

127 FERC ¶ 61,109  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER08-209-003

ORDER DENYING REHEARING

(Issued May 1, 2009)

1. Ameren Services Company (Ameren)<sup>1</sup> has requested rehearing of the Commission's order<sup>2</sup> that granted, in part, rehearing of the Commission's initial order in these proceedings.<sup>3</sup> For the reasons discussed below, we will deny rehearing.

**I. Background**<sup>4</sup>

**A. Existing Interconnection Agreement**

2. Illinois Power, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Prairie State Generating Company (Prairie State)<sup>5</sup> are parties to an

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<sup>1</sup> Ameren is acting for two Ameren Corporation affiliates, Illinois Power Company (Illinois Power) and Ameren Illinois Transmission Company (Ameren Transco). Ameren Transco was established to fund, construct, own and/or operate certain upgrades to the Illinois Power transmission system.

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008) (Rehearing Order).

<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,019 (2008) (Initial Order).

<sup>4</sup> Fuller description of the events leading to this proceeding is found in the Initial and Rehearing Orders.

<sup>5</sup> Prairie State consists of these equity ownership participants: American Municipal Power-Ohio (AMP-Ohio); Illinois Municipal Electric Agency (Illinois

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existing interconnection agreement (Existing Interconnection Agreement)<sup>6</sup> that provides for interconnection of Prairie State's 1,500 MW base load facility (Facility), which is under construction, to Illinois Power's transmission and distribution system. Under the Existing Interconnection Agreement, Illinois Power must reimburse Prairie State, through transmission credits, for 100 percent of the cost of the network upgrades (Original Upgrades) needed to interconnect the Facility to Illinois Power's transmission system.<sup>7</sup> One hundred percent reimbursement is consistent with the policy that the Commission outlined in Order No. 2003,<sup>8</sup> and with the provisions of Attachment X, "Generator

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Municipal); Indiana Municipal Power Agency; Kentucky Municipal Power Agency; Missouri Joint Electric Utility Commission; Northern Illinois Municipal Power Agency; Prairie Power, Inc. (Prairie Power); and Southern Illinois Power Cooperative.

<sup>6</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,019, *order on reh'g*, 111 FERC ¶ 61,237, *order on reh'g and compliance*, 112 FERC ¶ 61,281 (2005), *order accepting compliance*, Docket No. ER05-215-005 (Dec. 20, 2005) (unpublished letter order). The Existing Interconnection Agreement has an effective date of November 16, 2004.

<sup>7</sup> Initially, the Original Upgrades were estimated to cost \$68.5 million. Ameren now estimates their cost as \$76.5 million. See Affidavit of Maureen A. Borkowski, Vice President, Transmission for Ameren Services Company, at P 9, *included as pp. 316-314 in Midwest ISO's November 13, 2007 filing in Docket No. ER08-209-000* (Borkowski Affidavit).

<sup>8</sup> See *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). Order No. 2003 generally requires rolled-in pricing of network upgrades needed for generation interconnections. These default provisions require an Interconnection Customer to pay initially the full cost of all necessary network upgrades. Once generation delivery service begins, the transmission provider reimburses the Interconnection Customer with transmission service credits for the entire cost of the network upgrades plus interest. Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 694. The Commission also stated that when the transmission provider is an independent entity, i.e., an independent system operator or regional transmission organization, it would permit participant funding, subject to Commission approval. *Id.* P 698. Participant funding requires the Interconnection Customer to pay, without reimbursement, for some portion of needed network upgrades, but with the opportunity to receive well-defined

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Interconnection Procedures,” of Midwest ISO’s Tariff<sup>9</sup> (Attachment X) in effect at the time the Existing Interconnection Agreement was filed.

**B. RECB Tariff Changes**

3. Effective February 5, 2006, the Commission accepted revisions to the Midwest ISO Tariff that adopted recommendations proposed by the Midwest ISO Regional Expansion Criteria and Benefits (RECB) Task Force.<sup>10</sup> For interconnection agreements filed on or after that date, Attachment X provides for a form of participant funding of network upgrades. The interconnection customer continues to fund up front the costs of constructing network upgrades on the transmission owner’s system, but its reimbursement, through transmission credits, is reduced from 100 percent to 50 percent (RECB 50 percent reimbursement).

