

UNITED STATES OF AMERICA 106 FERC ¶ 61, 293
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. ER04-571-000

ORDER ACCEPTING SERVICE AGREEMENT FOR FILING

(Issued March 25, 2004)

I. Introduction

1. On February 19, 2004, Midwest Independent Transmission System, Inc. (Midwest ISO) and Ameren Services Company (Ameren) (collectively, Applicants) jointly filed, pursuant to Section 205 of the Federal Power Act (FPA),¹ an executed Agreement for the Provision of Transmission Service to Bundled Retail Load (Service Agreement) between Midwest ISO and Ameren, as agent for Union Electric Company, d/b/a AmerenUE (AmerenUE). In this order, the Commission accepts the proposed Service Agreement for filing, to become effective on May 1, 2004, as requested.

II. Background

2. Through a series of prior orders, the Commission has conditionally approved participation in Midwest ISO by two Ameren subsidiaries, AmerenUE and Central Illinois Public Service Company, d/b/a AmerenCIPS (AmerenCIPS), by becoming part of GridAmerica LLC (GridAmerica).² In order to participate in GridAmerica and Midwest

¹ 16 U.S.C. § 824d (2001).

² Ameren Services Company, et al., 101 FERC ¶ 61,320 (2002) (December 19, 2002 Order), reh'g denied, 103 FERC ¶ 61,178 (2003). GridAmerica is an independent transmission company (ITC) operating within Midwest ISO. Other participants in GridAmerica include American Transmission Systems Incorporated (ATSI) and Northern Indiana Public Service Company (NIPSCO). GridAmerica commenced operations with the participation of ATSI and NIPSCO on October 1, 2003.

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ISO, according to Applicants, Ameren also requires approval from the Illinois Commerce Commission (Illinois Commission) with respect to AmerenCIPS and AmerenUE and from the Missouri Public Service Commission (Missouri Commission) with respect to AmerenUE. Ameren already has received the necessary approvals from the Illinois Commission. However, Applicants state, Ameren still is awaiting approval from the Missouri Commission with respect to AmerenUE. Applicants state that AmerenCIPS will not join Midwest ISO other than in conjunction with AmerenUE.

3. Midwest ISO states that the proposed Service Agreement results from the Missouri Commission proceeding in which Ameren, on behalf of AmerenUE, sought authorization for AmerenUE to participate in GridAmerica and Midwest ISO. The Service Agreement was negotiated as part of a settlement among Midwest ISO, AmerenUE, and the staff of the Missouri Commission in that proceeding and was filed by Ameren at the Missouri Commission on February 4, 2004. According to Applicants, the settlement provides for AmerenUE's participation in Midwest ISO while permitting the Missouri Commission to continue regulating AmerenUE's bundled retail rates, including the transmission component of those rates, as contemplated by the Commission's White Paper on the Wholesale Market Platform.³ Under the settlement, the Commission's acceptance of the Service Agreement is a condition precedent for the Missouri Commission's approval of AmerenUE's participation in Midwest ISO.

4. Provided that Ameren secures the Missouri Commission's approval of the settlement agreement pending in its state proceeding, and this Commission's approval of the Service Agreement, in the near future, Ameren anticipates that AmerenUE and AmerenCIPS will be integrated with Midwest ISO through GridAmerica on May 1, 2004.⁴ Therefore, Applicants request an effective date of May 1, 2004.

³ See White Paper: Wholesale Market Platform, Docket No. RM01-12-000 (April 28, 2003) (White Paper). The White Paper is available on the Commission's website at www.ferc.gov.

⁴ The Missouri Commission approved the settlement agreement on February 26, 2004. Order Approving Stipulation and Agreement, Case No. EO-2003-0271, State of Missouri Public Service Commission.

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III. Notice of Filing and Pleadings

5. Notice of Applicants' filing was published in the Federal Register,⁵ with motions to intervene and protests due on or before March 5, 2004. Timely motions to intervene, raising no substantive issues, were filed by ATSI, Consumers Energy Company, GridAmerica, NIPSCO and Westar Energy, Inc. The Missouri Joint Municipal Electric Utility Commission (MJMEUC)⁶ filed a timely motion to intervene and protest.

