

110 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Iowa Power Cooperative

Docket No. EL04-129-000

v.

Midwest Independent Transmission System
Operator, Inc.

ORDER ON COMPLAINT

(Issued February 7, 2005)

Introduction

1. On August 27, 2004, as amended on August 28, 2004,¹ Central Iowa Power Cooperative (Central Iowa) filed a complaint under section 206 of the Federal Power Act (FPA)² against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). In this order, the Commission grants in part and denies in part the complaint. In so doing, we deny Central Iowa's request to direct Midwest ISO to collect a facilities charge on behalf of Central Iowa. Concerning Central Iowa's alternative request for relief, we hold that nothing in this order permits Midwest ISO to use Central Iowa's facilities without compensation, but based on the record before us we cannot find that Midwest ISO is providing transmission delivery services for the service in question to the interconnection points alleged be Central Iowa. This order benefits customers by restricting Commission action to only those public utilities that are within the Commission's jurisdiction.

¹ The August 28, 2004 amendment corrected minor typographical errors in Ex. 1 of the complaint.

² 16 U.S.C. § 824e (2000).

Background

2. Central Iowa is a Rural Utility Service (RUS)-financed electric cooperative and, thus, is not a Commission-regulated “public utility” under the FPA. Central Iowa is not a member of Midwest ISO. The Midwest ISO provides transmission service under the Midwest ISO Open Access Transmission Tariff (OATT), on behalf of its member Ameren Energy Marketing Company (Ameren), and transmits wholesale power from Ameren to the Resale Power Group of Iowa (RPGI).³ Prior to RPGI receiving such service, RPGI was a native load customer of Interstate Power and Light Company (IPL). When RPGI switched power suppliers, IPL entered into service agreements with those suppliers to transmit their power to RPGI pursuant to an Operating and Transmission Agreement (O&T Agreement) between IPL and Central Iowa. The most recent of those agreements was a network integration service agreement between IPL and MidAmerican Energy Corporation (MidAmerican) that became effective on January 1, 1999 and expired on December 31, 2003. IPL is now a member of Midwest ISO and has turned over operational control of its facilities to Midwest ISO. Midwest ISO succeeded IPL as the transmission provider under the MidAmerican network integration service agreement in February 2002. In January 2004, Ameren replaced MidAmerican as the power supplier to RPGI.

3. The O&T Agreement, discussed further below, governs Central Iowa’s and IPL’s use of their shared transmission system (Integrated Facilities). They do not jointly own the Integrated Facilities; rather, each entity owns discrete transmission facilities. IPL is the control area operator for the Integrated Facilities. Under section 5.14 of the O&T Agreement, Central Iowa and IPL each has the right to full use of the Integrated Facilities, including the right to use the facilities of the other party, to serve its customers or members.⁴ No wheeling charge shall be made by either party for the use of such facilities necessary to serve the parties’ customers. Section 5.15 requires the approval of

³ RPGI is an association of 29 Iowa electric utilities, most of which are municipally-owned.

⁴ The agreement does not define “customers,” but Central Iowa interprets section 5.14 to apply to native load customers. Central Iowa Complaint, Ex. 1 (Affidavit of Daniel Burns) at P 5. The parties in this proceeding do not dispute the definition of “customers.”

both Central Iowa and IPL for either party to provide transmission for third parties over the Integrated Facilities.⁵

Complaint

4. In its complaint, Central Iowa alleges that: (1) Midwest ISO is transmitting electricity from Ameren to RPGI;⁶ (2) Midwest ISO cannot reach RPGI without using Central Iowa's transmission facilities; (3) the Midwest ISO did not coordinate with Central Iowa or obtain Central Iowa's authorization to use Central Iowa's transmission facilities to serve RPGI; (4) there is a statement on the Alliant West [i.e., IPL] page of the Midwest ISO's OASIS indicating that transmission service across the IPL system may make use of Central Iowa's facilities, and thus, Central Iowa's tariff may apply; IPL's zonal rate under the Midwest ISO OATT does not include the cost of Central Iowa's transmission facilities; and (5) Central Iowa has not been, and is not being, compensated for the use of its transmission facilities to serve RPGI.⁷ Central Iowa claims that repeated efforts to resolve the matter with Midwest ISO have been unsuccessful.

