVICES
TARIFF, AS MODIFIED

(Issued December 29, 2006)

1. On November 2, 2006, Ameren Services Company, on behalf of three of its public utility subsidiaries, Central Illinois Light Company, d/b/a AmerenCILCO (CILCO), Central Illinois Public Service Company, d/b/a AmerenCIPS (CIPS), and Illinois Power Company, d/b/a AmerenIP (Illinois Power) (collectively, Applicants),¹ filed an Ancillary Services Tariff (Ancillary Services Tariff) to reflect the fact that as of January 1, 2007, Applicants will operate a single control area, constitute a single joint license plate pricing zone within the Midwest Independent Transmission System Operator, Inc. (Midwest ISO),² and provide certain ancillary services to the Midwest ISO. The proposed Ancillary Services Tariff sets forth the rates, terms and conditions under which Applicants would provide ancillary services to the Midwest ISO and the means by which Applicants would recover their costs for providing such services. In this order, the Commission conditionally accepts the proposed Ancillary Services Tariff, subject to modifications to be made in a compliance filing.

¹ Applicants' transmission facilities are located in Illinois and their retail operations are subject to the Illinois Commerce Commission's jurisdiction.

² See *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,323 (2006) (approving Applicants' proposed changes to license plate pricing zone boundaries).

Background

2. Applicants are transmission-owning members of the Midwest ISO. Applicants are also affiliated with Union Electric Company, d/b/a AmerenUE (Union Electric), another transmission-owning member of the Midwest ISO.³ At the time this filing was submitted to the Commission, Union Electric and CIPS operated a joint control area and a joint license plate pricing zone under the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT). In addition, CILCO and Illinois Power operated separate control areas and pricing zones within the Midwest ISO. The companies plan to reconfigure their control area and pricing zone structure so that Union Electric will function as a single control area and pricing zone, and the Applicants will function as a joint control area, as well as a joint pricing zone, effective January 1, 2007.

3. Under the TEMT, the Midwest ISO obtains Schedule 3, Schedule 5 and Schedule 6⁴ ancillary services from the operator of the control area in which the load is located. The Midwest ISO's transmission customers have the option to either supply these ancillary services to the Midwest ISO themselves or pay for these services at a charge equal to the filed rate for the pricing zone in which the point of delivery is located (*i.e.*, on a pass-through basis).

4. Applicants explain that under Illinois electricity restructuring law, they were permitted to divest their generation and did so. Thus, Applicants have virtually no generation with which to provide electric service, including the ancillary services they are required to provide under applicable tariffs. In order to meet their obligations to provide ancillary services following divestiture of their generation resources, Applicants explain that they have been using long-term contracts to provide the required ancillary services to the Midwest ISO. However, these contracts expire December 31, 2006 and, as of January 1, 2007, Applicants state that they will obtain their ancillary service needs through an independently administered Request for Proposal for Ancillary Services Products (RFP) process. Applicants state that they are in the process of entering into a number of ancillary services supply agreements and will file these agreements with the Commission. Applicants further state that pursuant to the RFP process, their new ancillary services supply agreements can include a variable lost opportunity cost component, which may cause the rates to vary from month to month.

³ Union Electric's transmission facilities are located in Missouri and its retail operations are subject to the Missouri Public Service Commission's jurisdiction.

⁴ Schedules 3, 5 and 6 provide for Regulation and Frequency Response, Spinning Reserves, and Supplemental Reserves, respectively.

5. The proposed Ancillary Services Tariff, for the most part, contains similar definitions, terms and conditions as those contained in the Commission's *pro forma* open access transmission tariff (OATT) and the TEMT. Under the proposed Ancillary Services Tariff, Applicants would provide Schedule 3, 5 and 6 ancillary services for load within their control area and pricing zone. The Ancillary Services Tariff would be in effect only until the Midwest ISO implements its market to provide such ancillary services.

6. The rates under the proposed Ancillary Services Tariff reflect a two-part formula rate under which Applicants will pass through the actual costs of ancillary services under the anticipated ancillary services supply agreements. Applicants state that the intent of the two-part rate design is to allow Applicants to collect the total amount paid to suppliers while allowing for timely billings for ancillary services rendered.