6. On March 9, 2004, Ameren filed an answer. On March 11, 2004, the Midwest ISO filed a motion for leave to answer and an answer. On March 12, 2004, MJMEUC filed an answer to Ameren's and Midwest ISO's answers.

7. On March 12, 2004, the Illinois Municipal Electric Agency (IMEA) filed a motion to intervene out-of-time, raising no substantive issues.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene of CECO, NIPSCO, Westar Energy, GridAmerica, ATSI, and MJMEUC serve to make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁸ prohibits an answer to a protest or an answer to an answer unless otherwise permitted by the decisional authority. We will deny Ameren's, Midwest ISO's and MJMEUC's answers. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁹ given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant IMEA's untimely, unopposed motion to intervene.

⁵ 69 Fed. Reg. 9607 (2004).

⁶ MJMEUC represents 55 municipal utility members.

⁷ 18 C.F.R. § 385.214 (2003).

⁸ 18 C.F.R. § 385.213(a)(2) (2003).

⁹ 18 C.F.R. § 385.214(d) (2003).

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B. Substantive Matters

The Service Agreement

9. The Service Agreement establishes a framework for Midwest ISO to provide transmission service to AmerenUE under the Midwest ISO open access transmission tariff (OATT), for service to AmerenUE's bundled retail load, during a five and a half year transition period commencing May 1, 2004. AmerenUE will not pay the license plate zonal transmission rate set forth in Schedule 9, Network Integration Transmission Service, of the Midwest ISO OATT, or the ancillary service rates in Schedules 1 through 6 of the Midwest ISO OATT, for service to its bundled retail load, provided that AmerenUE will be obligated to pay Midwest ISO for any transmission services and ancillary services that AmerenUE requires to serve its bundled retail load to the extent that AmerenUE does not provide such services itself. However, AmerenUE shall be subject to all non-price related terms and conditions under the Midwest ISO OATT applicable to transmission service that AmerenUE takes to serve its bundled retail load.

10. The Service Agreement also provides that Midwest ISO will provide Ameren with estimates of the congestion prices from each of AmerenUE's designated network resources to serve its bundled retail load, based on forecast locational marginal prices (LMPs). AmerenUE will use this information in its selection of Financial Transmission Rights (FTRs) in accordance with the FTR allocation process in Midwest ISO's OATT.

11. Finally, the Service Agreement provides that AmerenUE will submit its long-term generation and transmission resource plans to GridAmerica and Midwest ISO in accordance with the GridAmerica Documents and the Midwest ISO Agreement.¹⁰ GridAmerica and Midwest ISO will review those plans in accordance with the applicable agreements and planning protocols and inform AmerenUE of any additional transmission upgrades that are needed to support AmerenUE's resource plans or other required transmission upgrades. AmerenUE will be required to obtain the approval of the Missouri Commission prior to undertaking construction of transmission upgrades in Missouri that are not necessary to support AmerenUE's resources plan.

12. According to Applicants, the Service Agreement adheres to Commission requirements in the White Paper by: (1) not applying rates in Schedules 1 through 6, and 9, of the Midwest ISO OATT to bundled retail service so that the Missouri Commission can set the transmission rate component for bundled retail service; (2) preserving and

¹⁰ The GridAmerica Documents and the Midwest ISO Agreement are defined in Sections 1.3 and 1.5, respectively, of the Service Agreement.

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respecting the Commission's jurisdiction over the non-price terms and conditions of transmission service for AmerenUE's bundled retail load; and (3) providing close coordination with the Missouri Commission.

13. With respect to the planning provisions in the Service Agreement, Applicants state that AmerenUE will continue its historic process of preparing resources plans for submittal to the Missouri Commission. Upon joining Midwest ISO, AmerenUE will also submit those resource plans to the Midwest ISO Planning Function; in the event that AmerenUE is directed to build new facilities not contemplated in the resources plan, AmerenUE will apply to the Missouri Commission for certificate authorization for such facilities. Applicants submit that this provision allows for regional planning through Midwest ISO's collaborative process, while maintaining the historic certificate authority held by the Missouri Commission with respect to the siting of transmission facilities.