⁵ Section 4.03(e) of the O&T Agreement states that disputes that arise under the agreement are to be settled by an Administrative Committee comprised of representatives of Central Iowa and IPL. If the Administrative Committee is unable to reach a settlement, the dispute is to be submitted to arbitration.

⁶ Central Iowa's complaint provides a list of 133 of its facilities that it asserts are "impacted by" the transmission service to 22 RPGI cities, including "facilities used in serving each city on a normal day-to-day basis as well as facilities used in backup situations (such as during planned maintenance or unplanned outages) and facilities that were determined by powerflow simulation to be impacted by the transaction." Central Iowa's Complaint, Ex. 2. The listed facilities include 34 kV lines, 69 kV lines, 115 kV lines, 161 kV lines, 345 kV lines and substation equipment.

⁷ Central Iowa states that it discovered in 2002 that Midwest ISO's service to RPGI was using Central Iowa's transmission facilities. At the time, Central Iowa states that it was in negotiations regarding a proposal to form TRANSLink, a proposed independent transmission company that would have operated under Midwest ISO, but work on that proposal was suspended in November 2003. Central Iowa states that in "Fall 2003," it learned that Ameren would replace MidAmerican as the RPGI service provider beginning on January 1, 2004. Central Iowa states that "[a]t that time, [it] believed it was important to inform the parties" that it had discovered the alleged unauthorized use of its facilities by Midwest ISO. Central Iowa's Complaint at 9.

5. Central Iowa argues that it is well-established Commission policy that transmission owners should be compensated for the use of their facilities by third parties. It also states that the Commission has emphasized, in the context of Regional Transmission Organizations (RTOs), the need to identify and pay for the use of facilities needed by an RTO for transmission service where the costs of such facilities are not included in the RTO's transmission service rate.⁸

6. Central Iowa contends that the Midwest ISO OATT requires that Midwest ISO make arrangements with Central Iowa for third party transmission. It cites section 30.6 of the Midwest ISO OATT, under which a network customer is required to make any third party transmission arrangements to deliver resources to the transmission provider's transmission system or to deliver power from the transmission provider's transmission system to the network customer's load. Further, Central Iowa asserts that the OATT provides that the transmission provider must undertake reasonable efforts to assist the network customer in obtaining such arrangements. Central Iowa also asserts that Midwest ISO's Transaction Specification Sheets provide that "intervening systems" should be identified (section 12.0) and any charges from that intervening system should be listed as a direct assignment facilities charge to the network customer (section 18.4). According to Central Iowa, these provisions, taken together, make Midwest ISO responsible for: (1) identifying any intervening facilities that will be affected by its provision of network service to a customer; (2) assisting that customer with making arrangements with the intervening facility; and (3) collecting payments through a direct assignment charge. It contends that Midwest ISO refuses to do these things. Further, it contends that Midwest ISO has failed to file a network operating agreement for the transmission service between Ameren and RPGI, which has effectively prevented Central Iowa from directly challenging that service in a section 205 FPA proceeding.

7. Central Iowa further argues that section 5.15 of the O&T Agreement requires that it be compensated for the use of its facilities to provide third party transmission service. Central Iowa asserts that Midwest ISO had not approached either it or IPL regarding the use of the Integrated Facilities for service to RPGI, and, thus, they did not have the opportunity to inform Midwest ISO that both Central Iowa's and IPL's systems would be used, as well as the applicable Central Iowa tariff rate. It also argues that since the O&T Agreement is a grandfathered agreement listed under Attachment P of the Midwest ISO

⁸ For example, Central Iowa cites *PJM Interconnection, LLC*, 81 FERC ¶ 61,257 at 62,251 (1998); *PJM Interconnection, LLC*, 82 FERC ¶ 61,230 (1998) (hearing order), 85 FERC ¶ 61,074 (1998) (delegated order accepting settlement); *IES Utilities, Inc.*, 81 FERC ¶ 61,187 at 61,839 (1997).

