

134 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. and Ameren Illinois Company	Docket Nos. ER11-2777-000 ER11-2778-000 ER11-2779-000 ER11-2782-000 ER11-2786-000 ER11-2788-000 ER11-2789-000 ER11-2790-000 (Consolidated)
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ORDER ACCEPTING AND SUSPENDING UNEXECUTED SERVICE
AGREEMENTS, ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued March 29, 2011)

1. In this order, the Commission accepts for filing eight unexecuted Wholesale Distribution Service Agreements (WDS Agreements) between Ameren Illinois Company (Ameren Illinois) and eight different wholesale distribution service customers, suspends them for a nominal period, to become effective March 30, 2011, subject to refund, and establishes hearing and settlement judge procedures. The order also consolidates the proceedings for purposes of hearing, settlement, and decision.

I. Background

2. On January 28, 2011, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Ameren Services Company, on behalf of Ameren Illinois, filed with the Commission eight unexecuted WDS Agreements under Midwest ISO's Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Midwest ISO Tariff).¹

¹ FERC Electric Tariff, Fifth Revised Volume No. 1.

The agreements are between Ameren Illinois and the following customers: Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), Illinois Municipal Electric Agency (IMEA), Mt. Carmel Public Utility Company (Mt. Carmel), Norris Electric Cooperative (Norris), Prairie Power Incorporated (Prairie), Southern Illinois Power Cooperative (SIPC), Southwestern Electric Cooperative (Southwestern), and Wabash Valley Power Association (Wabash) (collectively, Customers). Ameren Illinois has filed these agreements to establish the rates, terms, and conditions for Ameren Illinois' provision of service to Customers on Ameren Illinois' distribution network. The revised agreements would supersede existing wholesale distribution service agreements between Ameren Illinois and Customers.

3. The wholesale distribution service agreements currently in place were entered into between Customers and the three recently merged Ameren Illinois "legacy" companies: Central Illinois Light Company (CILCO), Central Illinois Public Service Company (CIPS), and Illinois Power Company (IP). The current agreements feature wholesale distribution service rates that were most recently updated by CILCO, CIPS, and IP using test-year cost data from 1997, 1998, and 2002, respectively. Ameren Illinois states that it is making the instant filing to consolidate its wholesale distribution rates and agreements and to update its costs for wholesale distribution service.

4. Ameren Illinois developed its proposed WDS charge utilizing a direct assignment approach, specifically based on a typical circuit miles design approach, which Ameren Illinois states the Commission has previously accepted.² As explained in each of the Ameren Illinois transmittal letters, Ameren Illinois does not (nor did the legacy companies) maintain accounting information on distribution facilities on a segment by segment basis. Therefore, Ameren Illinois states that it performed a detailed cost of service study of portions of Ameren Illinois' distribution system, including substations and overhead lines needed to serve each of Customers' loads, based on costs for a "typical mile" of facilities. Ameren Illinois then directly assigned costs of those facilities dedicated entirely for a Customer to that Customer, with the remaining shared facilities allocated based on the load ratio share.

5. Ameren Illinois then multiplied the distribution plant costs assigned to each Customer by a carrying charge. Ameren Illinois bases its 19.54 percent carrying charge on the weighted cost of capital, plus income taxes, other taxes, operation and maintenance expense, administrative and general expense, depreciation expense, and

² *Commonwealth Edison Company*, Docket No. ER08-868-000 (June 17, 2008) (delegated letter order).

amortization expense.³ Ameren Illinois states that the carrying charge percentage was calculated using similar cost components as are included in the transmission rate formula in Attachment O of the Midwest ISO Tariff. Ameren Illinois also states that it developed the percentage associated with each expense category by dividing the actual expense by the gross distribution plant. Ameren Illinois includes an 11.38 percent return on equity (ROE) in this calculation, which Ameren Illinois notes is 100 basis points lower than the 12.38 percent ROE that Ameren Illinois claims it is entitled to use as the ROE approved for all transmission-owning members of Midwest ISO. Ameren Illinois' wholesale distribution service charges are based on 2009 test year data, adjusted to account for increased State of Illinois corporate income taxes.⁴

6. Ameren Illinois then calculates the rates in each of the WDS Agreements by dividing the revenue requirement by the weather-normalized 2009 billing determinants to derive a dollar per kilowatt monthly rate. Ameren Illinois states that the billing demand for each customer reflects the sum of the highest demands of each billing month. The proposed WDS Agreements also include a fixed monthly metering charge to recover the costs of meters and their expenses. To develop this charge, Ameren Illinois multiplies the costs of each Customer's meters and associated equipment by the carrying charge.

