UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Ameren Energy Marketing Company	Docket No. ER07-169-000
Ameren Energy, Inc.	Docket No. ER07-170-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULES, ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, ESTABLISHING TECHNICAL CONFERENCE AND CONSOLIDATING DOCKETS

(Issued December 26, 2006)

1. In this order, we address Ameren Energy Marketing Company's (AEM)[1] and Ameren Energy, Inc.'s (Ameren Energy)[2] (collectively, Applicants') filings of proposed rate schedules, under section 205 of the Federal Power Act (FPA),[3] to implement cost of service recovery rates for the sale of ancillary services to their affiliates. We accept for filing the proposed rate schedules, and suspend them for a nominal period, to become effective January 1, 2007, as requested, subject to refund and further Commission order. We also establish hearing and settlement judge procedures to address cost of service issues, and direct Commission staff to conduct a technical conference on affiliate abuse issues. Further, we consolidate the two proceedings.

I. **Background**

2. Under Illinois electricity restructuring law, Central Illinois Public Service Company (d/b/a AmerenCIPS), Central Illinois Light Company (d/b/a AmerenCILCO),

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[1] On behalf of its affiliates, Ameren Energy Resources Generating Company and Ameren Energy Generating Company, in Docket No. ER07-169-000.

[2] On behalf of its affiliate, Union Electric Company d/b/a AmerenUE (AmerenUE), in Docket No. ER07-170-000.

[3] 16 U.S.C. § 824d (2000).

and Illinois Power Company (d/b/a AmerenIP) (collectively, the Ameren Illinois Utilities) were permitted to divest their generation and did so. Thus, the Ameren Illinois Utilities have virtually no generation with which to provide electric service, including the ancillary services they are required to provide under applicable tariffs. Even so, pursuant to Illinois electricity restructuring law, the Ameren Illinois Utilities remain default electricity suppliers and are obligated to offer retail electricity service within their respective service territories to those customers that either decline to choose another supplier or return to take default service from the Ameren Illinois Utilities. In order to meet their obligations to provide electricity and ancillary services following divestiture of their generation resources, the Ameren Illinois Utilities entered into bilateral purchase agreements. These contracts expire on December 31, 2006.

3. The Ameren Illinois Utilities anticipated procuring ancillary services from a Midwest Independent Transmission System Operator, Inc. (Midwest ISO) competitive ancillary market after their current ancillary service contracts expired, but no such market yet exists. Therefore, on May 1, 2006, the Ameren Illinois Utilities issued a Request For Proposals (RFP) to fifteen entities soliciting bids to supply 100 MWs each of regulation and frequency response, spinning reserve, and supplemental reserve services, for the period of January 1, 2007 through December 31, 2007, or until a Midwest ISO market for each service is operational, whichever occurs first. The original RFP failed to produce acceptable results for the Ameren Illinois Utilities and a revised RFP was issued on August 22, 2006 (Revised RFP). The Revised RFP differs from the Original RFP in that it seeks reduced quantities of spinning reserve service (56 MWs instead of 100 MWs), and supplemental reserve service (68 MWs instead of 100 MWs) and provides for the inclusion of a non-fixed component to provide recovery of "lost opportunity costs, if relevant" in sellers' bids.

4. Three entities that were successful in their bids to provide the requested ancillary services are affiliates of Ameren Illinois Utilities. The first two successful bidders are Ameren Energy Resources Generating Company and Ameren Energy Generating Company, via their agent, AEM. Ameren Energy Resources Generating Company owns the Illinois generation formerly owned by AmerenCILCO and Ameren Energy Generating Company owns the Illinois and Missouri generation formerly owned by AmerenCIPS. The third successful bidder is AmerenUE, via its agent, Ameren Energy. The parties are currently negotiating ancillary service supply agreements.[4]

[4] In a separate proceeding in which the Commission has already acted, AEM and AmerenUE requested authorization to supply full requirements service to the Ameren Illinois Utilities to meet their electricity supplier obligations. In that case, the Illinois Commerce Commission oversaw and approved a competitive procurement auction (CPA). The Commission granted AEM and AmerenUE's requested authorization to (*continued…)*

II. **Description of the Filings**

5. On November 3, 2006, Applicants filed proposed rate schedules that set forth the rates, terms and conditions under which Ameren Energy Resources Generating Company, Ameren Energy Generating Company, and AmerenUE will provide to the Ameren Illinois Utilities ancillary services if negotiations are successful and the parties execute final ancillary service supply agreements. The proposed rates are cost-based and include a component for lost opportunity costs related to regulation and frequency response and spinning reserve services.