OATT, Midwest ISO may not take action inconsistent with the O&T Agreement unless permitted by the Commission.⁹

8. Central Iowa also contends that, as a matter of public policy, Midwest ISO should be responsible for determining and assessing any costs associated with its use of Central Iowa's transmission system. It argues that: (1) Midwest ISO is the ultimate transmission provider in its footprint, and thus is in the best position to determine how its delivery of service impacts Central Iowa's transmission facilities; (2) Midwest ISO knows what the terms of service will be under the applicable network service agreement and who should be responsible for any transmission-related costs under that agreement; and (3) it would not be burdensome for Midwest ISO to assess and collect charges related to its use of intervening facilities.¹⁰

9. Central Iowa further argues that the Commission set for hearing an analogous case, in which the issue was whether the transmission provider (Alliant) or the transmission customer (MidAmerican Energy, which was supplying power to RPGI) was responsible for making third-party transmission arrangements necessary to enable the proposed transmission service. The case ultimately settled, with the transmission customer paying a facilities charge that was agreed upon in a separate arrangement between the transmission provider and the cooperative whose facilities were being used.¹¹

10. Central Iowa requests that the Commission order the Midwest ISO to assess an additional facilities charge under the Midwest ISO Network Operating Agreement for the use of an intervening system to compensate Central Iowa for the use of its facilities. Central Iowa states that it maintains its own tariff that is patterned after the Commission's pro forma tariff, although Central Iowa's tariff is not on file with the Commission. Therefore, Central Iowa asks that the Commission allow its requested facilities charge be

⁹ Central Iowa states that during the Midwest ISO Energy Markets Tariff proceeding, the Commission reiterated its goal of ensuring that the grandfathered agreements are accommodated in a way that preserves the commercial bargain between the parties, while not harming reliability or third parties. *See Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,141 at P 51 (2004).

¹⁰ Central Iowa contends that administrative costs to Midwest ISO would be minimal and would be less than what Central Iowa pays in annual Schedule 10 administrative costs under the Midwest ISO OATT.

¹¹ *See Alliant Services Co.*, 86 FERC ¶ 61,272 (1999) (*Corn Belt*).

based on its tariff rate. Central Iowa estimates that this charge for transmission service to RPGI would be about \$4.98 million annually.¹²

11. Central Iowa further requests that the Commission order that the payment obligation date back to February 2002, when Midwest ISO replaced IPL as the transmission provider. It argues that the provisions of section 206 of the FPA concerning refund effective dates (i.e., the limitation that refunds not begin until 60 days after the date of the complaint) should not apply in this case, because the Midwest ISO failed to properly apply the Midwest ISO OATT and because Central Iowa seeks to recoup payments (with interest) that it is entitled to rather than refunds of overcharges.

12. Alternatively, if the Commission does not grant the relief it requests, Central Iowa requests that the Commission: (1) state that nothing in its order permits the Midwest ISO to use Central Iowa's facilities without compensation; and (2) find that the Midwest ISO is providing transmission delivery services for the service in question to the interconnection points between (a) the closest Midwest ISO controlled transmission facilities to the RPGI cities that Central Iowa has identified and (b) the Central Iowa transmission facilities utilized to serve those RPGI cities. If the Commission issues such an order, Central Iowa states that it would then take steps to curtail service to RPGI unless compensation was agreed upon.¹³

Notice and Responsive Pleadings

13. Notice of Central Iowa's complaint was published in the *Federal Register*,¹⁴ with comments, interventions or protests due on or before September 15, 2004. Timely motions to intervene, raising no substantive issues, were filed by the National Rural Electric Cooperative Association and Dairyland Power Cooperative. IPL filed a timely motion to intervene, arguing in support of Central Iowa's allegations regarding authorization for Midwest ISO to use Central Iowa's system.

14. Midwest ISO filed a timely answer, arguing that the complaint is procedurally deficient because it fails to document the alleged use of Central Iowa's facilities, besides

¹² Central Iowa suggests that the Commission could establish dispute resolution procedures to finalize arrangements for such compensation to Central Iowa and any associated documents.

¹³ Central Iowa proposes this alternative relief in its September 30, 2004 answer to the respondents' answers. *See infra* P 19.

¹⁴ 69 Fed. Reg. 53,907 (2004).

merely listing the facilities allegedly being used. Further, Midwest ISO argues that it may not arrange for payments to Central Iowa, citing a lack of privity of contract with Central Iowa because: (1) Central Iowa is not a member of Midwest ISO, and Midwest ISO has no authority to make payments to non-members, and (2) since Midwest ISO is not a party to the O&T Agreement, compensation under that agreement is a matter between Central Iowa and IPL, the parties to that agreement under which transmission service to RPGI was originally provided.