7. Ameren Illinois requests waiver of the Commission's 60-day notice requirement to permit a February 1, 2011, effective date for each of the WDS Agreements. Ameren Illinois states that a February 1, 2011, effective date is appropriate for the WDS Agreements since they are service agreements under Schedule 11 of the Midwest ISO Tariff and were filed within 30 days of commencement of service.⁵ Ameren Illinois also requests waiver of the Commission's regulations at 18 C.F.R. § 35.13 (2010) to the extent necessary.

II. Notice of Filing and Responsive Pleadings

8. Notices of the filings were published in the *Federal Register*, 76 Fed. Reg. 6608-6609 (2011), with interventions or protests due on or before February 18, 2011. On

³ Ameren Illinois states that this methodology was accepted by the Commission in *Northeast Utilities Service Company*, Docket No. ER08-349-000, (January 22, 2008) (delegated letter order).

⁴ Ameren Illinois Witness Althoff at 13-14.

⁵ Schedule 11 of Midwest ISO Tariff provides for wholesale distribution service which details customer-specific rates and charges as set forth in service agreements between the Transmission Provider and Transmission Customer.

February 18, 2011, Customers filed timely motions to intervene, motions to consolidate the dockets, and protests. On March 7, 2011, Ameren Illinois filed an answer to the protests. Subsequently, Customers filed answers to Ameren Illinois' answer. On March 23, 2011, Ameren Illinois filed an answer to the answers filed by Customers. On March 24, 2011, Hoosier, IMEA, Mt. Carmel, Norris, Prairie, SIPC and Wabash filed a joint objection to Ameren Illinois' March 23 answer.

A. Procedural Issues

1. Protests

9. Several Customers request that the Commission reject Ameren Illinois' filings. Hoosier, IMEA, Prairie, Southwestern, and Wabash argue that, since the proposed agreements are new agreements that supersede and terminate the existing wholesale distribution service agreements, Ameren Illinois is required to provide twelve months advanced written notice per the terms of the previous agreements.⁶ They contend that because Ameren Illinois did not provide twelve months advance written notice, the Commission should reject the proposed WDS Agreements.⁷ Several Customers also argue that the filings should be rejected because Ameren Illinois failed to follow the requirements of 18 C.F.R. §§ 35.12 and 35.13.⁸

10. Customers request that, if the Commission does not reject them outright, the filings be consolidated, set for hearing and granted a full five-month suspension.⁹ Customers argue that a full five-month suspension is warranted under *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*). Customers explain that, based on their analysis and on the analysis described in the testimony of Mr. Reising,

⁶ Hoosier Protest at 14-15; IMEA Protest at 9-10; Prairie Protest at 9; Southwestern Protest at 9-10; and Wabash Protest at 41-42.

⁷ *Id.*

⁸ IMEA Protest at 10; Norris Protest at 2; Prairie Protest at 16; SIPC Protest at 2; Wabash Protest at 15-17.

⁹ Hoosier Protest at 15 and 17; IMEA February 18, 2011, Motion to Consolidate, IMEA Protest at 1-2; Mt. Carmel Protest at 4; Norris Protest at 2 and 19; Prairie Protest at 6; SIPC Protest at 2 and 21; Southwestern Protest at 1; and Wabash Protest at 44.

more than 10 percent of Ameren Illinois' proposed rate increase is demonstrably excessive.¹⁰

11. Customers object to Ameren Illinois' request for waiver of the 60-day notice requirement on the basis that the WDS Agreements are not service agreements under an umbrella tariff.¹¹

