

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. ER07-153-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued April 30, 2007)

1. In this order, we accept a compliance filing, as modified, submitted by 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).

I. Background

2. On December 29, 2006, the Commission issued an order conditionally accepting Applicants' proposed Ancillary Services Tariff, to be effective January 1, 2007.¹ Applicants submitted their proposed 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), and provide certain ancillary services to the Midwest ISO. The Ancillary Services Tariff sets forth the rates, terms and conditions under which Applicants will provide ancillary services to the Midwest ISO and the means by which Applicants will recover their costs for providing such services.

3. The rates under the Ancillary Services Tariff reflect a two-part formula under which Applicants will pass through the actual costs of ancillary services incurred under agreements with their ancillary service suppliers. The rates consist of a fixed component and a variable component. The fixed monthly rates are derived based on one twelfth of

¹ *Ameren Services Company*, 117 FERC ¶ 61,358 (2006) (December Order).

the estimated annual cost to be paid to the generators that supply the ancillary services, divided by the divisor used in determining Applicants' transmission rates under Attachment O to the Midwest ISO Open Access Transmission and Energy Markets Tariff. The variable monthly rates are calculated based on the difference between actual revenues collected for all prior periods for the ancillary service, beginning with the effective date of the Ancillary Services Tariff, compared to the actual costs incurred by Applicants for the prior periods.

4. The Commission conditioned acceptance of the Ancillary Services Tariff upon Applicants filing revised tariff sheets specifying the process and timeline for updating the inputs to the formula rate for the fixed component, to avoid disputes regarding implementation of the formula. The Commission also conditioned its acceptance on Applicants' removing their proposal to base future Wholesale Distribution Service (WDS) charges on retail delivery service tariffs and adding language to section 4 clarifying filing rights of customers under the tariff. The Commission denied requests to "link" this proceeding to the proceeding in Docket Nos. ER07-169-000 and ER07-170-000, in which proposals by Applicants' generating affiliates to sell ancillary services to Applicants are being addressed. It found such linkage unnecessary because 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.

II. The Instant Filing

5. Applicants, in their January 24, 2007 compliance filing, state that they have proposed revisions to the Ancillary Services Tariff in compliance with the Commission's directives in the December Order. Applicants state that the proposed revisions specify the process and timeline for updating the inputs to the formula rates for the fixed components, remove the original proposal to base future WDS charges on retail delivery service tariffs, and add language to section 4 clarifying filing rights.

6. Specifically, Applicants propose additional language to Schedules 3, 5, and 6 that provide that the fixed monthly rate will be updated on June 1 of each year to incorporate Applicants' then-effective Attachment O rate divisor, which is also revised June 1 of each year to reflect the most recent system data, and on the first day of the month following any changes to the ancillary service suppliers' rates as ordered by the Commission. Also pursuant to the Commission's directive, Applicants propose to revise section 2 of the Ancillary Services Tariff to remove the language concerning basing WDS charges on retail delivery service tariffs. Finally, Applicants propose to add language to section 4 to state that "[n]othing 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 thereunder."

7. Applicants request an effective date of January 1, 2007.

III. Notice of Filing and Responsive Pleadings

8. Notice of Applicants' filing was published in the *Federal Register*, 72 Fed. Reg. 5040 (2007), with interventions and protests due on or before February 14, 2007. Soyland Power Cooperative, Inc. (Soyland) and Southwestern Electric Cooperative, Inc. (Southwestern) filed timely motions to intervene and protests. Illinois Municipal Electric Agency (IMEA), already an intervenor in this proceeding, filed a protest. On March 1, 2007, Applicants filed an answer.

9. Soyland argues that it would be unjust and unreasonable to allow Ameren to pass through the Ancillary Services Tariff whatever charges it incurs for these services. Soyland maintains that the Commission should require that any charges passed through the Ancillary Services Tariff be subject to refund and the outcome of the ongoing proceeding in Docket Nos. ER07-169-000 and ER07-170-000.²

10. Southwestern argues that while the Commission conditionally accepted the filing subject to modification, there are two potentially erroneous assumptions in the Ancillary Services Tariff. First, it assumes that the rates of Applicants' ancillary service suppliers, finally approved by the Commission in other dockets, will necessarily reflect a two-part rate structure. Second, it assumes that these rates will be based on estimated costs rather than actual costs. Southwestern argues that Applicants' Ancillary Services Tariff should not permit it to pass through Ancillary Services costs on a basis other than actual costs incurred by Ameren Services on a monthly basis.

