

128 FERC ¶ 61,170  
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. ER08-209-005

ORDER DENYING CLARIFICATION AND REHEARING

(Issued August 19, 2009)

1. Illinois Municipal Electric Agency (Illinois Municipal) has requested clarification or, in the alternative, rehearing<sup>1</sup> of the Commission's May 1, 2009 order<sup>2</sup> that accepted a compliance filing submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).<sup>3</sup> The compliance filing incorporates non-conforming changes required by the Commission to a generator interconnection agreement (New Interconnection Agreement) that governs the interconnection of Prairie State Generating Company, LLC (Prairie State)'s 1650 MW generating facility (Facility) to the transmission lines owned by the Illinois Power Company (Illinois Power) and operated by Midwest ISO.<sup>4</sup> For the reasons discussed below, we will deny these requests.

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<sup>1</sup> Illinois Municipal June 1, 2009 Request for Clarification or, in the Alternative, Rehearing (Clarification/Rehearing Request).

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,110 (2009) (May 2009 Compliance Order).

<sup>3</sup> Midwest ISO, Docket No. ER08-209-004, December 22, 2008 Compliance Filing of Large Generator Interconnection Agreement (Compliance Interconnection Agreement).

<sup>4</sup> Midwest ISO filed the New Interconnection Agreement, unexecuted, on November 13, 2007, in Docket No. ER08-209-000. The Commission accepted it and made it effective as of January 12, 2008. *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,019 (2008) (Initial Order). The Commission granted rehearing in

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## **Background**<sup>5</sup>

2. Prairie State is organized as a partnership owned by municipal and cooperative electric power agencies.<sup>6</sup> Illinois Municipal became a 15.17 percent co-owner of the Facility in 2007, during its construction, when Prairie State and Illinois Power were disputing whether Illinois Power would reimburse owners of the Facility 50 percent or 100 percent of network upgrade costs required to interconnect the Facility.<sup>7</sup> The dispute arose because Prairie State had requested to increase the Facility's output from the originally planned 1500 MW to 1650 MW, which necessitated a new interconnection agreement. The interconnection agreement for the originally planned 1500 MW Facility (Existing Interconnection Agreement),<sup>8</sup> provided for 100 percent reimbursement of network upgrade costs. Since then, Midwest ISO amended its Tariff<sup>9</sup> to lower the reimbursement to 50 percent.<sup>10</sup> The parties disagreed over whether 100 percent, as

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part of the Initial Order, *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008) (First Rehearing Order), and denied rehearing of the First Rehearing Order, 127 FERC ¶ 61,109 (2009) (Second Rehearing Order). These orders established the terms and conditions for reimbursement to Prairie State of its expenditures on network upgrades needed to accommodate the Facility's generation output.

<sup>5</sup> The events leading up to Midwest ISO's compliance filing are described more fully in the orders on rehearing in these proceedings.

<sup>6</sup> Currently, these equity owners are, in addition to Illinois Municipal: American Municipal Power-Ohio; Indiana Municipal Power Agency; Kentucky Municipal Power Agency; Missouri Joint Electric Utility Commission; Northern Illinois Municipal Power Agency; Prairie Power, Inc.; Southern Illinois Power Cooperative; and Peabody Energy.

<sup>7</sup> See Clarification/Rehearing Request at 10.

<sup>8</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) (Existing Interconnection Order). The Existing Interconnection Agreement has an effective date of November 16, 2004.

<sup>9</sup> Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

<sup>10</sup> See *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) (adopting the cost-sharing provisions of the Midwest ISO Regional Expansion Criteria

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provided in the Facility's Existing Interconnection Agreement, or 50 percent reimbursement, as currently provided in the Tariff, should apply to all the network upgrades needed to accommodate 1650 MW output. Because the parties could not resolve the dispute, Midwest ISO filed, unexecuted, the New Interconnection Agreement, providing that all network upgrade costs would be reimbursed at 50 percent.

3. The Commission determined that network upgrade costs associated with the originally planned 1500 MW output would be reimbursed at 100 percent, as provided in the Existing Interconnection Agreement, while network upgrade costs associated with the additional 150 MW output would be reimbursed at 50 percent, as provided in the New Interconnection Agreement. The Commission directed Midwest ISO to file a non-conforming interconnection agreement that applies the 100 percent crediting provision from the Existing Interconnection Agreement to the original network upgrade costs associated with interconnecting the Facility at the 1500 MW level.<sup>11</sup>

4. Midwest ISO complied and filed the Compliance Interconnection Agreement. The agreement provides, at section 11.4a, for 100 percent reimbursement of the original network upgrade costs and adopts the reimbursement terms and conditions of the Existing Interconnection Agreement, while section 11.4b provides for the additional network upgrades to be reimbursed at 50 percent and maintains the reimbursement terms and conditions of the New Interconnection Agreement.