4. Subsequently, Midwest ISO proposed Tariff revisions to apply the RECB 50 percent reimbursement policy to specific existing interconnection agreements entered into prior to February 5, 2006, including Prairie State’s. The Commission rejected the proposal because Midwest ISO had not demonstrated that applying its new cost-sharing policy to all these interconnection agreements produced just and reasonable results. While well-designed participant funding can encourage efficient siting of generation and avert improper subsidy,<sup>11</sup> the Commission found that Midwest ISO had not shown that

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capacity rights created by the upgrades. *Id.* P 700.

<sup>9</sup> As of January 6, 2009, Midwest ISO’s Open Access Transmission and Energy Markets Tariff (TEMT) became the Open Access Transmission, Energy, and Operating Reserve Markets Tariff (ASM Tariff). *See Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,321 (2008). This order uses “Tariff” to mean the TEMT or the ASM Tariff, whichever is in effect at the time written about.

<sup>10</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *reh’g denied*, 117 FERC ¶ 61,241 (2006), *order on reh’g*, 118 FERC ¶ 61,208 (2007) (RECB Order).

<sup>11</sup> In Order No. 2003, the Commission addressed concerns that providing transmission credits to an Interconnection Customer for the cost of network upgrades, unneeded but for interconnection of the new generating facility, provides the Interconnection Customer with an improper subsidy, particularly when the facility’s output is sold off-system. For an independent entity, such as a regional transmission operator or independent system operator, the Commission invited formation of a regional state committee to establish criteria for the independent entity to use to determine which transmission system upgrades should be participant funded, and which should not. Order

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its proposal would accomplish either purpose. Nevertheless, Midwest ISO could ask to change any particular interconnection agreement if it could demonstrate that the existing agreement's 100 percent reimbursement will result in an improper subsidy. The Commission also stated that Ameren could file, under section 206 of the Federal Power Act (FPA),<sup>12</sup> to revise the Existing Interconnection Agreement and apply the new RECB 50 percent reimbursement upon a showing that 50 percent reimbursement is necessary to prevent an improper subsidy.<sup>13</sup> No such filing was made.

**C. New Interconnection Agreement and Initial Order**

5. On November 13, 2007, Midwest ISO filed, under section 205 of the FPA,<sup>14</sup> an unexecuted interconnection agreement between itself, Ameren, and Prairie State (New Interconnection Agreement). The New Interconnection Agreement provides for Prairie State to increase the Facility's generation output by 150 MW to 1,650 MW.<sup>15</sup> This increase would necessitate additional network upgrades (New Upgrades) to Illinois

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No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 695-698.

<sup>12</sup> 16 U.S.C. § 824e (2006). Under section 206, Ameren would have the burden of showing that the Existing Interconnection Agreement is unjust, unreasonable, unduly discriminatory, or preferential.

<sup>13</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128, at P 25 & n.41 (citing Order No. 2003, FERC Stats & Regs. ¶ 31,146 at 30,523), P 26-27 (2006), *reh'g denied*, 119 FERC ¶ 61,097 at P 20-24 (2007) (2007 Rejection Order). The Commission noted that Ameren, which had complained repeatedly about the Prairie State situation, chose to request rehearing on the general proposal affecting 27 interconnection agreements rather than to file, under section 206 of the FPA, with arguments specific to Prairie State's Existing Interconnection Agreement. 2007 Rejection Order, 119 FERC ¶ 61,097 at P 22.

<sup>14</sup> 16 U.S.C. §824d (2006).

<sup>15</sup> The New Interconnection Agreement provides also for: revisions to the already required Original Upgrades and changes to the configuration of the proposed switchyard facilities; the addition of Ameren Transco as a party; Prairie State's election of Network Resource Interconnection Service rather than Energy Resource Interconnection Service; and assumption by Ameren Transco and Illinois Power of the requirement to acquire the real property interests necessary to construct an already required 7.4-mile-long new transmission line.

