125 FERC ¶ 61,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER08-209-001

ORDER GRANTING REHEARING, IN PART

(Issued November 20, 2008)

1. In this order, the Commission grants, in part requests for rehearing filed by Prairie State Generating Company, LLC (Prairie State) and the Kentucky Municipal Power Agency (Kentucky Municipal) of an order[1] accepting a revised large generator interconnection agreement (New Interconnection Agreement) among Prairie State, Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and Illinois Power Company (Illinois Power).[2]

I. Background

2. In 2002, Illinois Power filed an unexecuted interconnection agreement (Original Interconnection Agreement) to interconnect Prairie State's 1,500 MW coal-fired, base load facility (Facility) to Illinois Power's transmission and distribution system. The Commission ultimately accepted the Original Interconnection Agreement as modified by the parties through settlement.[3] In 2004, to address the transfer of control of the transmission facilities to Midwest ISO and changes to the configuration of the proposed interconnection, Midwest ISO submitted revisions to the Original Interconnection Agreement with the Commission. That Interconnection Agreement (Existing

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[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,019 (2008) (January Order).

[2] Ameren Services Company (Ameren) entered into the New Interconnection Agreement as an agent for Illinois Power and Ameren Illinois Transmission Company.

[3] *Illinois Power Co.*, 101 FERC ¶ 61,117 (2002).

Interconnection Agreement) was conditionally accepted,[4] subject to modification to conform it to Order No. 2003, the Commission's then new rule on interconnecting large generators.[5]

3. In Order No. 2003, the Commission generally required rolled-in pricing of network upgrades for generation interconnections.[6] This allows interconnection customers to be reimbursed 100 percent of what they pay up front for network upgrade costs. The Commission also allowed Regional Transmission Organizations such as Midwest ISO to propose participant funding, which requires interconnection customers to pay (without reimbursement) for some portion of the network upgrade costs. Midwest ISO initially adopted rolled-in pricing in its Order No. 2003 compliance filing,[7] and the Existing Interconnection Agreement incorporates such pricing. However, Midwest ISO later adopted a 50-50 participant funding methodology, called Regional Expansion Criteria and Benefits, which requires interconnection customers to fund (without reimbursement) 50 percent of certain network upgrade costs for interconnection agreements filed on or after February 5, 2006.[8]

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[4] *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,019, *order on reh'g and compliance*, 111 FERC ¶ 61,237, *order on reh'g*, 112 FERC ¶ 61,281 (2005).

[5] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[6] The Commission allows the higher of rolled-in pricing or incremental pricing, but since the Commission adopted rolled-in pricing as the default pricing methodology in Order No. 2003, rolled-in pricing is the standard we will discuss here.

[7] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, *order on reh'g*, 109 FERC ¶ 61,085 (2004).

[8] *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 46-72, *reh'g denied in pertinent part*, 117 FERC ¶ 61,241, at P 80-85 (2006). Last year, the Commission rejected Midwest ISO's proposal to generically apply the 50-50 cost-sharing retroactively to existing interconnection agreements, including the Existing Interconnection Agreement. The Commission found that Midwest ISO had not demonstrated that applying its new cost-sharing policy generically would produce just and reasonable results; however, it found that Midwest ISO could amend individual

(continued…)

4. On November 13, 2007, Midwest ISO submitted under section 205 of the Federal Power Act (FPA)[9] the New Interconnection Agreement among itself, Prairie State, and Illinois Power. The New Interconnection Agreement contains two principal revisions to the Existing Interconnection Agreement: (1) it includes a 150 MW increase in the capacity of Prairie State's Facility; and (2) it follows Midwest ISO's currently effective *pro forma* Interconnection Agreement, including the 50-50 cost-sharing provisions, which apply to the $76.5 million in network upgrades associated with the total 1,650 MW output of the Facility.

5. Over protests filed by various intervenors, the Commission held in the January Order that Prairie State's request to increase the capacity of its planned Facility by 150 MW requires a new Interconnection Agreement and that the new Interconnection Agreement must conform to Midwest ISO's current *pro forma* Interconnection Agreement, which includes the 50-50 cost-sharing. The Commission cited Order No. 2003[10] and company-specific cases[11] in which it found that any increase in generation capacity from an existing generator requires a new Interconnection Agreement conforming to the Transmission Provider's current *pro forma* Interconnection Agreement. The Commission also cited section 4.4.3 of the Midwest ISO's Large Generator Interconnection Procedures (Interconnection Procedures), which provides that an interconnection customer must proceed with a new interconnection request when there is a Material Modification to an existing interconnection request. The Commission also cited section 1 of the Midwest ISO Interconnection Procedures, which defines an interconnection request as a request "to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics

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existing interconnection agreements to adopt the 50-50 cost-sharing policy if Midwest ISO could show that 100 percent reimbursement would result in an "improper subsidy." *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128, *reh'g denied,* 119 FERC ¶ 61,097 (2007).

