

152 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System  
Operator, Inc.

Docket No. ER15-1130-001

ORDER CONDITIONALLY ACCEPTING FACILITIES SERVICE AGREEMENT

(Issued July 10, 2015)

1. On February 27, 2015, Midcontinent Independent System Operator, Inc. (MISO), pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> submitted for filing an unexecuted Facilities Service Agreement (FSA) between Ameren Services Company, as agent for Ameren Illinois Company (Ameren), and Bishop Hill Interconnection, LLC (Bishop Hill).<sup>3</sup> The FSA was filed unexecuted because the parties disagree on the appropriate funding methodology for the network upgrades that are the subject of the FSA. As discussed below, we will accept the FSA for filing, suspend it for a nominal period to become effective January 28, 2015, subject to refund, and subject to the outcome of the complaint proceedings pending before the Commission in Docket Nos. EL14-12-000 and EL15-45-000.<sup>4</sup>

---

<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pt. 35 (2014).

<sup>3</sup> MISO is the applicant in this proceeding as the administrator under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), under which the FSA has been filed, but MISO is not a party to the FSA.

<sup>4</sup> *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014) (ABATE Proceeding); *Arkansas Electric Cooperative Corp., v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015).

## I. Background

2. In October 2009, the Commission accepted a proposal by MISO to revise Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to increase the cost responsibility of an interconnection customer to 100 percent of network upgrade costs, i.e., 100 percent participant funding, with a 10 percent reimbursement for projects that were 345 kV and above.<sup>5</sup> At that time, MISO's Tariff provided three alternatives for funding the costs of network upgrades for generator interconnections. Attachment FF described two of these alternatives (Option 1 and Option 2), which were incorporated into MISO's *pro forma* Generator Interconnection Agreement (GIA) by reference, while Article 11.3 in MISO's *pro forma* GIA contemplated a third (the self-fund option).

3. Option 1 provided that for network upgrade costs subject to participant funding: (1) the interconnection customer provided up-front funding for network upgrades; (2) the transmission owner provided a 100 percent refund of the cost of network upgrades to the interconnection customer after the completion of the network upgrades; and (3) the transmission owner assessed the interconnection customer a monthly network upgrade charge over time to recover the cost of the network upgrades. The network upgrade charge included: (1) return on rate base, including general and common plant; (2) operations and maintenance expense; (3) depreciation expense; (4) taxes other than income taxes; and (5) income taxes calculated under Attachment GG of the tariff. Under Option 2, the transmission owner retains the interconnection customer's initial funding for the network upgrade costs that are subject to participant funding as a contribution in aid of construction, and the interconnection customer is assessed no further charges for such upgrades. Under the self-fund option, a transmission owner may finance the construction of the network upgrades itself.<sup>6</sup>

---

<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009).

<sup>6</sup> The self-fund option was originally identified in Order No. 2003. See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 720 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at PP 618 and 658, *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), *cert. denied*, 552 U.S. 1230 (2008).

4. On October 20, 2011, the Commission addressed a complaint in Docket No. EL11-30-000 by ordering the removal of Option 1 from Attachment FF, finding that, among other things, this option increased the costs directly assigned to the interconnection customer with no corresponding increase in service compared to other funding options.<sup>7</sup> The Commission found that the fact that the Tariff gives the transmission owner the sole discretion to choose between Option 1 and Option 2 creates opportunities for undue discrimination “by affording a transmission owner the discretion to increase the costs of interconnection service by assigning both increased capital costs, as well as non-capital costs ... to particular interconnecting generators, but not others.”<sup>8</sup> In that same order, the Commission also established that March 22, 2011, the filing date of the complaint, would serve as the effective date for the removal of Option 1 from the MISO Tariff. On rehearing, the Commission clarified that its decision to remove Option 1 from MISO’s Tariff will not apply to agreements effective prior to March 22, 2011, which the Commission stated was a reasonable remedy that balances the interests of the parties, the need for regulatory certainty, and ease of administration.<sup>9</sup>

5. Ameren, Bishop Hill, and MISO executed a GIA on January 8, 2010 (January 2010 GIA) to interconnect a 200 MW wind generation project in Henry County with the transmission system owned by Ameren and operated by MISO. The January 2010 GIA identified certain network upgrades whose costs were recovered under Option 1 of the MISO Tariff. Ameren, Bishop Hill, and MISO executed a second GIA on May 25, 2011 (May 2011 GIA), to address Bishop Hill’s request to increase the output capability of its wind generation project.<sup>10</sup> However, the May 2011 GIA did not identify any additional network upgrades. Ameren completed construction of the network upgrades on or about January 18, 2013, at which time Bishop Hill interconnected 81 MW of the 200 MW project.

---

<sup>7</sup> *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 34 (2011) (*E.ON*), order on reh’g, 142 FERC ¶ 61,048 (2013) (*E.ON Rehearing Order*).

<sup>8</sup> *E.ON*, 137 FERC ¶ 61,076 at P 38.

<sup>9</sup> *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34.

<sup>10</sup> Bishop Hill Energy II, LLC, an affiliate of Bishop Hill, entered into the January 2010 and May 2011 GIAs but later assigned the May 2011 GIA to Bishop Hill.

## II. Filing

6. Ameren states that in a letter dated August 2, 2013, it informed Bishop Hill that, pursuant to Option 1, Ameren intended to refund the funds that Bishop Hill had provided for the network upgrades under the January 2010 GIA and also provided Bishop Hill with a draft FSA setting forth the Option 1 monthly charge to recover the costs for the network upgrades. In a letter dated April 18, 2014, Bishop Hill acknowledged receipt of the draft FSA but refused to execute it. Ameren states that, in the letter, Bishop Hill asserted that Option 1 was not available to Ameren. Thus, states Ameren, the FSA is being filed on an unexecuted basis because Ameren and Bishop Hill do not agree on the appropriate funding methodology for the network upgrades that are the subject of the Bishop Hill FSA.

7. Ameren states that it modified the August 2, 2013 draft FSA to comport with the FSA between White Oak Energy, L.L.C. and Ameren that was submitted in compliance with the Commission's May 9, 2014 order conditionally accepting that FSA.<sup>11</sup> According to Ameren, Bishop Hill did not review the modified version of the FSA prior to the instant filing.

8. The unexecuted FSA establishes a monthly Network Upgrade Charge of \$16,915 to be paid over a 23-year term.<sup>12</sup> The FSA first requires Ameren to refund to Bishop Hill funds in the amount of \$1,649,863. Of this amount, Ameren explains that \$1,217,653 is the cost basis for the Network Upgrade Charge. Ameren states that it derived a modified fixed charge rate of 16.67 percent based on the formula contained in Attachment GG of the MISO Tariff, which prescribes how to calculate a return for a Network Upgrade Charge. Ameren then applied the fixed charge rate to the network upgrade cost basis of \$1,217,653 to determine the annual revenue requirement and then divided this amount by 12 to yield the monthly charge of \$16,915.

9. Ameren maintains that its election of Option 1 to reimburse Bishop Hill for funding the network upgrades and to establish a monthly charge to recover the costs of the network upgrades, as reflected in the Bishop Hill FSA, is just and reasonable. Ameren states that the FSA comports with the MISO Tariff that was in effect at the time the parties executed the January 2010 GIA. In its April 18, 2014 letter, Bishop Hill

---

<sup>11</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,106 (2014) (White Oak).

<sup>12</sup> The term of the Bishop Hill FSA initially was 25 years to be consistent with the May 2011 GIA. Because the network upgrades subject to the May 2011 GIA have been in service for approximately two years, and to comport with the Commission's *White Oak* decision, Ameren reduced the term to 23 years.

argued that the May 2011 GIA prevented Ameren from using Option 1 because it terminated and replaced the January 2010 GIA and was executed after the effective date in E.ON for the removal of Option 1 from the MISO Tariff. Ameren counters that, consistent with the Commission's determination in *Hoopeston*,<sup>13</sup> the funding mechanism for the network upgrades (which remained unchanged in the May 2011 GIA) was established as Option 1 as of the effective date of the January 2010 GIA.

10. Ameren requests waiver of the Commission's 60-day notice requirement, set forth in 18 C.F.R. § 35.3 (2014). Ameren argues that waiver is appropriate because the FSA is being filed within 30 days of the requested effective date.<sup>14</sup>

11. On April 27, 2015, Commission staff, pursuant to delegated authority, issued a letter requesting additional information on how Ameren derived its fixed charged rate, including its use of an after-tax overall rate of return as the discount rate. On May 12, 2015, Ameren filed a response to the deficiency letter (Deficiency Letter Response). In its response, Ameren explains that it used an after-tax rate for discounting because interest expense is deductible and that the cash flows resulting from this deduction are recognized in the cash flow analysis.

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

12. Notice of MISO's February 27, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 12,159 (2015) with protests and interventions due on or before March 20, 2015.

13. Bishop Hill filed a timely motion to intervene and protest on March 20, 2014. On March 30, 2015, Bishop Hill Energy III LLC filed a motion to intervene out-of-time. On April 6, 2015, Ameren filed a motion for leave to answer and answer to Bishop Hill's protest. On April 8, 2015 Bishop Hills filed an answer to Ameren's answer. On April 13, 2015, Ameren filed an answer to Bishop Hill's answer.

14. Notice of Ameren's Deficiency Letter Response was published in the *Federal Register*, 80 Fed. Reg. 28,995 (2015) with interventions and protests due on or before June 2, 2015. None was filed.

---

<sup>13</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,111 (2013), *order on reh'g*, 149 FERC ¶ 61,099 (2014) (*Hoopeston*).

<sup>14</sup> Transmittal at 37 (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84 (1993); 18 C.F.R. § 35.3(a)(2)).

#### IV. Protest

15. In its protest, Bishop Hill did not, after all, explicitly take issue with Ameren's election of Option 1 but raised other concerns. Bishop Hill objects to Ameren's apparent use of a 12.38 percent base return on equity (ROE) in calculating the monthly Network Upgrade Charge under the proposed FSA. Bishop Hill observes that this base ROE has been challenged in the ABATE Proceeding, which has been set for hearing and settlement judge procedures with a refund effective date of November 12, 2013.<sup>15</sup> Accordingly, Bishop Hill requests that the Commission accept and suspend the FSA, and the monthly Network Upgrade Charge therein, subject to refund and to the outcome of the ABATE Proceeding.<sup>16</sup>

16. Bishop Hill also contends that it is owed a net overpayment of approximately \$400,000 for the interconnection facilities that are the subject of, and the basis for, the FSA. Bishop Hill states that, pursuant to its obligations under the May 2011 GIA, Bishop Hill provided \$2,518,000 to MISO and Ameren to fund the interconnection facilities and network upgrades that are the subject of the FSA. According to Bishop Hill, Ameren expended only \$2,128,200 in actual costs to construct the interconnection facilities and upgrades but never returned the overpayment. Bishop Hill argues that Ameren is therefore in violation of Article 12.2 of the May 2011 GIA,<sup>17</sup> the MISO Tariff, and the FPA. Accordingly, Bishop Hill requests that the Commission direct Ameren to refund the net overcharge of \$389,820, plus interest, and take whatever other remedial action it deems appropriate for violation of the January 2010 GIA, the MISO Tariff, and the FPA.

---

<sup>15</sup> *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049.

<sup>16</sup> Bishop Hill Protest at 5 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004, at P 2 (2015) (RTO Adder Order); *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,287, at P 9 (2014) (MMU Order); *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,282, at P 60 (2014) (RPU Order)).

<sup>17</sup> Article 12.2 of the January 2010 GIA provides as follows: "Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. § 35.19(a)(2)(iii)), to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice."

**V. Answers**

17. Ameren argues that Bishop Hill mischaracterizes case law cited in support of Bishop Hill's position that the FSA be suspended subject to the outcome of the base ROE in the ABATE Proceeding. With respect to the RTO Adder Order, Ameren asserts that the fact that the Commission accepted the MISO Transmission Owners' request to defer collection of the RTO Adder pending the outcome of the ABATE Proceeding does not support suspension of the Bishop Hill FSA. Ameren also states that the RTO Adder Order imposed a nominal suspension, which, Ameren argues, is hardly the same outcome as suspending the FSA pending the outcome of the ABATE Proceeding. Ameren also argues that the MMU and RPU Orders are distinguishable because the Commission granted the requested effective dates of those filings rather than suspending them pending the outcome of the ABATE Proceeding. Ameren states that it does not oppose the Bishop Hill FSA being accepted subject to refund pending the outcome of the ABATE Proceeding, but it does oppose suspending the FSA subject to the outcome of that proceeding.

18. With respect to the alleged over collection of charges for Bishop Hill's interconnection facilities, Ameren claims that it attempted to refund these amounts in August 2013 but states that Bishop Hill did not respond to Ameren until eight months later. Thus, Ameren argues, Bishop Hill has not been prejudiced by a delay for which it shares responsibility and the Commission should not take further remedial actions. Nonetheless, Ameren states that, in the spirit of resolving any outstanding issues, it is now again seeking to refund to Bishop Hill the amount in excess of the actual costs for the interconnection facilities and network upgrades, consistent with the January 2010 GIA.

19. In its answer, Bishop Hill states that Ameren's commitments in its answer address Bishop Hill's concerns regarding the FSA set forth in its protest. First, Bishop Hill states that it accepts Ameren's agreement that the FSA will be subject to refund based on the outcome of the ABATE Proceeding. Second, Bishop Hill states that it accepts Ameren's commitment to refund the amounts that Ameren has collected in excess of the costs of the interconnection facilities and network upgrades.

20. In its response to Bishop Hill's answer, Ameren asserts that the outstanding issues concerning the FSA have been resolved by the pleadings and renews its request for acceptance of the FSA without suspension or hearing.

## VI. Discussion

### A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely motion to intervene serves to make Bishop Hill a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Bishop Hill Energy III LLC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

22. 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 accept the answers filed by Ameren and Bishop Hill because they provide information that assisted the Commission in its decision-making process.

### B. Substantive Matters

23. As the effective date of the January 2010 GIA is prior to March 22, 2011 Commission precedent does allow Ameren to elect Option 1.<sup>18</sup> We will accept and suspend the FSA for a nominal period, to become effective January 28, 2015, subject to refund, and subject to the outcome of the complaint proceedings pending before the Commission in Docket Nos. EL14-12-000 and EL15-45-000.

24. In its answer, Ameren does not dispute that it collected an overpayment from Bishop Hill for which it has a refund obligation under the GIA. Nonetheless, Ameren has not provided any evidence that it sent the overpayment to Bishop Hill's attention within 30 days of the final construction invoice, as required under Article 12.2 of the GIA, and as specifically requested in Bishop Hill's April 18, 2014 letter.<sup>19</sup> Therefore, we direct Ameren to refund the overpayment within 15 days of the date of this order. In accordance with Article 12.2 of the GIA, the overpayment must also include interest calculated in accordance with 18 C.F.R. § 35.19(a)(2)(iii) from the time Ameren received the funds until the date the funds are returned to Bishop Hill.

---

<sup>18</sup> *E.ON* Rehearing Order, 142 FERC ¶ 61,048 at P 34.

<sup>19</sup> Ameren Filing, Attachment D at 1 ("Please send a check in the total amount [of the overpayment, including interest] to my attention at 666 Grand Avenue, Suite 500, Des Moines IA, 50309.").

25. Finally, we grant Ameren's request for waiver of the Commission's 60-day notice requirement in order to permit an effective date of January 28, 2015. Waiver is appropriate when a service agreement under an existing tariff is filed within 30 days of the commencement of service.<sup>20</sup> Because Ameren filed the FSA within 30 days of the requested effective date, we will grant waiver of the Commission's 60-day notice requirement.

The Commission orders:

(A) Ameren's filing is hereby accepted and suspended for a nominal period to become effective January 28, 2015, subject to refund, and subject to the outcome of the complaint proceedings pending before the Commission in Docket Nos. EL14-12-000 and EL15-45-000, as discussed in the body of this order.

(B) Ameren is directed to refund to Bishop Hill the amounts that it collected in excess of the actual costs for interconnection facilities and network upgrades, including interest, within 15 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>20</sup> See *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993).