

131 FERC ¶ 61,125
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Ameren Services Company

Docket No. EL09-69-000

v.

PrairieLand Energy, Inc.

ORDER GRANTING COMPLAINT

(Issued May 7, 2010)

1. On August 28, 2009, Ameren Services Company (Ameren Services)¹ filed a complaint against PrairieLand Energy, Inc. (PrairieLand)² claiming that PrairieLand refuses to pay the amount due the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) for underbilled Network Integration Transmission Service (Network Service) provided to PrairieLand from January 2007 through February 2009. For the reasons discussed below, we will grant Ameren Services' complaint.

¹ Ameren Services, a subsidiary of the Ameren Corporation (Ameren), performs billing, invoicing and collection for transactions involving Midwest ISO's Ameren Illinois Pricing Zone (Ameren Zone). Ameren Services filed the complaint on behalf of its transmission-owning affiliates (Ameren Transmission Owners), which includes the Illinois Power Company, d/b/a Ameren IP (Illinois Power). Illinois Power became an Ameren affiliate in 2004.

² PrairieLand, formed in 1996, is a wholly-owned subsidiary of the University of Illinois (the University), on whose behalf it buys power and energy for resale to the University's native load customers. PrairieLand is the Transmission Customer for purposes of Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Midwest ISO Tariff).

Ameren Services' Complaint

2. Since 1967, the University has purchased from Illinois Power electric power to supplement the output of its Abbott Power Plant (Abbott Plant), on the Champaign-Urbana campus. In September 2004, the parties contracted for Illinois Power to provide up to 40 MW, the physical limit of the transmission line that connects to the University facilities.
3. On October 27, 2006, Prairieland and Midwest ISO entered into a service agreement (Service Agreement) under which the University, through Prairieland, takes Network Service over transmission facilities operated by Midwest ISO and owned by Ameren Transmission Owners. Midwest ISO agreed to provide the service requested by Prairieland, and Prairieland agreed "to supply information the Midwest ISO deems reasonably necessary in accordance with Good Utility Practice in order to provide the requested service, . . . and to take and pay for the requested service in accordance with the provision of the Tariff and this Service Agreement."³
4. On November 28, 2006, Ameren Services and Prairieland executed a Meter Data Management Services Agreement (Meter Agreement) under which Ameren Services agreed to submit electronically all meter data to Midwest ISO that is required to bill Prairieland. The Meter Agreement also required Prairieland to review all meter data submitted to Midwest ISO by Ameren Services and to provide written notice of any error in the meter data.
5. Starting in January 2007, Ameren Services, as Midwest ISO's billing agent, began billing Prairieland for Network Service received under schedule 9, "Network Integration Transmission Service," (Schedule 9) of the Midwest ISO Tariff. Ameren Services staff was unaware of the University's behind-the-meter generation and therefore unknowingly based the bills on the University's net demand. In April 2008, Ameren Services became aware of the behind-the-meter generation when the University's net demand for February 2008 was negative. Between April and August 2008, Ameren Services and Prairieland communicated by e-mail and telephone about Ameren Services' need for the behind-the-meter generation data and for the inclusion of this generation in Prairieland's bills.
6. On February 2, 2009, Prairieland provided Ameren Services with generation data from January 2007 through January 2009. On February 12, 2009, Ameren Services sent Prairieland updated gross billing data using actual Abbott Plant generation. Beginning April 2009, Ameren has billed Prairieland for service

³ Service Agreement at sections 2.0 and 3.0, Attachment C in Ameren Services' Complaint.

based on gross demand, and Prairieland has remitted the full billed monthly amounts for the Network Service. On July 21, 2009, Ameren Services sent an invoice to correct its previous billings for the January 2007 through February 2009 period.