Power's transmission system, at an additional cost that Ameren estimates as \$30,000.<sup>16</sup> The new Interconnection Agreement follows Midwest ISO's currently effective *pro forma* interconnection agreement, including the new cost sharing provisions. Midwest ISO proposes to apply the RECB 50 percent reimbursement policy to the total of \$76.5 million in all network upgrades associated with the 1,650 MW output of the Facility, not just the \$30,000 in New Upgrades associated with the 150 MW increase.

6. The Commission accepted the New Interconnection Agreement in the Initial Order. It found that increasing the Facility's capacity by 150 MW requires a new interconnection agreement that must conform to the current Midwest ISO *pro forma* interconnection agreement with its RECB 50 percent reimbursement. The Commission relied on Order No. 2003 and on precedent holding that any increase in generation capacity from an existing generator requires a new interconnection agreement that conforms to the Transmission Provider's current *pro forma* interconnection agreement. The Commission analogized the precedent, which concerns increasing the capacity of an *existing* generator, to Prairie State's situation of a generator not yet interconnected to the grid. It found that an increase in generation is generally a significant change (Material Modification)<sup>17</sup> to an Interconnection Request that requires new studies and a new Interconnection Request, and that any such request can materially affect other Interconnection Customers in the queue. Because the New Interconnection Agreement was filed after the effective date of the RECB revisions to the Midwest ISO Tariff, the RECB 50 percent reimbursement would apply to the costs of *all* necessary network upgrades associated with the Facility.<sup>18</sup>

7. The Commission rejected Prairie State's argument that the RECB 50 percent reimbursement should apply only to the costs associated with the 150 MW increase. It found that Midwest ISO's *pro forma* interconnection agreement applies to all network upgrades required to interconnect a generation facility without distinction between those

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<sup>16</sup> See Affidavit of Greg M. Gudeman, Supervisor – Transmission Regulation and Policy, Transmission Policy Department, Ameren, at 2, *included as pp. 329-335 in* Midwest ISO's November 13, 2007 filing in Docket No. ER08-209-000 (Gudeman Affidavit). The New Upgrades are a small number of new circuit breakers. See Prairie State's February 11, 2008 filing in Docket No. 08-209-001 at 9.

<sup>17</sup> Attachment X defines Material Modifications as those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date. See Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1 at Original Sheet No. 3060.

<sup>18</sup> Initial Order, 122 FERC ¶ 61,019 at P 16.

network upgrades described in a pre-RECB interconnection agreement and those needed to increase capacity and proposed after the effective date of the RECB 50 percent reimbursement methodology. The Commission did not address Midwest ISO's argument that application of the 100 percent reimbursement policy results in an improper subsidy. It found this argument moot because of its finding that the RECB 50 percent reimbursement applies to all the upgrades under the New Interconnection Agreement.<sup>19</sup>

#### **D. Rehearing Order**

8. On rehearing, the Commission modified the decision that the entire costs of all network upgrades needed to interconnect the 1,650 MW Facility must fall under the RECB 50 percent reimbursement. The Commission found that the Tariff is ambiguous, that it does not directly address the situation in this case, and that 50 percent reimbursement was not just and reasonable. The Commission held that only the costs of the New Upgrades that accommodate the 150 MW increase in generation fall under the RECB 50 percent reimbursement. The costs of the Original Upgrades must remain under the 100 percent reimbursement of the Existing Interconnection Agreement.<sup>20</sup>

9. The Commission granted rehearing to eliminate the suggestion that a new interconnection agreement is required *only* if the Commission finds that there is a Material Modification.<sup>21</sup> The Commission clarified that any request to increase the capacity of an existing generating facility is an Interconnection Request, regardless of whether it is also a Material Modification.<sup>22</sup> It found that the Midwest ISO Tariff provisions, which apply to an "existing Generating Facility that is interconnected with the Transmission System," are ambiguous in the case of the Facility because the Facility is not yet fully constructed and interconnected to the Transmission System. While affirming the decision that Prairie State must enter into a new interconnection agreement as a result of its request to increase the capacity of its Facility,<sup>23</sup> because of the absence

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<sup>19</sup> *Id.* P 16-22.

