

140 FERC ¶ 61,252
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.

Lively Grove Energy Partners, LLC	Docket Nos. ER12-2353-000
Prairie Power, Inc.	EL12-90-000
American Municipal Power, Inc.	EL12-91-000
Southern Illinois Power Cooperative	EL12-92-000
Illinois Municipal Electric Agency	EL12-93-000
Kentucky Municipal Power Agency	EL12-94-000
Missouri Joint Municipal Electric Utility Commission	EL12-95-000
Northern Illinois Municipal Power Agency	EL12-96-000
Indiana Municipal Power Agency	EL12-97-000 (consolidated)

ORDER INSTITUTING SECTION 206 PROCEEDING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 28, 2012)

1. In this order, pursuant to section 205 of the Federal Power Act (FPA),¹ we accept Lively Grove Energy Partners, LLC's (Lively Grove) proposed rate schedules for Reactive Supply and Voltage Control from Generation and Other Sources Service (reactive power).² We also institute, under section 206 of the FPA,³ an investigation into the proposed revenue requirements for reactive power for rate recovery purposes submitted by Prairie Power, Inc. (Prairie Power), American Municipal Power, Inc. (American Municipal), Southern Illinois Power Cooperative (Southern Illinois), Illinois

¹ 16 U.S.C. § 824d (2006).

² Lively Grove Energy Partners, LLC, FERC Electric Tariff, Reactive Power Revenue, LGE Reactive Power Rate Schedule, 1.0.0; Lively Grove Energy Partners, LLC, FERC Electric Tariff, Reactive Power Revenue, LGE Reactive Power Rate Schedule, 2.0.0.

³ 16 U.S.C. § 825e (2006).

Municipal Electric Agency (Illinois Municipal), Kentucky Municipal Power Agency (Kentucky Municipal), Missouri Joint Municipal Electric Utility Commission (Missouri Municipal), Northern Illinois Municipal Power Agency (Northern Illinois), and Indiana Municipal Power Agency (Indiana Municipal) (collectively, with Lively Grove, Filing Parties). We also establish hearing and settlement judge procedures to address issues raised by Filing Parties' proposed revenue requirements.

2. As discussed below, we accept for filing Lively Grove's proposed rate schedule and suspend it for a nominal period, Version 1.0.0 to become effective October 1, 2012, subject to refund, and Version 2.0.0 to become effective December 1, 2012, subject to refund, and conditioned on the approval of Unit 2 as a Qualified Generator.⁴ With regard to the proposed revenue requirements for reactive power submitted by the remaining Filing Parties, the effective date for any revenue requirement will be the date the Commission makes a revenue requirement effective when it issues an order approving a revenue requirement following the hearing and settlement judge procedures. We also consolidate these proceedings for the purpose of hearing and settlement judge procedures.

I. Background

A. Prairie State Energy Campus

3. Prairie State Energy Campus, being constructed and operated by Prairie State Generating Company, consists of two coal-fired electric generating units (Unit 1 and Unit 2) and is located in Washington County, Illinois. Each of the coal units is nominally rated at approximately 800 megawatts (MW). Prairie State Energy Campus is interconnected with the transmission system owned by Ameren Illinois Company (Ameren Illinois), whose facilities are under the functional control of Midwest Independent Transmission System Operator, Inc. (MISO). The Filing Parties explain that Prairie State Generating Company is required to provide reactive power pursuant to a Large Generator Interconnection Agreement, dated January 21, 2009, among Prairie State Generating Company, MISO, Illinois Power Company,⁵ and Ameren Illinois

⁴ A Qualified Generator is defined in the MISO Tariff as "The Generation Resource(s) having the technical capability of providing reactive supply and voltage control as determined by the Transmission Provider in accordance with the provisions specified in Schedule 2 of this Tariff." MISO, FERC Electric Tariff, section 1.528.

⁵ On October 1, 2010, Illinois Power Company, Central Illinois Light Company, and Central Illinois Public Service Company merged to form Ameren Illinois. *Ameren Corp.*, 131 FERC ¶ 61,240 (2010); *Ameren Corp.*, Notice of Consummation, Docket No. EC10-52-000, at 2 (filed Oct. 12, 2010).

Transmission Company.⁶ The Filing Parties own respective shares of Prairie State Energy Campus. Unit 1 was declared in commercial operation on June 12, 2012. Unit 2 is expected to be in commercial operation by December 2012.

4. The Filing Parties state that they seek compensation under Schedule 2 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) for providing reactive power from the two generation units. The Filing Parties explain that, although Unit 1 already provides reactive power service to MISO to assist with maintaining transmission voltages within acceptable limits within the MISO footprint, they are not yet receiving compensation for this service. The Filing Parties assert that MISO has established Unit 1 as a Qualified Generator. The Filing Parties state that Unit 1 meets the technical requirements under Schedule 2 of the Tariff, subject to MISO receiving confirmation of Commission approval in the instant proceeding. The Filing Parties further state that, because Unit 1 and Unit 2 are designed to operate similarly, they anticipate that Unit 2 will also meet the requirements to be an eligible generation resource.