15. Further, Midwest ISO denies that its use, if any, of Central Iowa's facilities is unauthorized. It also disputes the claim that it has violated the Midwest ISO OATT. It argues that section 30.6 of the OATT deals with network resources that are not physically interconnected with the Midwest ISO transmission system. However, the network resources used to serve RPGI are located in the Ameren control area and are directly interconnected with the Midwest ISO transmission system. Section 30.6 provides that the transmission customer, and not Midwest ISO, must arrange third-party transmission, and Ameren has not requested Midwest ISO's assistance. Further, Midwest ISO contends that, although the pro forma Transaction Specification Sheet for network integration service provides for direct assignment facilities charges, Central Iowa's claimed compensation does not fall within that category. Rather, Midwest ISO argues that direct assignment charges apply to facilities that are constructed by a transmission owner, independent transmission company (ITC) or ITC participant for the sole use/benefit of a particular transmission customer requesting service under the tariff.¹⁵ Central Iowa does not meet that definition, according to Midwest ISO, because Central Iowa is not a Transmission Owner, ITC or ITC Participant within the meaning of the Midwest ISO OATT; Central Iowa did not construct its facilities for the sole use/benefit of Ameren or RPGI; and the Commission is without authority to approve Central Iowa's charges, because it is a non-jurisdictional RUS-financed cooperative. Since Central Iowa is not entitled to any direct assignment facilities charges, its argument that Midwest ISO has failed to file a network operating agreement with Ameren is of no legal significance, according to Midwest ISO. Midwest ISO also contends that the Commission is without

¹⁵ Midwest ISO cites the following definition of "direct assignment facilities" in section 1.13 of the Midwest ISO OATT:

Facilities or portions of facilities that are constructed by a Transmission Owner(s), ITC, or ITC Participant(s) for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

authority to approve Central Iowa's charges, because it is a non-jurisdictional RUS-financed cooperative.

16. Midwest ISO further contends that the additional charge sought by Central Iowa would constitute rate pancaking. It also states that in *Corn Belt*, the Commission never reached the ultimate issue of whether Alliant, the transmission provider in that case, was required to make third-party transmission arrangements necessary to provide service over the intervening system owned by Corn Belt. Even if the Commission had found Alliant responsible, Midwest ISO argues that *Corn Belt* is distinguishable from the instant case, because Midwest ISO is not a party to the O&T Agreement and does not have the requisite contractual privity with Central Iowa as did Alliant and Corn Belt. It also disputes Central Iowa's reliance on the PJM cases. PJM's facilities charges involved the low voltage facilities of PJM transmission owners. Therefore, PJM had an agency relationship with the transmission owner before it could collect that charge, and all of the PJM transmission owners that were allowed to recover the facilities charge were Commission-jurisdictional utilities.

17. RPGI filed a timely motion to intervene and answer disputing Central Iowa's allegations. RPGI asserts that the requested facilities charge would result in pancaked rates. It observes that Central Iowa did not raise this issue when IPL was the third-party transmission provider between 1999 and 2002 and that during that period, it never made additional payments to Central Iowa for that service. RPGI also argues that its current transmission rate reflects the use of the facilities used to serve it. It disputes Central Iowa's claim that Midwest ISO does not have operational control over the Integrated Facilities, stating that all scheduling on the Integrated Facilities must be done through the Midwest ISO OASIS. RPGI argues that Central Iowa should address its cost recovery issues with IPL and have IPL, the Midwest ISO member, address any resulting rate adjustment issues with Midwest ISO. It also argues that Central Iowa bears the burden of showing that the rate the RPGI currently pays for use of the Integrated Facilities is unjust and unreasonable and that it has made no showing that the rate that RPGI pays is insufficient to cover Central Iowa's costs. It also asserts that IPL and Central Iowa have free use of the Integrated Facilities to serve their native load customers.

