

131 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Ameren Corporation
Illinois Power Company
Central Illinois Light Company
Central Illinois Public Service Company
Ameren Energy Resources Company, LLC
AmerenEnergy Resources Generating Company

Docket Nos. EL10-48-000
EC10-52-000

ORDER AUTHORIZING DISPOSITION AND ACQUISITION
OF JURISDICTIONAL FACILITIES AND GRANTING
PETITION FOR DECLARATORY ORDER

(Issued June 17, 2010)

1. On March 15, 2010, Ameren Corporation (Ameren), together with and on behalf of its directly or indirectly owned subsidiaries, Illinois Power Company (AmerenIP), Central Illinois Light Company (AmerenCILCO), Central Illinois Public Service Company (AmerenCIPS), Ameren Energy Resources Company, LLC (Ameren Energy Resources), and AmerenEnergy Resources Generating Company (AmerenEnergy Resources Generating) (collectively, Applicants) filed an application under section 203(a) of the Federal Power Act (FPA)¹ requesting Commission authorization relating to an internal corporate reorganization. The reorganization consists of two steps: (1) the merger of AmerenCILCO and AmerenIP with and into AmerenCIPS to form Ameren Illinois Company (AIC); and (2) distribution of AmerenEnergy Resources Generating stock from AIC to Ameren and the subsequent contribution by Ameren of AmerenEnergy Resources Generating to Ameren Energy Resources (Reorganization Transaction). Applicants also filed a petition for declaratory order seeking confirmation that the distribution of AmerenEnergy Resources Generating stock from AIC to Ameren is not barred by section 305(a) of the FPA.²

¹ 16 U.S.C. § 824b (2006).

² Applicants also request authorization under FPA section 204 for limited

(continued)

2. The Commission has reviewed the proposed transaction under the Commission's Merger Policy Statement.³ As discussed below, we will authorize the proposed transaction under section 203(a)(1), as we find that it is consistent with the public interest. We remind Applicants that when they submit an application seeking authorization under section 203 of the FPA, they must specify the subsection(s) of section 203 under which they are seeking authorization. The Commission further grants Applicants' petition for a declaratory order.

I. Background

A. Description of Parties

3. Ameren, a public utility holding company, directly owns three public utility operating companies in Illinois: AmerenCILCO, AmerenCIPS, and AmerenIP. Ameren does not itself own or operate any facilities subject to the Commission's jurisdiction under the FPA and does not own any significant assets other than the stock of its subsidiaries. Ameren also indirectly owns three marketing and generating company public utilities: Ameren Energy Marketing Company, Ameren Energy Generating Company and AmerenEnergy Resources Generating.

4. AmerenCILCO provides retail electric and natural gas services to customers in portions of central and east central Illinois, and does not own any generating assets. AmerenCILCO is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and has transferred functional control of its transmission system to the Midwest ISO. Transmission service on the AmerenCILCO transmission system is provided pursuant to the terms of the Midwest

issuances of securities and assumption of liabilities necessary to effectuate the proposed internal reorganization transaction. Applicants' request for authorization under section 204 will be addressed in a separate order (Docket No. ES10-29-000).

³ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

ISO Open Access Transmission Tariff (Midwest ISO OATT). In addition, AmerenCILCO is authorized by the Commission to sell power at market-based rates.⁴

5. AmerenCIPS provides retail electric and natural gas services to customers in portions of central, west central, and southern Illinois, and does not own any generating facilities. AmerenCIPS is a transmission-owning member of the Midwest ISO and has transferred functional control of its transmission system to the Midwest ISO. Transmission service on the AmerenCIPS transmission system is provided pursuant to the terms of the Midwest ISO OATT. AmerenCIPS is authorized to sell power at market-based rates.⁵