7. The proposed rates consist of a fixed and a variable component. The fixed monthly rate would be derived based on one twelfth of the estimated annual cost to be paid to the generators that actually provide the ancillary services, divided by the divisor used in determining Applicants' transmission rates under Attachment O to the TEMT. The variable monthly rate would be calculated based on the difference between actual revenues collected for all prior periods, beginning with the effective date of the Ancillary Services Tariff, compared to the actual costs incurred by the Applicants for the prior periods. The true-up provision in the variable rate component is intended to eliminate the possibility of over-recovery or under-recovery. Any over-recovery/under-recovery by the Applicants for the period prior to termination of the tariff would be distributed to/collected from the transmission customers as soon as practicable.

8. Additionally, section 2 of the Ancillary Services Tariff contains provisions for Wholesale Distribution Service (WDS). Section 2 provides that the rates for WDS would be based on the retail delivery service tariff in effect for the applicable Applicant with which the transmission customer is interconnected. In addition, section 2 provides that any transmission customer currently paying rates for WDS under an existing agreement would continue paying the existing rates until that agreement is terminated or amended. The provision clarifies that until its service agreement terminates, a transmission customer connected to Illinois Power's distribution facilities would continue to pay Illinois Power one of the following rates currently contained in Illinois Power's OATT: (a) the identified gross plant balance of the facilities to be directly assigned multiplied by an annual gross plant fixed charge rate of 10.82 percent, or (b) the identified net plant balance of the facilities to be directly assigned multiplied by the annual net plant fixed charge rate of 20.80 percent. The customer would be billed one-twelfth the annual costs each month. Applicants state that the WDS provisions are included in the Ancillary Service Tariff so that Applicants do not forfeit the ability to charge rates for WDS to certain customers under certain existing agreements, mainly customers taking service from Illinois Power.

9. Applicants request that the Ancillary Services Tariff become effective January 1, 2007, to coincide with the reconfiguration of Applicants' control areas and pricing zones.

Notice of Filing, Interventions, and Protests

10. Notice of Applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 66,766 (2006), with interventions and protests due on or before November 24, 2006. The Midwest ISO filed a timely motion to intervene. The Illinois Commerce Commission filed a notice of intervention. Illinois Municipal Electric Agency (IMEA) filed a timely motion to intervene, motion to consolidate and protest. Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc. (Dynegy) filed a motion to intervene out-of-time and protest. ISG Hennepin Inc. (ISG) filed a motion to intervene out-of-time and comments supporting IMEA's protest and motion to consolidate. On December 11, 2006, Applicants filed an answer.

11. IMEA states that Applicants' proposed Ancillary Services Tariff should be rejected as premature because it seeks to establish ancillary service rates for a new pricing zone which has not been approved by the Commission.

12. IMEA also states that Applicants improperly seek to tie the rates for Commission-jurisdictional WDS to state-approved retail delivery rates. Dynegy shares IMEA's objection. IMEA contends that Applicants give no explanation for why the change is necessary or why it should be included within an ancillary services tariff. Dynegy argues that Applicants' proposed change alters the definition of Applicants' WDS, as well as the charges for this service.

13. Next, IMEA notes that Applicants' proposed tariff provisions explicitly provide Applicants the right to unilaterally propose revisions to the tariff under section 205 of the Federal Power Act (FPA)⁵ but do not explicitly provide for the right of customers to unilaterally apply to the Commission under section 206 of the FPA⁶ for a change in the rates, terms and conditions set forth in the proposed tariff. It argues that Applicants' proposed tariff provisions should be expanded to explicitly include the right of customers to unilaterally apply to the Commission for a change to the rates, terms and conditions of service.

14. In the event that the Commission accepts Applicants' filing, IMEA contends that the proposed tariff changes should be set for hearing. IMEA requests that, if the

⁵ 16 U.S.C. § 824(d) (2000).

⁶ 16 U.S.C. § 824(e) (2000).

Commission sets this proceeding for hearing, it consolidate this proceeding with the proceedings in Docket Nos. ER07-169-000 and ER07-170-000.⁷

15. In response to the arguments raised in the protests, Applicants propose to withdraw that portion of the proposal that would base future WDS charges on the retail delivery services tariff while retaining parts of the proposal that provide for continuation of current rates for WDS to existing customers. Applicants state that they are withdrawing their original proposal without prejudice to their right to file rates, terms and conditions applicable to the WDS at a later date. Next, Applicants state that, while nothing in the proposed Ancillary Services Tariff restricts the section 206 filing rights of any person, they would be willing to add the following language: “Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission’s rules and regulations promulgated thereunder.” Applicants state that this language would conform section 4 of the Ancillary Services Tariff to the Regulatory Filings section of the Commission’s *pro forma* OATT, section 9.