5. Illinois Municipal protested section 11.4a of the Compliance Interconnection Agreement, arguing that while the section correctly reimburses the Facility's co-owners for 100 percent of the network upgrade costs associated with the original 1500 MW output, Midwest ISO should do so using the terms and conditions in section 11.4b of the New Interconnection Agreement, applicable to the 50 percent reimbursement of network upgrade costs. Illinois Municipal noted that in addition to changing the percentage reimbursement for the original 1500 MW from 50 percent to 100 percent, Midwest ISO also included, in section 11.4a of the Compliance Interconnection Agreement, the terms and conditions for 100 percent reimbursement of the Existing Interconnection Agreement. Illinois Municipal argued that for network upgrade costs associated with the original 1500 MW, the Commission had ordered Midwest ISO to change only the percentage reimbursement, from 50 percent to 100 percent. Therefore, Illinois Municipal argued, the Commission should reject any changes that Midwest ISO made to the terms and conditions applicable to the 100 percent reimbursement.

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and Benefits Task Force and making them effective for interconnection agreements filed after February 5, 2006).

<sup>11</sup> First Rehearing Order, 125 FERC ¶ 61,210 at P 26.

6. In particular, the first paragraph of both sections 11.4a.1 and 11.4b.1 states that the interconnection customer is entitled to a cash repayment for the relevant portion of the network upgrade costs it funded and receives the repayment on a dollar-for-dollar basis as payments are made under the Tariff for transmission services with respect to the Facility. The second paragraph of both sections states that if the Facility is designated as a Network Resource under the Tariff,<sup>12</sup> repayment to the interconnection customer for the relevant network upgrade costs is established by multiplying the applicable Tariff rate for firm point-to-point transmission service by the portion of the demonstrated output of the Facility designated as a Network Resource. Illinois Municipal noted, however, that the second paragraph in section 11.4a.1 omits language stating how repayments will be calculated if the Facility is not designated as a Network Resource and there are otherwise no incremental payments for transmission service with respect to the Facility,<sup>13</sup> while the second paragraph of section 11.4b.1 includes language addressing this scenario.<sup>14</sup> The

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<sup>12</sup> Midwest ISO's Tariff defines Network Resources, at section 1.452, as "Any Designated Generation Resource, External Resource or portion thereof, that is owned or leased 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 Module B in this Tariff. Network Resources do not include any Resource, or any portion thereof, that is 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, except for purposes of fulfilling obligations under a reserve sharing program.

<sup>13</sup> The second paragraph of section 11.4a.1 of the Compliance Interconnection Agreement (governing 100 percent reimbursement) states:

If the Generating Facility is designated a Network Resource under the Tariff, and in the absence of another mutually agreeable payment schedule, repayments shall be established equal to the applicable Tariff rate for firm point-to-point Transmission service multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) studied pursuant to Section 3.2.2.2 of the [Large Generator Interconnection Procedures].

<sup>14</sup> The second paragraph of section 11.4b.1 of the Compliance Interconnection Agreement (governing 50 percent reimbursement) states:

If the Generating Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of

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third paragraph of both section 11.4a.1 and section 11.4b.1 provides that, notwithstanding the foregoing, the parties may mutually agree to an alternative repayment schedule, but in any case full reimbursement must occur within twenty years from the Facility's Commercial Operation Date.<sup>15</sup>

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the Generating Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point-To-Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system-wide rate defined under Schedule 7 multiplied by the portion of the demonstrated output of the Generating Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the LGIP.

<sup>15</sup> With regard to transmission credits for the original 1,500 MW request, section 11.4.a.1 of the Compliance Interconnection Agreement (governing 100 percent reimbursement) states:

Notwithstanding the foregoing, as applicable, Interconnection Customer, Transmission Provider, Transmission Owner, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Owner and Affected System Operator take one of the following actions no later than five (5) years from the Commercial Operation Date: (1) return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner or Affected System Operator will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

7. Illinois Municipal anticipates not designating its share of the Facility's output as a Network Resource and to export its share of the output outside the Midwest ISO region. For this reason, it prefers section 11.4b's terms and conditions.<sup>16</sup> It prefers also section 11.4b's omission of the last paragraph in section 11.4a.1, which limits reimbursement for network upgrades should the Facility at commercial operation date have a demonstrated capability of more than five percent below the threshold capacity level that determined the need for network upgrades.