[9] 16 U.S.C. § 824d (2006).

[10] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 4, n.5; Midwest Independent Transmission System Operator, Large Generator Interconnection Procedures, sections 2.1, 11.1.

[11] *New England Power Co.*, 109 FERC ¶ 61,364 at P 13; *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,392 (2004); *Southern California Edison Co.*, 109 FERC ¶ 61,375, at P 10 (2004); *Jersey Central Power & Light Co.*, 110 FERC ¶ 61,273 (2005); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,125, at P 3 (2006).

of, an existing Generating Facility that is interconnected with the … Transmission System."[12] Drawing on these provisions, the Commission stated that "[a]n increase in generating capacity is generally a significant change (material modification) to an interconnection request that requires new studies and a new interconnection request."[13] The Commission also stated that "any such request can materially affect other interconnection customers in the queue."[14] The Commission rejected Prairie State's argument that the capacity increase was *de minimis* and, therefore, did not require a new interconnection agreement.[15] Thus, the Commission accepted the New Interconnection Agreement, which was consistent with Midwest ISO's *pro forma* Interconnection Agreement, including the current 50-50 cost-sharing provisions.

6. Kentucky Municipal and Prairie State filed requests for rehearing, arguing that the January Order's acceptance of the New Interconnection Agreement conflicts with Midwest ISO's procedures governing generator interconnections and creates bad policy.

7. Prairie State contends that the original 1,500 MW estimate for the output of its large baseload facility was submitted before the exact output level of the plant could be determined, as is typical for any large baseload facility. Prairie State adds that over time, it developed a better estimate of 1,650 MW; this is the 150 MW "increase."[16]

8. Prairie State observes that after studying the difference between the upgrades needed for the 1,650 MW estimate and those needed for the 1,500 MW estimate, Midwest ISO and Ameren found that to prevent short circuits, certain circuit breakers on the network needed to be replaced. The cost of these breakers was roughly $30,000, a small fraction of the $76.5 million in network upgrades originally associated with interconnecting the Facility.[17]

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[12] January Order, 122 FERC ¶ 61,019 at P 16, n.18.

[13] *Id*. P 16.

[14] *Id*.

[15] *Id*. P 17.

[16] Prairie State Rehearing Request at 7-8. Prairie State observes that it now has an even better estimate of final output, which is 1,608 MW under "best case" conditions.

[17] *Id*. at 9.

9. Prairie State thus makes three arguments on rehearing. First, there was inadequate record support for the Commission to conclude that the request to increase the Facility's capacity was a Material Modification as defined under Midwest ISO's *pro forma* Interconnection Agreement, its Interconnection Procedures, and as explained in Order No. 2003. Second, Prairie State argues that the capacity upgrade for the Facility was not, in fact, a Material Modification to its interconnection request. Third, Prairie State argues that the January Order discourages innovative approaches to interconnecting new generation capacity to the transmission network, because it would impose millions of dollars in costs for network upgrades when generation capacity can be added to the network with negligible upgrade costs.[18] Kentucky Municipal makes similar arguments.[19]

II. Discussion

10. As discussed below, we grant rehearing, in part, to achieve a just and reasonable result and will not require that the 50-50 pricing regime be applied to the original network upgrades.

11. However, first we will address the issue of when a new Interconnection Agreement is required, in order to prevent misunderstandings in the future.

A. When a New Interconnection Agreement is Required

12. We continue to believe that Prairie State must enter into a new Interconnection Agreement as a result of its request to increase the capacity of its Facility. However, upon reviewing the January Order and the arguments made on rehearing, we grant rehearing to eliminate the suggestion that a new Interconnection Agreement is required *only* if the Commission finds that there is a Material Modification. Whether a new Interconnection Agreement is required depends on whether a change to an existing generator's Interconnection Request is a new Interconnection Request under section 1 of Midwest ISO's Interconnection Procedures, not whether a Material Modification occurred.

