

140 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Ameren Corporation

Docket No. AC11-46-001

ORDER DISMISSING REQUEST FOR REHEARING AND PROVIDING
CLARIFICATION

(Issued September 19, 2012)

1. This order dismisses the joint request for rehearing and for prompt action of Illinois Municipal Power Agency (Illinois Municipal), Southern Illinois Power Cooperative (Southern Illinois), and Wabash Valley Power Association, Inc. (Wabash) (collectively, WDS Customers). The order also explains that Ameren Illinois Company's (Ameren Illinois) refund obligations continue to accrue until fully paid.

I. Background

2. On July 19, 2012, the Commission, among other things, found that Ameren Illinois improperly included acquisition premiums, including goodwill, as common equity in its transmission formula rate. We added that, by increasing the equity used to determine the formula rate billings with amounts related to acquisition premiums without Commission authorization, Ameren Illinois inappropriately recovered a higher return on rate base.¹ Thus, we also found that Ameren Illinois may have incorrectly billed transmission ratepayers for excessive amounts of Allowance For Funds Used During Construction (AFUDC) accrued as a result of using the inappropriately increased equity amounts in determining AFUDC rates.² Therefore, the Commission directed Ameren Illinois to, within 30 days: (1) adjust its formula rate billings and make refunds for acquisition premiums, and related over-accrual of AFUDC, inappropriately recovered from its customers, with interest on the adjustments calculated in accordance with 18 C.F.R. § 35.19a (2012); and (2) file a refund report.³

¹ *Ameren Corp.*, 140 FERC ¶ 61,034, at PP 32-33 (2012) (July 19 Order).

² *Id.* P 41.

³ *Id.* PP 40, 42, & ordering paras. (B)-(C).

3. On August 2, 2012, Ameren Corporation (Ameren)⁴ filed a request for an extension of time to provide refunds, to October 17, 2012, and to file a refund report, to November 16, 2012. Ameren stated that the July 19 Order directed Ameren Illinois to calculate refunds for a seven-year period. Ameren claimed that this involved the formula rates for its three subsidiaries, and the calculation, review, verification, and accounting tasks would be involved and would require significant time. Ameren also argued that determining the refunds required for the AFUDC rate would be particularly complex. Ameren noted that customers would not be adversely affected by an extension of time since it was obligated to provide interest on the refunds. Ameren also asserted that the Commission had granted time extensions in similar circumstances.⁵

4. On August 10, 2012, WDS Customers filed an answer opposing Ameren's request for an extension of time. WDS Customers claimed, that since the refunds deal with rates charged by the Midwest Transmission Independent System Operator, Inc. (MISO) as the transmission provider, they would be flowed back through MISO to the affected transmission customers and that would further delay any refunds. They also asserted that, because the rates improperly charged were easily determined, Ameren could compute refunds for misapplying goodwill in determining common equity in 30 days. However, WDS Customers noted that leeway might be appropriate for Ameren in determining refunds as a result of misapplying other acquisition premiums and AFUDC.⁶ They added that the two cases Ameren relied on did not present similar circumstances because they involved more complex situations. Therefore, WDS Customers asked the Commission to: (1) deny Ameren's motion for additional time to provide refunds; and (2) clarify that any additional time allowed should not extend putting in place the correct rates on a going-forward basis.⁷

5. On August 16, 2012, the Commission's Secretary, pursuant to, delegated authority, issued a notice granting Ameren an extension of time, to and including October 17, 2012, to comply with the July 19 Order, and until November 16, 2012, to file a refund report.⁸

⁴ In this order we will use the term Ameren interchangeably with Ameren Illinois.

⁵ Ameren's Request at 3-4.

⁶ WDS Customers' Answer at 5-6.

⁷ *Id.* at 6-7.

⁸ *Ameren Corp.*, Docket No. AC11-46-000 (August 16, 2012).