<sup>20</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 10, 17.

<sup>21</sup> *Id.* P 12.

<sup>22</sup> *Id.* P 14, citing Midwest ISO Interconnection Agreement, Article 1, and Interconnection Procedures, Section 1.

<sup>23</sup> It found that a request to increase capacity in this circumstance is essentially the same as a request to increase the capacity of an existing generator, and therefore should be treated as a new Interconnection Request because all of the interconnection studies for Prairie State's originally requested 1,500 MW of output were complete and it had an

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of a clear rule, the Commission looked to the specific facts of the case to arrive at a just and reasonable result concerning cost allocation of the Original Upgrades.

10. The Commission observed that the cost allocation issue in this case is very unusual and arose only because Prairie State had proposed to increase the Facility's generation after Commission acceptance of Midwest ISO's RECB 50 percent reimbursement scheme. As a result of the timing, Prairie State's request to increase the capacity of its unfinished baseload Facility by 150 MW, which necessitated only \$30,000 in additional network upgrades, would cause Prairie State's costs to increase by \$38 million (under the New Interconnection Agreement, Prairie State would receive 50 percent reimbursement for the total \$76.5 million in upgrades associated with the Facility instead of the 100 percent reimbursement that applies to the Original Upgrades under the existing agreement). This would not accomplish the two purposes that Order No. 2003 and the 2007 Rejection Order had set forth as possible justifications for participant funding<sup>24</sup> (i.e., to encourage efficient siting of generation and to prevent improper subsidies).<sup>25</sup> Efficient siting would not be encouraged because Prairie State had already sited the Facility.<sup>26</sup>

11. Regarding the improper subsidy issue, the Commission found that Midwest ISO and Ameren had not shown that Prairie State will receive an improper subsidy if it is fully reimbursed for the Original Upgrades.<sup>27</sup> The Commission pointed out that delivery of generator output outside the pricing zone is insufficient to establish an improper subsidy, and that offsetting benefits must also be addressed.<sup>28</sup> Ameren had acknowledged that not

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effective interconnection agreement before submitting the request to increase its capacity. Rehearing Order, 125 FERC ¶ 61,210 at P 15.

<sup>24</sup> Fifty percent reimbursement is partial participant funding.

<sup>25</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 18-19, citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at 30,523; 2007 Rejection Order, 117 FERC ¶ 61,128 at P 25, 27.

<sup>26</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 20.

<sup>27</sup> In Order No. 2003-B, the Commission addressed the petitioners' claims that they could devise hypothetical cases showing the Transmission Provider must either impose some new transmission costs on existing customers or violate the Commission's prohibition against "and" pricing. Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 55-57.

<sup>28</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 21, citing *International Transmission Co.*, 120 FERC ¶ 61,220 at P 16 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008);

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all the Facility's generation will be sold outside the Ameren Illinois Zone.<sup>29</sup> Ameren had not addressed offsetting benefits that loads in this zone may receive because of the Original Upgrades, such as increased reliability and a more competitive market.

12. The Commission also observed that re-allocating the \$76.5 million in Original Upgrades costs would create a disincentive for efficient expansion of generation. Prairie State could forgo the additional 150 MW generating capacity or idle the additional capacity until it had recovered, through transmission credits, 100 percent of its upfront payment for the Original Upgrades costs.

13. The Commission ordered Midwest ISO to file a revised non-conforming interconnection agreement to reflect the Commission's decision.<sup>30</sup> Ameren requested rehearing of the Rehearing Order.

## II. Discussion

14. Ameren's rehearing request rests essentially on its contention that 100 percent reimbursement for the costs of network upgrades is inherently unjust and unreasonable. Ameren alleges that the Rehearing Order erred in four areas: (1) the Commission disregarded Ameren's substantial evidence showing that an improper subsidy will result from 100 percent reimbursement and ignored the failure of any party to provide actual evidence to counter Ameren's substantial evidence; (2) the Commission ignored its prior statements that it will consider other forms of pricing in cases where the utility shows that an improper subsidy will otherwise result,<sup>31</sup> and Ameren made this showing; (3) the

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*American Transmission Co, LLC*, 120 FERC ¶ 61,221, at P 18 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008).

