

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
and Jon Wellinghoff.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER06-1439-001

ORDER DENYING REHEARING

(Issued April 30, 2007)

1. The Commission rejected<sup>1</sup> the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO's) proposal to revise its Open Access Transmission and Energy Markets Tariff (TEMT) to apply a new, approved cost-sharing policy<sup>2</sup> to certain existing interconnection agreements. We held that the Midwest ISO failed to demonstrate under Order No. 2003<sup>3</sup> that applying its proposal would produce just and reasonable results by encouraging efficient siting of generation or averting improper subsidies. However, our determination was without prejudice to the Midwest ISO making a future filing to demonstrate that a *particular* interconnection agreement would result in an improper subsidy if the cost-sharing policy is not applied. In this order, the

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006) (Order Rejecting Filing).

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh'g*, 117 FERC ¶ 61,241 (2006) (Cost Allocation Order).

<sup>3</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, No. 04-1148, 2007 U.S. App. LEXIS 626 (D.C. Cir. Jan. 12, 2007).

Commission denies Ameren Services Company's (Ameren's)<sup>4</sup> request for rehearing of the Commission's Order Rejecting Filing, as discussed below.

## **I. Background**

### **A. Prairie State Interconnection Proceedings**

2. In Docket No. ER05-215, *et al.*, the Midwest ISO filed an unexecuted interconnection agreement related to Prairie State Generating Company, LLC's (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, the predecessor to AmerenIP. That system is under the Midwest ISO's control.

3. As relevant here, the Commission required that the interconnection agreement comport with the *pro forma* large generator interconnection agreement and rejected a proposed non-conforming provision<sup>5</sup> that said that if there is a change in the Commission's or Midwest ISO's crediting policy that takes effect before Prairie State begins commercial operation, the new policy will govern the provision of such credits. The Commission stated "...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 AmerenIP seeks here."<sup>6</sup> The Commission also clarified 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."<sup>7</sup>

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<sup>4</sup> Ameren states that it is filing this pleading on behalf of the Ameren public utility operating companies, which include Central Illinois Light Company d/b/a AmerenCILCO; Central Illinois Public Service Company d/b/a AmerenCIPS; Illinois Power Company d/b/a AmerenIP; and Union Electric Company d/b/a AmerenUE.

<sup>5</sup> Under the Order No. 2003 series, interconnection agreements must conform to the relevant approved *pro forma* agreement; "non-conforming" agreements are permitted only in certain circumstances. *E.g. Southern Co. Services, Inc.*, 116 FERC ¶ 61,231, at P 14 (2006).

<sup>6</sup> *Midwest ISO Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,281 (2005) (Prairie State Order) at P 14.

<sup>7</sup> *Id.* See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,237 (2005) (May Order).

**B. Midwest ISO Cost Allocation Proceeding**

4. In the Cost Allocation Order,<sup>8</sup> the Commission approved the Midwest ISO's new interconnection pricing policy in Attachment FF – Transmission Expansion Planning Protocol. That policy provides for cost sharing (a form of participant funding) between generator interconnection customers and transmission owners. Under the policy, the customer and transmission owner share network upgrade costs equally (*i.e.* the interconnection customer is responsible for 50 percent of the project cost) if the output of the generator is committed by a contract of at least one year to serve Midwest ISO network customers and the generation facility is designated as a network resource at the time of commercial allocation. This policy was conditionally approved effective February 5, 2006.<sup>9</sup>

5. In addressing whether the new policy would apply to existing generators, the Commission stated, "...[T]he Midwest ISO has not proposed in the October 7 Filing to modify the applicable Tariff language as to existing generator interconnection agreements, and we will not require it to do so...This is without prejudice to the Midwest ISO's ability to seek modification to existing generation interconnection agreements."<sup>10</sup>

**C. Midwest ISO's Filing at Issue Here**

6. On August 31, 2006, the Midwest ISO proposed revisions to section III.A.2.d. of Attachment FF of its TEMT that would have applied this new policy (the 50/50 cost sharing) to certain existing generator interconnection agreements that pre-date the new policy. The proposal had three criteria to identify those agreements: 1) the agreement was entered into after the Midwest ISO's submittal of its Order No. 2003-A compliance filing (April 26, 2004) to the Cost Allocation Order; 2) the network upgrades are not yet in service and not yet included in the transmission owner's recoverable rate base; and 3) the generation facility is not yet in commercial operation. The proposed tariff language also indicated that the interconnection agreements meeting these criteria would be modified to incorporate cost allocation and repayment provisions consistent with this section III.A.2.d.

