

112 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER05-215-003
ER05-215-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued September 15, 2005)

1. In an order issued May 20, 2005, the Commission denied a request for rehearing of an earlier order that rejected an unexecuted interconnection and operation agreement (IA) between Prairie State Generating Company (Prairie State) and Illinois Power Company¹ for failing to follow the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO's) standard form interconnection agreement.² In this order, we deny Ameren/IP's further request for rehearing. This order also accepts in part and rejects in part the compliance filing.

Background

2. At issue is an agreement related to Prairie State's plan to interconnect a 1,500 megawatt (MW) coal-fired, base-load generating facility (Facility) to the transmission and distribution system of Illinois Power Company, which is integrated into the Midwest ISO.³ Midwest ISO filed an unexecuted interconnection agreement relating to the Facility on November 15, 2004.

¹ To reflect Ameren Service Company's ownership, Illinois Power Company shall be referred to as Ameren/IP.

² *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,237 (2005) (May Order).

³ For a complete discussion of the background of this proceeding, see *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,019 (2005) (January Order).

3. In an order issued January 14, 2005, the Commission rejected Midwest ISO's proposed unexecuted interconnection agreement as inconsistent with the standard form interconnection agreement in Midwest ISO's open access transmission tariff, which was in effect when the proposed interconnection agreement was filed.⁴ With regard to the issues in dispute in the unexecuted agreement, which related to how Prairie State would receive credits for network upgrade costs, the Commission noted that the parties would be subject to the Commission-approved crediting provision in the Midwest ISO interconnection agreement.⁵

4. The May Order denied Ameren/IP's request for rehearing of the January Order. It also accepted the revised unexecuted interconnection agreement submitted after the issuance of the January Order, but rejected certain modifications to that agreement proposed by Ameren/IP as insufficiently supported nonconforming changes. Three of the rejected changes, which are at issue in this rehearing proceeding, would have revised (1) article 11.4.4 to clarify that if there is a change in the Commission's or Midwest ISO's crediting policy that takes effect before Prairie State begins commercial operations, the new policy will govern the provision of such credits, and prevent Prairie State from opposing any attempt by Ameren/IP to recover the related costs in its rates; (2) article 11.4.1 to describe how crediting will work in light of the fact that interconnection of the Prairie State facility will require upgrades on multiple transmission systems within Midwest ISO; and (3) article 5.2 to modify the conditions applicable to the Interconnection Customer's option to build certain facilities.

Rehearing Request

5. Ameren/IP argues that the Commission, in rejecting revisions to sections 11.4.1, 11.4.4, and 5.2 proposed by Ameren/IP, did not provide any reasoned analysis, and thereby failed to meet the standard for reasoned decision-making. Although the Commission cited precedent explaining what a transmission provider must show when proposing revisions that deviate from the transmission provider's pro forma large generator interconnection agreement (LGIA), Ameren/IP argues, the Commission did not analyze the circumstances and explain why the Ameren/IP revisions were not unique. Specifically, Ameren/IP explains that it had argued that Midwest ISO admitted that its crediting policy was flawed and was being implemented only on an interim basis. Also, Ameren/IP notes that it previously explained that it was not challenging the current

⁴ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,019 (2005) (January Order).

⁵ January Order at P 22.

crediting policy, and the proposed changes were reasonable and necessary to protect Ameren/IP and its ratepayers in the event of a change in Commission policy.

6. Ameren/IP next argues that the Commission failed to address the fact that Prairie State agreed to and supported the proposed revisions to articles 11.4.1 and 5.2. According to Ameren/IP, Prairie State previously had agreed to these changes and requested that the Commission allow them to be incorporated as revisions to the LGIA. Ameren/IP argues that by disregarding this issue in the May Order, the Commission failed to engage in reasoned decision-making.

7. Ameren/IP also explains that now that Ameren/IP has turned over control of its transmission facilities to the Midwest ISO, any interconnection to the Ameren/IP system is subject to MISO's authority as transmission provider under Midwest ISO's open access transmission and energy markets tariff. As such, Ameren/IP continues, the interconnection agreement at issue here is entitled to the more deferential "independent entity" standard of review applicable to independent transmission providers. By not applying this more deferential standard to the LGIA, Ameren/IP concludes, the Commission departed from its precedent in failing to recognize the RTO status of the Midwest ISO.