5. The Filing Parties state that their cost-based annual revenue requirements were developed for each party's respective ownership share of Prairie State Energy Campus consisting of the following equipment costs: (1) the generator and the exciter; (2) the generator step-up transformers; (3) accessory electrical equipment; and (4) balance of plant, or the remaining production plant investment not covered by the preceding three categories.⁷ The Filing Parties explain that their respective reactive power revenue requirements were developed based on the methodology set forth in *American Electric Power Service Corp.*,⁸ using an overall rate of return of 10.23 percent. Each of the Filing Parties states that it has adopted the overall rate of return applied by Ameren Illinois

⁶ See Lively Grove Transmittal at 3-4, n.5; Prairie Power Transmittal at 4, n.12; American Municipal Transmittal at 4, n.7; Southern Illinois Transmittal at 3-4, n.7; Illinois Municipal Transmittal at 4, n.10; Kentucky Municipal Transmittal at 4, n.9; Missouri Municipal Transmittal at 4, n.9; Northern Illinois Transmittal at 4, n.9; Indiana Municipal Transmittal at 4, n.10.

⁷ See Lively Grove Transmittal, Ex. LGE-1 at 12-25; Prairie Power Transmittal, Ex. PPI-1 at 12-24; American Municipal Transmittal, Ex. AMP-1 at 12-25; Southern Illinois Transmittal, Ex. SIP-1 at 15-20; Illinois Municipal Transmittal, Ex. ILM-1 at 12-24; Kentucky Municipal Transmittal, Ex. KMP-1 at 12-24; Missouri Municipal Transmittal, Ex. MJM-1 at 12-24; Northern Illinois Transmittal, Ex. NIM-1 at 12-24; Indiana Municipal Transmittal, Ex. INM-1 at 12-24.

⁸ *American Electric Power Serv. Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*).

based on Commission policy that a generation owner without a Commission-approved rate of return may adopt a proxy rate of return based on the overall cost of capital of the utility with which the generation owner's facilities are interconnected.⁹ The Filing Parties each assert that it is not seeking to recover heating losses and opportunity costs in its revenue requirement for reactive power service at this time.

6. The Filing Parties state that, given the staggered in-service dates for Units 1 and 2, implementation of the revenue requirements will occur in two phases with a one-time true-up adjustment for each Prairie State Energy Campus owner's revenue requirement after one year of actual operating expenses for both units are determined.¹⁰ The Filing Parties explain that Prairie State Energy Campus owners will true-up their revenue requirements using actual values in place of the estimated values used in the instant proceeding. The Filing Parties anticipate making such a filing in 2014, with a requested effective date of June 1, 2014, to implement the true-up mechanism and update the revenue requirements reflecting the final costs of construction and the actual cost of operation of Prairie State Energy Campus.

7. Lively Grove requests that the Commission accept its proposed Reactive Power Rate Schedule Version 1.0.0 for Unit 1, effective October 1, 2012. Lively Grove requests that the Commission accept its proposed Reactive Power Rate Schedule Version 2.0.0 for Unit 2, effective December 1, 2012 or the earliest possible date consistent with Schedule 2, to reflect the in-service date of Unit 2. Lively Grove states that Version 2.0.0 will supersede Version 1.0.0. The remaining Filing Parties request that the Commission accept their proposed reactive power revenue requirements for Unit 1, effective

⁹ See Lively Grove Transmittal, Ex. LGE-1 at 26-29; Prairie Power Transmittal, Ex. PPI-1 at 25-28; American Municipal Transmittal, Ex. AMP-1 at 25-28; Southern Illinois Transmittal, Ex. SIP-1 at 28; Illinois Municipal Transmittal, Ex. ILM-1 at 25-28; Kentucky Municipal Transmittal, Ex. KMP-1 at 25-28; Missouri Municipal Transmittal, Ex. MJM-1 at 25-28; Northern Illinois Transmittal, Ex. NIM-1 at 25-28; Indiana Municipal Transmittal, Ex. INM-1 at 25-28 (all citing *Columbia Energy LLC*, 124 FERC ¶ 61,189 (2008); *Bluegrass Generation Co.*, 118 FERC ¶ 61,214 (2007); *Indiana Municipal Power Agency*, 114 FERC ¶ 61,008 (2006); and *Calpine Fox LLC*, 113 FERC ¶ 61,047 (2005)).

¹⁰ See Lively Grove Transmittal, Ex. LGE-1 at 32-36; Prairie Power Transmittal, Ex. PPI-1 at 32-35; American Municipal Transmittal, Ex. AMP-1 at 32-35; Southern Illinois Transmittal, Ex. SIP-1 at 32-35; Illinois Municipal Transmittal, Ex. ILM-1 at 32-35; Kentucky Municipal Transmittal, Ex. KMP-1 at 32-35; Missouri Municipal Transmittal, Ex. MJM-1 at 32-35; Northern Illinois Transmittal, Ex. NIM-1 at 32-35; Indiana Municipal Transmittal, Ex. INM-1 at 32-35.