<sup>29</sup> The Ameren Illinois Zone comprises the transmission facilities of Illinois Power, Central Illinois Public Service Company, and Central Illinois Light Company. Under the Midwest ISO Tariff, any costs of network upgrades needed to interconnect the Facility that are not assigned to Prairie State are included in the revenue requirements to be recovered from all ratepayers in this pricing zone.

<sup>30</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 25-26. We address Midwest ISO's compliance filing of a revised Interconnection Agreement (Compliance Interconnection Agreement) in our companion order issued concurrently. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,110 (2009).

<sup>31</sup> Ameren cites 2007 Rejection Order, 117 FERC ¶ 61,128 at P 26-27, 119 FERC ¶ 61,097 at P 18.

Commission erred in finding relevant Tariff and *pro forma* interconnection agreement provisions ambiguous when it should have found that, because the modifications to the Existing Interconnection Agreement require a revised interconnection agreement, Midwest ISO's RECB 50 percent reimbursement must apply; and (4) the Commission erred by finding that to apply the RECB 50 percent reimbursement at this stage of the Facility's construction would inhibit the efficient expansion of generation.

**A. Full Reimbursement and Improper Subsidy**

**1. Ameren's Arguments**

15. To support its position that 100 percent reimbursement for the Original Upgrades will be an improper subsidy, Ameren cites the Borkowski Affidavit as showing that the impact on Ameren Illinois Zone ratepayers would be \$10.7 million, an increase of 12.5 percent. In contrast, 50 percent reimbursement would increase Prairie State's costs for the Facility, which Ameren estimates as in excess of \$2.9 billion, by only 1.5 percent.<sup>32</sup> Ameren argues that it does not need the Prairie State network upgrades, which would not be constructed "but for" the request to interconnect the Facility. Most of the Facility's generation is likely to be delivered to customers located outside the Ameren Illinois pricing zone, and the Ameren Illinois Utilities<sup>33</sup> would receive little offsetting incremental revenues from the Facility.<sup>34</sup> Ameren states that the Gudeman Affidavit quantifies in detail the rate impact of using the RECB 50 percent reimbursement compared to 100 percent reimbursement.<sup>35</sup> It refers to its exhibit demonstrating that the Ameren Illinois Utilities would receive only a small amount of incremental revenue each year associated with delivery of power from the Facility while having to absorb over \$10 million more if the RECB 50 percent reimbursement is not applied.<sup>36</sup> Thus, Ameren urges that the equities in this dispute weigh in favor of applying the RECB 50 percent reimbursement to all the network upgrade costs.

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<sup>32</sup> Rehearing Request at 9, citing Borkowski Affidavit at P 10.

<sup>33</sup> The Ameren Illinois Utilities are Illinois Power, Central Illinois Public Service Company, and Central Illinois Light Company.

<sup>34</sup> Rehearing Request at 9, citing Borkowski Affidavit at P 11-12.

<sup>35</sup> *Id.* citing Gudeman Affidavit at P 7-12.

<sup>36</sup> *Id.* citing Ameren's December 19, 2007 filing, response to protests, at 12-21 & Exhibit I (Ameren Exhibit I). In the Initial Order, the Commission rejected this filing, as well as analogous filings by Midwest ISO, Prairie State, Illinois Municipal and AMP-

16. Ameren states that it has already addressed how much load is committed either outside or within the Ameren Illinois Zone as well as the offsetting reliability benefits (or lack thereof) associated with the upgrades. Ameren Exhibit I compared \$946,499, the annual incremental revenues to the Ameren Illinois Zone, to \$19,758,322, the total costs of annual repayment to Prairie State. Ameren repeats that this is an improper subsidy because, where network upgrades are undertaken only because of interconnection of a generator, payment for those upgrades by any entity other than the generator must be a subsidy.<sup>37</sup> Ameren states that other parties presented no evidence to contradict Ameren's figures. Because the New Interconnection Agreement containing the RECB 50 percent reimbursement was filed under section 205 of the FPA, Ameren submits that the only burden on it is to show that the New Interconnection Agreement is just and reasonable.