8. If the Commission denies Ameren/IP's request for rehearing, Ameren/IP alternatively requests clarification regarding article 29.11, which allows Midwest ISO the right to make a unilateral filing with the Commission under section 205 of the Federal Power Act (FPA), and gives Prairie State and Ameren/IP a similar right under section 206 of the FPA. The rejection of Ameren/IP's proposed revisions to the LGIA on the grounds that deviations will only be allowed in "unique" circumstances, Ameren/IP continues, does not address whether the Commission's determination has any effect upon the parties' filing rights under article 29.11. Therefore, Ameren/IP asks the Commission to clarify that the determinations in the May Order are not intended to affect the right of individual parties to the LGIA to contractually agree to allow unilateral filings to modify a pro forma interconnection agreement.

Compliance Filing

9. On June 20, 2005, in compliance with the May Order, the Midwest ISO filed revisions to the interconnection agreement. The Midwest ISO made the following six changes to correct or complete the unexecuted interconnection agreement, as approved in the May Order: (1) revised the definition of Point of Interconnection, (2) modified the description of Generating Facility in Appendix A; (3) removed the upgrade that was already completed by the Transmission Owner from the list of Network Upgrades to be installed and revised other references in the appendices accordingly; (4) substituted the map provided in Appendix A-1 to identify the point of interconnection; (5) revised section 1 of Appendix B to incorporate the Interconnection Customer's selected Standard

Option under article 5.1 of the interconnection agreement; and (6) updated the milestones provided in section 2(g) of Appendix B.

Notice of Filing and Responsive Pleadings

10. Prairie State filed an answer to Ameren/IP's request for rehearing. Notice of Midwest ISO's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 37,387 (2005), with comments, protests or interventions due on or before July 11, 2005. Prairie State filed a protest.

Answer and Protest

Answer to Request for Rehearing

11. Prairie State's answer to Ameren/IP's request for rehearing argues that Ameren/IP has failed to state any reasonable basis upon which to grant rehearing. Prairie State argues that Ameren/IP did not meet its burden of demonstrating that the agreement, which followed Midwest ISO's pro forma LGIA, was not just and reasonable. Prairie State notes that Ameren/IP's arguments were directed more generically at the Midwest ISO LGIA, and did not set forth the allegedly unique circumstances presented in this proceeding. Therefore, Prairie State argues, the Commission was correct in concluding that Ameren/IP failed to meet its burden. Prairie State also argues that Ameren/IP's argument regarding the independent entity standard does not make sense because the Commission accepted the agreement as filed by the independent RTO, and rejected proposed changes by the non-independent transmission owner Ameren/IP. Prairie State also explains that, although Prairie State did agree to the changes to articles 5.2 and 11.4.1 in the expectation that the parties would be able to negotiate an agreed-upon version of the agreement as a whole, because no such comprehensive agreement was reached, there was no free-standing agreement reached on these specific provisions. Finally, Prairie State agrees with Ameren/IP's reading of article 29.11, but notes that any such filing would be subject to the same scrutiny and standards applied by the Commission in the May Order.

Protest to Compliance Filing

12. Prairie State argues that certain of Midwest ISO's changes go well beyond the scope of compliance changes authorized by the Commission in the May Order. Prairie State supports the changes identified by Midwest ISO, but contends that in addition to these specific changes, the compliance filing also significantly revised the cost estimates for the required network upgrades by increasing such costs by approximately \$10

million.⁶ Prairie State further contends that this increase in cost was never identified by Ameren/IP as a change required to finalize the interconnection agreement.

Commission Conclusion

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We will accept Prairie State's answer because it has provided information that assisted us in our decision-making process.

