

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Interstate Power Company

Docket No. ER05-386-001

ORDER DENYING REHEARING

(Issued July 7, 2005)

1. On March 17, 2005, Interstate Power Company (Interstate Power) and Central Iowa Power Cooperative (CIPCO) filed a joint request for rehearing and clarification of the Letter Order issued February 15, 2005 in this proceeding.<sup>1</sup> In this order, we deny their request for rehearing and clarify that the letter order was not intended to assert Commission jurisdiction over CIPCO pursuant to the Federal Power Act,<sup>2</sup> or to place CIPCO's facilities under the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT). This order benefits customers because it ensures that the rates, terms and conditions of transmission service accord with the requirements of the Commission's open access rules.<sup>3</sup>

**Background**

2. On December 22, 2004, Interstate Power filed a proposed amendment to its integrated transmission system agreement (ITSA) with CIPCO. The original agreement, which provided for Interstate Power and CIPCO to coordinate planning and operation of their interconnected transmission systems and for each to provide transmission service

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<sup>1</sup> *Interstate Power Co.*, issued pursuant to delegated authority, Docket No. ER05-386-000 unpublished (February 15, 2005 Letter Order).

<sup>2</sup> 16 U.S.C. § 797 (2001).

<sup>3</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 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 sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

for the native loads of the other, became effective on January 1, 1980, with a term of 25 years, ending January 1, 2005. The proposed amendment filed on December 22, 2004 would extend the term of the ITSA for one year, with automatic renewal on a year-to-year basis unless one of the parties provides six months notice to terminate.

3. The February 15, 2005 Letter Order conditionally accepted the amendment for filing and directed Interstate Power to modify the ITSA to include the Midwest ISO as a signatory and to file the revised agreement as a service agreement under the Midwest ISO's OATT, within 60 days of the date of the February 15, 2005 Letter Order. Consistent with *Ameren Services Company*,<sup>4</sup> the February 15, 2005 Letter Order directed that the revised agreement should reflect that the Midwest ISO has operational authority over the Interstate Power transmission system, including interconnections with CIPCO, and provide that all future amendments to the agreement will be subject to negotiation and approval by all three parties.

4. In addition, the February 15, 2005 Letter Order noted that the ITSA was an existing unbundled transmission agreement at the time that Order No. 888 was issued. In Order No. 888, the Commission ruled that a customer may continue to receive transmission service under its existing transmission agreement until the agreement is modified or expires. Once such an agreement is modified or expires, all such transmission service must be provided pursuant to the rates, terms and conditions of the applicable OATT (here, the Midwest ISO OATT).<sup>5</sup> Interstate Power was, therefore, directed to modify the agreement accordingly and to refile such modified agreement within 60 days of the date of the February 15, 2005 Letter Order.

### **Request for Rehearing**

5. On March 17, 2005, Interstate Power and CIPCO filed a joint request for rehearing and clarification.<sup>6</sup> They state that the February 15, 2005 Letter Order erred to the extent that it interpreted the ITSA to provide for transmission service. According to Interstate Power and CIPCO, while the ITSA covered planning for transmission system expansion,

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<sup>4</sup> *Ameren Services Company*, 108 FERC ¶ 61,189 (2004).

<sup>5</sup> See Order No. 888-A at 30,178 and 30,521 (section 15.6 of the *pro forma* tariff); see also *Duke Energy Corporation*, 93 FERC ¶ 61,319 (2000), *order on reh'g*, 94 FERC ¶ 61,142 at 61,543 (2001).

<sup>6</sup> Along with their request for rehearing, Interstate Power and CIPCO also requested an extension of time, until September 17, 2005, to comply with the February 15, 2005 Letter Order. On March 22, 2005, the requested extension of time was granted.

the actual transmission service is already included as part of another grandfathered transmission service agreement (GFA) that was the subject of the proceeding addressing the treatment of GFAs in the Midwest ISO.<sup>7</sup> They request that the Commission clarify that the February 15, 2005 Letter Order does not in any way overturn the other GFAs between them that were the subject of the Midwest ISO GFA proceeding.

6. Second, they state that the February 15, 2005 Letter order ignored the reciprocal arrangements under the ITSA, under which each self-supplied its own transmission services and accessed facilities of the other to serve its own loads. They state that, to the extent that the Commission still considers the agreement to provide for transmission service, then it should be noted that service provided by CIPCO, which is not a public utility or a member of the Midwest ISO, would not be performed under the Commission's jurisdiction or under the Midwest ISO OATT and that any new arrangements must recognize payment to CIPCO for use of its facilities by the Midwest ISO.