7. On July 29, 2009, Prairieland filed with Midwest ISO a Transmission Settlements Billing Dispute,⁴ disputing Ameren Services' authority to retroactively revise transmission bills that have been received and paid. Under an extended payment agreement, Prairieland mailed Ameren Services \$21,832.06 on August 5, 2009, and again on August 28, 2009, while stating that it disputed retroactive adjustment of the transmission bills.

8. Ameren states that it filed the August 28, 2009 complaint because informal efforts to resolve the dispute were unsuccessful. It states further that, on August 31, 2009, Midwest ISO notified Prairieland that it was denying Prairieland's dispute because network load is to be reported on a gross basis, which includes behind-the-meter generation, and in accordance with the filed rate doctrine.

9. Ameren Services complains that, in violation of the terms of its Service Agreement with Midwest ISO, Prairieland has refused to remit \$567,633.60 of underbilled amounts for Network Service provided under the Service Agreement and Schedule 9 from January 2007 through February 2009. During this time period, Ameren Services, acting as Midwest ISO's billing agent in the Ameren Zone, based the monthly bills to Prairieland on net load instead of gross load which would have included any behind-the-meter generation.⁵ Ameren Services states that it was unaware of the amount of behind-the-meter generation.

⁴ Prairieland filed under section 3.1.1 of the Midwest ISO, Business Practices Manual No. 017, "Transmission Settlements Billing Dispute Resolution," effective December 31, 2007 (Billing Dispute Manual).

⁵ As set forth in Order Nos. 888 and 888-A, the Commission does not permit netting of behind-the-meter generation against network load. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,736, 31,743 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,258-260, *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Therefore, Prairieland was underbilled, which violates Midwest ISO's Tariff, related Business Practices Manuals, and the Commission's policies.

10. Ameren Services states that, under section 205 of the Federal Power Act (FPA)⁶ and the filed rate doctrine,⁷ regulated utilities, like the Ameren Transmission Owners, may not provide jurisdictional service inconsistently with their filed tariffs, and that a customer, like Prairieland, must pay the filed rate.⁸ It contends that Prairieland's failure to disclose the behind-the-meter generation violates the FPA, and that its refusal to remit the underbilled amount violates the Service Agreement, the Midwest ISO Tariff, and the Midwest ISO Business Practices Manual on transmission settlements.⁹ Ameren Services asks the Commission to order payment of the underbilled amount so that Prairieland will have paid the proper jurisdictional charge for Network Service received, interest computed according to the Commission's regulations,¹⁰ and Ameren Services' attorneys' fees.

11. Ameren Services claims that not only did Prairieland violate section 3 of the Service Agreement by not providing the amounts of behind-the-meter generation from January 2007 through February 2009, but that this non-disclosure could have affected the bulk power system's reliability.

12. Ameren Services also points to section 3.1.8.2 of the Transmission Settlements Manual as making clear that Network Service charges are for total

⁶ 16 U.S.C. § 824d (2006).

⁷ The filed rate doctrine forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority. *See N.Y. Power Auth. v. Consol Edison Co. of N.Y., Inc.*, 115 FERC ¶ 61,088, at P 15 (2006), which cites *Ark. La. Gas Co. v. Hall*, 453 U.S. 571,577 (1981).

⁸ Ameren Services cites *City of Vernon, Cal.*, 115 FERC ¶ 61,297, at n.41 (2006) (citations omitted) (the filed rate doctrine applies to both the company providing service and the customer taking service).

⁹ Midwest ISO, Business Practices Manual No. 012, "Transmission Settlements," effective January 6, 2009 (Transmission Settlements Manual).

¹⁰ *See* 18 C.F.R. § 35.19a (2009).

load, including behind-the-meter generation.¹¹ Further, it argues, this section is consistent with the Commission's Order No. 888 that does not permit netting behind-the-meter generation against load,¹² a policy that the Commission reiterated in Order No. 890.¹³ Ameren Services points out that had Prairieland wished to reduce its costs to the extent it was relying on the Abbott Plant and not on the bulk transmission system to supply its energy needs, it should have obtained Point-To-Point Transmission Service instead of Network Service.