12. Customers also object to Ameren Illinois' request for waiver of 18 C.F.R. § 35.13 filing requirements. Prairie and Southwestern argue that Ameren Illinois' proposed rates are not entirely formula rates, which might merit waiver of the section 35.13 filing requirements.¹² Further, Wabash adds that, because of the substantial proposed increase in rates and because the proposed WDS Agreements would supersede those previously approved by the Commission, Ameren Illinois is not eligible to make an abbreviated filing under Commission regulations.¹³

B. Methodology and Data Used to Calculate Rates

1. Protests

13. IMEA, Mt. Carmel, Prairie, SIPC, and Wabash argue that Ameren Illinois' methodology is unsupported by Commission precedent.¹⁴ Customers also argue that the methodology and calculations lack factual support. For example, IMEA, SIPC, and Wabash argue that Ameren Illinois provided incomplete data, and that the testimony provided by Ameren Illinois leaves many elements of the facility allocation process unexplained.¹⁵ Customers also argue that Ameren Illinois' filings lack support for:

¹⁰ Hoosier Protest at 15-16, Reising Aff. at 3; IMEA Protest at 28-29, Reising Aff. at 3; Mt. Carmel Protest at 9, Reising Aff. at 3; Norris Protest at 6, Reising Aff. at 3; Prairie Protest at 22-26, Reising Aff. at 3; SIPC Protest at 5-6, Reising Aff. at 3; Southwestern Protest at 53; and Wabash Protest at 9-12, Reising Aff. at 3.

¹¹ Hoosier Protest at 13-14; IMEA Protest at 24-26; Mt. Carmel Protest at 18; Norris Protest at 2; Prairie Protest at 11-12 and 18-19; SIPC Protest at 2, Southwestern Protest at 14-18; and Wabash Protest at 8-9.

¹² Prairie Protest at 16-20; Southwestern Protest at 18-25.

¹³ Wabash Protest at 15-16.

¹⁴ IMEA Protest at 10-12; Mt. Carmel Protest at 7-8; Prairie Protest at 19-22; SIPC Protest at 11; and Wabash Protest at 13-15.

¹⁵ IMEA Protest at 17-18; SIPC Protest at 19-21; and Wabash Protest at 26-27.

(1) the proposed 11.38 percent ROE; (2) system maps demonstrating how the network components are integrated into the network to provide service; (3) the accumulated depreciation and net depreciated plant in service for each substation allocable or assignable to Customers; (4) the weather normalization of the 2009 actual loads; (5) prepayments for the 2009 test year; and (6) Ameren Illinois' claimed cash working capital requirement of \$38 million.

14. Several Customers object to Ameren Illinois' use of a 2009 test year because of the depressed load in 2009 due to the recession.¹⁶ Norris and SIPC also contend that 2009 featured atypically high operations and maintenance costs due to Ameren Illinois' response to a reliability investigation ordered by the Illinois Commerce Commission, but that Ameren Illinois has since reduced maintenance costs substantially as a result of a rate case.¹⁷ Southwestern contends that the 2009 test year is inappropriate because it predates the 2010 merger of CILCO, CIPS, and IP, which Ameren Illinois itself claimed would reduce expenses.¹⁸

15. Customers also argue with Ameren Illinois' decision to selectively adjust the 2009 test year data to reflect Illinois' state income tax increase, which became effective January 1, 2011, while ignoring other changes that might not have been to Ameren Illinois' benefit.¹⁹

16. Several Customers argue that Ameren Illinois improperly allocates costs for facilities that Customers (and other wholesale distribution customers) do not use under normal conditions.²⁰ Prairie argues that Ameren Illinois has not demonstrated that it has removed from cost recovery the costs of facilities that solely provide service to retail customers, or costs from one facility that Ameren Illinois already recovers through Midwest ISO's Attachment O.²¹ Similarly, SIPC argues that Ameren Illinois overstates the distribution system components that are used to provide service to SIPC, as well as

¹⁶ Hoosier Protest at 7; IMEA Protest at 17-18; Mt. Carmel Protest at 15; Norris Protest at 17; Prairie Protest at 28; SIPC Protest at 19; and Wabash Protest at 38-39.