6. Applicants request that the Commission accept the proposed schedules without hearing. They contend that the cost-based rates are just and reasonable and that their issuance of the Revised RFP alleviates any potential affiliate abuse concerns. Alternatively, if the Commission determines that a hearing is necessary, they request that the Commission nevertheless affirmatively state that they are entitled to a lost opportunity cost component in the rates for regulation and frequency response and spinning reserve services. Applicants state that it is appropriate to grant this request because the inclusion of opportunity costs is consistent with Commission precedent and policy and, therefore, such a finding does not require development of an evidentiary record. They also assert that this finding approving recovery of lost opportunity costs is necessary to provide them with reasonable certainty that the Commission will permit the opportunity to recover their full costs. Applicants state that this certainty is necessary before they begin providing service on January 1, 2007; otherwise, the rate could subsequently be reduced below fully compensatory levels.

7. Applicants request that the Commission grant waiver of its sixty-day prior notice requirement and place its proposed rates into effect on January 1, 2007, the date on which they must supply ancillary services. Applicants explain that they have only recently been notified of the success of their RFP bids and are still negotiating the final supply agreements. In addition, they assert that they made their filings in as timely a manner as was practicable and in advance of execution of the supply agreements.

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make sales pursuant to the first CPA, which commenced in September 2006. *See Ameren Energy Marketing Co.*¸ 115 FERC ¶ 61,286 (2006). The Illinois Commission subsequently determined that the September 2006 CPA produced unacceptable results for the product designed for the customer class consisting of large commercial and industrial customers. Therefore, on November 9, 2006, AEM and AmerenUE requested authorization to sell capacity to the Ameren Illinois Utilities to serve large commercial and industrial customers, pursuant to a separate RFP process, to supplement the resources procured through the CPA. That request, made in Docket No. ER07-205-000, is currently pending before the Commission.

III. **Notice of Filing and Responsive Pleadings**

8. Notices of Applicants' filings were published in the *Federal Register*, 71 *Fed. Reg.* 66,767 (2006), with motions to intervene and protests due on or before November 24, 2006. Midwest ISO and Illinois Municipal Electric Agency (IMEA) filed timely motions to intervene and the Illinois Commerce Commission filed notices of intervention in Docket Nos. ER07-169-000 and ER07-170-000. IMEA also filed protests and requests to consolidate the two proceedings. On November 27, 2006 and December 15, 2006, respectively, ISG Hennepin, Inc. (d/b/a Mittal Steel USA – Hennepin) (Hennepin) and Constellation Energy Commodities Group (Constellation) filed motions to intervene out-of-time in both dockets. On December 11, 2006, Applicants filed answers to IMEA's protests. On December 18, 2006, IMEA submitted a motion to strike or, in the alternative, motion for leave to answer and answer in both dockets. On December 20, 2006, the Illinois Commerce Commission (ICC) filed comments in both dockets.

9. In its protest, IMEA contends that the Revised RFP does not meet the Commission's transparency, definition, evaluation and oversight requirements for affiliate sales. It notes that the filings do not include any testimony or support as to how the bids were accepted or considered. The filings also do not include any documentation on the third party that Applicants enlisted to assist them, how they selected the third party, or how it operated. In addition, there was no state regulatory oversight over the bidding on and award of the ancillary service contract, as was the case with other Commission-accepted RFPs.

10. IMEA further argues that the Ameren Illinois Utilities' proposed 11.31 percent rate of return on common equity (ROE) has not been justified. Other cost of service items also require correction and explanation, according to IMEA, including apparently incorrect other taxes, carrying charges that improperly include fuel inventory, an unsupported accumulated deferred income taxes adjustment, unexplained expected unit participation factors, and unit cost weighting factors that exceed 100 percent. In addition, IMEA notes that Ameren Energy Resources Generating Company does not file a FERC Form 1 and therefore there is no way to verify information used by that company. It also contends that Applicants' request to recover opportunity costs is unsupported.