8. The May 2009 Compliance Order accepted the Compliance Interconnection Agreement over Illinois Municipal's objections. The Commission found that applying each reimbursement crediting scheme as a whole, with its own accompanying terms and conditions, fulfills the intent of the Commission's directive in the First Rehearing Order.<sup>17</sup> The Commission found premature Illinois Municipal's concern over how it would be repaid the money due it in connection with construction of network upgrades should it not designate its share of the Facility's output as a Network Resource. The Commission stated that it had no reason to think that Illinois Municipal and Illinois Power would not come to a mutually agreeable payment schedule that is consistent with the Compliance Interconnection Agreement's repayment requirements. Should events prove otherwise, the Commission stated that Illinois Municipal may bring the matter to the Commission's 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 continued to find this provision to

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<sup>16</sup> If Illinois Municipal exports its share of the Facility's output to PJM, Illinois Municipal would not make any incremental payments for transmission service under the Midwest ISO Tariff because transactions with a source in Midwest ISO and a sink in PJM are charged only the rate in the sink (PJM) zone. Illinois Municipal prefers section 11.4b's terms and conditions, which, unlike those in section 11.4a, explicitly addresses this scenario.

<sup>17</sup> May 2009 Compliance Order, 127 FERC ¶ 61,110 at P 18 (citing First Rehearing Order, 125 FERC ¶ 61,210 at P 17, 26 (the Commission reversed its position in the Initial Order that 50-50 cost sharing provisions should apply to all the network upgrades; instead, it directed Midwest ISO to submit a non-conforming interconnection agreement incorporating the 100 percent crediting provision from the Existing Interconnection Agreement and applying it to the network upgrade costs associated with interconnecting the Facility at the 1500 MW level and applying the 50-50 cost sharing provisions only to the upgrades associated with raising the Facility's output by 150 MW)).

be just and reasonable for 100 percent reimbursement of network upgrade costs, just as the Commission had, in 2005, in accepting the Existing Interconnection Agreement.<sup>18</sup>

### **Clarification/Rehearing Request**

9. Illinois Municipal filed a request for clarification or, in the alternative, rehearing of the May 2009 Compliance Order.<sup>19</sup> Illinois Municipal states that it does not expect difficulty in coming to terms on a mutually agreeable payment schedule that reimburses it for the network upgrades it funded. However, to preempt any difficulties in this regard, it asks the Commission to clarify that the Compliance Interconnection Agreement provides the same repayment means to *all* owners who contributed to interconnection costs, irrespective of whether they have designated their share of the Facility's output as a Network Resource.<sup>20</sup>

10. Should the Commission not make this clarification, Illinois Municipal seeks rehearing of the May 2009 Compliance Order and argues that the Commission failed to explain why provisions from the Existing Interconnection Agreement had any relevance to the current situation. Compliance with the directives of the First Rehearing Order, it argues, would have reduced the 100 percent reimbursement to 50 percent reimbursement, and left other reimbursement terms and conditions as stated in the November 13, 2007, unexecuted New Interconnection Agreement.<sup>21</sup> Illinois Municipal states that it contributed to the Facility's interconnection costs and seeks the same treatment as co-owners that designate their share of the Facility's output as a Network Resource. To do otherwise, it argues, is undue discrimination under section 205(b) of the Federal Power Act, 16 U.S.C. § 824d(b) (2006).

11. Illinois Municipal also argues that while it may have been on notice when it became a co-owner of the Facility, in 2007, of the dispute over whether network upgrade

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<sup>18</sup> *Id.* P 19; Existing Interconnection Order, 111 FERC ¶ 61,237 at P 16.

<sup>19</sup> Prairie State submitted a filing styled as an answer supporting Illinois Municipal's position. 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 a request for rehearing unless otherwise ordered by the decisional authority. The filing simply supports Illinois Municipal's position and adds no information. We are not persuaded to accept Prairie State's filing and will therefore reject it.

<sup>20</sup> Clarification/Rehearing Request at 5.

<sup>21</sup> *Id.* at 7-8.

costs would be reimbursed at 50 percent or 100 percent, it had no real expectation that differing terms and conditions would apply depending on which compensation provision the Commission would eventually approve.<sup>22</sup>

### **Discussion**

12. We will deny Illinois Municipal's request for clarification. We continue to find premature Illinois Municipal's concern over its reimbursement of network upgrade construction costs if it does not designate its share of the Facility's output as a Network Resource. Illinois Municipal itself states that its request for clarification is needed only "to preempt any difficulties" and it "does not expect there will be any difficulty in coming to terms on a mutually agreeable repayment schedule."<sup>23</sup> Illinois Municipal has not been aggrieved by any Illinois Power action regarding reimbursement. As the May 2009 Compliance Order states, there is no reason to think that Illinois Municipal and Illinois Power will not come to a mutually agreeable payment schedule that is consistent with the Compliance Interconnection Agreement.<sup>24</sup> Similarly, Illinois Municipal's request for clarification is essentially a premature request for the Commission to make a finding on what reimbursement arrangements are or are not consistent with the Compliance Interconnection Agreement.