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<sup>8</sup> Cost Allocation Order, 114 FERC ¶ 61,106 (2006). *See also Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 (2006).

<sup>9</sup> Cost Allocation Order, 114 FERC ¶ 61,106 (2006). *See also Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 (2006).

<sup>10</sup> Cost Allocation Order at P 115; *also see id.* at P 70.

7. In the Order Rejecting Filing, the Commission rejected the Midwest ISO's proposed revisions, finding that it had not demonstrated that applying its new participant funding policy to all generation interconnections that meet the proposed criteria produces just and reasonable results. The Midwest ISO had not shown that the proposal would accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing – encouraging efficient siting of generation and averting improper subsidies. With regard to encouraging efficient siting, we noted that the Midwest ISO's proposal would have applied to generators that are already sited. With regard to improper subsidies, the Midwest ISO had not shown that the interconnection agreements with rolled-in pricing will generally result in improper subsidies. However, the Commission stated that the Midwest ISO, pursuant to the *pro forma* LGIA, could make a unilateral filing under the just and reasonable standard of review to apply its new cost sharing policy to a particular existing interconnection agreement.<sup>11</sup>

## II. Ameren's Rehearing Request

8. On rehearing of the Commission's Order Rejecting Filing, Ameren argues first, that the Commission changed its standard of review because we indicated that the Midwest ISO should proceed on a case-by-case basis. Second, Ameren contends that the Commission's determination imposes a Federal Power Act (FPA) section 206<sup>12</sup> standard on a section 205<sup>13</sup> filing. Third, Ameren asserts that customers should not have expected their interconnection agreements to remain unchanged, given the provisions permitting the Midwest ISO to propose unilateral changes. Fourth, Ameren argues that the Commission failed to respond to its assertions that participant funding is necessary to achieve equity between generators and that the filing is consistent with Order No. 2003, which says that RTOs can propose participant funding. Fifth, Ameren asserts that even if the Midwest ISO failed to show that application of participant funding is just and reasonable when applied generically to existing interconnection agreements, Ameren has shown in its pleadings in this proceeding that application of participant funding to Prairie State is just and reasonable.

9. Prairie State filed an answer to Ameren's request for rehearing and Ameren filed a response. Prairie State then filed an answer to Ameren's response.

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<sup>11</sup> Order Rejecting Filing, 117 FERC ¶ 61,128 at P 27.

<sup>12</sup> 16 U.S.C. § 824e (2000).

<sup>13</sup> 16 U.S.C. § 824d (2000).

### III. Discussion

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>14</sup> prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept Prairie State's answer and will, therefore, reject it. We also are not persuaded to accept Ameren's response to Prairie State's answer or Prairie State's corresponding response and will therefore, reject them.

#### A. Argument that Requirements were Changed

11. Ameren argues that the Commission applied "previously unannounced" standards.<sup>15</sup> Ameren says that for the first time, the Commission indicated that the Midwest ISO should proceed on a case-by-case basis. Ameren states that this is inconsistent with the Commission's prior findings that the Midwest ISO can modify existing interconnection agreements or tariff provisions, as long as it satisfies the section 205 just and reasonable requirement.

12. Ameren states that the Commission has not explained its basis for the new requirement that the Midwest ISO show that the existing agreements will result in improper subsidies on a case-by-case basis. It argues that it is inconsistent with basic principles of administrative law and in violation of parties' due process rights for the Commission to impose a new standard or change positions from its prior ruling without explanation. Ameren also states that if the Commission rejected the filing because the Midwest ISO proposed to amend the TEMT rather than to amend individual agreements, that is contrary to a prior order in which the Commission found that the February 5, 2006 effective date for the new participant funding was "without prejudice to the Midwest ISO's ability to seek modification as to the applicable tariff language."<sup>16</sup>

13. We disagree. Our decision here to reject the application of the new cost allocation policy to pre-existing agreements "without prejudice to the Midwest ISO making a future filing demonstrating, for example, that a *particular* interconnection agreement will result in an improper subsidy if rolled-in pricing is used,"<sup>17</sup> is not a new or unannounced standard. In the Prairie State Order, the Commission addressed a request for clarification by Ameren, and stated that Article 29.11 of that agreement allows the signatories to

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<sup>14</sup> 18 C.F.R. § 385.213(a)(2) (2006).

<sup>15</sup> Ameren Rehearing Request at 7.

<sup>16</sup> Cost Allocation Order at P 70.