18. Midwest ISO and RPGI further assert that IPL, implicitly if not explicitly, transferred functional control of the entire Integrated Facilities to Midwest ISO. They refute the allegation of unauthorized use of Central Iowa's facilities by arguing that Central Iowa has made no efforts to prevent IPL from transferring control of the facilities to Midwest ISO. For example, RPGI contends that Central Iowa "appears to have simply permitted Alliant [i.e., IPL] to transfer control of the [Central Iowa]-owned portion of the Integrated Facilities to [Midwest ISO], without taking any legally effective steps to

prevent such a transfer.”¹⁶ Further, RPGI asserts that, because Central Iowa’s portion of the Integrated Facilities is under the direct operational control of Midwest ISO, those facilities do not constitute an intervening system under section 30.6 of the Midwest ISO OATT; rather, they are a direct part of the transmission system operated by Midwest ISO.

19. On September 30, 2004, Central Iowa filed an answer to the answers.¹⁷ In response to Midwest ISO’s claim that Central Iowa did not show that its facilities were used to serve RPGI, Central Iowa supplements its complaint¹⁸ by providing six system maps¹⁹ that it claims show that power cannot flow to six of the RPGI member cities without “the use of” Central Iowa’s transmission facilities. Central Iowa states that the six maps are a representative sampling of Midwest ISO’s use of Central Iowa’s facilities and that, if requested, it can provide similar maps regarding the other RPGI members. Central Iowa also argues that if Midwest ISO is concerned about a lack of privity of contract with Central Iowa, then Midwest ISO can pay IPL, which, in turn, can pay Central Iowa. It disputes RPGI’s allegation that it and IPL have free use of the Integrated Facilities, responding that such use is not free; rather, in consideration for their shared obligations with regard to the system, IPL and Central Iowa do not charge each other to use the other’s portion of the system to serve their native load customers. It also notes that Ameren, the transmission customer of record for Midwest ISO’s delivery service in question, has not objected or filed any response disputing Central Iowa’s claims for relief.

20. On September 30, 2004, IPL filed an answer. It asserts that transmission to “certain” RPGI cities would be “physically impossible” without the use of Central Iowa’s facilities because there would be no electrical path from Ameren to those cities without using Central Iowa’s facilities. It quotes the following posting from the Alliant West (ALTW) (i.e., IPL) page of Midwest ISO’s OASIS:

Since [Central Iowa] and Alliant West [i.e., IPL] operate a joint transmission system that covers a significant portion of the Alliant West

¹⁶ RPGI Answer at 9.

¹⁷ Central Iowa’s pleading is styled as “Information to Supplement Complaint,” but it requests that the Commission allow the pleading as an answer to the answers to its complaint.

¹⁸ *See supra* note 6.

¹⁹ Central Iowa’s Information to Supplement Complaint, Att. 1 (Sept. 30, 2004).

control area, any sources and/or sinks located within the Alliant West control area and/or transactions that may use facilities in the Alliant West control area may also be required to abide by [Central Iowa] tariffs.^[20]

21. IPL denies RPGI's assertion that IPL and Central Iowa have "free" use of the Integrated Facilities under the O&T Agreement. Rather, the long term investment obligations that both of them have assumed is the underlying consideration for each of them to have access to the entire Integrated Facilities at no additional charge. IPL argues that neither Midwest ISO, Ameren nor RPGI has assumed a similar long term investment obligation for the Integrated Facilities, and thus they are not similarly situated.

22. With respect to third-party transmission, IPL states that section 5.15 of the O&T Agreement was meant to apply after both IPL and Central Iowa agreed upon a rate that would sufficiently recover their respective revenue requirements. But, IPL contends that the ability to administer the agreement in this fashion (i.e., agreement on a rate) "disappeared with Order 888,"²¹ which required IPL to develop its own Commission-jurisdictional OATT for the recovery of costs related to the use of its own facilities, but which did not include recovery for Central Iowa's cost of facilities nor provide service over Central Iowa's facilities. In turn, IPL states that Central Iowa developed its own tariff, patterned on the pro forma tariff and designed to recover the costs of Central Iowa's facilities. IPL argues that separate charges - IPL's zonal rate under the Midwest ISO OATT and Central Iowa's tariff - would not result in unduly discriminatory rates.