6. AmerenIP supplies electric and natural gas services subject to regulation by the Illinois Commerce Commission (Illinois Commission). AmerenIP does not own any generating assets. AmerenIP is a transmission-owning member of the Midwest ISO and has transferred functional control of its transmission system to the Midwest ISO. Transmission service on the AmerenIP transmission system is provided pursuant to the terms of the Midwest ISO OATT. AmerenIP is authorized by the Commission to sell power at market-based rates.⁶

7. Ameren Energy Resources, through various subsidiaries, conducts Ameren's market-regulated generation and wholesale merchant function (with the exception of the generating assets held by AmerenEnergy Resources Generating). Ameren Energy Resources' subsidiaries relevant to this application include Ameren Energy Marketing Company, which markets power produced by Ameren Energy Generating Company and AmerenEnergy Resources Generating.

8. AmerenEnergy Resources Generating, formerly named Central Illinois Generation, Inc. (CIGI), is a wholly-owned subsidiary of AmerenCILCO. On October 3, 2003, AmerenEnergy Resources Generating (then CIGI) acquired AmerenCILCO's 100 percent interest in generating facilities with an aggregate capacity of 1,125 MW (including a small amount of transmission facilities directly related to the generating plants). Other than these generating plants and related transmission facilities, AmerenEnergy Resources Generating owns no electric generating, transmission, or distribution assets.

⁴ *Illinois Power Co.*, 110 FERC ¶ 61,048 (2005); *Ameren Energy Generating Co.*, 128 FERC ¶ 61,153 (2009).

⁵ *See supra* note 4.

⁶ *See supra* note 4.

B. Proposed Transaction

9. Applicants state that the Reorganization Transaction consists of two steps: (1) the merger of AmerenCILCO and AmerenIP with and into AmerenCIPS to form Ameren Illinois Company (AIC); and (2) distribution of AmerenEnergy Resources Generating stock from AIC to Ameren and the subsequent contribution by Ameren of AmerenEnergy Resources Generating to Ameren Energy Resources.

10. Applicants state that the first step of the Reorganization Transaction is for administrative and regulatory simplicity and to streamline its retail service in Illinois. According to Applicants, AIC will be able to reduce audit expenses, reduce the number of financings for the combined entity, achieve capital cost reductions by financing larger amounts, and reduce other operational and administrative expenses such as accounting and record-keeping.⁷

11. Applicants state that the merger will benefit retail customers because it will consolidate customer retail bills and improve customer service through the consolidation of various customer service telephone numbers into a single toll free number. Further, Applicants note that there will be no change in the provision of transmission service as a result of this merger because Ameren already aggregates the transmission revenue requirements of the transmission assets of all three Illinois utilities and produces a single zonal rate.⁸

12. The primary purpose of the second step is to consolidate Ameren's market-regulated Illinois generation. Applicants state that under the second step of the Reorganization Transaction, AmerenEnergy Resources Generating will be reorganized in the Ameren corporate structure.⁹ All other Ameren market-regulated generating assets in Illinois are owned by Ameren Energy Resources. All AmerenEnergy Resources Generating stock will be distributed by AIC to Ameren, and subsequently contributed to Ameren Energy Resources. Applicants state that because the output of all of AmerenEnergy Resources Generating's assets is already committed to and marketed by Ameren Energy Marketing Company under a long-term power supply agreement, this

⁷ Application 14-15.

⁸ *Id.* at 15.

⁹ While Applicants intend to execute this step, obtaining a private letter ruling from the Internal Revenue Service may be needed before it can be executed. Applicants state that they will notify the Commission if this step is ultimately not consummated. *Id.* at n.29.

aspect of the Reorganization Transaction will not alter the relative effective control of generating assets among Ameren subsidiaries.¹⁰

II. Notice of Filing and Responsive Pleadings

13. Notice of the Application was published in the *Federal Register*, 75 Fed. Reg. 14,436 (2010), with comments, protests, or interventions due on or before April 5, 2010. A notice of intervention was filed by the Illinois Commission. Timely motions to intervene were filed by Wabash Valley Power Association, Exelon Corporation, and Hoosier Energy Rural Electric Cooperative, Inc. Southwestern Electric Cooperative, Inc. (Southwestern) filed a timely motion to intervene and a protest. Applicants filed an answer to Southwestern's protest. On May 7, 2010, Southwestern filed a notice to withdraw its protest.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Section 203 Application

1. Standard of Review

15. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹¹ Section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."¹² The Commission's regulations establish verification and informational requirements for applicants that seek

¹⁰ *Id.* at 15.

