

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Illinois Power Company
Illinois Electric Transmission Company, LLC
Trans-Elect, Inc.

Docket Nos. EC03-30-002
ER03-284-003

ORDER ON REHEARING

(Issued May 7, 2004)

1. On March 19, 2004, Trans-Elect, Inc. (Trans-Elect) filed a request for rehearing on the Commission's February 19, 2004 Order dismissing requests for rehearing.¹ In that order, the Commission dismissed the March 24, 2003 requests for rehearing of the Commission's February 20, 2003 Order in this proceeding² filed by Southwestern Electric Cooperative, Inc. and jointly Illinois Power Company and Illinois Electric Transmission Company, LLC as moot. The Commission explained that since the requests for rehearing were originally filed, the Commission understood that the transaction that was the subject of this proceeding, *i.e.*, the sale of Illinois Power to Illinois Electric Transmission Company, LLC, had been terminated.³

2. In the instant request for rehearing, Trans-Elect now argues that the underlying subject of this rehearing, the proposed transfer of facilities, has not been lawfully terminated, and that, contrary to the Commission's ruling, the requests for rehearing are

¹ Illinois Power Company, *et al.*, 106 FERC ¶ 61,176 (2004) (February 19 Rehearing Order).

² Illinois Power Company, *et al.*, 102 FERC ¶ 61,184 (2003) (February 20 Order).

³ See, *e.g.*, Press Release, Dynegy Inc., Dynegy Announces Agreement to Sell Illinois Power to Ameren (February 3, 2004).

therefore not moot.⁴ Trans-Elect argues that in the initial application for authorization to transfer jurisdictional transmission assets, and for approval of related jurisdictional agreements and rates, terms and conditions of transmission service and approval of reclassification of transmission and distribution assets (Application),⁵ Applicants sought Commission-approval in order to implement the Asset Purchase Agreement (APA). Pursuant to the APA, Illinois Power was to sell all of its jurisdictional transmission assets to IETC and cease to be a transmission owner or transmission provider, subject to the Commission's jurisdiction. IETC was to assume ownership of all of Illinois Power's jurisdictional transmission assets, and become a Midwest ISO transmission-owning member and transfer functional control of its facilities to Midwest ISO.

3. Trans-Elect explains that the APA anticipated that, in the event that the Commission did not accept the initially filed rates, the parties would negotiate in good faith to revise the rate and refile them with the Commission. Trans-Elect further explains that subsequent to the February 20 Order in which the Commission ordered hearings and deferred a ruling on Applicants' request for approval of the transfer of facilities to IETC pending the outcome of the hearings, Applicants withdrew the proposed rates and rate treatments for transmission service over the IETC system, indicating that the revised transmission rate treatments would be refiled promptly. Trans-Elect notes that, although as a result of Applicants' representation the Commission held the hearings in abeyance, revised rate treatments have not been resubmitted.

4. Trans-Elect now argues that it sought Illinois Power's cooperation to resubmit revised rate treatments, which would have allowed the Commission to make a determination that the proposed transfer of facilities would not have had any impact on rates.⁶ Trans-Elect contends, however, that Illinois Power refused and instead notified Trans-Elect that it was terminating the APA. Trans-Elect states that it has since sued Illinois Power for breach of the APA in Federal district court in Illinois.⁷ Trans-Elect argues that, since the "lawfulness" of Illinois Power's termination of the APA is actively in dispute and Trans-Elect could secure a judgment requiring Illinois Power to abide by

⁴ Trans-Elect Request for Rehearing at 1, 4-5.

⁵ On December 16, 2002, Trans-Elect, Illinois Power Company (Illinois Power), and Illinois Electric Transmission Company, LLC (IETC) (collectively, Applicants) jointly filed an Application seeking Commission approval of the sale of Illinois Power.

⁶ Trans-Elect Request for Rehearing at 4.

⁷ Trans-Elect, Inc. v. Illinois Power Company, Civil Action No. 03-C-7475 (N.D. Ill.)

the APA, it is inappropriate for the Commission to conclude that the APA has been terminated and that the requests for rehearing are moot.⁸

5. Trans-Elect therefore requests the Commission to defer taking action since the parties would resubmit a revised rate proposal if Trans-Elect is granted the relief it seeks in Federal district court. Trans-Elect fears that any other Commission action could interfere with the Federal district court's expeditious resolution of this matter before it, or could prejudice the issues should the court order the parties to resubmit the proposed rates to the Commission.

Commission Conclusion

6. We find no reason to change our mind and not dismiss the rehearing requests. Dynegy Inc., Illinois Power's parent company, has publicly announced that it plans to sell Illinois Power to Ameren Corp. In fact, Dynegy Inc. and Ameren Corp., have requested Commission approval of this agreement in Docket No. EC04-81-000, currently pending before the Commission. Our order dismissing the earlier requests for rehearing was thus a matter of administrative housekeeping - - closing dockets for a transaction that was no longer going to closure. Should the litigation in Illinois between Illinois Power and Trans-Elect resurrect the transaction, as Trans-Elect indicated might occur, the parties may, at that time, submit a filing to the Commission. Our decision in this case thus should have no effect on the litigation in Illinois between Illinois Power and Trans-Elect.

The Commission orders:

Trans-Elect's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary

⁸ Trans-Elect Request for Rehearing at 4.