13. Ameren Services refers to Commission policy that permits utilities to correct billing errors in order to ensure that the proper jurisdictional rate is paid and recovered.¹⁴ It states that as soon as it discovered the billing errors, in April 2008, it attempted to correct them and bill Prairieland in accordance with the Midwest ISO Tariff. It states that the responsibility for continued incorrect billing lies with Prairieland and the University which refused to provide correct and complete data about the behind-the-meter generation.

¹¹ "The Schedule 9 charges are obtained by applying the effective annual Schedule 9 zonal rate to the Network Customer's Load. . . . Unless specifically designated as Point-to-Point Transmission Service, all Network Customer Load is reported as Network Load. This includes Load served by Behind-the-Meter Generation." Transmission Settlements Manual, section 3.1.8.2.

¹² See *supra* note 5.

¹³ "The Commission is not persuaded to require transmission providers to allow netting of behind the meter generation against transmission service charges to the extent customers do not rely on the transmission system to meet their energy needs. . . . The existing *pro forma* OATT already permits transmission customers to exclude the entirety of a discrete load from network service and serve such load with the customer's behind the meter generation and through any needed point-to-point service, thereby reducing the network customer's load ratio share." *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 1619, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹⁴ Ameren Services cites: *Exelon Corp. v. PPL Util. Corp. and PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,065, at P 26 (2005) (correct billing error to ensure that customer pays appropriate rate for service taken); *La. Pub. Serv. Comm'n v. Entergy Corp.*, 106 FERC ¶ 61,228, at P 89 (2004) (allow utilities to correct past billing errors in order to apply correctly the filed rate).

14. Ameren Services requests reasonable attorneys' fees, in accordance with section 7.17(d) of the Midwest ISO Tariff, because it was obliged to resort to attorneys in its attempts to ensure that all billing is consistent with the Midwest ISO Tariff and applicable Business Practices Manuals, and to recover from Prairieland the amounts properly due.

Notice of Complaint and Responsive Filings

15. Notice of Ameren Services' complaint was published in the *Federal Register*, 74 Fed. Reg. 46,193 (2009), with Prairieland's answer and comments, interventions, and protests due on or before September 17, 2009.

16. On September 17, 2009, Prairieland filed its answer, and Midwest ISO and the Midwest ISO Transmission Owners (Transmission Owners) filed motions to intervene. On October 2, 2009, Ameren Services filed a response to Prairieland's answer (Ameren Services' Response), and on October 19, 2009, Prairieland filed a response to Ameren Services' Response (Prairieland's Response).

Prairieland's Answer

17. Prairieland denies that it failed to disclose generation information to Ameren Services. Prairieland states that the fault for reporting Prairieland's net generation, instead of the gross generation, to Midwest ISO lies with Ameren Services, which alone has the obligation to report generation under the Metering Agreement. Prairieland states that Ameren Service's affiliate, Illinois Power, has known about the Abbott Plant's generation since 1967, and that Ameren Services did not ask for generation data from the Abbott Plant until an August 22, 2008 meeting. At that time, Prairieland requested written rationale for the change in billing methodology and did not receive a written explanation until January 7, 2009. Prairieland argues that it should not now be required to pay the underbilled amount because the Midwest ISO Tariff precludes revision of billing invoices older than 90 days, and Ameren Services did not present formal invoices for retroactive adjustments until July 2009, five to 30 months after the original invoices.

