

127 FERC ¶ 61,013  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Ameren Energy Marketing Company

Docket No. ER09-398-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULES AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 3 2009)

1. In this order, we accept for filing the proposed rate schedules filed in Docket No. ER09-398-000 by Ameren Energy Marketing Company (Ameren Marketing) on behalf of its affiliates, Ameren Energy Generating Company (Ameren Generating) and AmerenEnergy Resources Generating Company (AmerenEnergy Resources), suspend them for a nominal period, to be effective on the date requested, subject to refund. We also establish hearing and settlement judge procedures.

**I. Background**

2. Ameren Marketing, Ameren Generating and AmerenEnergy Resources are indirect, wholly-owned subsidiaries of Ameren Corporation.<sup>1</sup> Ameren Marketing, Ameren Generating and AmerenEnergy Resources have the authority to sell energy and capacity at market-based rates and recently received approval of revisions to their market-based rate tariffs to permit sales of ancillary services in Midwest ISO's ancillary services market.<sup>2</sup>

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<sup>1</sup> Other subsidiaries of Ameren Corporation include the following: Illinois Power Company (AmerenIP), Central Illinois Public Service Company (AmerenCIPS), Central Illinois Light Company (AmerenCILCO) (collectively, Ameren Illinois Utilities) and Union Electric Company (AmerenUE).

<sup>2</sup> These filings were approved in *Ameren Energy Generating Company*, 126 FERC ¶ 61,169 (2009) (revisions to Ameren Generating and Ameren Marketing's market-based rate tariffs) and *AmerenEnergy Resources Company*, Docket No. ER04-53-008, (Oct. 2, 2008) (unpublished letter order).

3. Ameren Marketing is a power marketer that does not own any generation capacity. However, through long-term power sales agreements with its affiliates, Ameren Marketing controls approximately 6,000 megawatts (MW) of capacity. It sells energy and/or capacity in the Southern, Central, Northeast, and Southwest Power Pool, Inc., regions.

4. Ameren Generating was created during AmerenCIPS' divestiture of generation and currently owns approximately 4,300 MW of real power capacity within the PJM Interconnection, LLC (PJM) and Midwest Independent Transmission System Operator, Inc., (Midwest ISO) footprints. Ameren Generating sells 100 percent of the output of its generating facilities to Ameren Marketing under long-term contracts entered into pursuant to Ameren Generating's market-based rate authority.

5. AmerenEnergy Resources was created during AmerenCILCO's divestiture of generation and currently owns approximately 1,200 MW of real power capacity located in Midwest ISO's footprint. AmerenEnergy Resources sells 100 percent of the output from the generating facilities it owns to Ameren Marketing under long-term contracts entered into pursuant to AmerenEnergy Resources' market-based rate authority.

6. AmerenIP also sold its generation which is presently owned by Dynegy Midwest Generation, Inc. The Commission approved reactive power rates in the open access transmission tariffs of the Ameren Illinois Utilities prior to the divestiture of their generation.

## **II. Filing**

7. On December 9, 2008, Ameren Marketing filed, pursuant to section 205 of the FPA, two proposed rate schedules that specify the revenue requirements for reactive power supplied by eight generating units in the Ameren Generating and AmerenEnergy Resources fleets to the Midwest ISO.<sup>3</sup> It explains that all of the generation facilities are located within the Ameren Illinois Utilities pricing zone of Midwest ISO and are interconnected with Midwest ISO's transmission system. It adds that the electric power and energy output of the generation facilities are dispatched and support voltage within Midwest ISO. Ameren Marketing requests that the proposed rate schedules be made effective the first day of the month immediately following Commission acceptance or, if Commission acceptance occurs on the first day of a month, the first day of the month.

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<sup>3</sup> The proposed annual revenue requirements are as follows: Coffeen Power Station, \$1,227,365; Gibson City Power Plant, \$638,291; Grand Tower Power Station, \$2,105,478; Huntsville Power Station, \$273,106; Meredosia Power Station, \$660,452; Newton Power Plant, \$1,221,683; Duck Creek Plant, \$704,564; and E.D. Edwards Plant \$753,952.

8. Ameren Marketing further explains that its reactive power revenue requirements are calculated to reflect the portion of the fixed costs for the plants that are attributable to the reactive power capability of the facilities. It maintains that this calculation is consistent with the *AEP Method*<sup>4</sup> that the Commission has accepted for many generators seeking recovery of reactive power costs. Among other things, Ameren Marketing explains that it used a levelized annual carrying cost approach to develop the annual revenue requirement for each generation facility and, because Ameren Generating and AmerenEnergy Resources are not subject to traditional cost-of-service rate regulation, it used a proxy rate of return consistent with Commission precedent. Specifically, it states that it used the return on equity of 12.38 percent contained in the derivation of the latest transmission formula rates for the interconnecting transmission utility in the Ameren Illinois Utilities pricing zone of the Midwest ISO.