¹¹ *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹² 16 U.S.C. § 824b(a)(4) (2006); Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 164.

a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹³

2. Effect on Competition

a. Applicants' Analysis

16. Applicants state that the Reorganization Transaction creates no adverse effects on horizontal competition because no generating assets will be entering or leaving the Ameren corporate family as a result of the Reorganization Transaction. Applicants further state that the only generating assets at issue are those currently owned by AmerenEnergy Resources Generating. However, they note that AmerenEnergy Resources Generating will be transferred to Ameren Energy Resources. Moreover, according to Applicants, the output of all of AmerenEnergy Resources Generating's assets is already committed to Ameren Energy Marketing Company under a long-term power supply agreement.¹⁴ Thus, Applicants assert that no horizontal competition issues are raised in this transaction.

17. Applicants state that the Reorganization Transaction creates no adverse effects on vertical competition because the transaction will not result in Ameren owning or controlling any new entities that provide inputs to electricity products and/or new entities that provide generation products.¹⁵ Applicants contend that the subject transmission facilities are under the control of an independent Regional Transmission Organization (RTO) and will remain so after the Reorganization Transaction. Applicants also state that AmerenCILCO, AmerenIP and AmerenCIPS are transmission-owning members of the Midwest ISO and have transferred functional control of their transmission systems to the Midwest ISO. Therefore, transmission service on those transmission systems is provided under the terms of the Midwest ISO OATT.¹⁶

b. Commission Determination

18. In analyzing whether a transaction will adversely affect competition, the Commission first examines its effects on concentration in generation markets or whether the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation (horizontal concerns). Second, the

¹³ 18 C.F.R. § 33.2(j) (2009).

¹⁴ Application at 17.

¹⁵ *Id.*

¹⁶ *Id.* at 18.

Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. Applicants have shown that the Reorganization Transaction will not have an adverse effect on competition in either respect. The Reorganization Transaction involves an internal corporate reorganization, with no transfer of any generation assets outside the Ameren corporate family; therefore, the Reorganization Transaction will result in no change in market concentration. Also, the Reorganization Transaction creates no new vertical combinations of assets and, therefore, it does not raise any vertical market power concerns. We find that the Proposed Transaction will have no adverse effect on competition.

3. Effect on Rates

a. Applicant's Analysis

19. Applicants state that the Reorganization Transaction will have no adverse effect on rates charged to wholesale power and transmission customers. Ameren state that AmerenCILCO, AmerenIP and AmerenCIPS do not own generating assets. While AmerenEnergy Resources Generating owns generating assets and is a separate subsidiary of AmerenCILCO, Applicants note that those assets will be transferred to Ameren Energy Resources. The generating assets previously owned by AmerenCIPS are now held by AmerenEnergy Generating under Ameren Energy Resources, another subsidiary of which (Ameren Energy Marketing Company) also controls the output of AmerenEnergy Resources Generating facilities.¹⁷ According to Applicants, the output of all Ameren Energy Resources' assets is marketed by Ameren Energy Marketing Company, which holds market-based rate authority, and any sales are made pursuant to that authority.¹⁸ Applicants state that because the rates for sales made pursuant to market-based rate authority are not cost-of-service rates, they will not be affected by the Reorganization Transaction.¹⁹

20. Applicants state that the Reorganization Transaction will have no adverse effect on jurisdictional transmission service rates of an Ameren entity. Applicants state that AmerenCILCO, AmerenCIPS and AmerenIP are members of the Midwest ISO, which functionally controls their interstate transmission facilities pursuant to the Midwest ISO OATT. Applicants note that the transmission customers will not be impacted by this consolidation insofar as Ameren aggregates the transmission revenue requirements of the transmission assets of AmerenCILCO, AmerenCIPS and AmerenIP and produces a single

¹⁷ Application at 18-19.

