

111 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER05-215-001
ER05-215-002

ORDER ON REHEARING AND ACCEPTING
SERVICE AGREEMENT SUBJECT TO CONDITIONS

(Issued May 20, 2005)

1. In an order issued January 14, 2005, the Commission rejected an unexecuted interconnection and operation agreement (IA) between Prairie State Generating Company (Prairie State) and Illinois Power Company (Illinois Power) for failing to follow the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO's) standard form interconnection agreement.¹ In this order, we deny Prairie State's request for rehearing. This order also conditionally accepts the proposed revised and unexecuted interconnection service agreement between Prairie State and Illinois Power, which follows the standard form large generator interconnection agreement in Attachment X in Midwest ISO's tariff. This order benefits customers because it assures that the terms and conditions for interconnection service are just and reasonable.

Background

2. On March 28, 2002, Illinois Power filed an unexecuted IA to interconnect Prairie State's 1,500 megawatt (MW) coal-fired, base-load generating facility (Facility) to Illinois Power's transmission and distribution system under the terms and conditions of Illinois Power's Open Access Transmission Tariff. The Commission accepted the proposed IA for filing and set the disputed provisions for hearing, but held the hearing in abeyance pending settlement discussions.² This led to a settlement of all disputed issues

¹ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,019 (2005) (January Order).

² *Illinois Power Co.*, 99 FERC ¶ 61,164 (2002).

as of that date, and the filing of the first revised IA, which the Commission accepted on October 31, 2002.³

3. Later, to address changes to the configuration of the interconnection and required facility upgrades, the parties entered new negotiations to revise the appendices and other provisions in the IA. Because of the failure to resolve several issues, the consummation of Ameren's acquisition of Illinois Power,⁴ and Illinois Power's October 1, 2004 integration into the Midwest ISO, Prairie State requested the Midwest ISO file the second revised IA in unexecuted form. Midwest ISO did so on November 15, 2004.

January Order

4. The January Order rejected the proposed IA because it was inconsistent with the standard form interconnection agreement in Midwest ISO's open access transmission tariff, which was in effect when the proposed IA was filed. With regard to the issues in dispute in the unexecuted agreement, the Commission noted that the parties would be subject to the Commission-approved crediting provision in the Midwest ISO interconnection agreement, and left the generator facilities obligations to be resolved by the parties in advance of the filing of the new IA.⁵

Rehearing Request

5. Prairie State argues that if parties have agreed to certain terms in interconnection agreements that pre-date Order No. 2003,⁶ and have been operating under such agreements for several years, as is the case here, the Commission should permit revisions to such agreements without requiring the parties to revisit all other elements of their agreements. Its original effective IA with Illinois Power contained several important negotiated provisions that increased its flexibility to change the project development schedule and limit the amount of financial security needed to fully protect Illinois Power.

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

⁴ To reflect Ameren's ownership of Illinois Power, Ameren shall be referred to as Ameren/IP.

⁵ January Order at P 22.

⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *reh'g pending*.

In Prairie State's opinion, the Commission's *pro forma* large generator interconnection agreement does not include such flexibility because it was formulated to respond to the needs of smaller natural gas-fired generators, and not new base load generators like Prairie State. Acknowledging the value of a standard form IA for new projects, Prairie State nevertheless argues that forcing a generator and transmission provider to walk away from an IA that addresses project-specific concerns several years after it goes into effect will discourage parties from making beneficial changes if doing so will nullify their existing agreement. Also, Prairie State claims that the rejection of the IA in the January Order has created uncertainties and the prospect of litigation that will have a detrimental effect on its ability to pursue and timely complete financing, permitting and construction activities.

6. In the event that the Commission reinstates the second revised IA tendered on November 15, 2004, Prairie State offers two arguments against the unexecuted second revised IA. First, Prairie State protests Illinois Power's proposal in article 9.6 to restrict the payable transmission credits each month to the dollar amount that Illinois Power receives in that month from the Midwest ISO for transmission service from Prairie State's Facility. Under these conditions, Prairie State may receive less than full crediting of its prior payments for upgrades on Illinois Power's transmission system.