11. IMEA argues that Applicants have not adequately complied with the Commission's directives in the December Order. IMEA argues that Applicants' compliance filing does not provide for adequate updates to the estimated costs. Specifically, IMEA notes that Applicants propose to modify the fixed monthly rate: (1) on June 1, to reflect the updated Midwest ISO Attachment O divisor; and (2) on the first day of the month following any changes to the ancillary service suppliers' rates as ordered by the Commission. IMEA states that these two instances are not the only events that would warrant updating the fixed monthly rate and that such restrictive language

² See *Ameren Energy Marketing Co.*, 117 FERC 61,334 (2006) (Rate Proceeding).

provides no means to change the rates if any of the underlying factors are changed or if a better estimate of annual costs is developed. IMEA states that the Commission should require Applicants to incorporate additional provisions that would update the fixed monthly rates to reflect any change to the annual estimated costs to be charged to customers, and to provide a means for transmission customers to substantiate the rates charged by Ameren.

12. Next, IMEA argues that Applicants' proposed language in the compliance filing regarding the rights of customers (in section 4 of the Ancillary Services Tariff) should be revised. Specifically, IMEA states that the problem with Applicants' language is that the term "Party" is not defined within the Ancillary Services Tariff. In order to avoid any confusion regarding the applicability of this provision, IMEA contends that the Ancillary Services Tariff should be revised such that the term "Party" should be replaced with the term "Transmission Customers" or the Ancillary Services Tariff should be revised to include the definition of "Parties" contained in the Commission's proposed revised *pro forma* open access transmission tariff.

13. In their answer, Applicants state that the arguments presented in the protests are generally outside the scope of the compliance filing, improperly attempt to revisit issues already resolved by the Commission, and provide no basis to reject or condition the compliance filing.

14. Specifically, Applicants state that the Soyland and Southwestern protests do not assert that Applicants failed to comply with the December Order, but rather improperly seek to address issues that were resolved in the December Order. Applicants state that Soyland's objection to the use of a pass-through true-up mechanism and Southwestern's objection to the assumptions used by the Commission to approve the Ancillary Services pass through based on the outcome of Docket Nos. ER07-169, ER07-170 and ER07-323 constitute an impermissible collateral attacks on the December Order.

15. In response to IMEA, Applicants state that updating the rate to reflect any change, or for any better estimate of annual costs, as proposed by IMEA, would defeat the purpose of setting a fixed monthly rate along with a true-up, and would result in even more confusion, as both the fixed rate the monthly true-up could be different each month. Applicants state that, by focusing solely on the fixed rate, IMEA does not understand the two-part rate design approved by the Commission. Applicants go on to state that the exact split between the fixed rate and the true-up rate is less important than the overall effective rate. The end result of the two-part rate design is that Ameren Services will pass through the actual costs billed by suppliers.

16. Applicants also state that they disagree with IMEA's contention that the Commission should require additional independent accounting for Ameren Services'

costs for ancillary services. Applicants state that all of the agreements for ancillary services between Ameren Services and its affiliates will be reviewed by the Commission. Applicants further state that customers and the Commission will be able to review and verify information for the supplier agreements through the Commission's Electric Quarterly Reports, as required by Order No. 2001.³ Applicants state that Ameren Services will ensure that the ancillary service rates are posted to the Midwest ISO website for review.

17. With respect to IMEA's concern regarding Applicants' proposed tariff language regarding the rights of customers, Applicants, in their answer, propose a further revision to section 4. Applicants propose to replace "Party" with "Eligible Customer," which is a defined term in the Ancillary Services Tariff. The new proposed language would read as follows:

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Eligible Customer 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.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We note that while we are granting Southwestern's and Soyland's motions to intervene in Docket No. ER07-153-001, we expect them to accept the record to date.

19. 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.

³ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002).