October 1, 2012, and Unit 2, effective December 1, 2012 or the earliest possible date consistent with Schedule 2 to reflect the in-service date of Unit 2.

B. The Filing Parties

1. Lively Grove (Docket No. ER12-2353-000)

8. Lively Grove is a non-utility generator formed for the exclusive purpose of owning a portion of Prairie State Energy Campus. Lively Grove owns a 5.06 percent ownership interest in Prairie State Energy Campus.

9. Lively Grove proposes an annual cost-based revenue requirement of \$223,092 for the reactive power service provided by Lively Grove's interest in Prairie State Energy Campus.¹¹ Lively Grove also requests that the Commission accept the proposed one-time true-up so that Lively Grove may adjust the revenue requirement to reflect data from final construction and actual operating costs.

2. Prairie Power (Docket No. EL12-90-000)

10. Prairie Power owns an 8.22 percent ownership interest in Prairie State Energy Campus. Prairie Power states that it is a non-public utility because it is an electric cooperative that sells less than 4 million MWh of electricity annually,¹² a jurisdictional threshold added by amendments to the FPA that were enacted as part of the Energy Policy Act of 2005 (EPAAct).¹³ Prairie Power asserts that non-public utility entities such as itself are eligible to recover their costs of supplying reactive power upon application

¹¹ See Mr. Reising's testimony, Lively Grove Transmittal, Ex. LGE-1.

¹² 16 U.S.C. § 824(f) (2006).

¹³ EPAAct, Pub. L. No. 109-58, Title XII, § 1291(c), Applicability, 119 Stat. 985 (2005) (amending the FPA at 16 U.S.C. § 824(f) to exempt electric cooperatives that sell less than 4 million megawatt hours of electricity per year). Prairie Power is the successor in interest to Soyland Power Cooperative, Inc. (Soyland). Prior to enactment of EPAAct, during the period that Soyland was a jurisdictional public utility, it made requisite filings with the Commission. Once EPAAct was enacted, including its amendment exempting cooperatives selling less than 4 million megawatt hours of electricity per year, Soyland notified the Commission that it was no longer a jurisdictional public utility, and the Commission accepted that notice. See Soyland Power Coop., Inc., Notice of Change in Jurisdictional Status, Docket No. ER06-51-000 (filed Oct. 19, 2005); *Soyland Power Coop., Inc.*, Docket No. ER06-51-000 (Nov. 22, 2005) (delegated letter order).

and acceptance of their revenue requirement by the Commission.¹⁴ Prairie Power also states that its accounting books are based on Rural Utilities Service (RUS) and Commission accounting methods, including use of Form RUS-12. According to Prairie Power, this form is similar to the Commission's Uniform System of Accounts (USoA).

11. Prairie Power proposes an annual cost-based revenue requirement of \$334,766 for the reactive power service provided by Prairie Power's interest in Prairie State Energy Campus.¹⁵ Prairie Power also requests that the Commission accept the proposed one-time true-up so that Prairie Power may adjust the revenue requirement to reflect data from final construction and actual operating costs.

3. American Municipal (Docket No. EL12-91-000)

12. American Municipal owns a 23.26 percent ownership interest in Prairie State Energy Campus. American Municipal is a non-transmission owning member of MISO. American Municipal states that it is a non-jurisdictional utility, and it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order to be compensated for providing reactive power.¹⁶

13. American Municipal proposes an annual cost-based revenue requirement of \$975,561 for the reactive power service provided by American Municipal's interest in Prairie State Energy Campus, as explained in Mr. Reising's testimony.¹⁷ American Municipal also requests that the Commission accept the proposed one-time true-up so that American Municipal may adjust the revenue requirement to reflect data from final construction and actual operating costs.

¹⁴ See *Midwest Indep. Trans. Sys. Operator, Inc.*, 113 FERC ¶ 61,046, at P 88 and n.13 (2005) (October 2005 Order), *reh'g denied*, 114 FERC ¶ 61,192 (2006) (finding that MISO's Tariff should be revised to provide that non-public utility entities are eligible to receive compensation for reactive power, but noting that to qualify to receive payment for reactive power service, a non-public utility entity must submit its revenue requirement for acceptance by the Commission).

¹⁵ See Mr. Reising's testimony, Prairie Power Transmittal, Ex. PPI-1.

¹⁶ American Municipal Transmittal at 5 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

¹⁷ See American Municipal Transmittal, Ex. AMP-1.

4. Southern Illinois (Docket No. EL12-92-000)

14. Southern Illinois owns a 7.90 percent ownership interest in Prairie State Energy Campus. Southern Illinois is a member-owned, not-for-profit generation and transmission cooperative. Southern Illinois is a market participant and generation and transmission owner and operator in MISO. Southern Illinois states that its funding is provided by its member/customers and from long-term debt payable to the Federal Financing Bank and the Rural Utility Service. Southern Illinois further states that, as a non-jurisdictional utility, it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order to be compensated for providing reactive power.¹⁸ Southern Illinois states that its accounting books are based on RUS and Commission accounting methods, including use of Form RUS-12.