14. Furthermore, Midwest ISO states that it takes seriously the Commission's undue discrimination concerns. Therefore, Midwest ISO states that, subject to Commission approval, it would offer similar agreements to other similarly situated transmission owners if so required by their state commissions, provided that such agreements do not substantially interfere with Midwest ISO's ability to operate the transmission system and efficiently administer the energy markets.

MJMEUC's Protest

15. MJMEUC states that it understands why the Missouri Commission would have concerns that in the transition to a regional transmission organization (RTO), retail customers retain rights they have today to reliable service at reasonable rates. MJMEUC states that it shares these concerns with regard to the service it and its members provide to other Missouri retail customers. Thus, MJMEUC states, it has no objection to AmerenUE obtaining the protections it needs to continue to provide service to its bundled retail load, so long as it is clear that MJMEUC and its members are entitled to the same protections with regard to their own, "equally native" load.

16. MJMEUC asserts that the Service Agreement binds Midwest ISO to granting undue preferences to AmerenUE's retail load to the detriment of transmission dependent utilities. Specifically, as to rates, MJMEUC is concerned that the Service Agreement may result in MJMEUC members paying transmission rates that include incentive adders while AmerenUE pays a rate with no such adders for service on behalf of its bundled retail load. MJMEUC is also concerned that the transmission planning provisions in the Service Agreement will put the transmission needs of it and its members on the margin, and subject to heightened scrutiny and potential for participant funding or "and" pricing in rates.

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17. Therefore, MJMEUC requests that the Commission revise the Service Agreement to clarify that rates charged to AmerenUE, as well as rates charged to other wholesale customers, will all be subject to review to make sure they accord with the FPA, or otherwise clarify that this is the way the Commission will interpret and enforce the agreement. Specifically, MJMEUC requests that Ameren be put on notice that, in any proposal to apply incentive rates to other customers within its pricing zone, it will be required to demonstrate that the rate change is not unduly discriminatory as compared to the rates charged for AmerenUE's bundled retail load, and that such proposal otherwise meets the FPA's requirements.

18. MJMEUC is also concerned that the Service Agreement will give AmerenUE preferential treatment in Midwest ISO's FTR allocation process. Thus, MJMEUC requests that the Commission either revise the Service Agreement to require, or condition its acceptance on, extension of the same protections to transmission dependent utilities.

Commission Determination

19. The Commission's regulations require that an RTO be the sole provider of transmission service over the facilities that it controls.¹¹ Thus, transmission owners and independent transmission company (ITC) participants, such as AmerenUE, are no longer the transmission providers within Midwest ISO. Instead, Midwest ISO is the sole provider of transmission service, and the transmission owners and ITC participants must take all transmission services, including transmission used to deliver power to bundled retail load, from Midwest ISO. As a result, the rates, terms and conditions of transmission service purchased by the transmission owners and ITC participants from Midwest ISO in order to serve their bundled retail load must be on file with the Commission. This reflects the simple reality that Midwest ISO provides all transmission service and must be compensated, as would any transmission provider.¹²

20. The price that transmission owners and ITC participants pay to Midwest ISO becomes their cost for the transmission service used to deliver the energy they sell at retail. The Commission allows transmission owners and ITC participants to seek a rate from Midwest ISO for the transmission service purchased to deliver energy to bundled retail load equal to the transmission component of the bundled retail rates set by their state commissions. Thus, under this approach, the rate set for transmission service

¹¹ 18 C.F.R. § 35.34(k)(1)(i) (2003).

¹² See Midwest Independent Transmission System Operator, Inc., order on remand, 102 FERC ¶ 61,192 at P 24 (2003) (Remand Order).

