

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Midwest Independent Transmission  
System Operator, Inc. and  
Ameren Services Company

Docket No. ER04-1252-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AND  
ESTABLISHING HEARING PROCEDURES

(Issued November 18, 2004)

1. In this order, we accept for filing the revised tariff sheets submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Ameren Services Company (Ameren)<sup>1</sup> to replace Ameren's current zonal rates with rates calculated pursuant to the rate formulae in Attachment O of the Midwest ISO's Open Access Transmission Tariff (OATT), suspend them for a nominal period, subject to refund, and establish hearing procedures. This action will benefit customers by ensuring that the rates charged to Midwest ISO transmission customers are just and reasonable and not unduly discriminatory.

**I. Tariff Filing**

2. On September 28, 2004, pursuant to section 205 of the Federal Power Act,<sup>2</sup> the Midwest ISO submitted revisions to its OATT to apply the standard Attachment O, Rate Formulae (Attachment O) to derive transmission rates for the AmerenUE and AmerenCIPS Zone. The Midwest ISO and Ameren propose a straightforward application of Attachment O and do not propose any modifications to the rate formulae. The rate formulae in Attachment O have been accepted for filing by the Commission and found to be just and reasonable.<sup>3</sup> This rate formula applies to the majority of the transmission owners of the Midwest ISO.

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<sup>1</sup> Ameren filed as agent for its electric utility affiliates, Union Electric Company d/b/a/AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS.

<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,090 (2003); see also, *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,200 (2004).

3. Currently, the rates applicable to Ameren are those set forth in Schedules 7, 8, and 9 of the OATT. These rates have been applicable to Ameren since May 1, 2004, when it transferred functional control of AmerenUE's and AmerenCIPS' transmission facilities to the Midwest ISO as participants in GridAmerica LLC (GridAmerica). When GridAmerica was integrated into the Midwest ISO, the Midwest ISO and the GridAmerica Companies filed revisions to the OATT that provided for stated rates for each of the GridAmerica zones. The stated rates, which the Commission accepted for filing, were based on each company's then effective rates and revenue requirements. The rates in Schedules 7, 8, and 9 were part of these stated rates.<sup>4</sup>

4. The Midwest ISO and Ameren state that the purpose of their filing is to transition Ameren from the stated rates and bring it under the Attachment O rates. They state that this will allow Ameren to fully migrate to the OATT and be subject to the same terms and conditions of service as the majority of transmission owners of the Midwest ISO.

5. To effectuate the application of Attachment O, the Midwest ISO and Ameren propose changes to certain tariff sheets and schedules, listed in the Appendix to this order. They state that the proposed changes are designed to eliminate special provisions previously included to accommodate the stated rates for AmerenUE and AmerenCIPS. The special provisions consist of references to and the actual specification of stated rates in sections 34.1 and 34.3 of the tariff, as well as Schedules 7, 8, and 9. They state that by eliminating these special provisions, the tariff will automatically require that the rates charged for the AmerenUE and AmerenCIPS zones be calculated using the rate formulae in Attachment O.

6. The Midwest ISO and Ameren request waiver of the Commission's 60-day prior notice requirement and ask that the proposed tariff changes become effective no later than October 1, 2004. They contend that good cause exists for granting the waiver because the proposal consists of ministerial changes necessary to implement rate formulae already approved and on file with the Commission.

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<sup>4</sup> *Midwest Independent Transmission System Operator, Inc. and Ameren Services Co.*, 106 FERC ¶ 61,293, *order granting clar.*, 107 FERC ¶ 61,167 (2004) (Service Agreement Order).

## **II. Notice, Interventions, and Protests**

7. Notice of the Midwest ISO's and Ameren's filing was published in the *Federal Register* (69 Fed. Reg. 60,850 (2004)) with interventions and protests due on or before October 19, 2004. Timely interventions were filed by Consumers Energy Company and the Missouri Joint Municipal Electric Utility Commission (Missouri Joint Municipal Commission). The Missouri Joint Municipal Commission protests the filing.

8. The Missouri Joint Municipal Commission argues that the proposed rate change will result in unduly discriminatory rates because the rate that it and other transmission dependent load-serving entities will be charged allegedly will increase by at least 30 percent, whereas the rate Ameren pays to serve its own retail native load will not increase. In addition, the Missouri Joint Municipal Commission believes the rates were calculated incorrectly.

9. The Missouri Joint Municipal Commission also protests the applicants' request for waiver of the 60-day prior notice requirement and an October 1, 2004 effective date for the proposed tariff changes. The Missouri Joint Municipal Commission argues that the applicants do not explain why they did not make their filing with 60 days notice and that the Commission should uphold the 60-day prior notice requirement, while subjecting the applicant's filing to a comprehensive review that examines the justness and reasonableness of the proposed rates.

10. On November 3, 2004, Ameren filed an answer. It disputes the arguments in the protest and states that, to the best of the applicants' knowledge, the proposed rate correctly applies the Attachment O rate.

## **III. Discussion**

### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. Under Rule 213(a) of the Commission's Rules of Practice and Procedure,<sup>5</sup> no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. Accordingly, we deny Ameren's answer.

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<sup>5</sup> 18 C.F.R. § 385.213(a) (2004).