15. Southern Illinois proposes an annual cost-based revenue requirement of \$331,254 for the reactive power service provided by Southern Illinois's interest in Prairie State Energy Campus.¹⁹ Southern Illinois also requests that the Commission accept the proposed one-time true-up so that Southern Illinois may adjust the revenue requirement to reflect data from final construction and actual operating costs.

5. Illinois Municipal (Docket No. EL12-93-000)

16. Illinois Municipal owns a 15.17 percent ownership interest in Prairie State Energy Campus. Illinois Municipal owns and operates electric generation resources within MISO and obtains transmission service from MISO as a network integration transmission service customer under the MISO Tariff. Illinois Municipal states that, as a municipal joint public agency, it is not directly subject to the Commission's rate jurisdiction under FPA sections 205 and 206.²⁰ Illinois Municipal further states that, as a non-public utility, it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order to be compensated for providing reactive power.²¹ Illinois Municipal states that its accounting books are based on the Commission's USofA.

17. Illinois Municipal proposes an annual cost-based revenue requirement for reactive power service of \$652,522 for the service provided by Illinois Municipal's interest in

¹⁸ Southern Illinois Transmittal at 4 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

¹⁹ See Mr. Reising's testimony, Southern Illinois Transmittal, Ex. SIP-1.

²⁰ Illinois Municipal Transmittal at 3, citing 16 U.S.C. § 824e (2006).

²¹ *Id.* at 4-5 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

Prairie State Energy Campus.²² Illinois Municipal also requests that the Commission accept the proposed one-time true-up so that Illinois Municipal may adjust the revenue requirement to reflect data from final construction and actual operating costs.

6. Kentucky Municipal (Docket No. EL12-94-000)

18. Kentucky Municipal owns a 7.82 percent ownership interest in Prairie State Energy Campus. Kentucky Municipal owns electric generation resources within MISO. Kentucky Municipal states that as a municipal joint action agency, it is not directly subject to the Commission's rate jurisdiction under FPA sections 205 and 206.²³ Kentucky Municipal further states that as a non-public utility, it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order to be compensated for providing reactive power.²⁴ Kentucky Municipal states that its accounting books are based on the Commission's USofA.

19. Kentucky Municipal proposes an annual cost-based revenue requirement of \$325,494 for the reactive power service provided by Kentucky Municipal's interest in Prairie State Energy Campus.²⁵ Kentucky Municipal also requests that the Commission accept the proposed one-time true-up so that Kentucky Municipal may adjust the revenue requirement to reflect data from final construction and actual operating costs.

7. Missouri Municipal (Docket No. EL12-95-000)

20. Missouri Municipal owns a 12.33 percent ownership interest in Prairie State Energy Campus. Missouri Municipal owns electric generation resources within MISO. Missouri Municipal states that as a municipal joint action agency, it is not directly subject to the Commission's rate jurisdiction under FPA sections 205 and 206.²⁶ Missouri Municipal further states that as a non-public utility, it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order to be compensated for providing reactive power.²⁷ Missouri Municipal states that its accounting books are based on the Commission's USofA.

²² See Mr. Reising's testimony, Illinois Municipal Transmittal, Ex. ILM-1.

²³ Kentucky Municipal Transmittal at 4.

²⁴ *Id.* at 5 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

²⁵ See Mr. Reising's testimony, Kentucky Municipal Transmittal, Ex. KMP-1.

²⁶ Missouri Municipal Transmittal at 4.

²⁷ *Id.* at 5 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

21. Missouri Municipal proposes an annual cost-based revenue requirement of \$531,061 for the reactive power service provided by Missouri Municipal's interest in Prairie State Energy Campus.²⁸ Missouri Municipal also requests that the Commission accept the proposed one-time true-up so that Missouri Municipal may adjust the revenue requirement to reflect data from final construction and actual operating costs.

8. Northern Illinois (Docket No. EL12-96-000)

22. Northern Illinois owns a 7.60 percent ownership interest in Prairie State Energy Campus. Northern Illinois owns electric generation resources within MISO. Northern Illinois states that, as a municipal joint action agency, it is not directly subject to the Commission's rate jurisdiction under FPA sections 205 and 206.²⁹ Northern Illinois further states that, as a non-public utility, it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order to be compensated for providing reactive power.³⁰ Northern Illinois states that its accounting books are based on the Commission's USofA.

23. Northern Illinois proposes an annual cost-based revenue requirement of \$328,226 for the reactive power service provided by Northern Illinois' interest in Prairie State Energy Campus.³¹ Northern Illinois also requests that the Commission accept the proposed one-time true-up so that Northern Illinois may adjust the revenue requirement to reflect data from final construction and actual operating costs.