¹⁷ Norris Protest, Witness Blake at 11-13; SIPC Protest at 18-19.

¹⁸ Southwestern Protest at 44-46.

¹⁹ IMEA Protest at 23; Southwestern Protest at 43.

²⁰ Prairie, Norris, SIPC, Mt. Carmel, Wabash, IMEA, and Hoosier Protests witness Reising at 5-10.

²¹ Prairie Protest at 31, 35.

the relative load delivered to SIPC members using those facilities.²² SIPC also argues that Ameren Illinois' proposal would improperly invalidate a settlement that Ameren Illinois entered into with SIPC member Monroe County in Docket No. ER99-4415-000, by allocating more than \$1.9 million of the cost of certain 69 kilovolt facilities to Monroe.²³ IMEA states that Ameren Illinois' proposal assigns costs for numerous facilities which are located more than 100 miles from any delivery points of IMEA and are unlikely to serve it.²⁴ Southwestern asserts that it was improperly allocated costs of facilities that are also used by other customers, including instances where Ameren Illinois applied a 100 percent load share ratio to facilities that were used by other wholesale customers and Ameren Illinois' retail load. Finally, Southwestern asserts that Ameren Illinois included the cost of directly assigned facilities that Southwestern, rather than Ameren Illinois, paid for and owns, without giving Southwestern credit for the amounts it paid.²⁵

17. Additionally, Customers argue that Ameren Illinois has insufficiently supported or incorrectly applied the load ratio share percentages used to assign costs to wholesale distribution service customers, particularly Ameren Illinois' use of 2010 loads while using 2009 demand in its rate design.²⁶

18. Customers disagree with Ameren Illinois' use of a "typical mile" methodology for estimating the gross cost of facilities.²⁷ They contend that this methodology estimates costs based on design standards exceeding those of most facilities that serve them (and other wholesale distribution service customers).

19. Prairie and Wabash object to Ameren Illinois' proposed assignment of distribution facilities on a gross, rather than net, plant basis because they argue it will not account for

²² SIPC Protest at 7.

²³ *Id.* at 12.

²⁴ IMEA Protest at 13.

²⁵ Southwestern Protest at 31-36.

²⁶ Southwestern Protest at 33-35 and Prairie, Norris, SIPC, Mt. Carmel, Wabash, IMEA, and Hoosier Witness Reising at 17.

²⁷ Hoosier Protest at 5-7; IMEA Protest at 14-17; Mt. Carmel Protest at 16-17; Norris Protest at 7-10; Prairie Protest at 32-35; SIPC Protest at 9-11; Southwestern Protest at 36-37; and Wabash Protest at 21-23.

the depreciation on such assets that Customers have already paid.²⁸ Several Customers note that the proposed rates inappropriately shift from using a net plant methodology to a gross plant methodology.²⁹

20. Several Customers criticized elements of Ameren Illinois' carrying charge methodology.³⁰ For instance, Hoosier, IMEA, Prairie, and Wabash object to the way Ameren Illinois calculates both its distribution operation and maintenance expenses and its administrative and general expenses.³¹ Additionally, Southwestern disagrees with the methodology Ameren Illinois uses to develop the metering charge.³²

21. Hoosier, IMEA, Prairie, and Wabash argue that Ameren Illinois should be required to conduct a depreciation study of its sub-transmission facilities similar to that for transmission facilities.³³ Norris and SIPC point to several of the depreciation expenses Ameren Illinois includes in its filing, arguing that they are not related to sub-transmission service received by Norris or SIPC. Further, Norris and SIPC contend that Ameren Illinois has not demonstrated that the depreciation rates for those expenses are representative of the depreciation rates applicable to sub-transmission facilities, and that Ameren Illinois should provide additional information about them.³⁴ Southwestern claims that Ameren Illinois bases its depreciation rates on an outdated study, which results in rates that are devoid of a factual basis and reflect unreasonably short average service lives.³⁵

²⁸ Prairie Protest at 33; Wabash Protest at 20.

²⁹ Hoosier Protest at 8-9; IMEA Protest at 16; Norris Protest at 10-11; and SIPC at 12-13.