### **III. Notice of Filing and Responsive Pleadings**

9. Notices of Ameren Marketing's filing, as amended, were published in the *Federal Register*, 73 Fed. Reg. 78,354 and 74 Fed. Reg. 8524 (2008), with interventions, comments and protests due on or before February 23, 2009. Timely motions to intervene without substantive comments were filed by Midwest ISO, Exelon Corporation, and Wabash Valley Power Association. Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Energy) filed a timely motion to intervene, protest and request for suspension, hearing and settlement judge procedures. Ameren Marketing filed an answer to Hoosier Energy's protest and hearing request.

10. Hoosier Energy raises three issues with respect to the reactive power rate schedules. Hoosier Energy challenges the assertion that the proposed rates should be treated as new rate schedules, which it equates to Ameren Marketing asking the Commission to treat the proposed rate schedules as initial rates. Hoosier Energy points out that seven of the eight generating plants are more than thirty years old. Thus, it argues, at the very least the Commission should require Ameren Marketing to explain how the revenue requirements related to the provision of reactive power have been recovered so far.

11. Hoosier Energy also challenges the proposed rate schedules as potentially raising an issue of double recovery of reactive power costs. Hoosier Energy points out that it already pays for reactive power provided on behalf of its member Wayne-White Counties Electric Cooperative. It asks that the Commission require that Ameren Marketing

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<sup>4</sup> *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999) (*AEP*).

demonstrate that the costs it seeks to recover here are not already being recovered through rates regulated by the Commission.<sup>5</sup>

12. Finally, Hoosier Energy argues that the proposed rates are unjust and unreasonable because Ameren Marketing is proposing to levelize the carrying costs. It argues that the Commission in *AEP*<sup>6</sup> determined that it was necessary to know how much of the fixed costs have already been recovered over the long service lives of these facilities to determine the reasonableness of levelized rates. According to Hoosier Energy, given the age of the facilities, a switch to levelized costs at this juncture would result in excess charges to the customers. It notes that the filing does not explain whether Ameren Marketing is proposing such a switch and, if it is proposing such a switch, whether the switch would be reasonable.<sup>7</sup>

13. Ameren Marketing responds that it has not proffered the rates as “initial rates” and thus Hoosier Energy’s characterization is a “red herring.” Ameren Marketing argues that the question before the Commission is whether the proposed revenue requirements are just and reasonable, as determined by existing Commission requirements and precedent. It asserts that Hoosier Energy should not be permitted to derail the Commission’s review with erroneous characterizations of initial or superseding rates that have no bearing whatsoever on whether the proposed revenue requirement calculations meet Commission requirements.<sup>8</sup>

14. Ameren Marketing challenges Hoosier Energy’s assertion that the merchant generators must demonstrate that their costs associated with the provision of reactive power are not being recovered elsewhere, as being based on erroneous assumptions and being beyond the scope of this proceeding.<sup>9</sup> Ameren Marketing argues that there is no danger of double recovery with these proposed rates because Hoosier Energy’s current charges are for reactive power provided by generators other than those of Ameren Generating and Ameren Energy Resources. Thus, Ameren Marketing asserts that the filing here does not propose to “double recover,” as assumed by Hoosier Energy, but to

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<sup>5</sup> Hoosier Energy Protest at 4.

<sup>6</sup> *AEP*, 88 FERC ¶ 61,141 (1999).

<sup>7</sup> Hoosier Energy Protest at 4-5.

<sup>8</sup> Ameren Marketing Answer at 5.

<sup>9</sup> *Id.* at 4.

initiate a just and reasonable revenue recovery for Ameren Generating and AmerenEnergy Resources.<sup>10</sup>

15. Ameren Marketing points out that the reactive power revenue requirements at issue are proposed pursuant to the terms of Schedule 2 of Midwest ISO's tariff.<sup>11</sup> Schedule 2, § II.A provides that only "Qualified Generators" may collect charges for reactive power. Ameren Marketing states that Schedule 2 § II.C requires that a Qualified Generator establish a cost-based revenue requirement that has been filed with and accepted by the Commission. It states that prior to filing the application in this proceeding, Ameren Generating and AmerenEnergy Resources had no reactive power revenue requirement under the Midwest ISO tariff, and thus, they have not been receiving any payment for reactive power from Midwest ISO since the time that the Ameren Illinois Utilities, with which their facilities interconnect, turned over control of their transmission facilities to Midwest ISO.<sup>12</sup> However, Ameren Marketing filed an errata to correct a misstatement concerning reactive power compensation. Ameren Marketing states that AmerenEnergy Resources has not recovered any reactive power costs and Ameren Generating has indirectly recovered some reactive power costs prior to December 31, 2006 and has not recovered anything since then.