9. Indiana Municipal (Docket No. EL12-97-000)

24. Indiana Municipal owns a 12.64 percent ownership interest in Prairie State Energy Campus. Indiana Municipal states that, as a municipal joint action agency, it is not directly subject to the Commission's rate jurisdiction under FPA sections 205 and 206.³² Indiana Municipal further states that, as a non-public utility, it is submitting its proposed revenue requirement in accordance with the directives in the October 2005 Order in order

²⁸ See Mr. Reising's testimony, Missouri Municipal Transmittal, Ex. MJM-1.

²⁹ Northern Illinois Transmittal at 3.

³⁰ *Id.* at 4-5 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

³¹ See Mr. Reising's testimony, Northern Illinois Transmittal, Ex. NIM-1.

³² Indiana Municipal Transmittal at 4.

to be compensated for providing reactive power.³³ Indiana Municipal states that its accounting books are based on the Commission's USofA.

25. Indiana Municipal proposes an annual cost-based revenue requirement of \$544,863 for the reactive power service provided by Indiana Municipal's interest in Prairie State Energy Campus.³⁴ Indiana Municipal also requests that the Commission accept the proposed one-time true-up so that Indiana Municipal may adjust the revenue requirement to reflect data from final construction and actual operating costs.

II. Notices of Filings and Responsive Pleadings

26. Notice of Lively Grove's filing was published in the *Federal Register*, 77 Fed. Reg. 48,136 (2012), with interventions and protests due on or before August 20, 2012.

27. Notice of Prairie Power's filing was published in the *Federal Register*, 77 Fed. Reg. 47,061 (2012), with interventions and protests due on or before August 20, 2012.

28. Notice of American Municipal's filing was published in the *Federal Register*, 77 Fed. Reg. 47,061 (2012), with interventions and protests due on or before August 20, 2012.

29. Notice of Southern Illinois' filing was published in the *Federal Register*, 77 Fed. Reg. 47,059 (2012), with interventions and protests due on or before August 20, 2012.

30. Notice of Illinois Municipal's filing was published in the *Federal Register*, 77 Fed. Reg. 47,060 (2012), with interventions and protests due on or before August 20, 2012.

31. Notice of Kentucky Municipal's filing was published in the *Federal Register*, 77 Fed. Reg. 47,062 (2012), with interventions and protests due on or before August 20, 2012.

32. Notice of Missouri Municipal's filing was published in the *Federal Register*, 77 Fed. Reg. 47,060 (2012), with interventions and protests due on or before August 20, 2012.

33. Notice of Northern Illinois' filing was published in the *Federal Register*, 77 Fed. Reg. 47,061 (2012), with interventions and protests due on or before August 20, 2012.

³³ *Id.* at 4-5 (citing October 2005 Order, 113 FERC ¶ 61,046 at P 88 and n.13).

³⁴ *See* Mr. Reising's testimony, Indiana Municipal Transmittal, Ex. INM-1.

34. Notice of Indiana Municipal's filing was published in the *Federal Register*, 77 Fed. Reg. 47,060 (2012), with interventions and protests due on or before August 20, 2012.

35. On August 2, 2012, Illinois Municipal, Kentucky Municipal, Missouri Municipal, Northern Illinois, and Indiana Municipal filed erratum in their respective dockets to correct certain statements made in their original filings.

36. Timely motions to intervene were filed by MISO in all dockets. GenOn Energy Management, LLC and GenOn Bowline, LLC jointly filed a timely motion to intervene in Docket No. EL12-95-000. Ameren Services Company, on behalf of its public utility affiliates Ameren Illinois and Ameren Energy Marketing (collectively, Ameren), filed timely motions to intervene and protests in Docket Nos. EL12-90-000, EL12-92-000, and EL12-93-000. Out-of-time motions to intervene were filed by Ameren in Docket Nos. ER12-2353-000, EL12-91-000, EL12-94-000, EL12-95-000, EL12-96-000, and EL12-97-000. American Municipal filed out-of-time motions to intervene in Docket Nos. EL12-90-000, EL12-92-000, and EL12-93-000. On September 4, 2012, Prairie Power, Southern Illinois, and Illinois Municipal filed motions for leave to answer and answers. On September 10, 2012, American Municipal filed comments in support of Prairie Power's, Southern Illinois', and Illinois Municipal's answers.

III. Discussion

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), we will grant the late-filed motions to intervene of Ameren and American Municipal, given their interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept Prairie Power's, Southern Illinois', and Illinois Municipal's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Protests

39. Ameren claims that Prairie Power, Southern Illinois, and Illinois Municipal have failed to demonstrate that their proposed rates are just and reasonable. Ameren contends that, because neither Prairie State Generating Company nor the three aforementioned non-public utilities use the Commission's USofA, no opportunity has been given to ensure the proposed rates only include appropriately allocated costs. According to Ameren, this lack of transparency removes the true-up mechanism's ability to address improperly allocated or imprudently incurred costs.³⁵ In addition, Ameren included in its protest a news article in support of its claim that Prairie State Energy Campus has experienced cost overruns and delays, thus raising the potential that the costs underlying the proposed rates were imprudently incurred.³⁶ Ameren asserts that these concerns require the Commission to set the proceeding for trial-type evidentiary hearing to obtain additional discovery.³⁷