## 2. Commission Response

17. Ameren misunderstands the question before us. Much of its argument addresses a question that the Commission has answered in the negative on numerous occasions – whether the just and reasonable standard requires that the generator alone must pay for network upgrades that would not have been built “but for” the new generating facility.

18. Ameren's “but for” argument was raised and rejected when the Commission adopted Order No. 2003. There the Commission emphasized that network upgrades, even “but for” upgrades, benefit all transmission customers:

[T]he Commission's approach to interconnection pricing looks beyond the direct usage related benefits usually associated with transmission system enhancements. That is, our approach also recognizes the reliability benefits of a stronger transmission system infrastructure and more competitive power markets that result from a policy that facilitates the interconnection of new generating facilities. . . . [T]he Transmission System is a cohesive, integrated network that operates as a single piece of equipment, and that network facilities are not “sole use” facilities but facilities that benefit all Transmission Customers.<sup>38</sup>

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Ohio. Initial Order, 122 FERC ¶ 61, 019 at P 10.

<sup>37</sup> Rehearing Request at 11.

<sup>38</sup> Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 584-585.

19. The U.S. Court of Appeals for the District of Columbia Circuit has upheld the Commission's conclusion that 100 percent reimbursement does not inherently create an unfair subsidy because network upgrades benefit all transmission system users:

The Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a "benefit," reflects its policy determination that a competitive transmission system with barriers to entry removed or reduced is in the public interest. . . . The Commission has long rejected the argument that transmission credits for network upgrades result in "cross subsidization" by native load customers as based on the faulty premise that native load customers receive no benefit from the upgrades; no subsidization occurs except where customers pay for other customer's sole use facilities.<sup>39</sup>

20. In 2002 and again in 2005, the Commission found it just and reasonable to require full reimbursement for the Original Upgrades for the 1500 MW Facility.<sup>40</sup> It is well established that there can be more than one just and reasonable rate;<sup>41</sup> various just and reasonable cost allocation schemes each have their own strengths and weaknesses. The fact that the costs of network upgrades needed to interconnect the Facility would be allocated under the RECB 50 percent reimbursement if Prairie State made its very first

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<sup>39</sup> *Entergy Services, Inc. v. FERC*, 319 F.3d 536, 543-44 (D.C. Cir. 2003), *reh'g denied per curiam*, No. 01-1487 (D.C. Cir. May 2, 2003) (*Entergy*), *citing Public Service Co. of Colorado*, 62 FERC ¶ 61,013, at 61,062 (1993); *see also American Transmission Co.*, 120 FERC ¶ 61,221, at P 18 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008) (regarding subsidy concerns, a network upgrade is considered part of the interconnected transmission system that benefits all customers).

<sup>40</sup> *See Illinois Power Co.*, 99 FERC ¶ 61,164, at P 13 (2002); *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,019, at P 21 (2005).

<sup>41</sup> *See American Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 88, *order on reh'g*, 125 FERC ¶ 61,342 (2008) (As the courts have found, on the same set of facts there can be "multiple just and reasonable rates" and the resolution may depend on whether the proceeding is initiated under section 206," citing "*Complex*" *Consol. Edison Co. of NY*, 165 F.3d 992, 1000-02 (D.C. Cir. 1999)). Thus, were Prairie State to file an initial interconnection request for the same 1,500 MW generating facility today, an interconnection agreement using the RECB 50 percent reimbursement would be just and reasonable.

interconnection request today does not nullify the Commission's earlier findings of just and reasonable rates concerning the Original Upgrades.

21. We turn now to whether Ameren has demonstrated that, in the particular circumstances of this case, 100 percent reimbursement of the costs of the Original Upgrades is unjust and unreasonable because it results in an improper subsidy. The Commission has acknowledged that 100 percent reimbursement may, in unusual circumstances, create an improper subsidy.<sup>42</sup> However, the mere facts that customers in the Ameren Illinois Zone may face increased rates as a result of the upgrades, and that the upgrades might not have been built "but for" the Facility do not by themselves demonstrate an improper subsidy.

