

101 FERC ¶ 61,066  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

Ameren Services Company

Docket Nos. ER02-2237-000  
ER02-2237-001

ORDER ACCEPTING FOR FILING AND SUSPENDING UNEXECUTED SERVICE  
AGREEMENT AND UNEXECUTED OPERATING AGREEMENT, AND  
ESTABLISHING HEARING PROCEDURES

(Issued October 21, 2002)

1. On August 22, 2002, Ameren Services Company, as agent for Central Illinois Public Service Company and Union Electric Company (collectively, Ameren), filed a revised unexecuted Network Integration Transmission Service Agreement (SA) and a revised unexecuted Network Operating Agreement (OA), for service to Cinergy Power Marketing (Cinergy) as the network customer and Southwestern Electric Cooperative (Southwestern) as the network operator, pursuant to Ameren's open access transmission tariff (Ameren OATT).

2. We will accept the revised SA and OA for filing, suspend them nominally, make them effective subject to refund and grant waiver of the Commission's prior notice requirement to permit an effective date of June 1, 2002. We will set the SA and the OA for hearing, but will hold the hearing in abeyance for 45 days, to allow for further settlement efforts. This action will facilitate a resolution of the parties' outstanding differences on a mutually agreeable basis, without further reliance on the Commission's time and resources. This action is consistent with the Commission's goals of promoting open access transmission.

**Background**

3. Ameren has provided transmission service to Cinergy in order for Cinergy to provide power service to Southwestern since June 1, 1997 through a Network Operating Agreement and a Network Integration Transmission Service Agreement. These five-year

agreements terminated on May 31, 2002.<sup>1</sup> Ameren states that it continues to provide service to Cinergy under the unexecuted agreements at issue pursuant to the Ameren OATT.

4. Cinergy provides full requirements service to Southwestern at points of delivery under a power sales agreement at a price that includes among other things, ancillary services and third party transmission costs. The power sales agreement terminates on May 31, 2004.<sup>2</sup>

5. Ameren initially filed an unexecuted SA and OA on July 1, 2002 in Docket No. ER02-2237-000, designating Southwestern as the network customer and requesting an effective date of June 1, 2002. Southwestern protested the agreements stating that it did not wish to be the network customer. Cinergy intervened and requested additional time to assess the impact of the filed agreements on Cinergy's power supply and related obligations to Southwestern.

6. Following discussions between the Cinergy and Southwestern, Ameren filed a revised unexecuted SA and OA on August 22, 2002 in Docket No. ER02-2237-001. The revised SA designates Cinergy as the network customer, while the revised OA designates Cinergy as the network customer and Southwestern as the network operator. Southwestern protested the OA's designation of Southwestern as the network operator.

### **Notice of Filing and Responsive Pleadings**

7. Notice of Ameren's filing of revised agreements was published in the Federal Register,<sup>3</sup> with interventions, comments or protests due on or before September 12, 2002. A motion to intervene and protest was timely filed by Southwestern.

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<sup>1</sup>These agreements, filed in Docket No. ER97-3545-000, were accepted by letter order dated August 11, 1997, subject to refund and subject to the outcome in Docket No. ER96-154-000.

<sup>2</sup>The power sales agreement filed in Docket No. ER97-1747-000 was accepted by letter order dated June 20, 1997.

<sup>3</sup>67 Fed. Reg. 56,992 (2002). An errata to this notice was issued on September 10, 2002 in Docket No. ER02-2237-001.

8. Southwestern states that it receives full power requirements at its substations from Cinergy and requires no additional transmission from Ameren for the period June 1, 2002 through May 31, 2004, the dates Ameren proposes for the OA.

9. Southwestern asserts that Ameren's filing obligates Southwestern to pay for costs under the OA commencing June 1, 2002 that will result in a double charge to Southwestern for transmission service, since Southwestern already compensates Cinergy for the full costs of requirements power, including transmission.

10. Southwestern argues that Ameren's inclusion of Southwestern as a network operator is inconsistent with the SA, the Order No. 888 pro forma tariff<sup>4</sup> and the Ameren OATT. Southwestern contends that the responsible entity under the OA should match the responsible entity under the SA and notes that Southwestern is not identified in the SA. Southwestern argues that neither the Order No. 888 pro forma tariff nor Ameren's OATT define the term "network operator" and that Ameren did not justify its deviation.