Request for Rehearing

14. The Commission is not persuaded to grant Ameren/IP's request for rehearing. The revisions to articles 11.4.1, 11.4.4 and 5.2 do not meet the standard for nonconforming changes. As the Commission explained in the May Order, nonconforming changes "must be due to unique circumstances or other operational reasons that necessitate the changes proposed."⁷ The Commission has explained that use of the standard to approve changes will arise only rarely, and in unusual circumstances: "[T]he Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement."⁸ The circumstances described by Ameren/IP do not warrant the approval of the proposed nonconforming changes. In this instance, the interconnection itself is not unusual in the sense that it does not raise unusual reliability concerns or involve other unusual technical characteristics that require changes to the agreement. Nor are novel legal issues involved. Since there are numerous interconnection agreements that contain the Midwest ISO's current network upgrade crediting provision, the agreement hardly could be considered unique or extraordinary. Furthermore, as discussed below, article 29.11 of the interconnection agreement gives the parties the opportunity to submit revised provisions and have the Commission review

⁶ Prairie State asserts that Ameren/IP noted that the cost estimates for network upgrades would need to be reduced to \$68,355,411 to reflect the elimination of an upgrade already constructed. Instead, Prairie State continues, the compliance filing increased the cost estimate to \$78,411,544. *See* Prairie State protest P 3 at n.4. Prairie State specifically objects to the changes made which reflect an increase in network upgrade costs to sheets 84, 94 and 96 through 98.

⁷ May Order at P 17; *see PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 at P 9-11 (2005).

⁸ *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 at P 10 (2005).

those proposed changes under either section 205 or 206 of the FPA. While it is unclear whether or when Midwest ISO will implement a new cost recovery method, it would be premature to revise the interconnection agreement to incorporate the changes Ameren/IP seeks here.

15. In response to Ameren/IP's argument regarding Prairie State's alleged support for certain of the proposed changes, it is instructive to note that Prairie State clarifies in its answer that the arguments that Ameren/IP cites as indicative of support no longer apply, since the expressions of support related to negotiations that were never comprehensively resolved. Furthermore, Prairie State indicated that it supported without modification the version of the document filed by the Midwest ISO after the Commission rejected the unexecuted agreement in the January 2005 Order. Even if we did not disregard the significance of the Prairie State's prior support for select provisions of the interconnection agreement, the nonconforming agreement standard would still lead us to reject these changes as insufficiently supported.

16. Ameren/IP mistakenly argues that the independent entity variation applies to the circumstances in this proceeding. The independent entity variation applies only to variations that an independent entity seeks to make to the pro forma large generator interconnection procedures (LGIP) or LGIA in Order No. 2003. It also applies to any further changes that an independent entity seeks to make to its Commission-approved pro forma LGIP and LGIA. The Commission does not apply this standard to nonconforming provisions of individual LGIAs because once the LGIA has become a part of a transmission provider's tariff, the use of the pro forma document ensures that an interconnection customer receives non-discriminatory service, and that all interconnection customers are treated on a consistent and fair basis. It is in part for these reasons that the Commission applies a stricter standard to nonconforming provisions. Because this proceeding involves non-conforming provisions in an individual interconnection agreement, and not changes to the pro forma interconnection agreement or procedures in Midwest ISO's tariff, the independent entity variation does not apply.

17. Finally, we clarify that article 29.11 allows the signatories to exercise their rights under the FPA to seek modifications to the agreement. The May Order was not intended to affect the signatories' rights to seek modifications under sections 205 and 206 of the FPA. When a modification is sought, the Commission will determine the appropriate standard to apply to such requests.

Compliance Filing

18. While we accept the compliance filing, we note that the compliance filing proposes to increase the cost for network upgrades by approximately \$10 million. This change is beyond the scope of the compliance ordered in the May Order, and is rejected

without prejudice. The pages that incorporate this increase in costs must be revised to eliminate this increase in a further compliance filing.

The Commission orders:

(A) Ameren/IP's request for rehearing of the May Order is hereby rejected, as discussed in the body of the order.

(B) Midwest ISO's compliance filing is accepted in part, and rejected in part, as discussed in the body of this order.

(B) Midwest ISO is directed to make a compliance filing, as directed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.