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedures, 18 C.F.R. § 385.214 (2006), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Dynegy’s and ISG’s late-filed motions to intervene given their interest in this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants’ answer because it has provided information that assisted us in our decision-making process.

⁷ In these other dockets, Ameren’s generating affiliates sought authorization to sell ancillary services to Applicants. The Commission accepted and suspended the proposed rate schedules filed in those dockets, established hearing and settlement judge procedures, established a technical conference and consolidated the two dockets. *Ameren Energy Marketing Company*, 117 FERC ¶ 61,334 (2006).

B. Analysis

18. As an initial matter, we disagree with IMEA that Applicants' filing is premature. The control area reorganization and the pricing zone restructuring is planned to occur on January 1, 2007. Applicants explain that, as of January 1, 2007, they will begin to purchase Regulation and Frequency Response, Spinning Reserves, and Supplemental Reserves on an integrated basis for the new consolidated control area. Because the proposed tariff is consistent with the Commission's *pro forma* OATT and its single rate for integrated service for the entire single control area appropriately reflects the manner in which the service will be supplied for the new consolidated control area, compared to the current multiple rates for the existing multiple control areas, we find that Applicants' proposed tariff, subject to conditions discussed below, provides an appropriate tariff mechanism for them to provide these services to customers at appropriate levels of compensation.

19. Applicants' proposed rate formula for the fixed component provides that it will be determined based on one-twelfth of the estimated annual cost to be paid to generators for providing the service, divided by the divisor used in determining Applicants' currently effective transmission rates under Attachment O of the TEMT. However, Applicants' proposal does not specify when the fixed component will be updated to reflect new estimates of annual costs. In order to avoid disputes regarding implementation of the formula, we will require Applicants to file revised tariff sheets, within 30 days of the date of this order, to specify the process and timeline for updating the inputs to the formula rate for the fixed component.

20. Next, as noted above, in their answer, Applicants propose to withdraw the proposal to base future WDS charges on retail delivery service tariffs. Applicants also propose to add tariff language to section 4 specifying that nothing in the Ancillary Services Tariff shall be construed as affecting the ability of any party receiving service under the tariff to exercise its rights under the FPA and pursuant to the Commission's rules and regulations. We find that these two modifications satisfy the concerns raised regarding Applicants' proposed Ancillary Services Tariff. Accordingly, we will accept the Ancillary Services Tariff, to be effective January 1, 2007, as requested, conditioned upon Applicants filing, within 30 days of the date of this order, revised tariff sheets that remove the proposal to base future WDS charges on retail delivery service tariffs and that add language to section 4 clarifying filing rights, as proposed in the November 11 Answer.

21. Finally, we will deny the request to consolidate the proceedings. The Commission formally consolidates cases for purposes of hearing and subsequent decision, *i.e.*, when instituting a trial-type evidentiary hearing or other further procedures, such as a paper hearing or technical conference. While we have established such procedures in Docket Nos. ER07-169-000 and ER07-170-000 to address the proposal by Applicants'

generating affiliates to sell ancillary services to Applicants,⁸ we are not instituting further procedures here, but instead are summarily deciding all issues concerning Applicants' proposed Ancillary Services Tariff on their merits. Moreover, the true-up mechanism provided by the variable monthly rate component for each service in the proposed tariff will ensure that any refunds that Applicants' generating affiliates are required to provide Applicants in Docket Nos. ER07-169-000 and ER07-170-000 are flowed through to customers under the Ancillary Services Tariff.⁹ Accordingly, formal consolidation is not warranted,¹⁰ nor is there any reason otherwise to "link" this proceeding to the outcome of Docket Nos. ER07-169-000 and ER07-170-000.

The Commission orders:

(A) Applicants' Ancillary Services Tariff is hereby conditionally accepted, subject to modification, to be effective January 1, 2007, as discussed in the body of this order.

(B) Applicants are hereby directed to make a compliance filing revising the Ancillary Services Tariff, within 30 days of the date of this order, as discussed in the body of this order.

(C) The motion for consolidation is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ *See Id.*

⁹ *See* proposed Ancillary Services Tariff, Original Sheet Nos. 9 (Schedule 3), 10-11 (Schedule 5), and 13 (Schedule 6).

¹⁰ *See, e.g., Entergy Services, Inc.*, 108 FERC ¶ 61,107, at P 21 (2004).