23. On October 14, 2004, Midwest ISO filed a motion to reject Central Iowa's and IPL's answers or, in the alternative, motion for leave to answer an answer. On October 20, 2004, RPGI filed a motion to strike Central Iowa's and IPL's answers. Midwest ISO and RPGI argue that Central Iowa's attempt to supplement its complaint

²⁰ IPL's Answer at 2-3, citing <<<http://oasis.midwestiso.org/OASIS/ALTW>>>.

²¹ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Statutes & Regulations, Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group, *et al.* v. FERC, 225 F.3d 667 (D.C. Cir. 2002), *aff'd sub nom.* New York v. FERC, 535 U.S. 1 (2002).

should be rejected as an impermissible answer to their answers. They argue that Central Iowa failed to proffer the supporting evidence in its original complaint as required by the Commission's regulations and that it otherwise reiterates arguments from its complaint.

24. Midwest ISO further argues that it merely provided a continuation of existing transmission service to a customer of IPL, without changing the nature of this service in any material way. To the extent that Central Iowa consented to that prior service, it should not be heard to complain now that the Midwest ISO has assumed service obligations previously performed by IPL. Further, Midwest ISO contends that even assuming that Central Iowa's facilities are indispensable to service RPGI, that would not change the analysis, because Central Iowa has not "opened the circuits" (i.e., physically cut off its facilities from Midwest ISO) and, therefore, must be deemed to have consented to the use of its facilities. Given the fluid nature of electricity, the burden to protect its own interests in such a situation and prevent electricity from flowing over its own facilities rests with Central Iowa, and not with any third party, according to Midwest ISO. It cannot be required to pay Central Iowa's tariff charge, because it is not an "eligible customer," which the Central Iowa tariff defines, in part, as an electric utility, according to Midwest ISO. Midwest ISO states that it is not an electric utility as defined in section 3(22) of the FPA because it does not sell electric energy or generate electric energy for resale and is not a retail customer of Central Iowa taking unbundled transmission service. Midwest ISO also argues that IPL and Central Iowa have steadfastly refused to propose any revisions to the O&T Agreement and have generally sought to exclude it from any meaningful Commission review.

25. On October 27, 2004, Central Iowa filed an answer to Midwest ISO's motion to reject and RPGI's motion to strike. Central Iowa questions why Midwest ISO would initially argue that the complaint is procedurally deficient due to insufficient documentation and then seek to strike the documentation that Central Iowa has proffered to supplement its complaint. It also contends that its answer responds to misstatements in RPGI's answer.

Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²² the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.

²² 18 C.F.R. § 385.214 (2004).

27. Under Rule 213(a) of the Commission's Rules of Practice and Procedure,²³ no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. We will allow the various answers, because they have provided information that has aided us in understanding the matters at issue in this proceeding.

B. Substantive Matters

28. Because Central Iowa is an RUS-financed electric cooperative and thus, is not a regulated public utility within the Commission's jurisdiction, the Commission has no authority to regulate Central Iowa's rates. Therefore, we will not, and indeed cannot, order Midwest ISO to pay Central Iowa's unregulated rate, as Central Iowa requests. However, if the parties were to agree on (or a court with jurisdiction were to determine) a charge to be paid by Midwest ISO or IPL and then reflected in a jurisdictional rate, then the jurisdictional entity, whether it be IPL or Midwest ISO, could file the proposed charge with the Commission. The Commission has previously held that, if Central Iowa believes that its arrangements with IPL do not properly account for the use of Integrated Facilities and for sharing of revenues from third-party uses, Central Iowa may file a complaint under section 206 of the FPA to modify their arrangements, i.e., to modify the O&T Agreement.²⁴

29. Further, the Commission has consistently held that, where it has authorized the transfer of operational control over jurisdictional facilities to Midwest ISO, and where such facilities were integrated with the facilities of non-jurisdictional utilities, the Commission's authorization applied only to the jurisdictional facilities.²⁵ Thus, in *Alliant*, the Commission emphasized that it was authorizing the transfer of only the jurisdictional facilities that Alliant owned. Further, the Commission has held on similar facts that its approval of a section 203 application does not affect any other approvals necessary to complete the transaction, including approval by any state commission or any

²³ 18 C.F.R. § 385.213(a) (2004).