### **Discussion**

7. We will deny rehearing. The February 15, 2005 Letter order correctly reflects that the ITSA provides for unbundled transmission service. Article 6 of the ITSA provides that each party shall contribute facilities to the integrated transmission system for normal load growth and that both CIPCO and Interstate Power shall have full use of the integrated transmission system for the purpose of serving their customers located in the area served by that system. Article 6 further provides that no wheeling charge shall be charged by either party for use of such facilities. Thus, under the ITSA, each provides the other with service over its transmission facilities on essentially a reciprocal, or return-in-kind, basis. The fact that the service is provided on essentially a return-in-kind basis, without an explicit wheeling charge, does not negate the fact that the service that Interstate Power provides over its share of transmission facilities that make up the integrated transmission system is a jurisdictional transmission service covered by the Commission's open access transmission rules.

8. Nor does the fact that loads covered by the ITSA were also covered by other GFAs at issue in the Midwest ISO GFA proceeding conflict with this finding. During the GFA proceeding, the Commission ordered GFA parties to file interpretations of their contracts.<sup>8</sup> On July 9, 2004, Alliant Energy Corporate Services, Inc. (Alliant), on behalf

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<sup>7</sup> See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042 (2005), *reh'g pending*.

<sup>8</sup> *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,289 (2004) (May 26 Order).

of Interstate Power, and CIPCO filed interpretations of their GFAs pursuant to that order.<sup>9</sup> In that filing, the parties explained that the ITSA (GFA No. 13 in the Midwest ISO GFA proceeding) was one of several secondary agreements providing transmission service that dovetails with the transmission service provided by the primary agreement between the parties, the 1990 Operating and Transmission Agreement between the former IES Utilities, Inc, which Alliant has succeeded, and CIPCO (GFA No. 16). The parties explained that, for these instances in which multiple agreements provide services necessary to complete the total path from generation resources to CIPCO's load, the load covered by the secondary agreements make up a subset of the total load covered by the primary agreement. For clarity and to avoid double counting, the entire megawatt quantity of load served by the ten GFAs between Alliant and CIPCO<sup>10</sup> was listed under GFA No. 16. Therefore, the loads covered by the ITSA are served with partial path transmission service over the former IES Utilities, Inc. facilities under GFA No. 16, which has a 45-year initial term commencing in 1991, and also with partial path transmission service over the Interstate Power transmission facilities under GFA No. 13, the ITSA. While the transmission services dovetail to provide continuous paths from resources to load, each agreement provides a separate and distinct service. However, we clarify that the February 15, 2005 Letter Order does not affect the grandfathered status of the service provided under GFAs other than the ITSA.

9. We also clarify that the February 15, 2005 Letter Order was not intended to assert Commission jurisdiction pursuant to the Federal Power Act over the transmission service that CIPCO provides under the ITSA. The order only applies to the jurisdictional transmission service that is provided by Interstate Power to CIPCO under the ITSA. Nor was the February 15, 2005 Letter Order intended to place service that CIPCO provides over its own facilities under the Midwest ISO OATT.<sup>11</sup>

10. Finally, we will deny CIPCO's request that we clarify that any new transmission service arrangements "must recognize payment to CIPCO for use of its facilities by the Midwest ISO,"<sup>12</sup> consistent with our recent order responding to a similar request made by

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<sup>9</sup> See Joint Supplemental Informational Filing of Alliant and CIPCO, Docket Nos. ER04-691-000 and EL04-104-000 (July 9, 2004).

<sup>10</sup> The Alliant and CIPCO GFAs consist of the primary agreement (GFA No. 16), and nine secondary agreements that provide for partial path transmission service to serve their respective loads (GFA Nos. 13, 28, 29, 30, 31, 32, 33, 35, 36).

<sup>11</sup> See, e.g., *Alliant Energy*, 90 FERC ¶ 61,344 at 62,134 (2000) (*Alliant*); *Otter Tail Power Co.*, 97 FERC ¶ 61,226 (2001), *reh'g denied*, 98 FERC ¶ 61,112 (2002).

<sup>12</sup> Rehearing Request at 4-5.

CIPCO in another proceeding.<sup>13</sup> In that order, the Commission explained that it has no authority to regulate CIPCO's rates or to require any entity to pay CIPCO's non-jurisdictional rate.<sup>14</sup> However, if the Midwest ISO or Interstate Power were to agree on (or a court were to determine appropriate) a charge to be paid by the Midwest ISO or Interstate Power to CIPCO for use of CIPCO's facilities and that charge was then reflected in a jurisdictional rate, the jurisdictional entity, whether the Midwest ISO or Interstate Power, could file with the Commission a proposed rate.<sup>15</sup>

The Commission orders:

Interstate Power and CIPCO's request for rehearing is hereby denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>13</sup> See *Central Iowa Power Cooperative v. Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,093 (2005), *reh'g pending*.

<sup>14</sup> *Id.* at P 28.

<sup>15</sup> *Id.*