II. Request for Rehearing and Prompt Action

6. On August 19, 2012, WDS Customers filed a request for rehearing of, and prompt action on, the notice of extension of time in the above-captioned proceeding. They ask that the Commission reconsider granting Ameren the 60-day extension. WDS Customers argue that, by granting Ameren's request for an extension of time without addressing their answer in opposition, the Commission failed to engage in reasoned decision-making. They also claim that, by granting Ameren's request for an extension to refund easily determined overcharges, without providing any explanation, the Commission's action was arbitrary and capricious.⁹ WDS Customers maintains that Ameren failed to provide good grounds for: (1) a 60-day extension of time to provide refunds for the easily quantified amounts it overcharged transmission customers; and (2) permitting any delay in correcting now effective transmission rates to account for improperly including goodwill in equity.

7. WDS Customers also contend that in allowing the 60-day extension the Commission effectively added more time since refunds to customers must be flowed through the MISO billing process.¹⁰ WDS Customers ask that the Commission clarify that interest must be paid as to the time value on all refunds, including interest for the time required by MISO to actually flow through the refunds under its billing procedures. They also ask that the Commission clarify that any additional time allowed should not extend putting into place the correct rates on a going-forward basis, and that Ameren should remove goodwill from equity effective on the date of the July 19 Order or by August 20, 2012.¹¹

III. Discussion

8. Contrary to WDS Customers' arguments, our decision to grant Ameren a 60-day extension of time to provide refunds was reasoned decision-making, and not arbitrary and capricious. It is well established that the Commission has substantial discretion to establish its calendar and procedures to balance the interest of all parties and provide for

⁹ WDS Customers' Joint Request at 2-3.

¹⁰ *Id.* at 5-7.

¹¹ *Id.* at 7-8.

a reasonable resolution of proceedings.¹² Although WDS Customers contend that we failed to provide an explanation for our decision, in the notice granting Ameren an extension of time, we specifically explained that Ameren needed the extension due to the complexity of determining the required refund amount. Furthermore, we find that WDS Customers have not shown how they are prejudiced by our decision to allow additional time. In fact, WDS Customers have acknowledged in their answer that determining some of the refunds might require additional time.¹³ Moreover, we find that WDS Customers are not harmed by our decision to grant Ameren an extension of time to provide refunds since Ameren is obligated to also include interest with the refunds until customers are fully paid, as we further describe below. Thus, we will not reverse our decision.

9. WDS Customers ask that the Commission clarify that interest must be paid as to the time value on all refunds, including interest for the time required by MISO to actually flow through the refunds under its billing procedures. In the July 19 Order, the Commission directed Ameren Illinois to make refunds for acquisition premiums, and related over-accrual of AFUDC, inappropriately recovered from its customers with interest on the adjustments calculated in accordance with section 35.19a of our regulations. Therefore, refunds are due for the entire period in which Ameren Illinois collected revenues without the Commission's authorization, and interest continues to accrue on refunds until fully paid. Thus, that interest would continue to accrue during the time required by MISO to actually flow through the refunds to customers under its billing procedures.¹⁴

10. WDS Customers also ask that the Commission clarify that any additional time allowed should not extend putting into place the correct rates on a going-forward basis. As we explained above, WDS Customers are not harmed by any delay because Ameren must provide refunds with interest. Moreover, we note that since Ameren has an obligation to provide refunds with interest until customers are fully paid, it has an incentive to implement the proper rates as soon as possible.

¹² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 127 FERC ¶ 61,269, at P 89 & n.207 (2009); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 121 FERC ¶ 61,184, at P 164 & n.231 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,267, at P 5 & n.5 (2006); *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001, at 61,001 (1984).

¹³ *See supra* note 6.

¹⁴ *Anadarko Petroleum Corp., et al. v. FERC*, 196 F.3d 1264, 1267-1268 (D.C. Cir. 1999) (“Compensation deferred is compensation reduced by the time value of money... interest is simply a way of ensuring full compensation.”).

The Commission orders:

WDS Customers' request for rehearing is hereby denied, and clarification is provided, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.