16. In addition, Ameren Marketing argues that if Hoosier Energy wishes to challenge the methodology of allocating charges for its share of Midwest ISO's reactive power costs, or whether the Commission should permit Ameren Generating and AmerenEnergy Resources to recover reactive power costs at all, such claims are beyond the scope of this proceeding. Ameren Marketing points out that Schedule 2 of Midwest ISO's tariff establishes the requirements for recovery of reactive power costs to generators and the allocation methodology for reactive power charges to Midwest ISO customers and these terms are not at issue here. Ameren Marketing asserts that the only question before the Commission is whether the generator owners have calculated and supported their rates in a manner consistent with that which has been determined by the Commission to be just and reasonable.<sup>13</sup>

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<sup>10</sup> *Id.* at 6.

<sup>11</sup> Ameren Marketing Answer at 5 n.4 *citing* Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet Nos. 1761 through 1772 (available at [www.midwestiso.org](http://www.midwestiso.org)).

<sup>12</sup> Ameren Marketing Answer at 5 n.4.

<sup>13</sup> *Id.*

17. Ameren Marketing argues that the Commission has regularly accepted revenue requirement calculations that use the levelized carrying cost approach for generators seeking recovery of reactive power costs.<sup>14</sup> According to Ameren Marketing, the proposed rates follow Commission precedent by properly applying the *AEP* Method. Ameren Marketing points out that Hoosier Energy's reliance on *AEP* is misplaced because in *AEP* the Commission stated that AEP's proposal to utilize the levelized gross plant method for reactive power rates was reasonable.<sup>15</sup> Ameren Marketing points out that the Commission in *AEP* explained that the cases relied upon by the AEP intervenors – the same cases relied upon by Hoosier Energy – were inapposite: (1) because those cases involved transmission rates, not ancillary services rates; (2) because those cases involved a proposal to convert “mid-stream,” or to convert an existing and current rate, from a non-levelized to a levelized methodology; and (3) because the converted rate would be for the same or similar services to those currently being provided.<sup>16</sup>

18. On January 21, 2009, a deficiency letter was sent concerning the use of a proxy to establish a rate of return. On February 2, 2009, Ameren Marketing filed a response to the deficiency letter, pointing out that Commission policy allows the use of the interconnected transmission owner's authorized rate of return as a proxy for a merchant generator's rate of return.

#### **IV. Discussion**

##### **A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213 (a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Ameren Marketing's answer because it has provided information that assisted us in our decision-making process.

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<sup>14</sup> Ameren Marketing Answer at 7 n.6.

<sup>15</sup> Ameren Marketing also notes that Hoosier Energy cites to the portion of *AEP* involving transmission service instead of the portion of *AEP* that pertains to ancillary service.

<sup>16</sup> See *AEP*, 88 FERC ¶ 61,141 at 61,455.

**B. Substantive Matters**

21. As an initial matter, contrary to Hoosier Energy's assertions, we find that the proposed rates are not initial rates. Indeed, Ameren Marketing explains that it has not "proffered the rates as 'initial rates.'" Accordingly, we will treat the proposed rates as changes in rates and not as initial rates.
22. Ameren Marketing's proposed rate schedules raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. For example, with respect to the double recovery issue, we note that AmerenUE, AmerenCIPS and other subsidiaries of the Ameren Corporation have tariffs on file with the Commission providing for reactive power service potentially from the same reactive power capability at issue here.<sup>17</sup> Thus, the potential exists for customers to be over charged for reactive power service.
23. Additionally, we note that in *AEP* the Commission stated that levelized rates for reactive power service were reasonable because, at that time, the reactive power service was a new service and no switch from non-levelized to levelized was possible. However, in this proceeding, we are unable to determine whether the use of levelized rates would constitute a switch from non-levelized rates since the time these generators began providing reactive power service as a new service, regardless of whether the generators were owned by Ameren Corporation Generating and AmerenEnergy Resources or other subsidiaries of the Ameren Corporation.
24. Our preliminary analysis indicates that the proposed rate schedules have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept them for filing, suspend them for a nominal period, make them effective on the date requested, subject to refund, and set them for hearing and settlement judge procedures.
25. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures is commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>18</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

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<sup>17</sup> As explained above, AmerenCIPS and AmerenCILCO divested their generation to create Ameren Generating and AmerenEnergy Resources, respectively.

<sup>18</sup> 18 C.F.R. § 385.603 (2008).

otherwise, the Chief Judge will select a judge for this purpose.<sup>19</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Ameren Marketing's proposed rate schedules are hereby accepted for filing, suspended for a nominal period, to become effective on the date requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Ameren Marketing's proposed rate schedules. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If

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<sup>19</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.