<sup>17</sup> *Id.* (emphasis added).

exercise their rights under the FPA to *seek* modifications to the agreement. Again, in the Cost Allocation Order at P 115 the Commission addressed the question regarding the application for the Midwest ISO's cost sharing policy to existing interconnection agreements by stating that our conditional acceptance was without prejudice to the Midwest ISO's ability to *seek* modification to existing generation interconnection agreements. Moreover, Order No. 2003-B specifically stated that a transmission provider who believes that participant funding is necessary to prevent a subsidy *in a particular instance* can make a filing proposing a pricing scheme that prevents such a subsidy.<sup>18</sup> Thus, this is not the first time the Commission has said that the Midwest ISO or another party to a specific interconnection agreement may proceed to propose cost sharing to an existing agreement, *i.e.*, by filing pursuant to the terms of the interconnection agreement to change the crediting language.

14. Instead of filing to revise the individual agreement, the Midwest ISO chose to file an amendment under section 205 to its TEMT to make generic changes. However, as discussed below, it did not demonstrate that such a generic revision met the statutory standards nor did it satisfy our filing requirement by proposing to revise the pricing in the individual agreements.<sup>19</sup>

#### **B. Imposition of a Section 206 Standard on a Section 205 Filing**

15. Ameren contends that the Commission's determination that the Midwest ISO has not shown that existing interconnection agreements result in improper subsidies conflicts with section 205. It says that we applied an unjust and unreasonable standard rather than the just and reasonable standard required by section 205. It points out that section 205 does not require that an applicant show that an existing contract is unjust and unreasonable. Ameren says that the Commission grafted a section 206 requirement (to show that an existing agreement is unjust and unreasonable) onto a filing under section 205.

16. We did not apply the wrong standard. Order No. 2003 requires that an RTO or non-independent transmission provider wanting to impose a pricing scheme different from the pricing set forth in that order must justify its alternative pricing under the

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<sup>18</sup> Order No. 2003-B at P56.

<sup>19</sup> The Midwest ISO recognizes this, as it proposed language in the instant filing to Section III.A.2.d of Attachment FF of its TEMT that states that “[s]uch interconnection agreements shall be modified to incorporate cost allocation and repayment provisions consistent with the Section III.A.2.d, provided; however, that parties entering into interconnection agreements prior to February 5, 2006, may implement alternate cost sharing provisions, if acceptable by all signatories to such interconnection agreements.”

“independent entity” standard or the “consistent with or superior to” standard. Thus, the rolled-in pricing in Order No. 2003 is rebuttably presumed to be just and reasonable and not unduly discriminatory. However, under Order No. 2003-B, a transmission provider wanting to apply participant funding to a generator has an opportunity to file under section 205 to demonstrate that there will otherwise be an improper subsidy. The Midwest ISO has not shown that the proposal to apply participant funding generically to existing interconnection agreements that meet the criteria proposed by Midwest ISO meets the requirements of Order No. 2003 because Midwest ISO has not shown that its proposal would encourage efficient siting or prevent subsidies.

**C. Reservation of Section 205 Rights and Proposed Changes**

17. Ameren maintains that the Commission did not adequately explain why the reservation of section 205 rights in existing agreements (that is, the fact that they are not *Mobile-Sierra* agreements) does not defeat claims that the generators reasonably expected that the agreements would not change. Ameren argues that the interconnection customers should not have expected that their agreements would remain the same. It states that this is particularly true for Prairie State, as this has been an issue between Prairie State and Ameren for many years.

18. We agreed in our Order Rejecting Filing that under the interconnection agreements, the Midwest ISO has the right to file to propose changes under section 205. However, in order for the revision to be accepted by the Commission, the Midwest ISO must demonstrate that the revision meets the just and reasonable standard under section 205. In order to meet this standard, the applicant must show that the proposal meets the requirements of Order No. 2003 that it either encourages efficient siting or is needed to prevent an improper subsidy. We reiterate our policy set forth in Order No. 2003. The Midwest ISO can propose revisions to individual interconnection agreements. It did not do so, nor did Ameren. While it is true that generators knew their contracts could be revised under the just and reasonable standard, that alone is not reason enough to change the contracts; the entity requesting changes to a contract still bears the burden of showing that the revisions are just and reasonable.

