
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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Docket Nos. EC03-53-000, et al.
EC04-81-000, et al. and
ER04-730-000

COMMISSION APPROVES MIDWEST UTILITY MERGER, CLARIFIES STANDARDS FOR AFFILIATE TRANSACTIONS

The Federal Energy Regulatory Commission today conditionally approved a Midwest utility merger involving Ameren Corporation, Dynegy, Inc. Illinova Corporation and Illinova Generating Company, and approved Illinois Power's transfer of its transmission facilities to the Midwest Independent Transmission System Operator (EC04-81).

Today's actions in addressing the merger and affiliate sales will help to ensure a more competitive wholesale power market while making clear the Commission's standards involving disposition of facilities in today's market conditions.

In two other orders discussed below, the Commission applied more definition to its standards for future utility affiliate transactions.

Ameren Corporation, a registered holding company, controls five utilities that provide electric and gas service in parts of Missouri and Illinois. Dynegy, an Illinois company, through its subsidiaries, gathers, markets and distributes natural gas and generates, markets and transmits electric power. Illinois-based Illinova is a subsidiary of Dynegy and Illinois Power is a direct subsidiary of Illinova.

Under section 203 of the Federal Power Act, the Commission must approve any sale, or disposition, of jurisdictional facilities, if it finds that the transaction will "be consistent with the public interest." In 1996, the Commission adopted a revised Merger Policy and reviews mergers and other dispositions of jurisdictional facilities based on the following criteria: (1) the effect on competition; (2) the effect on rates; and, (3) the effect on regulation.

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The utilities' combination of their transmission and generation assets will not harm competition, the Commission said. All of Ameren's operating companies have either become members or are seeking to become members of the Midwest ISO. "We believe that turning over operational control of transmission assets to a Commission-approved RTO mitigates vertical market power relating to generation and transmission..." the Commission said.

The Commission also approved proposed Power Purchase Agreements (PPAs) between Dynegy Midwest Generation and Dynegy Power Marketing, finding that there was no evidence of affiliate abuse (ER04-673 and ER04-711). The Commission noted that Illinois Power has no traditional cost-based rates with fuel adjustment clauses for wholesale customers and Illinois retail rates are frozen for the duration of the PPAs, and that the PPAs are only for a two-year period. At that time, Illinois Power will purchase the capacity and energy for its retail customers through a competitive bidding process.

In a separate order also involving Ameren, the Commission affirmed an administrative law judge's findings that will allow an affiliate sale of certain generating assets between utilities in Missouri and Illinois and, in so doing, articulated its policy for future acquisitions involving affiliates (EC03-53). The Commission's policy will protect wholesale customers and ensure that competition is not harmed in acquisitions involving affiliates.

In this case, Ameren UE, an Ameren Corporation subsidiary and Ameren Energy Generating Company (AEG) asked the Commission to authorize the transfer of certain jurisdictional transmission facilities associated with the sale of two generating plants from AEG to Ameren UE. As a result of the proposed transaction, AmerenUE would own an additional 548 megawatts of generating capacity. The Commission set the case for hearing to determine whether there would be any harmful effects on competition as a result of the proposed disposition of facilities.

The Commission agreed with the judge's findings that no affiliate abuse occurred and agreed that the proposed transaction would be consistent with the public interest, but concluded that there should be a more transparent solicitation process for such future approvals.

The Commission developed standards for affiliate transactions in the *Boston Edison Company Re: Edgar Electric Co. (Edgar)* case. As set out in the *Edgar* case, examples of how to demonstrate lack of affiliate abuse include:

- Evidence of direct head-to-head competition between affiliated and unaffiliated suppliers;

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- Evidence of the prices that non-affiliated buyers were willing to pay for similar service from the affiliate; and,
- “benchmark” evidence of the prices, terms and conditions of sales made by non-affiliate sellers.

Since the market for generating assets is not as liquid as the market for PPAs, a competitive solicitation through a formal request for proposal (RFP) is likely the most effective way to show that an affiliate transaction is not marred by affiliate abuse, the Commission said. This would apply for all future affiliate transactions filed under section 203 of the Federal Power Act.

In an order addressing affiliate sales, the Commission granted Allegheny Energy Supply Company, LLC’s (AE) request to make market-based rate sales to its affiliate, The Potomac Edison Company (Potomac) (ER04-730-000). The Commission found that the RFP at issue meets the criteria as discussed in the *Edgar* order. “No affiliate should receive undue preference...” the Commission emphasized. The Commission also provided further guidance as to the standards it will use in the future to evaluate whether an RFP meets the *Edgar* criteria, identifying four guidelines: (1) transparent, open and fair; (2) clearly defined; (3) contain standardized bid evaluation criteria; and, (4) be overseen by an independent third party. Potomac met all these requirements, under the supervision of the Maryland Public Service Commission. The Commission noted that Allegheny had a clean RFP process.

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