¹⁸ *Id.* at 19.

¹⁹ *Id.*

zonal rate. As a result, all interstate transmission service provided by the Ameren CILCO, AmerenCIPS and AmerenIP is currently and will continue to be taken under the Midwest ISO OATT.²⁰

21. AIC commits to hold transmission customers harmless from costs directly related to the Reorganization Transaction (i.e., transaction costs) for a period of five years to the extent that such costs exceed savings related to the reorganization. Applicants note that this hold-harmless commitment is not a rate freeze and would not preclude changes in transmission rates attributable to costs not attributable to the reorganization.²¹

b. Commission's Determination

22. We accept Applicants' commitment to hold transmission customers harmless from costs related to the transaction. We note that nothing in the application indicates that rates to customers will increase as a result of the Reorganization Transaction, and that no customer argues otherwise. In addition, the Commission will be able to monitor the Applicants' hold harmless provision under the books and records provision of PUHCA 2005.²² Also, wholesale customers' rates will not be affected by the transaction since all sales from the output of Ameren Energy Resources' assets are made under market-based rate authority. Therefore, we find that the Reorganization Transaction will not adversely affect rates charged to wholesale power and transmission customers.

4. Effect on Regulation

a. Applicant's Analysis

23. Applicants state that the Reorganization Transaction will have no adverse effect on federal and state regulation. They state that AIC (1) will be a public utility subject to the FPA and (2) commits to follow the Commission's policies on the pricing of non-power goods and services between affiliates.²³ They further state that AIC's retail gas and electric rates will continued to be regulated by the Illinois Commission.

²⁰ *Id.*

²¹ *Id.* at 20.

²² Public Utility Holding Company Act of 2005, 42 U.S.C. § 16451-63 (2006).

²³ Application at 20-21.

b. Commission Determination

24. We find that neither state nor federal regulation will be impaired by the Reorganization Transaction. We find that the Reorganization Transaction will not create a regulatory gap at the federal or state level. We note that no party alleges that regulation would be impaired by the reorganization, and no state commission has requested that the Commission address the issue of the effect on state regulation.

5. Cross-Subsidization

a. Applicant's Analysis

25. Applicants state that the state and federal regulatory structures through which Ameren's market-regulated generating assets are made available to AmerenCILCO, AmerenIP and AmerenCIPS will not change as a result of the Reorganization Transaction. Applicants contend that, because the Reorganization Transaction serves to further separate regulated utility activities from the market-regulated activities of their affiliates, there will be no inappropriate cross-subsidization.²⁴

26. Applicants state that the Reorganization Transaction will not result in any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities, and an associate company. Applicants argue that there is no such transfer here because the only generating facilities at issue that are aligned under a public utility (the generating facilities owned by AmerenEnergy Resources Generating) have already been transferred.²⁵ Applicants state that because these generating assets are held by a market-regulated generating subsidiary today and will continue to be held by a market-regulated generating subsidiary after the reorganization, no cross-subsidization issues arise from the transfer of AmerenEnergy Resources Generating.²⁶

27. Applicants also state that the Reorganization Transaction will not result in any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company. Applicants state that while some existing debt held by AmerenIP, AmerenCIPS and AmerenCILCO will have to be restructured to permit consolidation of the three entities, the only steps in the

²⁴ *Id.* at 22.

²⁵ *Central Illinois Light Co.*, 99 FERC ¶ 62,143 (2002).

²⁶ Application at 25.