11. Southwestern asks that the Commission reject Ameren's filing to recover transmission charges under the OA from Southwestern or suspend Ameren's proposed filing, order the rates to be effective subject to refund, and order a hearing on the justness and reasonableness of the OA.

12. On October 15, 2002, Ameren filed an answer addressing these contentions.<sup>5</sup> Ameren states that the OA contains provisions that apply only to the entity that owns and operates the delivery system beyond the point of delivery to which capacity and energy is transmitted pursuant to the SA. Ameren asserts that Southwestern owns and operates the delivery service facilities beyond the point of delivery and that inclusion of Southwestern

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<sup>4</sup>Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part, remanded in part on other grounds sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S. Ct. 1012 (2002).

<sup>5</sup>Ameren requests waiver of 18 C.F.R. § 385.213 (a) (2002).

in the OA ensures that Ameren acquires a contractual obligation from Southwestern that it will operate such facilities in accordance with the applicable terms of the OA.

13. Ameren states that similar three-party arrangements have been made and cites a December 29, 1997 agreement between Cinergy, the Tennessee Valley Authority (TVA) and the Bristol Virginia Utilities Board (Bristol), in which Cinergy was the transmission customer under that SA, and where there was a three-way arrangement between TVA, Cinergy and Bristol under the OA.

14. Ameren states that it will continue to charge Cinergy, the network customer, for the transmission service provided pursuant to the SA, as it has in the past and that inclusions of Southwestern as the network operator will not result in transmission service charges being assessed to Cinergy, as the network customer, and Southwestern, as the network operator. Ameren states that it is open to inserting language in the OA that precludes Ameren from assessing any transmission service charges to Southwestern that it also assesses to Cinergy.

15. Ameren states that the OA in this case is superior to those previously filed with the Commission since the OA at issue recognizes a necessary distinction between a network customer that owns and operates the delivery system on the customer side of the point of delivery from a network customer that does not.

## **Discussion**

### **Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice of Procedure,<sup>6</sup> the timely, unopposed motion to intervene filed by Citizens serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice of Procedure<sup>7</sup> prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept Ameren's answer as it helps to clarify the record and provides additional information that will assist us here.

### **Analysis**

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<sup>6</sup>18 C.F.R. § 385.214 (2002).

<sup>7</sup>Id. at § 385.213(a)(2).

17. Southwestern argues that its inclusion in the OA may result in a double-charge to Southwestern of transmission costs given Southwestern's power services agreement with Cinergy. Ameren asserts, to the contrary, that the double-charge argument is without merit. We find that Southwestern has raised this and other material issues of fact that we cannot summarily decide based on the evidence before us. Our preliminary review of the proposed revised OA indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Since the SA and the OA are intricately related, we will accept the SA and the OA for filing, nominally suspend them, make them subject to refund and set them both for hearing.

18. However, to allow the parties an opportunity to resolve their differences on a mutually agreeable basis, the Commission will hold the hearing in abeyance for 45 days, and direct the Chief Administrative Law Judge to defer appointment of a presiding judge pending the parties efforts to resolve their outstanding differences. The parties are hereby directed to report to the Commission and Chief Judge within 45 days of the date of issuance of this order concerning the status of their negotiations. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts, appoint a settlement judge, or order commencement of the formal hearing process by assigning the case to a presiding judge.

The Commission orders:

(A) Ameren's revised unexecuted SA for service to Cinergy is hereby accepted for filing, suspended nominally, to become effective June 1, 2002, subject to refund.

(B) Ameren's revised unexecuted OA for service to Cinergy and Southwestern is hereby accepted for filing, suspended nominally, to become effective June 1, 2002, subject to refund.

(C) Waiver of the Commission's prior notice requirement is hereby granted, to permit a June 1, 2002 effective date.

(D) 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 issues specified in paragraph 16 of the body of this order.

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As discussed in the body of this order, we will hold the hearing in abeyance for 45 days to give the parties time to conclude their negotiations.

(E) Within 45 days of the date of this order, the parties shall file a report with the Commission and Chief Judge on the status of their negotiations. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts, appoint a settlement judge, or order commencement of the formal hearing process by assigning the case to a presiding judge. If settlement efforts continue, the parties or settlement judge, as appropriate, shall issue a report every 60 days thereafter, informing the Commission of the parties' progress toward settlement.

(F) If the settlement negotiations fail, an administrative law judge to be designated by the Chief Administrative Law Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge appoints the presiding judge, 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 administrative law 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 )

Linwood A. Watson, Jr.,  
Deputy Secretary.