13. We recognize that the facts in this case are unusual, since Midwest ISO changed its *pro forma* Interconnection Agreement before Prairie State's Facility went into service. However, based on the regulations and precedent, a request to increase capacity in this circumstance should be treated as a new Interconnection Request. This increase in

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[18] *Id*. at 10-15.

[19] Kentucky Municipal Rehearing Request at 6-9 and 11-14.

capacity is essentially the same as a request to increase the capacity of an existing generator.

14. Midwest ISO's *pro forma* LGIA and LGIP define an "Interconnection Request" as "an Interconnection Customer's request . . . to interconnect a new Generating Facility, or to *increase the capacity of*, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission System."[20] Under this definition, an Interconnection Customer is making a new Interconnection Request if it: (1) is an existing Generating Facility; and (2) requests to increase its capacity *or* if it requests a change that is considered a Material Modification. In other words, *any* request to increase the capacity of an existing Generating Facility is an Interconnection Request regardless of whether the capacity increase is also a Material Modification. This distinction is critical in this case, because a finding that the requested capacity increase was a Material Modification would have required a factual finding regarding the effect on lower queued generators,[21] while a request to increase capacity always requires a new Interconnection Request.

15. While use of the phrase "existing Generating Facility that is interconnected with the Transmission System" in the definition of Interconnection Request creates some ambiguity as to its applicability to Prairie State's Facility, which is not yet fully constructed and interconnected to the Transmission System, we find that Prairie State's Facility should be treated as an existing Generating Facility for purposes of the definition of "Interconnection Request."[22] Although Kentucky Municipal suggests that the Prairie State Facility was more like a new facility owned by an Interconnection Customer,[23] we disagree, because all of the interconnection studies for Prairie State's originally requested

[20] Midwest ISO Interconnection Agreement Art. 1 and Interconnection Procedures, section 1 (emphasis added).

[21] Midwest ISO LGIA, Art. 1.

[22] January Order, 122 FERC ¶ 61,019 at P 16.

[23] Kentucky Municipal Protest at 9 (citing Midwest ISO Interconnection Procedures, section 4.4.1). Section 4.4.1 addresses modifications to information provided in an Interconnection Request before the Interconnection Customer returns an executed System Impact Study Agreement and provides in relevant part: "For plant increases that have been determined to be a Material Modification…the incremental increase in plant output will go to the end of the queue for the purpose of cost allocation and study analysis."

1,500 MW of output were complete and it had an effective Interconnection Agreement before submitting the request to increase its capacity.

16. There are logical reasons for treating requests to increase capacity of existing generators as new Interconnection Requests. Some changes that an Interconnection Customer may propose are not necessarily significant, and it makes sense to require a factual showing that these proposed changes will adversely affect others in the queue (i.e., whether the change is a Material Modification) before requiring a new Interconnection Agreement. But an increase in the amount of power the Generating Facility will produce should be treated as significant because it is an important change in one of the most fundamental characteristics of a Generating Facility. How much power a Generating Facility will produce is critical to the very nature of the Generating Facility, and it is reasonable to treat a change to that characteristic as a new Interconnection Request.

B. Whether 50-50 Pricing Should Apply to Original Upgrades

17. We reverse the position taken in the January Order that the 50-50 cost-sharing provisions should apply to the entire $76.5 million in network upgrades. As we note above, the tariff is ambiguous and does not cover this exact situation. Given the unusual circumstances in this case, we find that in order to reach a just and reasonable result, the 50-50 cost-sharing provisions should only apply to the upgrades associated with the 150 MW increase. As a result, Midwest ISO must file a non-conforming Interconnection Agreement to replace the new Interconnection Agreement accepted in the January Order and currently on file at the Commission.[24] Specifically, Midwest ISO must revise the New Interconnection Agreement so that the 100 percent crediting provision from the Existing Interconnection Agreement applies to the $76.5 million cost of network upgrades associated with the original 1,500 MW request, with the new 50-50 cost sharing applying only to the $30,000 cost of upgrades associated with the 150 MW increase.