**D. Failure to Address Claims that Applying the New Cost Allocation Policy to Existing Agreements is Necessary for Equity and Claims that the Proposal is Consistent with Order No. 2003-A**

19. Ameren argues that the Commission did not respond to the Midwest ISO’s argument that application of the new participant funding to the existing agreements is necessary to preserve equity between the parties to the existing agreements and parties to the agreements entered into after February 2006 (intergenerational equity). Ameren further contends the Commission did not address claims that the filing is consistent with

Order No. 2003-A, which said that RTOs may propose to use participant funding. It also states that we ignored the fact that generators still have the chance to make efficient decisions as to the size and location of their plants up until the time their plants are actually built, and that application of participant funding would compel them to make such decisions. It points to Prairie State, which Ameren says has admitted that it might have challenged the network upgrade costs if it had known it would be required to pay a portion of these costs.<sup>20</sup>

20. We did address these arguments. We clearly stated in the Order Rejecting Filing that the Midwest ISO failed to demonstrate why the participant funding proposal is equitable if applied generically to agreements executed after April 26, 2004, the date Midwest ISO made its Order No. 2003-A compliance filing. Order No. 2003-A indicates our willingness to consider participant funding for RTOs and ISOs, but only where to do so would encourage efficient siting or avert improper subsidy. Here, we have not been shown that participant funding meets these requirements for the existing agreements and therefore cannot be found to be just and reasonable. The Midwest ISO made general assertions about equity among interconnection customers, but did not explain how equity was achieved under its proposal. Equity does not require that all existing generators that entered into their interconnection agreements after April 26, 2004 (the date the Midwest ISO submitted its Order No. 2003-A compliance filing) be subject to the new pricing policy without demonstrating how the proposal would promote efficient siting or prevent improper subsidies.

21. In particular, the Midwest ISO did not show how its proposal would result in efficient siting. We reject Ameren's argument that participant funding would encourage efficient siting until the generating facility is actually built. It is not necessarily easy to change an interconnection site, especially if the generator has already invested money based on that site. The costs to the customer could increase with such a change. Ameren argues that the Order Rejecting Filing "presumes narrowly that once a generator has selected a potential site or configuration for its plant, it is locked into that decision, regardless of any changes in circumstances that might affect the economics of its project."<sup>21</sup> Moreover, Ameren argues that "[n]one of the projects associated with the existing LGIAs has commenced commercial operations."<sup>22</sup> Ameren points out the specific case of Prairie State, stating "construction has not even begun."<sup>23</sup> However,

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<sup>20</sup> Prairie State Protest at 22-23.

<sup>21</sup> Ameren Rehearing Request at 16.

<sup>22</sup> Id.

<sup>23</sup> Id.



Ameren ignores the fact that once a site has been selected, significant costs are incurred for studies and site preparation, well before construction commences. Such costs would need to be incurred again with a new site. Additionally, if the customer does change its site, it faces loss of its queue position, further delaying its development plans. Therefore, we disagree that interconnection customers generally can easily change their sites before construction begins. Thus, Ameren has not shown that applying the new cost allocation generically to existing agreements will cause generators to re-site their projects in a more economically efficient manner.

22. However, if Ameren wishes, it can make a section 206 filing requesting revision of a particular interconnection agreement as long as doing so is consistent with the terms of the agreement. It would be required to show that in that specific instance, applying the new cost allocation policy would encourage economically efficient siting (or is necessary to prevent an improper subsidy). It is unclear why Ameren, which has complained repeatedly about the Prairie State situation, chose to request rehearing of our order on the generic proposal rather than making such a filing. We note again that in Order No. 2003-B we specifically invited such filings.<sup>24</sup>

**E. Ameren's Claimed Showing that the Application of Participant Funding to Prairie State is Just and Reasonable**

23. Ameren asserts that it showed in its pleadings in this proceeding that application of participant funding to Prairie State is just and reasonable. It says that the Commission failed to respond to that showing. Ameren asserts that application of the standard crediting policy in the RTO context would result in the unfair subsidization of the generator's operations by other customers. This is especially true when power from the generation facility is delivered outside of the AmerenIP zone. Ameren asserts that AmerenIP ratepayers receive no financial benefits from the construction of generation facilities when the power is delivered outside of the AmerenIP pricing zone, despite having to pay the costs of necessary network upgrades.

24. This is not the proceeding in which to make this argument. The Midwest ISO's August 31, 2006 filing was one of general application, affecting 27 interconnection agreements, and filed under section 205. It is not appropriate for the Commission to make a determination with respect to Prairie State's individual agreement in this docket. If the Midwest ISO or Ameren feels that Prairie State is an instance that meets the requirements of Order No. 2003, either can make a filing consistent with the terms of its agreement.<sup>25</sup>

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<sup>24</sup> Order No. 2003-B at P 56.

<sup>25</sup> Prairie State Order at P 17.

The Commission orders:

Ameren's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

( S E A L )

Philis J. Posey,  
Deputy Secretary.