²⁴ See *Alliant Energy*, 90 FERC ¶ 61,344 at 61,134 (2000) (*Alliant*); *IES Utilities, Inc.*, 81 FERC ¶ 61,187 at 61,839 (1997) (*IES Utilities*). See also *Corn Belt*, 86 FERC ¶ 61,272 at 61,988 (where one utility's transmission facilities are embedded in another utility's transmission system, a joint use agreement typically governs each party's access rights and the rates and charges associated with those access rights (be it monetary compensation or reciprocal use rights)).

²⁵ See, e.g., *Alliant; Otter Tail Power Co.*, 97 FERC ¶ 61,226 (2001), *reh'g denied*, 98 FERC ¶ 61,112 (2002) (*Otter Tail*).

necessary consent by any party to a contract.²⁶ Further, the *Alliant* section 203 order authorized the transfer of all relevant service agreements from IPL to Midwest ISO, including the IPL-MidAmerican network integration service agreement, under which Midwest ISO transmitted power from MidAmerican to RPGI through December 2003. However, the complaint here does not cite any side agreement, related to the IPL-MidAmerican service agreement, that provided for an additional facilities charge payment to Central Iowa by either IPL or MidAmerican.

30. Further, Central Iowa's argument that section 30.6 of the Midwest ISO OATT requires Midwest ISO, in its role as the transmission provider, to make third-party transmission arrangements, is misplaced. Section 30.6 requires the network customer to make such arrangements with the transmission provider to assist, if asked. Ameren is the network customer here. Thus, according to section 30.6, Ameren would be the appropriate entity to make third-party transmission arrangements under the Midwest ISO OATT. Further, no evidence has been presented that Ameren asked Midwest ISO to provide assistance in making third-party arrangements with Central Iowa.²⁷

²⁶ *E.g.*, *Otter Tail*, 97 FERC at 62,033, n.8 (and cases cited therein, including *Alliant*), *order on reh'g*, 98 FERC at 61,335. *See also* *TRANSLink Transmission Co., L.L.C.*, 101 FERC ¶ 61,140 at P 23 (2002) ("TRANSLink participants can only transfer rights and ownership interests in the facilities to the extent that they actually have such rights and interests. For facilities that are jointly owned, TRANSLink may only operate those facilities consistent with the ownership interest transferred and cannot impair any contractual rights of other joint owners.")

²⁷ Central Iowa does not cite any efforts to raise its concern with Ameren, besides certain passing references to Ameren's alleged refusal to pay the requested facilities charge. Central Iowa does note its protest in Docket No. ER04-738-000, which concerned Midwest ISO's notice of succession filing to replace Ameren Energy Services Company as transmission provider to Ameren. In that case, Central Iowa raised the same issues it raises here. But, the Commission denied the protest, finding that the service agreements that were the subjects of the notice of succession did not involve the use of the Integrated Facilities; rather, they involved only the use of Ameren Energy Services' facilities. The Commission held that Central Iowa may seek compensation for the use of its facilities when an applicable service agreement is filed under the relevant OATT (citing *IES Utilities*) or, in the absence of the filing of the applicable service agreement, it may file a complaint. *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,008 at P 9 (2004).

31. We also find persuasive Midwest ISO's argument that the Midwest ISO OATT's direct assignment facilities charge does not apply to Central Iowa's facilities, because Central Iowa is not a Transmission Owner, ITC or ITC Participant within Midwest ISO, as defined in section 1.13 of the Midwest ISO OATT. Further, no evidence has been presented that Central Iowa constructed its facilities for the sole purpose of serving RPGI.²⁸

32. Based on the above discussion, we will deny Central Iowa's request to direct Midwest ISO to collect a facilities charges on Central Iowa's behalf and make payments to Central Iowa. With respect to Central Iowa's alternative request for relief, we hold that nothing in this order should be construed as a determination that Midwest ISO may use Central Iowa's facilities without compensation. However, we deny Central Iowa's request to find that Midwest ISO is providing transmission services for the service in question to the interconnection points alleged by Central Iowa. That factual allegation is in dispute among the parties, and we cannot make the determination sought by Central Iowa based on the record before us. We decline to set the issue for hearing, because Central Iowa's facilities are not within the Commission's jurisdiction, as explained above. Accordingly, we grant Central Iowa's complaint in part and deny it in part.

The Commission orders:

Central Iowa's complaint is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁸ See *supra* P 15.