

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER05-215-000

ORDER REJECTING UNEXECUTED INTERCONNECTION AGREEMENT

(Issued January 14, 2005)

1. On November 15, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) on behalf of Illinois Power Company (Illinois Power) filed an unexecuted interconnection and operation agreement (IA) between Prairie State Generating Company (Prairie State) and Illinois Power. This order rejects the IA for failing to follow Midwest ISO's standard form interconnection agreement. As we find below, Midwest ISO may re-file a revised IA that is consistent with the Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIP) contained in its Open Access Transmission Tariff (OATT). This order benefits customers because it assures that the terms and conditions for interconnection service are just and reasonable.

Background

2. Prairie State's attempt to interconnect with Illinois Power began on March 28, 2002, when Illinois Power filed an unexecuted IA to interconnect Prairie State's 1,500 megawatt (MW) coal-fired, base-load generating facility (Facility) to Illinois Power's transmission and distribution system under the terms and conditions of Illinois Power's OATT. The Commission accepted the proposed IA for filing and set the disputed provisions for hearing, but held the hearing in abeyance pending settlement discussions.¹ This led to a settlement of all disputed issues as of that date, and the filing of the first revised IA, which the Commission accepted on October 31, 2002.²

¹ *Illinois Power Co.*, 99 FERC ¶ 61,164 (2002).

² *Illinois Power Co.*, 101 FERC ¶ 61,117 (2002).

3. To address changes to the configuration of the interconnection and required facility upgrades, the parties entered new negotiations to revise the appendices and other provisions in the IA. The parties resolved all pending issues in a second revised IA except section 9.6, regarding credits for network upgrades, and sections 4.2 and 4.3 of Appendix A, regarding certain generator facilities' obligations. Resolution of the pending issues was impeded by both Trans-Elect's proposed purchase of Illinois Power's transmission facilities and Ameren's proposed acquisition of Illinois Power. Because of the failure to resolve the pending issues, the consummation of Ameren's acquisition of Illinois Power,³ and Illinois Power's October 1, 2004 integration into the Midwest ISO, Prairie State on September 22, 2004, requested Illinois Power to file the second revised IA in unexecuted form. Illinois Power did not file the unexecuted IA. However, once functional control over Illinois Power's transmission facilities was transferred to the Midwest ISO, Prairie State requested that the Midwest ISO file the unexecuted IA.

Notice of Filing and Responsive Pleadings

4. Notice of Midwest ISO's filing was published in the *Federal Register*, 69 Fed. Reg. 70,138 (2004), with comments, protests or interventions due on or before December 6, 2004. Ameren/IP filed a motion to intervene and comments and Prairie State filed a motion to intervene and protest. On December 8, 2004, Dynegy Midwest Generation, Inc. (Dynegy) filed a motion to intervene out of time and comments. On December 21, Ameren/IP filed an answer to Prairie State's protest.

Pending Issues

Transmission Crediting (IA section 9.6)

5. Section 9.6 obligates Illinois Power to refund network upgrade costs by providing transmission credits to Prairie State to offset the costs of transmission service. It also limits the amount of credits and payments to Prairie State each month to the amount that Illinois Power, in the absence of transmission credits, would be entitled to receive from Midwest ISO for transmission service purchased under the Midwest ISO OATT for transmission service from the point of interconnection.⁴ Thus, to the extent that Illinois Power does not receive revenues from the transmission transaction under the Midwest

³ To reflect Ameren's ownership of Illinois Power, Ameren shall be referred to as Ameren/IP.

⁴ If Illinois Power provides transmission service under its own tariff, section 9.6 limits the amount of credits and payments to the amount received by Illinois Power for transmission service from the point of interconnection. But this condition is not contested in this proceeding.

ISO OATT (*i.e.*, the Prairie State facility is designated as a network resource for load in another zone), Ameren/IP will not provide transmission credits to Prairie State. Midwest ISO explains that the period over which transmission credits would be provided was left subject to the outcome of a final order in the Commission's generator interconnection rulemaking.

6. Prairie State protests Illinois Power's proposal in section 9.6 to restrict the payable transmission credits each month to the dollar amount that Illinois Power receives in that month from the Midwest ISO for transmission service from Prairie State's Facility. These conditions, Prairie State continues, may require Prairie State to pay the Midwest ISO an amount for transmission service that exceeds the amount that the Midwest ISO may pay Illinois Power in a particular month. As a consequence, Prairie State would receive less than full crediting of its prior payments for upgrades on Illinois Power's transmission system. Prairie State explains that the Commission intended its transmission crediting mechanism as a means to prohibit the transmission provider from charging a transmission rate reflecting both the average cost associated with the use of the system and the incremental costs associated with network upgrades (*i.e.*, prohibited "and" pricing). The restriction in section 9.6 results in *de facto* "and" pricing, Prairie State continues, because it already will have paid Illinois Power in full for a portion of this transmission service through its funding of upgrades. Prairie State concludes that there is no justification for it having to pay twice for transmission service for the output of the Facility. Prairie State further argues that having already fully financed the cost of the upgrades to Illinois Power's system, it is inequitable for Prairie State in a given month not to receive a full dollar for dollar crediting of the amounts paid for transmission service from the Facility.

7. Prairie State further alleges that Illinois Power may be using section 9.6 to exploit a loophole in the Midwest ISO transmission pricing model to deny Prairie State the ability to be repaid for its network upgrade investment. Under the Midwest ISO OATT, transmission service is priced on the basis of load, not injections. So even though the load served from the Prairie State Facility will pay for transmission service under the Midwest ISO Tariff, there may be no resulting direct payments from the Midwest ISO to Illinois Power for such service. In such case, restricting reimbursement under the IA could result in no transmission crediting whatsoever. Prairie State recommends that all amounts paid by Prairie State or the load using its generation for service under the Midwest ISO tariff should receive a full crediting from Illinois Power, irrespective of the amount of any payments made by the Midwest ISO to Illinois Power for this service.

8. On the issue of transmission credits, Ameren/IP notes that the required network upgrades, which will cost over \$67 million, are being constructed solely to interconnect Prairie State. But under Attachment O of the Midwest ISO OATT, Ameren/IP continues, the costs of the facilities are reflected in Ameren/IP's rate base as the credits are paid, regardless of whether Ameren/IP receives an offsetting amount of transmission revenues.

Thus, Ameren/IP or its other customers would be subsidizing the costs of the network upgrades built to support the Prairie State project, in contravention of basic cost causation principles. Ameren/IP notes that that under the terms of the first revised IA, which followed the previous settlement, Illinois Power was obligated to pay credits only to the extent it receives transmission revenues associated with the delivery of power from the facility.

9. Ameren/IP also argues that Midwest ISO, in its January 20, 2004 filing submitted in compliance with Order No. 2003,⁵ admitted that the Commission's default crediting policies, which require a transmission owner to provide transmission credits to a generator even if the transmission owner does not receive any revenues from the underlying transmission transaction, can result in inequities when applied in the regional transmission organization context. The Midwest ISO specifically recognized that these inequities could arise in instances when an interconnection customer sells its power off-system, and could result in the unfair subsidization of the generator's operations by other customers. The Commission conditionally accepted the Midwest ISO's Order No. 2003 compliance filing, noting the Midwest ISO's recognition of the inequities in the Commission's default crediting provisions, along with the Midwest ISO's plans to file revised crediting provisions in the future.⁶ Ameren/IP argues that because the Prairie State facility is not scheduled to commence operations until 2009, it is neither just nor reasonable to require Ameren/IP to pay transmission credits under an interim policy that the relevant transmission provider admits may be flawed and intends to replace. Furthermore, because the Midwest ISO is an independent entity, Ameren/IP argues, its crediting policy should be permitted to deviate from the Commission's default policy. Finally, if the Commission rejects or requires modification to proposed section 9.6.1, Ameren/IP asks the Commission to clarify that any such action will be without prejudice to Ameren/IP's ability to file proposed changes to this provision or any other provision of the IA.