11. In its comments, the ICC states that the RFP process described by the Applicants in their filings falls short of the Commission's standards set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) and *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004). However, the ICC does not intend its comments to disrupt the Ameren Illinois Utilities' ability to provide comprehensive service after January 1, 2007. Under the circumstances, the ICC recommends that the Commission investigate whether there was any undue preference in the process.

IV. Discussion

A. Procedural Issues

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. We will also grant Hennepin's and Constellation's motions to intervene out-of-time given the early stage of these proceedings, their interests in these proceedings, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers that Applicants and IMEA filed in the instant proceedings and will, therefore, reject them.Analysis

B. Analysis

1. Affiliate Abuse Concerns

13. We cannot make a finding on potential affiliate abuse issues arising from the proposed affiliate sales agreements based on the information Applicants provide in their filings. As IMEA notes, Applicants do not include documentation to support their claim that potential affiliate abuse concerns have been mitigated. We believe that our decision on this issue would benefit from further exploration of the affiliate abuse issues by the Commission Staff and the parties. Therefore, we will direct the Staff to convene a technical conference on the matter of affiliate abuse. Following the conference, the parties will have an opportunity to file written comments that will be included in the formal record of the proceeding, which, together with the record developed to date, will form the basis for further Commission action. Commission staff will report the results of the conference to the Commission within 150 days of the date of issuance of this order.

14. At the staff technical conference, the parties should be prepared to address concerns regarding affiliate abuse and further explain how the proposed affiliate sales of ancillary service are not the result of undue preference.

2. Opportunity Costs

15. In the event of a hearing, Applicants request that the Commission affirmatively state that they are entitled to recover lost opportunity costs for providing regulation and frequency response and spinning reserve services. We agree that lost opportunity costs are an acceptable basis for establishing the cost of providing regulation and frequency response and spinning reserve services. The Commission has recognized that when sellers must make a decision to sell either energy or ancillary services and to the extent a seller chooses to sell capacity as an ancillary service like spinning reserves, it could incur

an opportunity cost by not selling energy.[5] In addition, the Commission has acknowledged that sellers have no incentive to supply ancillary services when the revenues they can earn through market-based energy sales are higher than those they can earn through the sale of ancillary services at rates that are capped at embedded costs, thus reducing the supply of ancillary services available to entities, such as the Ameren Illinois Utilities, that are required to provide such services.[6] Also, basing the lost opportunity costs on energy prices in the Midwest ISO markets, as is the case here, can ensure that opportunity costs are accurately and transparently measured.

16. Nonetheless, although opportunity costs can be a valid basis for rates, Applicants' proposed rates include: (1) an opportunity cost component; (2) a stated component designed to provide 100 percent recovery of embedded costs; and (3) an energy charge equal to locational marginal prices. The opportunity cost component and energy charge provides recovery of infra-marginal rents contributing to embedded costs. The combination of the embedded cost component, the opportunity cost component, and the locational marginal price energy charge, provides for the potential to over-recover embedded costs and opportunity costs. Therefore, in the hearing ordered below, parties should develop appropriate mechanisms to ensure that the cost of service rates do not provide for recovery of more than embedded costs or opportunity costs, whichever is higher.

C. Hearing and Settlement Judge Procedures

17. Applicants' proposed rate schedules raise issues of material fact related to the cost of service basis for the proposed rates that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

18. Our preliminary analysis indicates that Applicants' proposed rate schedules have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed rate schedules for filing, suspend them for a nominal period, make them effective January 1, 2007, subject to refund and to further Commission order, and set them for hearing and settlement judge procedures with regard to the cost of service basis for the proposed rates. Under the circumstances of this case, we find good cause to grant waiver of the sixty-day prior notice requirement.

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[5] *See, e.g., California Independent System Operator*¸ 114 FERC ¶ 61,026 at P 31 (2006).

[6] *See, e.g., AES Redondo Beach, L.L.C.*¸ 85 FERC ¶ 61,123 (1998).

19. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[7] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[8] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Applicants' proposed rate schedules are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2007, as requested, subject to refund and further Commission order, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulation under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the cost of service basis for the proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

[7] 18 C.F.R. § 385.603 (2006).

[8] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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 Procedures.

(F) The Commission staff is hereby directed to convene a technical conference concerning potential affiliate abuse issues, as discussed in the body of this order, and to report the results of the conference to the Commission within 150 days of the date of issuance of this order.

(G) Docket Nos. ER07-169-000 and ER07-170-000 are hereby consolidated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.