7. Second, Prairie State objects to articles 4.2 and 4.3 of Appendix A to the second revised IA, which provide that certain upgrades and equipment must be installed at the Baldwin generating station (Baldwin), which is owned by Dynegy, a competitor of Prairie State. If after using "reasonable efforts," Prairie State fails to meet this condition, it may avoid breach of contract by operating at a reduced output established by a future study of the interconnection enhancements. Prairie State argues that it is unjust and unreasonable to grant Dynegy what amounts to a unilateral veto over Prairie State's future operation.

Revised Unexecuted Interconnection Agreement

8. On April 4, 2005, Midwest ISO submitted a new proposed unexecuted IA between Prairie State and Illinois Power that is based on the standard form large generator IA that appears in Attachment X in Midwest ISO's tariff. Midwest ISO explains that Prairie State requested that the IA be filed in unexecuted form because negotiations over the agreement had reached an impasse. According to Midwest ISO, one issue remains unresolved in the new unexecuted IA: how Illinois Power shall repay Prairie State for funds that Prairie State advances to Illinois Power under the IA for Network Upgrades required to be build on the Illinois Power transmission system. Midwest ISO also requests that the Commission waive its 60-day notice requirement and make the agreement effective November 16, 2004, the effective date originally requested in this proceeding.

Notice of Filing and Responsive Pleadings

9. Notice of Midwest ISO's filing was published in the *Federal Register*, 70 Fed. Reg. 20,118 (2005), with comments, protests or interventions due on or before April, 25, 2005. Prairie State filed comments, and Ameren/IP filed comments and a protest. On May 2, 2005, Midwest ISO Transmission Owners filed a motion to intervene out of time and comments in partial support of Ameren/IP's protest. On May 9, 2005, Ameren/IP filed an answer in response to Prairie State's comments. On May 11, 2005, Prairie State filed an answer in response to both Ameren/IP's protest and the comments of the Midwest ISO Transmission Owners. On May 18, 2005, Indiana Municipal Power Agency filed a motion to intervene out of time and comments answering the comments of the Midwest ISO Transmission Owners. On May 19, 2005, Ameren/IP filed an answer in response to Prairie State's answer.

Intervention, Comments and Protest

10. Ameren/IP filed comments requesting that the Commission require the new unexecuted IA be amended to clarify that if there is a change in the Commission's or Midwest ISO's pricing policy for providing transmission credits that takes effect before Prairie State begins commercial operations, the new policy will govern the provision of such credits. It proposes a new article 11.4.4 that would memorialize this clarification in the IA. Ameren/IP argues that this change allows the Midwest ISO, which has admitted that its crediting policies may result in inequitable results, to develop revised policies to compensate generators for network upgrade payments. A revised article 11.4.4, Ameren/IP continues, will protect load within the Ameren/IP pricing zone from having to pay all costs of Prairie State's network upgrades, which are currently estimated to exceed \$68 million, if there is a change in the crediting policy.

11. Because Ameren/IP considers the new unexecuted IA incomplete and unclear, it offers several proposed clarifications and revisions to certain IA terms. First, it seeks to delete the phrase "Interconnection Customer" from the definition of Point of Interconnection⁷ to allow for the presence of the Transmission Owner's Interconnection Facilities. This change would allow the Point of Change of Ownership and the Point of Interconnection to be at different locations, which reflects operational reality. Second, it proposes changes to article 11.4.1 (Repayment of Amounts Advanced for Network Credits Proposed Changes and Explanation of Changes) to describe how crediting will

⁷ As revised, the definition would read: "Point of Interconnection shall mean the point, as set forth in Appendix A to this IA, where the ~~Interconnection Customer's~~ Interconnection Facilities connect to the Transmission System or Distribution System, as applicable."