10. The Midwest ISO commits to meeting with the parties to resolve the controversy over the amount to be repaid to Prairie State and reserves the right to later supplement or amend its filing to reflect the parties' resolution of this issue.

⁵ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, 109 FERC ¶ 61,287 (2004) (Order No. 2003-B); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

⁶ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027 at P 29, 38 (2004).

11. On December 21, Ameren/IP submitted an answer to Prairie State's protest. In its answer, Ameren/IP disagrees with Prairie State's argument that the IA's cost allocation provisions constitute "and" pricing. Rather, section 9.6 ensures that Prairie State will receive credits for the full amount of its network upgrade costs, and the only issue is the time period over which Prairie State receives the credits. Ameren/IP further notes that Order No. 2003-A does not entitle a generator to payment of credits for the entire amount it has paid for network upgrades within a fixed period of time if it has not taken sufficient transmission service from its facilities to provide sufficient revenues to the Transmission Provider.⁷ Ameren/IP concludes that the same principle should apply here.

Generator Facilities' Obligations (IA Appendix A, sections 4.2 and 4.3)

12. Section 4.2 of Appendix A to the IA provides that certain upgrades and equipment must be installed at the Baldwin generating station (Baldwin), which is owned by Dynegy, a competitor of Prairie State. Specifically, this section requires installation of generator power system stabilizers or other improvements on three units at Baldwin sufficient to maintain system stability consistent with Good Utility Practice. Failure to meet this condition may result in breach of the IA. If after using "reasonable efforts," Prairie State fails to meet this condition, it may avoid breach by operating at a reduced output established by a future study of the interconnection enhancements.

13. Prairie State argues that it is unjust and unreasonable to grant Dynegy what amounts to a unilateral veto over Prairie State's future operation. And without privity of contract with Dynegy, Prairie State has no independent ability to compel Dynegy to install the described facilities. Furthermore, Prairie State explains, Dynegy and Illinois Power are parties to an interconnection agreement that already requires Dynegy to make upgrades and install facilities needed for transmission system protection relating to operating Baldwin. At a minimum, Prairie State asserts, there is no basis to require it to exert any efforts (reasonable or otherwise) to encourage Dynegy to perform its contractual obligations to Illinois Power. Prairie State requests that these provisions be rejected.

14. In its comments, Ameren/IP argues that the interconnection agreement cited by Prairie State does not give Ameren/IP the authority to compel Dynegy to take steps to accommodate the interconnection of the Prairie State facility. To the extent that any upgrades to the Baldwin facility are required, Ameren/IP continues, the party responsible for dealing with Dynegy should be Midwest ISO, in its role as regional transmission operator, or Prairie State, the party on whose behalf the upgrades are needed. Ameren/IP avers that it will cooperate in any efforts to coordinate with Dynegy, as required by the unexecuted IA. See Appendix A, section 4.4.

⁷ Citing Order No. 2003-A at P 617.

15. Dynegy clarifies that while it disagrees with the argument that its Baldwin interconnection agreement with Illinois Power requires the installation of upgrades to protect the system, it is of no consequence since the agreement has been superseded and is no longer applicable. The provisions of the revised IA between Illinois Power and Dynegy do not require Dynegy to make modifications to its facilities to maintain the reliability of the Midwest ISO transmission system in general, or as a result of the interconnection of the Prairie State facility in particular.

16. Midwest ISO acknowledges that the provision of interconnection service to the Prairie State Facility necessitates improvements to affected systems, including the electric system associated with Baldwin. In addition, Midwest ISO continues, studies are underway to assess the impacts on the transmission systems of Southern Illinois Power Cooperative and Union Electric Company d/b/a AmerenUE.⁸ These impacts were not previously evaluated and must be addressed before interconnection service can commence. The Midwest ISO commits to meeting with the parties to address any necessary improvements to the electric systems of affected systems, and reserves the right to later supplement or amend its filing to reflect the parties' resolution of this issue.