22. As the court noted in *Entergy*,<sup>43</sup> the Commission need not take a narrow view of what constitutes a benefit to other customers. Ameren has not shown that its other customers will not benefit from the upgrades through increased reliability or a more competitive market. In fact, Ameren admits that some of these customers will get power directly from Prairie State's Facility.<sup>44</sup> Even customers who do not actually buy power specifically from the Facility may benefit from a more competitive market. Ameren has also not shown that the upgrades at issue here will not increase the reliability of its transmission system, a benefit to all who use the grid. The fact that these types of benefits are not as easily quantified as the costs to Ameren's ratepayers does not mean that these benefits should be ignored. In these circumstances, we are not convinced that there is an unjust and unreasonable or unduly discriminatory imbalance between costs

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<sup>42</sup> See note 11, *supra*; see also Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 55-57 ("If a Transmission Provider (or an existing Transmission Customer) believes that, for an actual interconnection, it faces circumstances where native load and other customers are not held harmless, it should make that demonstration in an actual transmission rate filing.").

<sup>43</sup> Note 39, *supra*.

<sup>44</sup> "The majority of the power from the Prairie State Facility will be delivered outside of that [Ameren Illinois Zone]," Ameren's December 4, 2007 filing in Docket No. ER08-209-000 at 15, implies that the minority of power will be delivered inside the Ameren Illinois Zone. "Customers purchasing the Prairie State output that are located in the Ameren Illinois [Zone] will pay the applicable rate for network service within that zone. . . . Exhibit I estimates the output that [Illinois Municipal], [Prairie Power] and Southern Illinois Power Cooperative . . . will take from the Prairie State Facility for delivery within the Ameren Illinois [Zone]." Ameren's December 19, 2007 filing in Docket No. ER08-209-000 at 18-19.

and benefits that makes 100 percent reimbursement unjust and unreasonable. We therefore reject Ameren's arguments that the effects on ratepayers in the Ameren Illinois Zone prove the existence of an improper subsidy.

23. Ameren has failed to convince us to revisit the Commission's conclusion, in the Rehearing Order, that based on the specific facts in this case, it is unjust and unreasonable to apply the RECB 50 percent reimbursement to the entire \$76.5 million in network upgrades that are subject to the 100 percent crediting in upgrade costs under the Existing Interconnection Agreement.<sup>45</sup>

**B. Ambiguity of Tariff and Pro Forma Interconnection Agreement Provisions**

24. While the Commission affirmed, in the Rehearing Order, the decision that Prairie State must enter into a new interconnection agreement as a result of its request to increase the capacity of its Facility, it also found that the Midwest ISO Tariff provisions, which apply to an "existing Generating Facility that is interconnected with the Transmission System," are ambiguous in the case of the Facility.<sup>46</sup> Although the Facility is not yet fully constructed and interconnected to the Transmission System, all of the interconnection studies for Prairie State's originally requested 1,500 MW were complete and Prairie State had an effective Interconnection Agreement before submitting the request to increase capacity.<sup>47</sup>

25. Ameren argues that after correctly reaffirming the decision that Prairie State must enter into a new interconnection agreement, the Commission erred when determining that the RECB 50 percent reimbursement should apply only to a small subset of upgrades under the New Interconnection Agreement. Ameren argues that there is no ambiguity or uncertainty about whether the RECB 50 percent reimbursement applies because the New Interconnection Agreement, at section 11.4.1, "Repayment of Amounts Advanced for Network Upgrades," states that the Interconnection Customer is entitled to be reimbursed for funds advanced by it for all network upgrades identified in the New Interconnection Agreement, with the repayment amount to be determined in accordance with Tariff Attachment FF, which outlines the RECB 50 percent reimbursement scheme.

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<sup>45</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 19, 26.

<sup>46</sup> *Id.* P 12-16.

<sup>47</sup> *Id.* P 15.