18. Prairieland supports its argument, that under the Midwest ISO Tariff transmission bills are final after 90 days and cannot be adjusted retroactively, by positing that the filed rate consists of the Midwest ISO Tariff and those Midwest ISO Business Practices Manuals that the Tariff incorporates by reference. Prairieland cites Tariff section 12, "Dispute Resolution Procedures," which mentions the Billing Dispute Manual. Because section 3.1.1 of the Billing Dispute Manual limits submittal of transmission settlement disputes to no later than 90 days from the date of invoice, invoices not disputed within 90 days, such as Ameren Services' invoices for the underbilled amounts, are final and may not be

retroactively revised. Prairieland concludes that Ameren Services is improperly asking the Commission to deviate from the tariff on file which, as well as the FPA, preclude retroactive adjustments.

19. Prairieland disputes Ameren Services' claim that section 3.1.1 of the Billing Dispute Manual does not apply because Ameren Services is a Transmission Owner. Prairieland states that Ameren Services acted as the billing agent for Midwest ISO when it rendered the invoices for the January 2007 through February 2009 underbilling. Not until July 2009 did Ameren Services send new invoices that imposed additional charges for the transmission service that Midwest ISO had provided from five to 30 months earlier. Prairieland states that to allow Ameren Services to reopen final invoices containing a billing error would eviscerate the finality provisions of the Midwest ISO Tariff and disrupt the settled expectation of customers that have reasonably relied on the finality afforded by the Tariff.

20. Prairieland urges that even if the Midwest ISO Tariff did not bar the retroactive adjustment of final invoices, such as these, retroactive adjustment would require Commission authorization and is not justified. Reopening final invoices, Prairieland continues, would require extraordinary circumstances that meet a stringent standard. Prairieland proposes the standard announced in *Niagara Mohawk Power Corporation*, "the need for accuracy outweighs concerns of financial certainty and significant injustice would result in the absence of Commission action."¹⁵

21. Prairieland alleges that, having failed to apply the Midwest ISO Tariff correctly or to detect its error within the time allowed by the Tariff, Ameren Services is now trying to shift the blame to Prairieland although these failings are really the result of Ameren Services' own lack of diligence. Section 3 of the Service Agreement does not place on Prairieland the affirmative obligation to provide the generation data of the Abbott Plant. Rather, Prairieland states, the section merely establishes an obligation to supply information that may be requested, which Ameren Services did not do in timely fashion. When first raising the issue, in April 2008, Ameren Services failed to make a specific request for data. It did so only at the August 22, 2008 meeting, at which time Prairieland requested a written statement of what was required and the reason for the change in billing method. Ameren Services did not provide the written explanation until January 2009, after which Prairieland provided the requested data within 30 days. Ameren Services waited another five months after that to send an invoice for the underbilled amount in July 2009.

¹⁵ *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314, at P 25 (2008).

22. Prairieland urges that, if the Commission permits the retroactive adjustment, it should exercise equitable discretion and deny interest. The record shows that Ameren Services has delayed continually in this matter: it needed a year to realize that it was using incorrect billing data; it took an additional four months to request relevant data; it delayed in responding to Prairieland's request for a written explanation of the data request; and it waited five more months to send an invoice for the underbilled amount to Prairieland's designated representative. Moreover, Prairieland states that no basis exists for an award of attorneys' fees. Prairieland states that Ameren Services' lack of care and diligence in carrying out its duties as a billing agent indicate that the claim for attorneys' fees should not be given serious consideration. Thus, Prairieland concludes, an award of attorneys' fees under section 7.17(d) of the Midwest ISO Tariff would be unjust and unreasonable.

Discussion

Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene 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) (2009) prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Ameren Services' and Prairieland's Responses and will, therefore, reject them.

