

127 FERC ¶ 61,110  
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. ER08-209-004

ORDER ACCEPTING COMPLIANCE FILING

(Issued May 1, 2009)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) has filed a revised, unexecuted Generator Interconnection Agreement (Compliance Interconnection Agreement) in compliance with the Commission's order<sup>1</sup> that granted rehearing, in part, of the Commission's initial order in these proceedings.<sup>2</sup> For the reasons described below, we will accept the Compliance Interconnection Agreement.

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008) (Rehearing Order). We are issuing concurrently our order on rehearing of this order, in Docket No. ER08-209-003. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,109 (2009) (Second Rehearing Order).

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,019 (2008) (Initial Order).

## **Background**<sup>3</sup>

2. Illinois Power Company (Illinois Power),<sup>4</sup> Midwest ISO, and Prairie State Generating Company (Prairie State)<sup>5</sup> are parties to an 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)<sup>7</sup> needed for this interconnection. One hundred percent reimbursement is consistent with the policy that the Commission

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<sup>3</sup> The events leading up to this compliance proceeding are described more fully in the Initial Order and the Rehearing Order.

<sup>4</sup> Illinois Power is a subsidiary of the Ameren Corporation (Ameren). Another subsidiary, Ameren Illinois Transmission Company (Ameren Transco) was established to fund, construct, own and/or operate certain upgrades to the Illinois Power transmission system.

<sup>5</sup> Prairie State consists of these equity ownership participants: American Municipal Power-Ohio (AMP-Ohio); Illinois Municipal Electric Agency (Illinois Municipal); Indiana Municipal Power Agency; Kentucky Municipal Power Agency; Missouri Joint Electric Utility Commission; Northern Illinois Municipal Power Agency; Prairie Power, Inc.; 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.*

outlined in Order No. 2003,<sup>8</sup> and with the provisions of Attachment X, “Generator Interconnection Procedures,” of Midwest ISO’s Tariff<sup>9</sup> (Attachment X) in effect at the time the Existing Interconnection Agreement was filed.

3. Because Prairie State wanted to increase the Facility’s generation output by 150 MW, to 1,650 MW, and to make certain other changes, the parties sought to revise the Existing Interconnection Agreement. On November 13, 2007, Midwest ISO filed, under section 205 of the Federal Power Act,<sup>10</sup> an unexecuted interconnection agreement between itself, Ameren,<sup>11</sup> and Prairie State (New Interconnection Agreement).

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<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 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> 16 U.S.C. § 824d (2006).

<sup>11</sup> Ameren subsidiary, Ameren Services Company, acted as agent for Illinois Power and Ameren Transco. See *supra* note 4.

4. The New Interconnection Agreement provides for the additional generation output, some additional network upgrades (New Upgrades)<sup>12</sup> and other changes.<sup>13</sup> It also applies Midwest ISO's currently effective cost-sharing provisions, in Attachment X, concerning participant funding and reimbursement for network upgrades,<sup>14</sup> to all network upgrades required for the interconnection, both the Original and the New Upgrades. Under Midwest ISO's current cost-sharing provisions, Prairie State continues to pay up front the costs of constructing network upgrades on Illinois Power's transmission system, but its reimbursement, through transmission credits, is reduced from 100 percent to 50 percent (RECB 50 percent reimbursement). The New Interconnection Agreement also applies the conditions of the current *pro forma* interconnection agreement governing repayment for the network upgrades to both the New Upgrades and the Original Upgrades.<sup>15</sup> In the Initial Order, the Commission conditionally accepted the New Interconnection Agreement.<sup>16</sup>

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<sup>12</sup> The New Upgrades are a small number of new circuit breakers. *See* Prairie State's February 11, 2008 filing in Docket No. ER08-209-001 at 9. Illinois Power estimates the cost as \$30,000. *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.

<sup>13</sup> The New Interconnection Agreement also provided for Prairie State to change the transmission service from Energy Resources Interconnection Service to Network Resources Interconnection Service, added Ameren Transco as a party to the agreement, and no longer required Prairie State to obtain easements, rights-of-way, and real property interests to construct a 7.4-mile-long transmission line.