26. We find that Ameren does not support its claim that there was no ambiguity in the Tariff. The Commission did not find that the repayment provisions in the New Interconnection Agreement to which Ameren refers were ambiguous. Rather, the Commission found that the Tariff was ambiguous as to whether Prairie State's request to increase the capacity of its facility should be treated like a request to interconnect a new Generating Facility or like a request to increase the capacity of an Existing Generating Facility.<sup>48</sup> Because of this ambiguity, it was appropriate to look to the specific facts of the case to arrive at a just and reasonable result, that the Prairie State Facility should be treated as an existing Generating Facility for purposes of the definition of "Interconnection Request."<sup>49</sup>

### C. Expansion of Generation

27. In the Rehearing Order, the Commission stated that reallocating the \$76.5 million costs of the Original Upgrades could create a disincentive for Prairie State to efficiently expand its generation. Prairie State might forgo the additional 150 MW of generating capacity or might idle the additional capacity until it has recovered its upfront payment for the cost of the Original Upgrades through transmission credits.<sup>50</sup> As a matter of policy, neither is a desirable result.

28. Ameren contends that application of the RECB 50 percent reimbursement at this stage of the proceeding will not necessarily inhibit Prairie State's planned expansion of the Facility to 1650 MW. It states that no party provided evidence that Prairie State would not expand the Facility's capacity if the Facility became subject to RECB cost-sharing for all network upgrades, a nominal 1.5 percent increase in overall costs. Moreover, Prairie State began constructing the Facility knowing that some form of cost-sharing would be required, and it continued construction even after the Initial Order imposed the RECB 50 percent reimbursement for *all* network upgrades.

29. Prairie State stated, in its request for rehearing of the Initial Order:

Generators in the same position as Prairie State will think twice before proposing capacity upgrades, fearing that, even if the change has no material impact on other parties, they risk being hit with disproportionate costs down the road

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* P 20 & n.27.

should the transmission owner adopt a new *pro forma* [interconnection agreement] with new rules. Indeed, if this Order stands, Prairie State will have to seriously consider whether to pursue the capacity increase at all or whether to artificially and inefficiently limit its output to 1500 MW, thus retaining the arrangement in the previous [interconnection agreement].<sup>51</sup>

We find that this refutes Ameren's contention. A company might well weigh the costs of falling under the RECB 50 percent reimbursement for all network upgrades instead of receiving 100 percent reimbursement before it decides to expand a generation facility that has a pre-RECB interconnection agreement. While Prairie State might continue with its construction of a 1,650 MW Facility even with only 50 percent reimbursement, as Ameren expects, it might also choose to idle the incremental 150 MW.

**D. Other Changes in the Existing Interconnection Agreement**

30. Ameren points out that there were changes other than the 150 MW increase that required revision of the Existing Interconnection Agreement (i.e., no longer requiring Prairie State to obtain easements, rights-of-way, and real property interests to construct a 7.4 mile transmission line, Prairie State's change from Energy Resources Interconnection Service to Network Resources Interconnection Service,<sup>52</sup> and the addition of Ameren Transco as a party to the agreement). Ameren argues that these changes are Material Modifications that themselves require a new interconnection agreement that would come under the RECB 50 percent reimbursement.

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<sup>51</sup> Prairie State's February 11, 2008 filing in Docket No. ER08-209-001.

<sup>52</sup> Under Energy Resource Interconnection Service, Prairie State is eligible to deliver the Facility's output using the existing capacity of the Transmission System that Midwest ISO operates on an as-available basis. By changing to Network Resource Interconnection Service, a higher priority service, Prairie State can integrate the Facility with the Transmission System in the same manner as any Operating Facility designated as a Network Resource. See Attachment X, Section 1, "Definitions."

31. A Material Modification is one that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.<sup>53</sup> Ameren does not show that these changes will affect other interconnection projects lower in the interconnection queue. We conclude that these changes do not bring the Existing Interconnection Agreement under the RECB 50-50 cost-sharing scheme.

The Commission orders:

Ameren's request for rehearing of the Rehearing Order is hereby denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>53</sup> *See supra* note 17.