Payment for Behind-the-Meter Generation

24. We will grant Ameren Services' complaint. Ameren Services correctly billed Prairieland based on the information Prairieland provided. That Prairieland failed to provide information required by its Service Agreement and the Midwest ISO's Tariff, as discussed further below, cannot convert this Tariff violation into a billing error by Ameren Services. Simply put, Prairieland violated the Tariff and the Service Agreement, and must be held accountable for the costs it avoided as a result of its violation.¹⁶

25. Pursuant to section 2.0 of the Service Agreement, Prairieland is a Transmission Customer under the Network Service provisions of the Tariff and, as such

¹⁶ The filed rate doctrine applies to customers as well. *See City of Vernon*, 115 FERC ¶ 61,297, n.41 (2006).

agrees to supply information the Midwest ISO deems reasonably necessary in accordance with Good Utility Practice in order to provide the requested service, to provide a Transaction Specifications with applicable deposit and will execute a Network Operating Agreement for each requested transaction, and agrees to take and pay for the requested service in accordance with the provisions of the Tariff and this Service Agreement.[¹⁷]

Thus, Prairieland must abide by the terms of the Tariff in taking and paying for transmission service pursuant to the Network Service provisions of the Tariff.

26. As a Network Customer under the Tariff, Prairieland was required to submit an application that included a description of the Network Load at each delivery point.¹⁸ The Tariff defines Network Load as including:

all Load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular Load at discrete Points of Delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Module B of this Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.[¹⁹]

27. Prairieland failed to comply with the Tariff by not designating its total load as Network Load. Prairieland does not dispute that it knew that it had behind-the-meter generation and that it contracted to receive Network Service. Rather, it seeks to place on Ameren the burden to identify Prairieland's behind-the-meter generation. As explained above, Prairieland had the responsibility under its Service Agreement and the Tariff to designate the necessary behind-the-meter generation when taking Network Service. As the Commission has explained in Order Nos. 888 and 890, the responsibility for load served by behind-the-meter generation is with the transmission customer:

¹⁷ Service Agreement, section 3.0.

¹⁸ Midwest ISO Tariff, section 29.2 (iii).

¹⁹ *Id.*, section 1.448.

In Order No. 888, in response to customers with load served by “behind-the-meter” generation that sought to eliminate such load from their network calculation, the Commission found that a customer may exclude a particular load at discrete points of delivery from its load ratio share of the allocated cost of the transmission provider’s integrated system. The Commission determined, however, that customers electing to do so must seek alternative transmission service, such as point-to-point transmission service, for any load that has not been designated as network load for network service. In Order No. 888-A, the Commission stated that it would permit a network customer to either designate all of a discrete load as network load under the network integration transmission service or to exclude the *entirety* of a discrete load from network service and serve such load with the customer’s behind the meter generation and/or through any point-to-point transmission service.^[20]

28. For whatever reason, Prairieland did not identify its behind-the-meter generation when it sought Network Service. Nor did Prairieland seek alternative transmission service so as to obviate the need to report its behind-the-meter generation, as required by the Tariff. Thus, we conclude that Prairieland violated its Service Agreement and the Tariff and is responsible for paying for its Network Service based on gross load rather than net load for the period from January 2007 through February 2009.²¹

29. Under the circumstances here, we conclude that interest on the amounts that Prairieland did not pay is appropriate for the period January 2007 through February 2009 when Prairieland violated the Tariff.²² In addition, in accordance

²⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1614 (footnotes omitted).

²¹ See, e.g., *NY Power Authority v. Consolidated Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,304, at P 56 (2005) (Commission granted retroactive refunds, explaining that it was not “changing a rate on file, but ... enforcing the rates, terms, and conditions of several filed rate schedules.”). We also note that since March 2009 Prairieland has been paying for its network transmission service based on gross load.

²² See *PPL Wallingford Energy, LLC*, 116 FERC ¶ 61,089, at P 31 & n.38 (2006) (the purpose of ordering interest is to make the recipient whole for the time value of money it would otherwise have received). See also *Anadarko Petroleum v. FERC*, 196 F.3d 1264, 1268 (D.C. Cir. 1999) (interest ensures full compensation, makes the prevailing party whole).

with section 7.17(d) of the Midwest ISO Tariff, Prairieland is responsible for reasonable attorneys' fees incurred by Ameren Services.

The Commission orders:

Ameren Services' complaint is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.