<sup>14</sup> These provisions were recommended by the Midwest ISO Regional Expansion Criteria and Benefits (RECB) Task Force and apply to interconnection agreements filed on or after February 5, 2006, the effective date of the Commission's order adopting the recommendations and modifying Attachment X. *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>15</sup> These repayment conditions, adopted with RECB 50 percent reimbursement, differ from those in the Existing Interconnection Agreement, which requires 100 percent reimbursement.

<sup>16</sup> Midwest ISO filed conforming compliance revisions on February 11, 2008, which were accepted under delegated authority, with acknowledgement of a pending request for rehearing of the Initial Order. *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER08-209-002 (April 25, 2008) (unpublished letter order).

5. In the Rehearing Order, the Commission directed Midwest ISO to change the reimbursement provisions of the New Interconnection Agreement. It held that while the costs of the New Upgrades fall under the current provisions of Attachment X, and are subject to 50 percent reimbursement, the costs of the Original Upgrades remain as stated in the Existing Interconnection Agreement, i.e., subject to 100 percent reimbursement.<sup>17</sup> The Commission required Midwest ISO to file a revised interconnection agreement reflecting this holding.

### **Compliance Interconnection Agreement**

6. Midwest ISO filed the Compliance Interconnection Agreement on December 22, 2008, asking leave to make minor revisions of calculations in 30 days. It filed the completed Compliance Interconnection Agreement on January 21, 2009 (January 21 Filing).

7. The Compliance Interconnection Agreement divides section 11.4, "Transmission Credits," into proposed section 11.4a, "Transmission Credits Applicable to Network Upgrades Associated with the Original 1,500 MW Request," (section 11.4a) and proposed section 11.4b, "Transmission Credits Applicable for Network Upgrades Associated with the 150 MW Increase in Output" (section 11.4b). Section 11.4a uses the text of the Existing Interconnection Agreement verbatim, including the repayment terms and conditions. Section 11.4b uses the transmission crediting language from the New Interconnection Agreement, including, as before, the repayment terms and conditions adopted in the RECB Order.

8. The January 21 Filing's proposed changes are in Appendix A, Section 3, "Description of Network Upgrades." The changes indicate which of the network upgrades are subject to 100 percent reimbursement crediting and which are subject to RECB 50 percent reimbursement crediting.

### **Discussion**

#### **Notices and Responsive Filings**

9. Notice of Midwest ISO's December 22, 2008 filing was published in the *Federal Register*,<sup>18</sup> with motions to intervene or protests due on or before January 12, 2009. In

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<sup>17</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 26. Ameren filed a request for rehearing of the Rehearing Order. Our concurrent Second Rehearing Order denies Ameren's request.

<sup>18</sup> 74 Fed. Reg. 1672 (2009).

response, Ameren, Prairie State, and Illinois Municipal filed timely protests. On January 27, 2009, Midwest ISO filed a motion for leave to answer these protests and its answer (Midwest ISO Answer).

10. Notice of Midwest ISO's January 21, 2009 filing was published in the *Federal Register*,<sup>19</sup> with motions to intervene or protest due on or before February 11, 2009. In response, Prairie State filed a timely protest (Prairie State Second Protest) and Illinois Municipal filed a timely protest that also addresses the Midwest ISO Answer (Illinois Municipal Second Protest).

11. 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. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO Answer because it has provided information that assisted us in our decision-making process.

#### **Ameren's Protest**

12. Ameren protests the Compliance Interconnection Agreement's allocation to Ameren Illinois Pricing Zone<sup>20</sup> ratepayers of approximately \$76.5 million in network upgrade costs associated with the Facility's initial 1,500 MW capacity. Ameren recognizes that the Compliance Interconnection Agreement follows the Commission's directive in the Rehearing Order. Ameren points out that it has requested rehearing of the Rehearing Order, and asks that the Commission act on the Compliance Interconnection Agreement subject to the outcome of Ameren's pending rehearing request.