18. The circumstances in this case are very unusual. The cost allocation issue arises only because of the timing: when Midwest ISO changed how it allocates the cost of network upgrades and when Prairie State made its initial 1,500 MW and later 150 MW

[24] *See PJM Interconnection, LLC,* 111 FERC 61,163 at PP 10-11, *reh'g dismissed*, 112 FERC ¶ 61,282 (2005) (recognizing that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for a non-conforming Interconnection Agreement instead of an Interconnection Agreement conforming to the Transmission Provider's *pro forma* Interconnection Agreement).

interconnection requests. The progression of relevant events is as follows: (1) Prairie State submitted an interconnection request for its proposed 1,500 MW baseload Facility (July 2001); (2) Midwest ISO and Illinois Power completed all studies for that 1,500 MW interconnection request; (3) the Existing Interconnection Agreement containing the 100 percent crediting for the original $76.5 million took effect (November 2004); (4) Prairie State submitted an interconnection request to increase the Facility's output by 150 MW (February 2005); (5) Midwest ISO changed from 100 percent crediting to 50-50 cost sharing (February 2006); (6) Midwest ISO and Illinois Power determined that no upgrades other than $30,000 in new circuit breakers were needed to accommodate the 150 MW increase (June 2007); and (7) Midwest ISO submitted the unexecuted New Interconnection Agreement (November 2007). As a result of this turn of events, Prairie State's request to increase the capacity of its unfinished baseload Facility by 150 MW, which necessitated only $30,000 in additional upgrades, would end up costing Prairie State over $38 million if we did not grant rehearing.

19. Based on the specific facts in this case, we find it unjust and unreasonable to apply the 50-50 cost-sharing provisions to the entire $76.5 million in network upgrades that would have remained eligible for 100 percent crediting but for the requested 150 MW increase and related additional $30,000 in upgrades. The 50-50 cost sharing is unjust and unreasonable in this particular case for reasons similar to those that the Commission explained in another case. In that case, the Commission rejected Midwest ISO's request to retroactively apply the 50-50 cost sharing on a generic basis to existing interconnection agreements that otherwise had 100 percent crediting.[25] In particular, applying the 50-50 cost sharing (a form of participant funding) to the total $76.5 million in upgrades would not accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing – (1) encouraging efficient siting of generation and (2) preventing improper subsidies.[26]

20. In this case, applying the 50-50 cost sharing cannot serve the first purpose – encouraging efficient siting – since Prairie State has already decided where it will locate its Facility. Further, reallocating the $76.5 million upgrade costs could also create a disincentive for efficient expansion of generation. Such a reallocation could cause Prairie State to either forgo the additional 150 MW of generating capacity at its proposed

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[25] *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order denying reh'g*, 119 FERC ¶ 61,087 (2007).

[26] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at 30,523 (2003).

Facility or idle the additional capacity until it has completed the Facility and recovered its upfront payment of upgrade costs through transmission credits.[27]

21. With regard to the second possible justification for partial participant funding in this case, Midwest ISO and Ameren have not shown that applying the 100 percent crediting would result in an improper subsidy. In Order No. 2003-B, the Commission addressed claims that 100 percent reimbursement would result in improper subsidies. It stated that parties could raise this argument in specific cases and that if they made a sufficient showing, the Commission would consider alternative pricing proposals. The Commission also stated that the Transmission Provider would bear the burden of explaining the facts of the case and the assumptions on which its calculations are based and providing evidentiary support.[28] The Commission has also stated that a showing of improper subsidy is not easily made, that delivery of the output of the generator outside the pricing zone is not sufficient to establish that an improper subsidy exists, and that offsetting benefits must be addressed.[29]

22. In its testimony,[30] Ameren states that it has no need for the network upgrades other than to interconnect the Facility and that it would not be constructing the network upgrades but for the need to interconnect Prairie State. Ameren states that under the Existing Interconnection Agreement, neither Prairie State nor the loads outside of the Ameren Illinois Zone[31] that will be served by the Facility will pay any of the network

[27] Prairie State says that if the Commission does not grant rehearing, it will seriously consider whether to pursue the capacity increase at all or whether to artificially and inefficiently limit output of the Facility to 1,500 MW. (Prairie State Rehearing Request at 14).

[28] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at 31,292-3 (2003).

[29] *See International Transmission Co.*, 120 FERC ¶ 61,220 at P 16 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008); *see also American Transmission Co. LLC*, 120 FERC ¶ 61,221 at P 18 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008).

[30] Although Midwest ISO submitted the filing, it included testimony from Ameren because Midwest ISO was aware that Ameren and Prairie State did not agree as to whether the 50-50 cost-sharing provisions should be applied to the New Interconnection Agreement. Arguments in the testimony in support of the 50-50 cost-sharing provisions are thus made on behalf of Ameren.