B. Analysis

20. In the December Order, the Commission required Applicants to amend their proposal to: (1) specify a process and timeline for updating inputs to the formula rate to avoid disputes regarding implementation of the formula; (2) remove their proposal to base future WDS charges on retail delivery service tariffs; and (3) add language to section 4 clarifying that nothing in the tariff affects the rights of customers under the tariff to exercise their rights under the Federal Power Act. As discussed below, we will accept Applicants' compliance filing, as modified, effective January 1, 2007.

21. We find that Southwestern's and Soyland's arguments are beyond the scope of Applicants' compliance filing, and, accordingly, are denied. Southwestern and Soyland argue that the Ancillary Services Tariff, which the Commission previously conditionally accepted, should not allow for the pass through of costs (or pass through of estimated costs rather than actual costs). The pass through of costs is not at issue at this stage of the proceeding. The Commission already accepted the Ancillary Services Tariff, which reflects a two-part formula rate under which Applicants will pass through the actual costs of ancillary services under the anticipated ancillary services supply agreements. We find that Southwestern's and Soyland's protests to the compliance filing are essentially untimely requests for rehearing of the December Order, submitted by entities that were not parties to the proceeding prior to the deadline for filing rehearing requests. A compliance filing is not the appropriate vehicle to seek rehearing.⁴

22. Next, we agree with Applicants that updates to the fixed monthly rates should be based on objective criteria and that IMEA's proposal requiring that the fixed monthly rate be revised to reflect *any* change in estimated costs does not meet this standard and is likely to result in confusion and disputes, contrary to the requirements of the December Order. Moreover, we agree with Applicants that the end result of the two-part rate design is that they will pass through the actual costs billed by suppliers, and thus IMEA's proposal for constant updates to the fixed monthly rate is unnecessary to prevent cost over-recovery.

23. However, at the same time, we agree with IMEA that Applicants' proposal to limit updates to reflect changes in ancillary service suppliers' rates ordered by the Commission is too narrow, because it does not reflect changes to suppliers' rates or the quantity of

⁴ See, e.g., *Virginia Electric and Power Co.*, 20 FERC ¶ 61,210 (1982) (protest rejected as an attempt at an untimely request for rehearing); *North American Electric Reliability Council*, 88 FERC ¶ 61,046 (1999) (issue should have been raised in protest of the original filing or on rehearing of the order accepting the original filing).

regulation or operating reserve capacity purchased that may occur without a Commission order. For instance, where the Commission approves a tariff that provides for the sale of ancillary services at rates at or below cost-based ceiling rates and includes a *pro forma* service agreement, the supplier would not need to file individual service agreements reflecting the price and quantity of actual transactions as long as they conform to the *pro forma* service agreement. Rather, it would only report those transactions in its Electronic Quarterly Report, as required by Order No. 2001.⁵ Therefore, we will direct Applicants to file revised tariff sheets within 30 days of the date of this order to provide that the fixed monthly rates will be updated to reflect any changes in the ancillary service suppliers' rates or in the quantity of regulation or operating reserve capacity purchased.

24. IMEA argues that Applicants' proposed process for updating formula inputs should provide a means for transmission customers to substantiate the rates charged by Applicants. While the measures suggested by Applicants may sometimes provide a means for customers to substantiate the rates charged by Applicants, they will not in every case. For instance they would not allow a customer to substantiate estimated annual costs reflecting Applicants' purchase of ancillary services under agreements that are not required to be filed at the Commission pursuant to Order No. 2001. While we expect public utilities will provide customers access to information necessary to substantiate the rates charged pursuant to rate formulas in any event,⁶ we will require Applicants to file revised tariff sheets, within 30 days of the date of this order, that specifically provide for customers' access to such information.

25. Finally, with respect to IMEA's concern regarding the revisions to section 4 (filing rights), we find that the modification proposed by Applicants in their answer addresses IMEA's concerns over the previously proposed language and is consistent with the requirements of the December Order. We will therefore accept the tariff language. We direct Applicants to file a compliance filing reflecting their proposed language, within 30 days of the date of this order.

⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2000-D, 102 FERC ¶ 61,334 (2003).

⁶ *See Michigan Electric Transmission Company, LLC*, 118 FERC ¶ 61,139 at P 13.

The Commission orders:

(A) Applicants' compliance filing is hereby accepted, as modified, effective January 1, 2007, as discussed in the body of this order.

(B) Applicants are hereby directed to file tariff revisions, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.