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provided by Midwest ISO to be "re-sold" to retail load as part of bundled retail service would be the same rate set by the states for the transmission component of bundled retail sales. As we have previously stated, this must be accomplished by contract between Midwest ISO and the transmission owner or ITC participant. Service agreements reflecting such proposed rates must be filed with the Commission and be consistent with the FPA.¹³

21. We find that Applicants' proposal is consistent with this policy. AmerenUE will take transmission service under the Midwest ISO OATT to serve its bundled retail load, and shall be subject to all non-price related terms and conditions under the Midwest ISO OATT for such transmission service to serve its bundled retail load. With respect to the rates, AmerenUE's rates will reflect the transmission component of its bundled retail rate, rather than the otherwise applicable license plate zonal rates in Schedule 9 of the Midwest ISO OATT, and AmerenUE will not pay for ancillary services in Schedule 1 through 6 of the Midwest ISO OATT to the extent that it provides those services itself. These provisions are also the same as apply to transmission service for bundled retail load of other transmission owners and ITC participants under Section 37.3(a) of the Midwest ISO OATT. However, we clarify that we understand that AmerenUE's self-supply of ancillary services will be in accordance with the provisions for self-supply of ancillary services in the Midwest ISO OATT (e.g., reserve requirements and rules for scheduling self-supplied ancillary services),¹⁴ and our acceptance of the Service Agreement is subject to that understanding.

22. Applicants acknowledge that, in recent orders addressing this policy, the Commission has required that the service agreement providing for transmission service for delivery of power to bundled retail load must explicitly state the transmission component of the bundled retail rate. However, the Applicants have not separately stated the transmission component of the bundled retail rate in the Service Agreement. They contend that it would serve no purpose to state the rate, because no customer other than AmerenUE would be able to obtain this rate. They further assert that ascertaining the transmission component of the bundled retail rate would require a lengthy, and potentially contentious, rate "unbundlement" proceeding before the Missouri Commission. Such a proceeding would be complicated, they contend, by the fact that Missouri is not presently a retail choice state and, therefore, AmerenUE's bundled rates

¹³ Remand Order at P 25.

¹⁴ That is, the Service Agreement does not contain any provision stating that the Midwest ISO OATT's provisions for the self supply of ancillary services will not apply to AmerenUE.

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are essentially "black box" rates that do not explicitly state the transmission component. We will accept the Service Agreement for filing without requiring the Applicants to separately calculate the transmission component of the bundled retail rate at this time. In addition, to eliminate any concern about undue discrimination and to satisfy the filing requirements of the FPA, we will impute the existing OATT rate to that service.

23. Section 4.2 of the Service Agreement provides that Midwest ISO will provide Ameren certain information regarding forecast locational marginal prices and congestion costs, if it has not done so already. We expect that Midwest ISO will provide such information to other customers as well upon request. In addition, Section 4.3 of the Service Agreement provides that:

Ameren shall select, in accordance with the Midwest ISO's OATT, what Ameren believes to be a reasonable hold harmless portfolio of FTRs for Bundled Retail Load.

We understand this provision to not provide Ameren any additional rights regarding FTR allocations than it would otherwise have under the Midwest ISO OATT. We accept the Service Agreement subject to this understanding of Sections 4.2 and 4.3.

24. With respect to MJMEUC'S concerns about potential undue discrimination resulting from the Service Agreement, as noted above, the Commission requires that service agreements with transmission owners and ITC participants for service for bundled retail load be consistent with the FPA. We take seriously our obligation under the FPA to ensure that there is no undue discrimination in the rates, terms and conditions of jurisdictional service. However, MJMEUC has not raised a concrete concern at this time regarding undue discrimination associated with the rates on file for other customers on the AmerenUE system upon AmerenUE's integration into Midwest ISO.¹⁵ Rather, it raises concerns that undue discrimination may result in the future if rates are adopted for other customers on the AmerenUE system that reflect incentive rate adders or participant funding for network upgrades, or if Midwest ISO files FTR allocation procedures that do not afford other customers similar treatment to that provided AmerenUE in the Service Agreement. We find it premature to address such concerns, because the instant filing does not propose recovery for incentive adders or participant funding for network

¹⁵ The rates on file for the Ameren pricing zone under the Midwest ISO OATT were established pursuant to a settlement recently approved by Commission order dated March 3, 2004, in Docket No. ER03-580-000, *et al.* Midwest Independent Transmission Operator, Inc., *et al.*, 106 FERC ¶ 61,200 (2004).