**B. Substantive Matters****1. Undue Discrimination**

12. The Missouri Joint Municipal Commission argues that the proposed adoption of the Attachment O formulae will result in unduly discriminatory rates because the rate that it and other transmission dependent load-serving entities would be charged would increase by at least 30 percent, whereas the rate charged to Ameren to serve its own retail native load would not increase. Ameren would be charged a lower rate, according to the Missouri Joint Municipal Commission, because the service agreement under which Ameren receives service from Midwest ISO to serve its own bundled retail load states that any incentive adders that the Commission offers for participation in an RTO or ISO shall not apply to the transmission component of the rates set for bundled retail service by the Missouri Public Service Commission (Missouri Commission). Missouri Joint Municipal Commission points out that the rate calculated under Attachment O includes a 50 basis point incentive adder to the Midwest ISO's 12.88 percent return on equity, which it believes Ameren will not be charged under the terms of its service agreement.

13. Missouri Joint Municipal Commission previously raised the undue discrimination issue in the proceeding in which the Commission accepted Ameren's service agreement. However, the Commission dismissed the Missouri Joint Municipal Commission's undue discrimination concerns in the Service Agreement Order as premature, since Ameren was not proposing at that time to charge rates that included an incentive adder, and accepted the service agreement for filing.<sup>6</sup> The Commission also stated that if Ameren proposed to apply incentive rates to other customers within its pricing zone, Ameren must demonstrate that such a proposed rate change is not unduly discriminatory, as compared to the rates charged for Ameren's bundled retail load, and that such a proposal otherwise meets requirements under the Federal Power Act. The Missouri Joint Municipal Commission argues that because the formula in Attachment O includes a 50 basis point incentive adder to Midwest ISO's return on equity, Ameren must now meet these requirements.

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<sup>6</sup> Service Agreement Order, 106 FERC ¶ 61,293 at P 24 (2004).

14. The Missouri Joint Municipal Commission correctly characterizes the concerns the Commission expressed in the Service Agreement Order regarding discriminatory rates, which could occur if a customer were charged a rate different from the one a transmission owner itself would be charged for transmission service.<sup>7</sup> The Commission recognizes that, as part of an agreement Ameren made with the Missouri Commission, the Midwest ISO-Ameren service agreement under which Ameren procures transmission to serve its bundled retail load specifically states that an incentive adder will not be included in retail bundled rates.<sup>8</sup> Therefore, the applicants have not demonstrated that the adoption of the proposed incentive adder would not be unduly discriminatory “as compared to the rates charged for AmerenUE’s bundled retail load,” as required by the Service Agreement Order.<sup>9</sup> Accordingly, we will set this issue for hearing, as ordered below.

## 2. Accuracy of Proposed Adoption of Attachment O Rate

15. The Missouri Joint Municipal Commission’s claim that the proposed rates may result from errors made in implementing Attachment O raises the issue of whether the formulae are being adopted correctly. This is an issue more appropriately addressed in the hearing ordered below.

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<sup>7</sup> In addition, the Commission accepted Ameren’s Service Agreement for filing without requiring Ameren to separately calculate the transmission component of the bundled retail rate. In order to establish the rate on file and the rate level against which any claims of undue discrimination should be evaluated, the Commission stated that it would impute the OATT rate for service to Ameren’s bundled retail load. *Id.* at P 22.

<sup>8</sup> Section 3.1 of the service agreement states in pertinent part: “[T]o the extent that the FERC offers incentive “adders” for participation in an RTO or in an ITC to the rate of return allowed for providing Transmission Service to wholesale customers within the Ameren zone, such incentive adders shall not apply to the transmission component of rates set for Bundled Retail Load by the [Missouri Commission].” Agreement for the Provision of Transmission Service to Bundled Retail Load, section 3.1, filed by Midwest ISO and Ameren in Docket No. ER04-571-000.

<sup>9</sup> See 106 FERC ¶ 61,293 at P 22.

### **3. Request for Waiver of Prior Notice Requirement**

16. Ameren has not shown extraordinary circumstances justifying its failure to timely file the proposed tariff sheets.<sup>10</sup> We also disagree with Ameren's characterization of a filing to change the transmission rates its customers will be charged as simply ministerial in nature. Therefore, we will deny the applicants' request for waiver of the 60-day prior notice requirement.

### **4. Acceptance, Suspension and Hearing Procedures**

17. Our preliminary analysis indicates that the proposed adoption of Attachment O by Ameren has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We will therefore accept the proposed adoption of Attachment O, suspend it for a nominal period, to become effective on November 28, 2004 (60 days after the filing was made), subject to refund, and set it for hearing, as ordered below.

### **5. Other Issues**

18. Finally, while reviewing the instant filing, we noticed that several of the rate designations contain errors. More importantly, there are inconsistencies between the "clean" and "red-lined" versions of the application. The purpose of the filing of both a "red-lined" and a "clean" version is undermined when the documents lack consistency. In the future, Ameren must be sure it files the correct information in its applications.

#### **The Commission orders:**

(A) The applicants' proposed tariff sheets are hereby accepted for filing and suspended for a nominal period, to become effective on November 28, 2004, as discussed in the body of this order.

(B) The applicants' request for waiver of the 60-day prior notice requirement is hereby denied.

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<sup>10</sup> *Central Hudson Gas & Electric Company*, 60 FERC ¶ 61,106 (1992), *reh'g denied*, 60 FERC ¶ 61,089 (1992).

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and 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 the proposed tariff sheets.

(D) A presiding judge, to be designated by the Chief Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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 )

Linda Mitry,  
Deputy Secretary.