

148 FERC ¶ 61,238  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Illinois Power Generating Company

Docket No. ER14-2554-000

ORDER ACCEPTING REVISED MARKET-BASED RATE TARIFF AND  
GRANTING REQUEST FOR WAIVERS

(Issued September 29, 2014)

1. In this order, we accept a revised market-based rate tariff submitted by Illinois Power Generating Company (Illinois Power Generating), effective August 1, 2014, as requested. Also in this order, we grant Illinois Power Generating's request for certain waivers commonly granted to market-based rate sellers, except as noted herein.

**I. Background**

2. On July 31, 2014, Illinois Power Generating filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> a revised market-based rate tariff. The revisions to the market-based rate tariff reflect a request for waiver of Parts 41, 101, and 141 of the Commission's regulations,<sup>2</sup> with the exception of sections 141.14 and 141.15. Illinois Power Generating states that it does not currently have the waivers of Parts 41, 101, and 141 that are regularly granted to other market-based rate sellers because Illinois Power Generating succeeded to Ameren Energy Generating Company's (Ameren Energy Generating) market-based rate tariff, which did not include those waivers.

3. Illinois Power Generating explains that Ameren Energy Generating was granted market-based rate authorization in an order issued by the Commission on October 11, 2000.<sup>3</sup> Illinois Power Generating states that, in that order, the Commission granted Ameren Energy Generating waiver of Subparts B and C of Part 35 of the Commission's

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pts. 41, 101, 141 (2014).

<sup>3</sup> July 31 Filing at 2 (citing *Ameren Energy Generating Co.*, 93 FERC ¶ 61,024 (2000), *reh'g denied*, 95 FERC ¶ 61,009 (2001)).

regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16. Illinois Power Generating further states that, in that order, the Commission denied Ameren Energy Generating's request for waiver of Parts 41, 101, and 141 of the Commission's regulations because such waivers are typically granted only to power marketers that are not subject to cost-based rate regulation and Ameren Energy Generating had previously acknowledged that it was making cost-based rate sales. Illinois Power Generating states that, later, Ameren Energy Generating applied for, and received, blanket authorization under Part 34 of the Commission's regulations to issue securities and assume liabilities.<sup>4</sup> Illinois Power Generating also states that the Commission acknowledged that the previous cost-based sales arrangements had been terminated by Ameren Energy Generating. Illinois Power Generating affirms that it does not make sales of energy or capacity at cost-based rates.<sup>5</sup> As a result, Illinois Power Generating represents that the circumstances that previously led the Commission to deny Ameren Energy Generating's request for waiver of Parts 41, 101, and 141 are no longer applicable.

## **II. Notice of Filings**

4. Notice of Illinois Power Generating's July 31, 2014 filing was published in the *Federal Register*,<sup>6</sup> with interventions and comments due on or before August 21, 2014. On August 21, 2014, the Illinois Municipal Electric Agency (Illinois Municipal Electric) filed a motion to intervene and protest. On September 5, 2014, Illinois Power Generating filed an answer. On September 22, 2014, Illinois Municipal Electric filed an answer to Illinois Power Generating's September 5 answer.

5. Illinois Municipal Electric argues that the Commission should deny Illinois Power Generating's request for waiver of Parts 41, 101, and 141 of the Commission's regulations. Illinois Municipal Electric states that Illinois Power Generating is the owner of several generating assets that are used to supply power to Illinois Municipal Electric under the terms of a power supply agreement. Illinois Municipal Electric states that under the terms of the power supply agreement the rates charged to Illinois Municipal Electric for power from the facilities owned by Illinois Power Generating are cost-based.

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<sup>4</sup> July 31 Filing at 3 (citing *Ameren Servs. Co., on behalf of Ameren Energy Generating Co.*, 132 FERC ¶ 61,054 (2010)).

<sup>5</sup> July 31 Filing at 4. Illinois Power Generating states that the fact that Illinois Power Generating provides Reactive Service at cost-based rates does not disqualify it from waiver of Parts 41, 101, and 141 of the Commission's regulations. *Id.* n.21 (citing *Sunbury Generation, LLC*, 108 FERC ¶ 61,160 (2004) (accepting Reactive Service rate schedule and simultaneously granting waiver of Parts 41, 101, and 141)).

<sup>6</sup> 79 Fed. Reg. 46,253 (2014).

Illinois Municipal Electric further states that Illinois Power Generating is required to maintain the costs incurred to support the cost-based rates charged to Illinois Municipal Electric in accordance with the FERC Uniform System of Accounts. Illinois Municipal Electric states that it relies on this data (FERC Form No. 1) in the monitoring and administration of the power supply agreement and if waiver of these requirements were granted it would directly affect Illinois Municipal Electric.

6. Illinois Municipal Electric also argues that the Commission should not grant Illinois Power Generating's request in light of the possibility of Illinois Power Generating being designated as a System Support Resource (SSR) by Midcontinent Independent System Operator, Inc. (MISO). Illinois Municipal Electric states that any generator within MISO that is required to operate as a SSR will be allowed full cost-of-service recovery under a rate set by MISO and reviewed by the Commission under FPA section 205.<sup>7</sup> Illinois Municipal Electric states that these are conditions that would preclude a waiver of Parts 41, 101 and 141 of the Commission's regulations. Illinois Municipal Electric further urges that "in light of the possibility of being designated as an SSR," no waivers of the Uniform System of Accounts or of Part 141 should be given as to the costs of running any generator located in MISO. Finally, Illinois Municipal Electric argues that the Commission previously denied Ameren Energy Generating's request for these waivers in Ameren Energy Generating's initial application for market-based rate authority.<sup>8</sup>

7. In its answer, Illinois Power Generating notes that the Commission usually grants waiver of Parts 41, 101, and 141 of its regulations to sellers that do not make sales at cost-based rates and who do not have captive customers. Illinois Power Generating states that it meets these requirements.

8. Illinois Power Generating states that the power supply agreement is between Illinois Municipal Electric and Illinois Power Generating's affiliate, Illinois Power Marketing Company (Illinois Power Marketing) and that Illinois Power Generating is not the seller under the power supply agreement or a party to the power supply agreement and therefore Illinois Power Generating does not have any obligations under the power supply agreement. Illinois Power Generating states that, although the power supply

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<sup>7</sup> Illinois Municipal Electric Protest at 7, n.14 (stating that "the Commission also required that MISO revise its tariff to permit the SSR owner to file unilaterally a rate with the Commission under Section 205 of the FPA should it not be able to negotiate a rate with MISO," citing *Midcontinent Indep. System Operator, Inc.*, 148 FERC ¶ 61,057, at PP 92-93 (2014) and a related compliance filing).

<sup>8</sup> *Ameren Energy Generating Company*, 93 FERC ¶ 61,024 (2000), *reh'g denied*, 95 FERC ¶ 61,009 (2001).

agreement identifies certain generating facilities owned by Illinois Power Generating, Illinois Power Marketing is not obligated to use such facilities to satisfy its obligations to Illinois Municipal Electric. Illinois Power Generating also states that although Illinois Municipal Electric repeatedly refers to the power supply agreement as providing for cost-based sales, Illinois Municipal Electric acknowledges that the power supply agreement was entered into under Ameren Energy Marketing Company/Illinois Power Marketing's market-based rate authorization.<sup>9</sup> Illinois Power Generating further states that, in a different proceeding, the Commission rejected similar claims to those made in the Illinois Municipal Electric protest.<sup>10</sup> Illinois Power Generating states that in the order issued in that proceeding, the Commission stated that “[t]he fact that parties to a transaction entered into under market-based rate authority negotiate a price that is equal to cost does not mean that the customer is thereby being served under cost-based regulation.”<sup>11</sup>

9. In response to Illinois Municipal Electric's argument that Illinois Power Generating is required under the power supply agreement to maintain the costs incurred to support the cost-based rates charged to Illinois Municipal Electric in accordance with the FERC Uniform System of Accounts and that Illinois Municipal Electric relies on the data from the FERC Form No. 1 in the monitoring and administration of the power supply agreement, Illinois Power Generating states that because it is not a party to the power supply agreement, it has no obligations under the agreement. Moreover, Illinois Power Generating asserts that Illinois Municipal Electric's argument is belied by the language of the power supply agreement, which expressly states that “[i]f at any time during the [term of the agreement], [Illinois Power Generating], [Illinois Power Resources Generating] or any other subsidiary company [. . .] that owns a Generating Resource listed in Attachment A, is not required to file a FERC Form No. 1, then any reference herein to data reported or contained in FERC Form No. 1 shall be construed to mean the same data that is recorded or contained in that company's books and records.”<sup>12</sup> Illinois Power Generating states that this language makes clear that Illinois Power Marketing will continue to be required to calculate the charges under the power supply agreement, and to maintain records in accordance with the agreement, regardless

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<sup>9</sup> Illinois Power Generating's September 5 Answer at 3 (citing Illinois Municipal Electric Protest at 6). Illinois Power Generating notes that at the time when the power supply agreement was executed, Illinois Power Marketing was known as Ameren Energy Marketing Company.