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upgrades, and it does not propose FTR allocation procedures. MJMEUC may raise such concerns at the time that such proposals are filed pursuant to Section 205 of the FPA,¹⁶ or through a complaint pursuant to Section 206 of the FPA. We further note that, in any proposal to apply incentive rates to other customers within its pricing zone, AmerenUE will be required to demonstrate that such proposed rate change is not unduly discriminatory as compared to the rates charged for AmerenUE's bundled retail load, and that such proposal otherwise meets the FPA's requirements.

25. The Service Agreement provides that the Missouri Commission's approval is required before AmerenUE's construction of transmission upgrades in Missouri that are required by the Midwest ISO planning process but are not necessary to support AmerenUE's individual resource plans. This provision, as we understand it, clarifies the coordination between Midwest ISO's regional planning process and the Missouri Commission's exercise of its certificate authority. Our acceptance of the Service Agreement, which incorporates the settlement between AmerenUE and the Missouri Commission, does not, and cannot, alter the scope of the Missouri Commission's jurisdiction under state law. Any party adversely affected by the Missouri Commission's exercise of the authority described in this Service Agreement may raise its concerns in an appropriate state court. Moreover, we remain committed to supporting development of a regional planning process that recognizes the interdependent nature of transmission facilities throughout the Midwest.

26. MJMEUC argues that Article V of the Service Agreement (New Transmission Facilities or Enhancements to Existing Transmission Facilities) "puts [transmission dependent utility] needs on the margin subject to heightened scrutiny and potentially participant funding or 'and' pricing, while AmerenUE's needs get met as a matter of course."¹⁷ We reject this argument as vague and unsupported. MJMEUC does not cite any particular language in Article V that has the effects that it alleges. Further, MJMEUC offers no explanation of how the unspecified language of Article V has the effects that it alleges except to make a reference to a protest that it filed in a proceeding involving Southwest Power Pool's (SPP) proposal for RTO status, where it raised similar concerns concerning SPP's planning and expansion process.¹⁸ MJMEUC does not

¹⁶ Midwest ISO is currently developing tariff provisions for an energy market with LMPs and FTRs. See Informational Filing Regarding the Midwest Market Initiative, filed January 23, 2004 in Docket No. ER02-2595-000.

¹⁷ MJMEUC's Protest at 9 (footnote omitted).

¹⁸ By order issued on February 10, 2004, the Commission granted RTO status to SPP, subject to SPP fulfilling the requirements for qualification as an RTO. Southwest
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explain how its argument in the SPP proceeding supports its arguments on the facts of this case. To the extent that MJMEUC seeks to modify the regional planning process in the Midwest ISO Agreement or the planning process in the GridAmerica Documents, those have been previously approved and are not at issue in this proceeding. MJMEUC further contends that "[t]he SPP RTO Order skimmed only the tip of the iceberg of these serious concerns."¹⁹ Issues concerning SPP's RTO proposal are beyond the scope of this proceeding. If MJMEUC has issues with the SPP RTO Order, the appropriate forum to raise them is a timely request for rehearing of the SPP RTO Order.

27. Section 2.2 of the proposed Service Agreement provides that, if this Commission orders any material revisions to the proposed Service Agreement, the revised Service Agreement must subsequently be resubmitted to, and unconditionally approved by, the Missouri Commission, or else the Service Agreement will be deemed void. We do not believe that this order materially changes the Service Agreement. However, if the Applicants, in the future, were to seek to end AmerenUE's participation in Midwest ISO by terminating the Service Agreement, such termination could only be effectuated pursuant to a filing under Section 205 of the FPA.²⁰

28. Finally, Applicants have not proposed designations in compliance with Order No. 614.²¹ Applicants shall submit such designations in a compliance filing within 30 days of the date of this order.

Power Pool, 106 FERC ¶ 61,110 (2004) (SPP RTO Order).

¹⁹ MJMEUC's Protest at 9, n.7.

²⁰ See, e.g., *Pennsylvania-New Jersey-Maryland Interconnection, et al.*, 105 FERC ¶ 61,294 at P 29 & P 36 (2003), citing *Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements under the Federal Power Act*, 104 FERC ¶ 61,248 (2003).

²¹ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regs. Preambles July 1996 – December 2000 (2000).

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The Commission orders:

(A) The Applicants' proposed Service Agreement is hereby accepted for filing, to become effective on May 1, 2004, as requested.

(B) Applicants shall submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.