Request for Waiver of Attachment X

17. The Midwest ISO requests waiver of Attachment X to file the unexecuted IA between Prairie State and Illinois Power. Attachment X contains Midwest ISO's Commission-approved standard interconnection procedures and agreement, and waiver would allow the filing of the instant IA without requiring that it conform to the standard agreement in Attachment X. In the transition to the Midwest ISO's assumption of functional control over Illinois Power's transmission facilities, the Midwest ISO explains, waiver is appropriate in consideration of the parties' positions on the pending issues, the previous litigation by the parties of Prairie State interconnection-related matters before the Commission, the agreement reached by the parties on all other issues in the Interconnection Agreement prior to the date of Illinois Power's integration into the Midwest ISO, and the timing of the Midwest ISO's responsibility as Transmission Provider over Illinois Power's transmission facilities.

18. Midwest ISO further states that the circumstances as described do not allow the Midwest ISO to reasonably conform the IA to the standard and may disrupt the bargain previously struck by the parties. The IA is a two-party agreement between Prairie State and Illinois Power. While Midwest ISO concludes that the parties' circumstances support the filing of the IA as is, it nevertheless commits to supplementing and amending the instant filing to revise the IA to make the Midwest ISO a third signatory.

⁸ AmerenUE is an Ameren Corporation operating company.

19. Ameren/IP does not object to this approach, as long as it can continue to assert that section 9.6.1 and Appendix A, section 2.4 of the unexecuted IA are correct as filed, and that these provisions should remain in any IA between Ameren/IP, Prairie State and the Midwest ISO.

Discussion

20. Pursuant to Rules 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely unopposed motion to intervene and comment by Ameren/IP serves to make it a party to this proceeding. We will also grant the unopposed motion to intervene out of time by Dynegy given its interest in this proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Ameren/IP's answer because it has provided information that assisted us in our decision-making process.

21. In the instant filing Midwest ISO requests waiver of Attachment X to its OATT, which was submitted in compliance with Order No. 2003, and which the Commission accepted and made effective July 8, 2004.⁹ Midwest ISO claims that the circumstances leading up to the instant filing support the Commission's waiver of Attachment X to its OATT. We disagree. As an IA that allocates the responsibilities for constructing and operating a new interconnection, the agreement is subject to Order No. 2003. In this regard, an important factor is the fact that the IA was filed with the Commission after Order No. 2003 became effective.¹⁰ In fact, the proposal was filed as an unexecuted second revised IA on November 15, 2004, more than ten months after Order No. 2003 became effective for Ameren/IP and more than four months after the Midwest ISO's Attachment X became effective. Therefore, we will reject the proposed IA because it is not consistent with the LGIA in Midwest ISO's OATT that was in effect when the proposed IA was filed, but we do so without prejudice to Midwest ISO filing a revised IA that is consistent with Attachment X of its OATT. We note that upon refile of the IA, the parties will be subject to the Commission-approved crediting provisions in Attachment X. As a result, there is no need to further address the transmission crediting issue raised by Prairie State.

⁹ See, Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,027, *order on reh'g*, 109 FERC ¶ 61,085 (2004) .

¹⁰ See Order No. 2003 at P 911 (extending grandfathering protection to interconnection agreements submitted before the effective date of Order No. 2003).

22. With regard to the generator facilities obligations, Midwest ISO admits that further studies are required to assess the impacts on its system before interconnection service can commence. Moreover, Midwest ISO commits to working with the parties to address any necessary improvements to the electric systems of affected systems. The rejection of the instant filing allows Midwest ISO additional time to resolve this issue before re-filing the IA.

The Commission orders:

Midwest ISO's IA is hereby rejected, without prejudice, as discussed in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.