[31] The Ameren Illinois Zone comprises the transmission facilities of Illinois Power, Central Illinois Public Service Company, and Central Illinois Light Company.

upgrades costs required to reliably interconnect and deliver the Prairie State generation. Ameren states that under the Midwest ISO revenue distribution formula, the Ameren Illinois Zone will receive less than 5 percent of the transmission revenues associated with sales from Prairie State's proposed Facility to loads within or external to Midwest ISO. Thus, Ameren argues that under the Existing Interconnection Agreement, ratepayers in the Ameren Illinois Zone will improperly subsidize the project if they bear the entire revenue requirement yet receive very little incremental transmission revenue.[32]

23. Prairie State argues that Ameren has failed to meet the standard that the Commission set forth in Order No. 2003-B. It states that the network upgrades are by no means for the sole use of transmission customers outside the Ameren Illinois Zone; transmission customers in the Ameren Illinois Zone will benefit both directly and indirectly from the upgrades, even if Prairie State delivers some of the output outside the zone.[33] Prairie State argues that Ameren failed to provide a concrete calculation of the improper subsidy, failed to substantiate with evidentiary support Ameren's claim of a subsidy, and failed to explain what portion of Prairie State's 1,650 MW would need to be delivered into the Ameren Illinois Zone in order for Ameren to recoup the 100 percent reimbursement.[34]

24. In response to Ameren's claim that the upgrades are primarily for delivery of power to off-system loads, Kentucky Municipal points out that it will pay Midwest ISO – and thus Ameren – to deliver output from Prairie State's proposed Facility to Kentucky Municipal's loads. Kentucky Municipal explains that it will take point-to-point service from Midwest ISO to move its share of the project output and that Ameren will share in those point-to-point revenues. Kentucky Municipal states that these revenues are in addition to Ameren's share of network service revenues that it will receive as a Midwest ISO transmission owner, including Prairie State loads located on the Ameren system.[35]

25. We find that Ameren has not shown that there would be a subsidy if Prairie State is fully reimbursed for the original upgrades. While Ameren claims that the Existing

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[32] Midwest ISO's Nov. 13, 2008 Filing, Exhibit III, Borkowski Affidavit at 8.

[33] Prairie State cites to Commission language stating that the integrated transmission grid is a cohesive network whose expansion benefits all users of the grid, since the grid is continuously expanding and all users of the grid benefit from its continued stability. *See* Prairie State Protest at 14.

[34] Prairie State Protest at 14-16.

[35] Kentucky Municipal Rehearing Request at 17.

Interconnection Agreement will create an improper subsidy, the record does not support those claims. Ameren does not indicate how much load is committed either outside or within the Ameren Illinois Zone, other than listing which entities outside of the zone have committed to Prairie State capacity and showing that one of the entities' commitments is for 300 MW. Moreover, Ameren admits that not all the power from this Facility will be sold outside of the Ameren Illinois Zone. Finally, Ameren makes no effort to address offsetting benefits that loads in the Ameren Illinois Zone may receive, such as increased reliability and a more competitive market resulting from the upgrades. Therefore, we find that Ameren failed to make an adequate showing that the ratepayers in the Ameren Illinois Zone would improperly subsidize the Prairie State Facility if 100 percent reimbursement continues to apply to the network upgrades needed for the originally proposed output of the Facility.

26. For these reasons, we grant rehearing, in part and find it unjust and unreasonable in this case for Midwest ISO to apply the 50-50 cost sharing to the $76.5 million in upgrade costs that are subject to the 100 percent crediting under the Existing Interconnection Agreement. We therefore direct Midwest ISO to submit in a compliance filing, within 30 days of the date of this order, a non-conforming Interconnection Agreement incorporating the 100 percent crediting provision from the Existing Interconnection Agreement and applying it to the network upgrade costs associated with interconnecting Prairie State's proposed Facility at the 1,500 MW level (i.e., the original $76.5 million in upgrade costs). The current 50-50 cost-sharing provisions will apply only to the upgrades associated with Prairie State's subsequent interconnection request to raise the output of the Facility by 150 MW (i.e., the $30,000 for new circuit breakers).

<u>The Commission orders</u>:

(A) Rehearing is hereby granted in part, as discussed in the body of this order.

(B) Within 30 days of the date of this order, Midwest ISO must file a revised New Interconnection Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.