³⁰ Hoosier Protest at 12; IMEA at 21-24; Norris Protest at 14-15; Southwestern Protest at 41-43; and Wabash Protest at 36-38.

³¹ Hoosier Protest at 10-11; IMEA Protest at 21-22; Prairie Protest at 42-43; and Wabash Protest at 28-31.

³² Southwestern Protest at 37-39.

³³ Hoosier Protest at 11-12; IMEA Protest at 23; Prairie Protest at 44; and Wabash Protest at 32.

³⁴ Norris Protest at 14-15; SIPC Protest at 16-17.

³⁵ Southwestern Protest at 39-40.

22. Customers argue that Ameren Illinois' proposed 11.38 percent ROE is unsupported and inappropriately high.³⁶ Norris argues that the Commission-approved 12.38 percent ROE for Midwest ISO transmission owners is specific to transmission assets, which have a different risk profile than distribution assets, as shown in the lower retail ROEs than transmission ROEs. Norris also contends that Ameren Illinois' capital structure of 56 percent equity and 44 percent debt likely provides it with a lower risk profile than those of most other utilities.³⁷ Southwestern argues that Ameren Illinois' proposed capital structure comprising of 56 percent equity is unreasonable and should not exceed 50 percent.³⁸

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene of Customers serves to make them parties to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed in the above-referenced dockets and will, therefore, reject them.

B. Hearing and Settlement Judge Procedures

25. Ameren Illinois' proposed WDS Agreements raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

26. Our preliminary analysis indicates that Ameren Illinois' proposed rates in the WDS Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In addition, we deny Customers' requests for a five-month suspension. In *West Texas*, the Commission explained that, when the Commission's preliminary analysis indicates that

³⁶ Hoosier Protest at 9-10; IMEA Protest at 19-20; Mt. Carmel Protest at 17-18; Norris Protest at 12-13; Prairie Protest at 44-49; SIPC Protest at 14-15; Southwestern Protest at 30-31; and Wabash Protest at 32-36.

³⁷ Norris Protest at 13.

³⁸ Southwestern Protest at 48.

proposed rates may be unjust and unreasonable and substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).³⁹ In the instant proceeding, our preliminary analysis indicates that the proposed rates may not be substantially excessive. Therefore, we will accept Ameren Illinois' proposed rates in the WDS Agreements for filing, suspend them for a nominal period, making them effective March 30, 2011,⁴⁰ sixty days after the date of filing, subject to refund, and set them for hearing and settlement judge procedures.

27. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁴¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁴² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

³⁹ *West Texas*, 18 FERC at 61,374-75 (the Commission will suspend a proposed rate for the maximum period, five months, if the proposed rate increase is found to be substantially excessive); *Tucson Elec. Co.*, 76 FERC ¶ 61,235, at 62,147 & n.25-26 (1996).

⁴⁰ Absent a strong showing of good cause, the Commission's policy is to deny request for waiver of prior notice for rate increases when the rate change and effective date are not prescribed by contract. *See, e.g., Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992). Accordingly, the Commission will deny Ameren Illinois' request for waiver of the 60-day prior notice requirement for failure to show good cause.

⁴¹ 18 C.F.R. § 385.603 (2010).

⁴² If the parties decide to request a specific judge, they may make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

C. Consolidation

28. We grant the motions to consolidate filed by Customers. We find that there are common issues of law and fact in the filings made by Ameren Illinois in Docket Nos. ER11-2777-000, ER11-2778-000, ER11-2779-000, ER11-2782-000, ER11-2786-000, ER11-2788-000, ER11-2789-000, and ER11-2790-000. Therefore, in order to promote administrative efficiency, we will consolidate Ameren Illinois' filings in these dockets for purposes of hearing, settlement and decision.

The Commission orders:

(A) Docket Nos. ER11-2777-000, ER11-2778-000, ER11-2779-000, ER11-2782-000, ER11-2786-000, ER11-2788-000, ER11-2789-000, and ER11-2790-000 are hereby consolidated.

(B) Ameren Illinois' proposed agreements are hereby accepted for filing and suspended for a nominal period, to become effective March 30, 2011, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Ameren Illinois' proposed WDS Agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.