13. We will deny also Illinois Municipal's request for rehearing. The First Rehearing Order directed Midwest ISO "to submit in a compliance filing . . . a non-conforming Interconnection Agreement incorporating the 100 percent crediting provision from the Existing Interconnection Agreement and applying it to the network upgrade costs associated with interconnecting Prairie State's proposed Facility at the 1500 MW level."<sup>25</sup> We recognize that it may have been unclear whether, for the network upgrades associated with the original 1500 MW output, the Commission intended to change only the 50 percent share to 100 percent, or whether it intended reversion to the entire provision in the existing interconnection agreement. Nevertheless, we continue to find, as the Commission found in the May 2009 Compliance Order,<sup>26</sup> that the more reasoned interpretation is that application of each reimbursement crediting scheme as a whole

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<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> May 2009 Compliance Order, 127 FERC ¶ 61,110 at P 19.

<sup>25</sup> First Rehearing Order, 125 FERC ¶ 61,210 at P 26.

<sup>26</sup> May 2009 Compliance Order, 127 FERC ¶ 61,110 at P 18.

better fulfills the Commission's intent. Just as increasing generation by 150 MW did not place the original upgrades under the 50 percent reimbursement requirement, the same 150 MW increase did not place the original upgrades under the terms and conditions of 50 percent reimbursement. Illinois Municipal's protests have not convinced us otherwise.

14. Moreover, additional terms and conditions would apply to the 100 percent reimbursement if, as Illinois Municipal requests, we directed Midwest ISO to apply the terms and conditions applicable to 50 percent reimbursement to both 50 percent and 100 percent reimbursement. For example, the 50 percent reimbursement is governed by Attachment FF to the Tariff. This requires that, as a condition of being reimbursed for upgrade costs, an Interconnection Customer must demonstrate at the time of Commercial Operation that the project has been designated a Network Resource, or that it is the subject of a contractual commitment of one year or longer for capacity entered into with a Network Customer. If we required the terms and conditions for 50 percent reimbursement to apply to the 100 percent reimbursement, Illinois Municipal would not be eligible for any reimbursement if it exported its share of the output from the Facility outside Midwest ISO.<sup>27</sup>

15. We disagree with Illinois Municipal's contention that it is unduly discriminatory if co-owners of the Facility who do not designate their share of the output as a Network Resource are reimbursed in a different manner than co-owners who designate their share of the Facility's output as a Network Resource. Illinois Municipal's intention to export its share of the Facility's output outside of the Midwest ISO region, with the result that this share will not be designated as a Network Resource for purposes of section 11.4a.1, is Illinois Municipal's own choice. We see no undue discrimination in placing the 1500 MW output under the terms and conditions of the Existing Interconnection Agreement and the 150 MW additional output under the terms and conditions of the New Interconnection Agreement. All co-owners who choose to export their share of the Facility's output outside of the Midwest ISO region will be treated alike.<sup>28</sup> Furthermore,

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<sup>27</sup> We note that Midwest ISO has recently applied to delete this condition from Attachment FF of its Tariff. Midwest ISO, Tariff amendment filing, Docket No. ER09-1431-000, transmittal letter at 15 (filed July 9, 2009).

<sup>28</sup> We also note that co-owners of the Facility who do not export their share of the Facility's output but deliver it to different zones within Midwest ISO may not receive exactly the same crediting amounts as the other co-owners because the reimbursement amount during a particular time period is based on the rate in zone where the energy is delivered.

as noted above, Illinois Municipal itself states that it does not expect any difficulty in coming to terms on a mutually agreeable payment schedule.

16. We reject Illinois Municipal's argument that it had no real expectation in 2007, when it became a co-owner of the Facility, that differing terms and conditions would be put in place depending on the reimbursement provisions eventually accepted. Illinois Municipal has acknowledged that it knew about the dispute between Prairie State and Illinois Power over the reimbursement level when it chose to become a 17.8 percent co-owner of the Facility. At that time, Illinois Municipal could be sure only of the terms of the then-effective Existing Interconnection Agreement, which included the reimbursement terms and conditions that Illinois Municipal now contests. Illinois Municipal could not predict how this Commission or Prairie State would act. Thus, it could not be sure of the terms and conditions of the unexecuted New Interconnection Agreement until after Commission acceptance of the agreement and conclusion of the proceeding. Moreover, prior to Commission acceptance of the New Interconnection Agreement, Prairie State might have chosen to withdraw its request to increase the size of the Facility. This would have left in place the Existing Interconnection Agreement, with the terms and conditions to which Illinois Municipal now objects.

The Commission orders:

The Clarification/Rehearing Request filed by Illinois Municipal in this proceeding is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.