13. With our concurrent denial of Ameren's rehearing request,<sup>21</sup> Ameren's protest to the Compliance Interconnection Agreement is similarly rejected.

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<sup>19</sup> *Id* at 6148.

<sup>20</sup> The Ameren Illinois Pricing Zone is the geographic area containing 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>21</sup> Second Rehearing Order, 127 FERC ¶ 61,109.

### Cost Recovery Conditions

14. Prairie State and one of its equity owners, Illinois Municipal, protest that Midwest ISO's changes in the Compliance Interconnection Agreement go impermissibly beyond the scope of the Commission's directive in the Rehearing Order. They object to changes, in section 11.4, beyond restoration of 100 percent reimbursement for the Original Upgrades. Their specific objection is to Midwest ISO attaching to the Original Upgrades the repayment conditions of the Existing Interconnection Agreement. Prairie State and Illinois Municipal want only one set of repayment conditions, those in section 11.4b.1, which state that if the Generating Facility fails to achieve commercial operation, but it or another generating facility is later constructed and makes use of the network upgrades, then reimbursement may be made pursuant to Attachment FF, "Transmission Expansion Planning Principles," of the Tariff. They urge the Commission to direct Midwest ISO to remove from the Compliance Interconnection Agreement the language, in section 11.4a.1, stating that if the Generating Facility's Demonstrated Capability at the Commercial Operation Date is more than five percent below the capacity level that determined the need for network upgrades, then transmission credit repayment associated with the unneeded network upgrades is delayed until these network upgrades are needed either for the Generating Facility or other firm uses of the Transmission or Distribution System.

15. Illinois Municipal is concerned also that Midwest ISO has different conditions under 100 percent reimbursement and RECB 50 percent reimbursement regarding transmission credits to repay the amounts that Prairie State advanced for network upgrades, especially concerning whether the Facility is or is not designated a Network Resource.<sup>22</sup> Illinois Municipal states that it owns a 15.17 percent share in the Facility and has not designated its share as a Network Resource in Midwest ISO. Rather, it has arranged to export its share of Prairie State output to meet capacity requirements outside of the Midwest ISO region.<sup>23</sup> Illinois Municipal states also that, although it protested

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<sup>22</sup> The Midwest ISO Tariff, at section 1.217, defines a Network Resource as a designated Generation Resource or portion thereof that is owned by a Network Customer, or whose output is under contract to a Network Customer, and that is designated under the Network Integration Transmission Service provisions of the Tariff. It excludes any resource or portion thereof committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

<sup>23</sup> Illinois Municipal Protest at 4-5; Illinois Municipal Second Protest at 3-5. Illinois Municipal appears to be concerned with the necessity to enter into a mutually agreeable payment schedule with Ameren and Midwest ISO, and also with the consequences of the Facility's demonstrated capability, at the commercial operation date, being 5 percent below the threshold capacity level that required the network upgrades.

application of the RECB 50 percent reimbursement to all network upgrades, it relied on the other conditions in the New Interconnection Agreement when it first became a co-owner of the Facility in 2007.<sup>24</sup>

16. Midwest ISO answers that the Rehearing Order did not explicitly limit the change in reimbursement solely to numerical changes. It states that application of the 100 percent reimbursement provisions from the Existing Interconnection Agreement logically includes revising section 11.4a to include the terms and conditions that were in effect in that agreement, before adoption of the RECB 50 percent reimbursement scheme. Section 11.4b includes the changes made as a result of Midwest ISO's filing in the RECB proceeding and include Midwest ISO's new pricing policy regarding cost allocation for system upgrades in Attachment FF. Midwest ISO refers to its explanation of the changes in network upgrade reimbursement crediting policy that it filed in the RECB proceeding:

Attachment X originally provided for full repayment of all costs paid for by the Interconnection Customer. In addition, because all costs were refunded to the customer, there were provisions limiting these repayments if the final demonstrated capability of the Generating Facility was less than that represented and upon which Network Upgrade costs were incurred. Because Attachment FF provides for sharing of costs between the Interconnection Customer and the Transmission Owner, Attachment X was revised to reference the provisions of Attachment FF as governing repayment requirements. In addition, because the Interconnection Customer will now have incentive to minimize Network Upgrade costs, the limiting repayment provisions of Attachment X related to demonstrated capability of Generating Facility have been removed.<sup>25</sup>

Midwest ISO states that references to Attachment FF are relevant only to the RECB 50 percent reimbursement mechanism. It criticizes Prairie State's and Illinois Municipal's request as inappropriately intermingling provisions of section 11.4 that were in effect during different time periods as well as including text that has no basis in a prior approved *pro forma* Generation Interconnection Agreement.

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<sup>24</sup> Illinois Municipal Protest at 6. Illinois Municipal states that it had this interest when Midwest ISO filed the unexecuted New Interconnection Agreement, on November 13, 2007.

<sup>25</sup> Midwest ISO Answer at 12-13, citing Midwest ISO's October 7, 2005 filing in Docket No. ER06-18-000, Cost Allocation Policy Filing, transmittal letter at 24.

17. In addition, Midwest ISO states that Illinois Municipal's concern over what happens if only a portion of the Facility is designated a Network Resource is not at issue in this proceeding and is unripe for Commission action. It states that Illinois Municipal has not had a chance to see how Ameren applies the crediting provisions in revised sections 11.4a and 11.4b. Such crediting depends on facts that are not yet known and that may be in the control of the Interconnection Customer, such as any designation of the Facility as a Network Resource.<sup>26</sup>

18. We find that application of each reimbursement crediting scheme as a whole, with its own accompanying terms and conditions, fulfills the intent of the Commission's directive in the Rehearing Order.<sup>27</sup> Just as the Rehearing Order found that increasing generation by 150 MW, in the circumstances of this case, did not bring the Original Upgrades under the RECB 50 percent reimbursement methodology, we find, similarly, that the 150 MW increase does not bring the Original Upgrades under the terms and conditions associated with the RECB 50 percent methodology. We will deny Prairie State's and Illinois Municipal's protest on this point.

19. We find premature Illinois Municipal's concern over repayment to it of the money due in connection with construction of network upgrades should it not designate its share of the Facility's output as a Network Resource. At present, we have no reason to think that Illinois Municipal and Ameren will not come to a mutually agreeable payment schedule that is consistent with the Compliance Interconnection Agreement. Should events prove otherwise, Illinois Municipal may bring the matter to our attention. Regarding Illinois Municipal's concern over the consequences of the Facility not achieving the demonstrated capability that required construction of the Original Upgrades, the Commission found this provision to be just and reasonable for 100 percent reimbursement of network upgrade costs when it accepted the Existing Interconnection Agreement,<sup>28</sup> and we continue to so find.

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<sup>26</sup> *Id.* at 14.

<sup>27</sup> Rehearing Order, 125 FERC ¶ 61,210 at P 17, 26 (reversing the position that 50-50 cost sharing provisions should apply to the entire network upgrades, and directing Midwest ISO to apply the 100 percent crediting provision from the Existing Interconnection Agreement to the Original Upgrades and the 50-50 cost sharing provisions only to the New Upgrades).

<sup>28</sup> As the Rehearing Order states, the Commission accepted the Existing Interconnection Agreement subject to modification conforming the provisions concerning network upgrades costs to the rolled-in pricing adopted in Order No. 2003. *See id.* at P 2 & n.4.

20. We find unavailing Illinois Municipal's argument, that it relied, when becoming a co-owner of the Facility, on the repayment conditions accompanying RECB 50 percent reimbursement (although protesting repayment of only 50 percent). Illinois Municipal knew that the parties disagreed over the terms and conditions of an interconnection agreement that would supersede the Existing Interconnection Agreement. It should have anticipated that Midwest ISO would file an unexecuted New Interconnection Agreement whose final terms and conditions would be determined by the Commission.

The Commission orders:

The Compliance Interconnection Agreement is hereby accepted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.