40. Ameren also argues that Unit 2's delays and lack of certification as a "Qualified Generator" under MISO's Tariff renders Prairie Power's, Southern Illinois', and Illinois Municipal's requests to begin recovering Unit 2's costs premature. As a result, Ameren states that the Commission should reject Prairie Power's, Southern Illinois', and Illinois Municipal's phased approach for Prairie State Energy Campus, only allow collection of Unit 1's revenue requirement, and condition Unit 2's ability to collect costs on its release for commercial operation as a Qualified Generator.³⁸ Additionally, Ameren argues that the inability to examine costs calls into question whether Units 1 and 2 do, in fact, contribute equally to Prairie State Energy Campus's annual revenue requirement and, thus, the appropriateness of the phased approach.³⁹

³⁵ All Ameren Protests at 3-4.

³⁶ All Ameren Protests at 4, Att. A (citing St. Louis Post Dispatch, *Delays, Cost Overruns Blemish Illinois Coal Project* (June 2012), available at http://www.stltoday.com/business/local/delays-cost-overruns-blemish-illinois-coal-project/article_ffaa187e-b729-11e1-b412-001a4bcf6878.html (last visited Sept. 19, 2012)).

³⁷ All Ameren Protests at 4.

³⁸ Ameren Protest in Docket Nos. EL12-90-000 and EL12-92-000 at 5-6; Ameren Protest in Docket No. EL12-93-000 at 4-5.

³⁹ All Ameren Protests at 5.

41. Ameren also contends that the Commission should reject Prairie Power's and Southern Illinois' use of Ameren Illinois' cost of capital as a proxy rate of return. Ameren argues that the cases used to support Prairie Power's and Southern Illinois' request for use of a proxy are inapposite. According to Ameren, the Commission has found that merchant generators are more risky than the transmission owner with which they are interconnected and that they do not have a Commission-approved return on equity that can be used in the development of their reactive power rates.⁴⁰ Thus, with respect to merchant generators, the Commission has found these circumstances justify the use of a proxy. Ameren argues that Prairie Power and Southern Illinois are not merchant generators and do not face risks similar to those of a merchant generator. Ameren asserts that as Prairie Power and Southern Illinois are both cooperatives, their captive customers are responsible for any losses incurred, and for this reason, among others, Prairie Power and Southern Illinois are significantly less risky than a merchant generator.⁴¹ Additionally, Ameren argues that none of the cases relied upon by Prairie Power or Southern Illinois involve a MISO market participant or Transmission Owner with its own Attachment O transmission rate formula. Ameren argues that unlike merchant generators, Prairie Power and Southern Illinois each have Commission-approved rates of return of 6.32 percent⁴² and 5.48 percent,⁴³ respectively, which are substantially less than their requested 10.23 percent. Accordingly, Ameren contends that Prairie Power and Southern Illinois should not be permitted to use a proxy rate of return when they already have a Commission-approved rate of return on file.

2. Answers

42. In each of their respective answers, Prairie Power, Southern Illinois, and Illinois Municipal respond that the detailed descriptions of accounting given in their filings, Mr. Reising's testimony, and other attachments eliminate any need for additional discovery. According to Southern Illinois, Prairie State Energy Campus does use the USofA.⁴⁴ Prairie Power and Southern Illinois argue that although their data is not

⁴⁰ All Ameren Protests at 4.

⁴¹ Ameren Protests in Docket Nos. EL12-90-000 and EL12-92-000 at 4-5.

⁴² Ameren Protest in Docket No. EL12-90-000 at 5. Ameren states that Prairie Power has an Attachment O for purposes of calculating the credits it is entitled to receive for its customer-owned transmission facilities located in the Ameren Illinois rate zone.

⁴³ Ameren Protest in Docket No. EL12-92-000 at 5. Ameren states that Southern Illinois is a MISO Transmission Owner and has its own Attachment O with its own capital structure.

⁴⁴ Southern Illinois Answer at 2.

presented in USofA form, their books are kept in accordance with RUS requirements, including Form RUS-12, which the Commission has previously determined is not a barrier to cost recovery.⁴⁵ Prairie Power and Southern Illinois argue that this method of data organization is similar to the USofA.⁴⁶ Illinois Municipal notes that, in its errata filed on August 2, 2012, it clarified that its accounting books are based on the Commission's USofA.⁴⁷ In response to Ameren's assertion that costs may have been imprudently incurred, Prairie Power, Southern Illinois, and Illinois Municipal each asserts that Ameren has not met the initial burden of proof to show costs included in the revenue requirement are excessive.⁴⁸ Prairie Power, Southern Illinois, and Illinois Municipal each contends that the news article supporting Ameren's claim does not provide a basis for an imprudence claim.⁴⁹ Finally, Prairie Power, Southern Illinois, and Illinois Municipal each argues that the true-up process will protect customers by ensuring only actual costs will be recovered, during which time any interested parties may dispute the revenue requirement.⁵⁰

43. In response to Ameren's claim that Prairie Power's, Southern Illinois', and Illinois Municipal's requests to begin recovering Unit 2's costs are premature, each contends that Ameren has mischaracterized its cost collection methodology under the proposed phased-in approach. Prairie Power, Southern Illinois, and Illinois Municipal each states that it

⁴⁵ Prairie Power Answer at 4, Southern Illinois Answer at 2-3, and Illinois Municipal Answer at 3 (citing *Midwest Indep. Trans. Sys. Operator, Inc*, 113 FERC ¶ 61,046, at PP 86-88 (2005)).

⁴⁶ Prairie Power Answer at 3-4; Southern Illinois Answer at 2-3.

⁴⁷ Illinois Municipal Answer at 2-3.

⁴⁸ Prairie Power Answer at 5, and Southern Illinois and Illinois Municipal Answers at 3-4 (citing *Edison Electric Institute on behalf of Jurisdictional Signatories to the Spare Transformer Sharing Agreement*, 116 FERC ¶ 61,280, at P 52 n.50 (2006); *Indiana Mun. Power Agency v. FERC*, 56 F.3d 247, 253 (D.C. Cir. 1995); *Interstate Power and Light Co. v. ITC Midwest, LLC*, 127 FERC ¶ 61,043, at P 44 (2009); and *San Diego Gas & Electric Co. v. Century Power Corp.*, 50 FERC ¶ 61,285, at 61,916 (1990) (stating, "Mere allegations are insufficient to mandate a hearing; parties must make an adequate proffer of evidence to support them.")).

⁴⁹ Prairie Power Answer at 5-6; Southern Illinois and Illinois Municipal Answers at 4.

⁵⁰ Prairie Power Answer at 5; Southern Illinois and Illinois Municipal Answers at 3.

recognizes that Unit 2 must receive Qualified Generator status before recovering costs and reiterate that, under the proposed phased-in approach, the parties will place the remaining half of the total plant revenue requirement in effect when Unit 2 is declared to be in commercial operation.⁵¹ Prairie Power further argues that the text of Schedule 2 of the MISO Tariff dictates that generation resources should receive Commission approval of revenue requirements before obtaining Qualified Generator status.⁵² In addition, Prairie Power contends that ascribing costs evenly among the two units of Prairie State Energy Campus is just and reasonable, as the Reising testimony demonstrates that the gap between the Unit 1 and Unit 2 commercial operating dates does not result in material plant differences.⁵³ According to Prairie Power, Southern Illinois, and Illinois Municipal, this approach will, in fact, benefit ratepayers by deferring cost collection.⁵⁴

44. In responding to Ameren's charge that the Commission should reject the use of Ameren Illinois' cost of capital as a proxy rate of return, Prairie Power and Southern Illinois state that Commission precedent demonstrates that a proxy cost of capital based on that of the interconnecting utility is just and reasonable.⁵⁵ Prairie Power argues that Ameren's claim that none of the cases used to bolster Prairie Power's proxy request involves a MISO market participant is false. Prairie Power also notes that, in its filing, it cited a non-merchant plant case involving a non-public utility.⁵⁶ Prairie Power

⁵¹ Prairie Power Answer at 8-9; Southern Illinois and Illinois Municipal Answers at 4-5.

⁵² Prairie Power Answer at 9 (citing MISO Tariff, at Schedule 2, section II.C. which states, "To be eligible to receive compensation for its voltage control capability, a Generation Resource shall submit a request to the Transmission Provider certifying its compliance with paragraphs 1 - 4 of Section II.B and stating its cost-based revenue requirement as filed and accepted by the Commission. Any Generation Resource seeking compensation under this Schedule 2 shall be responsible for making all appropriate filings with the Commission to justify its cost-based revenue requirements for the provision of the reactive supply and voltage control service." (Emphasis added by Prairie Power)).

⁵³ Prairie Power Answer at 9-10.

⁵⁴ Prairie Power Answer at 9-10; Southern Illinois and Illinois Municipal Answers at 5-6.

⁵⁵ Prairie Power Answer at 7-8, Southern Illinois Answer at 6-7 (citing *Prairie Power, Inc.*, 135 FERC ¶ 61,025 (2011) (*Prairie Power*)).

⁵⁶ Prairie Power Answer at 7 (citing *Indiana Municipal Power Agency*, 114 FERC ¶ 61,008 (2006)).

additionally states that the Commission previously granted Prairie Power's Alsey generation units use of Ameren Illinois' return on equity.⁵⁷ Southern Illinois contends that Prairie State Energy Campus is, in fact, a merchant generator and notes that Southern Illinois does not have a Commission-approved cost of common equity, thereby making the use of a proxy appropriate.⁵⁸

45. American Municipal states that it supports the positions of Prairie Power, Southern Illinois, and Illinois Municipal described in their answers. American Municipal argues that the issues raised by Ameren in its protests lack merit and provide no basis for the Commission either to reject the filings or to set the revenue requirements for hearing. Generally, American Municipal contends that Ameren does not raise a legitimate issue with respect to imprudently incurred costs, that Prairie Power's use of a proxy cost of capital is appropriate, that it is not premature for the Commission to accept the revenue requirements for Unit 2, and that, contrary to Ameren's claims, splitting the costs equally between Units 1 and 2 is a conservative cost approach that will benefit customers.