work in light of the fact that interconnection of the Prairie State facility will require upgrades on multiple transmission systems within Midwest ISO. Third, a further proposed change to article 11.4.4 would prevent Prairie State from opposing any attempt by Ameren/IP to recover in its rates the costs associated with either the Network Upgrades or any interest provided to Prairie State in connection with the provision of transmission credits. Ameren/IP explains that this change is reasonable because it means that Prairie State will not oppose the rate recovery of the facilities necessary to interconnect its generation facility. Fourth, Ameren/IP proposes, without support, changes to article 5.2 (General Conditions Applicable to Option to Build). Finally, Ameren/IP identifies several revisions that it says are necessary to correct or complete the IA; for example, a network upgrade that will not be charged to Prairie State should be removed from article 3(b)(i) of the agreement, and the Map in Appendix A-1 should be revised to identify the Point of Interconnection. Ameren/IP requests that because further negotiations are necessary, the Commission should accept the unexecuted IA subject to refund and conditions, and establish settlement procedures in this proceeding.

12. Prairie State argues that the revised agreement is precisely what the Commission directed the parties to file in the January Order, and the Commission should accept it on this basis. Prairie State also explains that it is Ameren/IP's refusal to accept the transmission crediting language that appears in the Midwest ISO standard form IA that led to the revised agreement being filed in unexecuted form. Finally, Prairie State requests expedited Commission action because the failure to finalize interconnection terms is beginning to interfere with the project's development.

13. Midwest ISO Transmission Owners submitted comments supporting Ameren/IP's position on the crediting provisions in the Midwest ISO standard form IA. They argue that the Commission should adopt the language proposed by Ameren/IP to require the IA to be amended to clarify that if there is a change in the Commission's or Midwest ISO's pricing policy for providing transmission credits that takes effect before Prairie State begins commercial operations, the new policy will govern the provision of such credits.

Commission Conclusion

14. We will grant the unopposed motions to intervene out of time by Midwest ISO Transmission Owners and Indiana Municipal Power Agency given their interest in this proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest and an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Ameren/IP's, Prairie State's, and Indiana Municipal Power Agency's answers and will, therefore, reject them.

15. The Commission is not persuaded to grant rehearing. As we explained in the January Order, the second revised IA was submitted after the Commission accepted Midwest ISO's standard form IA submitted in compliance with Order No. 2003. Also, the second revised IA sought to establish the terms and conditions for a new interconnection that will serve a generating unit that has not yet been constructed. Therefore, the second revised IA was subject to Order No. 2003, and was properly rejected for failing to follow the Midwest ISO's standard IA in Attachment X.

16. With respect to the new unexecuted IA tendered in Docket No. ER05-215-002, we conclude that it follows the standard form IA in Attachment X of Midwest ISO's tariff. Therefore we accept it, subject to conditions described below.

17. We reject the changes proposed by Ameren/IP for articles 11.4.1, 11.4.4, and 5.2 as insufficiently supported nonconforming changes. The Commission has explained that nonconforming changes must be due to unique circumstances or other operational reasons that necessitate the changes proposed.⁸ Ameren/IP has not explained why these changes must be included in the IA, therefore, they are rejected. But we accept the proposed change to the definition of Point of Interconnection, since it corrects an error. Therefore, we require Midwest ISO to amend its Commission-approved IA to include this change.

18. Finally, we agree with Ameren/IP that other changes it highlights may be necessary to correct or complete the IA. Therefore, we direct Midwest ISO to submit a compliance filing that responds to or incorporates these changes within thirty days of the date of this order. This compliance filing will not be another opportunity for Ameren/IP or Prairie State to propose new provisions or amendments to the IA. The compliance filing is intended only to complete the agreement that the Commission conditionally accepts in this order.

The Commission orders:

(A) Prairie State's request for rehearing of the January Order is hereby rejected, as discussed in the body of the order.

⁸ See *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 at P 9-11 (2005) (*PJM*). The situation here is somewhat different from the *PJM* case in that here the filed IA does conform to the applicable *pro forma* IA and an intervenor wants it revised. Nevertheless, the same reasoning applies; non-conforming provisions should be accepted only if they meet the standard discussed in *PJM*.

(B) The new unexecuted interconnection agreement submitted in Docket No. ER05-215-002 is hereby conditionally accepted, effective November 16, 2004, as discussed in the body of this order.

(C) Midwest ISO is directed to make a compliance filing, as directed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.