<sup>10</sup> *Id.* at 3-4 (citing *Ameren Energy Generating Co.*, 145 FERC ¶ 61,034 (2013)).

<sup>11</sup> *Id.* at 4 (citing *Ameren Energy Generating Co.*, 145 FERC ¶ 61,034 at P 88).

<sup>12</sup> *Id.* at 6 (emphasis in original).

of whether Illinois Power Marketing, Illinois Power Generating, and/or Illinois Power Resources Generating have accounting and reporting obligations imposed upon them by the Commission.

10. Finally, Illinois Power Generating argues that there is no basis for Illinois Municipal Electric's suggestion that resources in MISO should not be entitled to waivers of Parts 41, 101, and 141. Illinois Power Generating states that it does not currently provide SSR service, and even if it did, as noted by Illinois Power Generating in the July 31 Filing, the Commission has found that the provision of limited services at cost-based rates does not disqualify sellers from obtaining and retaining waivers of Parts 41, 101, and 141.

11. Illinois Municipal Electric, in its answer, argues that although the power supply agreement "does provide for the contingency if at some future date [Illinois Power Generating] was not required to file a FERC Form No. 1, that contingency was in the context of any future Commission-initiated action to change its reporting requirements."<sup>13</sup> Illinois Municipal Electric maintains that there is no language in the power supply agreement that authorizes Illinois Power Generating to unilaterally seek to relieve itself of that reporting obligation.

### **III. Discussion**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), Illinois Municipal Electric's timely, unopposed motion to intervene serves to make it a party to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by Illinois Power Generating and Illinois Municipal Electric because they have provided information that assisted us in our decision-making process.

14. As discussed below, the Commission will grant the request for waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15, consistent with those granted to other entities with market-based rate authorizations.<sup>14</sup> Notwithstanding the waiver of the

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<sup>13</sup> Illinois Municipal Electric's September 22 Answer at 4 (citing § 1.1 of the power supply agreement).

<sup>14</sup> We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations. *See Market-Based Rates for Wholesale* (continued...)

accounting and reporting requirements, the Commission expects Illinois Power Generating to keep its accounting records in accordance with generally accepted accounting principles.

15. We do not agree that Illinois Power Generating's request for waiver should be denied due to the power supply agreement. Illinois Power Generating is not the seller under the power supply agreement nor is it a party to the power supply agreement. Illinois Power Marketing is the seller under the power supply agreement and the contract was negotiated in an arm's length transaction under Ameren Energy Marketing Company/Illinois Power Marketing's market-based rate authority. Moreover, as noted by Illinois Power Generating, the Commission has previously stated that a market-based rate can be set based on a number of factors, including costs, that the parties negotiate. The fact that a transaction entered into under a seller's market-based rate authority is priced based on cost does not mean that the customer is thereby being served under cost-based regulation.<sup>15</sup>

16. Further, we disagree with Illinois Municipal Electric's contention that the power supply agreement precludes Illinois Power Generating from requesting the waiver it seeks in this proceeding. Illinois Municipal Electric has not identified any provision in the agreement that expressly precludes Illinois Power Generating from filing a request for a waiver of the FERC Form No. 1 obligation. In addition, as noted above, section 1.1 of the power supply agreement provides that if at any time during the term of the agreement, Illinois Power Generating, Illinois Power Resources Generating or any other subsidiary company that owns a Generating Resource listed in Attachment A "is not required to file a FERC Form No. 1, then any reference herein to data reported or contained in FERC

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*Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA"))).

<sup>15</sup> *See Ameren Energy Generating Co.*, 145 FERC ¶ 61,034 at P 88.

Form No. 1 shall be construed to mean the same data that is recorded or contained in that company's books and records."

17. Lastly, we reject Illinois Municipal Electric's argument that the Commission should not grant Illinois Power Generating's request for waiver in light of the possibility of Illinois Power Generating being designated as a SSR. We note that Illinois Power Generating does not have any generating units currently operating under an SSR agreement in MISO, and we find Illinois Municipal Electric's concern about possible future SSR designations to be speculative.

18. For these reasons, we will grant Illinois Power Generating's request for waiver, except as noted herein, and accept Illinois Power Generating's revised market-based rate tariff, effective August 1, 2014, as requested. We note that the waivers granted herein are based on the specific facts and representations made by Illinois Power Generating in this proceeding. To the extent that there is any material change in circumstances that would reflect a departure from the facts and representations that we have relied upon in granting the requested waivers, Illinois Power Generating will be required to inform the Commission within 30 days of any such change.

The Commission orders:

(A) Illinois Power Generating's revised market-based rate tariff is hereby accepted for filing, effective August 1, 2014, as requested, as discussed in the body of this order.

(B) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.