3. Commission Determination

46. The Filing Parties' proposed revenue requirements raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

47. Our preliminary analysis of the submittals indicates that the Filing Parties' proposed revenue requirements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. While Ameren has raised issues of material fact specific to revenue requirements proposed by Prairie Power, Southern Illinois, and Illinois Municipal, the disputed issues raised by Ameren are applicable to all Filing Parties because the revenue requirements share similar costs, rates of return, and scheduled implementation. Therefore, we will accept Lively Grove's proposed rate schedule for filing, suspend it for a nominal period, with the revenue requirement applicable to Unit 1 to become effective October 1, 2012, subject to refund, and with the revenue requirement applicable to Unit 2 to become effective December 1, 2012, subject to refund, and conditioned on the approval of Unit 2 as a Qualified Generator under Schedule 2 of the Tariff, and set it for hearing and settlement judge procedures. Further, with respect to the remaining Filing Parties' proposed revenue requirements for rate recovery purposes, we will institute an investigation, under section 206 of the FPA, and set them for hearing and settlement judge procedures as well. The effective date for any revenue requirement of those

⁵⁷ Prairie Power Answer at 7 (citing *Prairie Power*, 135 FERC ¶ 61,025).

⁵⁸ Southern Illinois Answer at 7.

remaining Filing Parties will be the date the Commission makes a revenue requirement effective when it issues an order approving a revenue requirement following the hearing and settlement judge procedures.⁵⁹

48. In addition, because the issues in the nine dockets raise common issues of fact and law, we will consolidate the instant filings for purposes of hearing and decision, as well as settlement judge procedures.

49. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.⁶⁰ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁶¹ The settlement judge shall report to the Chief Judge and the Commission within 30 days 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 the commencement of a hearing by assigning the case to a presiding judge.

50. In cases where the Commission institutes an investigation on a filing under section 206 of the FPA such as a complaint to reduce rates or similarly such as the filing at issue here to establish a revenue requirement for recovery of costs associated with the production of reactive power, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005,⁶² requires that the Commission must establish a refund effective date,

⁵⁹ We note that in other instances non-public utilities have committed to providing refunds when submitting their proposals for cost recovery for Commission review. *See City of Riverside, California*, 136 FERC ¶ 61,137 at P 27 (2011); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at P 31 (2012). The remaining Filing Parties retain the opportunity to file a new, superseding filing with a commitment to provide refunds in order to establish a different effective date.

⁶⁰ 18 C.F.R. § 385.603 (2012).

⁶¹ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five (5) days of the date 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>).

⁶² Pub. L. No. 109-85, § 1285. 119 Stat. 594, 980-81 (2005).

and that date must be no earlier than the date the filing was made but no later than five months after the date the filing was made. Consistent with our general practice, we will set a refund effective date at the earliest date possible, i.e., the date of the filing, which is July 30, 2012.⁶³

51. Section 206(b) of the FPA also requires that, if no decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures or, if the case were to go to hearing immediately, by June 30, 2013. We thus estimate that if the case were to go to hearing immediately we would be able to issue our decision within approximately four months of the filing of briefs on exceptions and briefs opposing exceptions, or by December 30, 2013.

The Commission orders:

(A) Lively Grove's proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, Unit 1 to become effective October 1, 2012, as requested, subject to refund and Unit 2 to become effective December 1, 2012, as requested, subject to refund, and conditioned on the approval of Unit 2 as a Qualified Generator, as discussed in the body of this order. We also hereby direct Lively Grove to submit a notice of cancellation for Version 1.0.0 once Version 2.0.0 takes effect.

⁶³ While section 206 of the FPA, as amended, requires the Commission to specify a refund effective date, which we have done above, here, where we are not dealing with a complaint asking that the Commission lower existing rates but rather where we are dealing with a request essentially to adopt new increased rates, a proposed revenue requirement can be effective no earlier than the date the Commission makes any such revenue requirement effective when it issues an order approving a revenue requirement following the hearing and settlement judge procedures. We note that Schedule 2 of MISO's Tariff provides that Qualified Generator Status is "effective on the first day of the month immediately following acceptance of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month." *See T.E.S. Filer City Station Ltd. Partnership*, 130 FERC ¶ 61,239 (2010). *See also Indiana Municipal Power Agency*, 114 FERC ¶ 61,008 (2006); *Illinois Municipal Electric Agency*, 114 FERC ¶ 61,009 (2006).

(B) The Filing Parties' submittals are hereby consolidated for the purpose of hearing and decision and settlement judge procedures, 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 Lively Grove's proposed rate schedule and the remaining Filing Parties' proposed revenue requirements. 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 (2012), 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.

(G) The refund effective date established pursuant to section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005, is July 30, 2012.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.