Reorganization Transaction that may be viewed as new issuances of securities by AIC resulting from the reorganization will be: (1) the conversion of six series of outstanding Ameren IP preferred stock held by the public into six series of AIC preferred stock; and (2) the issuance of three series of mortgage bonds and senior secured notes to secure the outstanding AmerenCIPS' senior notes held by the public.²⁷ Applicants argue that the purpose of this conversion is to give existing public holders of AmerenIP preferred stock a commensurate equity interest in AIC, and the purpose of this issuance of mortgage bonds and senior secured notes is to preserve the ranking of the AmerenCIPS' senior notes relative to certain other senior secured notes that will be outstanding after the reorganization. Applicants contend that this conversion and issuance are not for the benefit of an associate company.²⁸

28. Further, Applicants state that the Reorganization Transaction will not result in any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company. Applicants note that there will be no new pledge or encumbrance of any assets of traditional public utility companies for the benefit of an associate company. Applicants state that after the reorganization, AIC will have greater financial separation from the market-regulated generating subsidiaries.²⁹

29. Finally, Applicants state that, with one exception, the Reorganization Transaction will not result in any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. The only exception, according to Applicants, is the affiliate contract for pollution control facilities.³⁰ Certain outstanding AmerenCILCO bonds are tax-exempt pollution control bonds that were issued in 1992 and 1993. Applicants note that in order to preserve the status quo – i.e., the benefits to AmerenCILCO of the tax-exempt status – AmerenEnergy Resources Generating must continue to operate these pollution control

²⁷ A separate order in the section 204 proceeding, in Docket No. ES10-29-000, will address the issuances of these stocks, bonds, and notes.

²⁸ Application at 25-26.

²⁹ *Id.* at 26-27.

³⁰ Applicants state that the pertinent service agreements have been previously approved by the Illinois Commission, which has continuing jurisdiction over the agreements.

facilities in compliance with the applicable tax regulations. Applicants contend that because AIC will not own AmerenEnergy Resources Generating after the AmerenEnergy Resources Generating distribution, AmerenEnergy Resources Generating and AIC will enter into a written agreement requiring AmerenEnergy Resources Generating and its successors to continue to operate these pollution control facilities in compliance with these tax regulations and hold harmless and indemnify AIC from any claim, demand, cause of action, or suit as a result of AmerenEnergy Resources Generating's failure to abide by the terms and obligations with respect to the subject bonds.³¹ Applicants argue that because these are long-term outstanding bonds and this agreement preserves the status quo, this affiliate agreement does not raise cross-subsidization issues. Applicants state that ratepayers will benefit from the agreement insofar as it ensures the tax-exempt status of these bonds will continue to be protected. Applicants further state that these bonds have lower debt costs than AmerenCILCO's senior secured notes so they also benefit ratepayers by lowering the weighted cost of capital, and in turn, the overall rate of return.³²

b. Commission Determination

30. Based on the facts as presented in the application, we find that the Reorganization Transaction will not result in inappropriate cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise. The purpose of the conversion of AmerenIP's preferred stock to AIC's preferred stock is to transfer to existing public holders of AmerenIP's preferred stock a commensurate equity interest in AIC. The purpose of the issuances of mortgage bonds and senior secured notes is to preserve the existing ranking of AmerenCIPS' senior notes relative to certain other senior secured notes that will be outstanding after the reorganization. Such conversion and issuances are not for the benefit of an associate company since AmerenIP is merging into AIC and mortgage bonds and senior secure notes are being issued to secure Ameren CIPS' outstanding senior notes.

31. Regarding the new affiliate agreement between AmerenEnergy Resources Generating and AIC for pollution control facilities, we find that the agreement will not result in inappropriate cross-subsidization. The purpose of the agreement is to continue the operation of pollution control facilities by AmerenEnergy Resources Generating in compliance with the applicable tax regulations.

³¹ Application at 27.

³² *Id.* at 28.

C. Request for Declaratory Order under Section 305(a)

32. Applicants request confirmation that FPA section 305(a) does not bar the Reorganization Transaction. Specifically, Applicants state that AIC will distribute to Ameren its 100 percent ownership interest in AmerenEnergy Resources Generating, Ameren will then contribute the stock of AmerenEnergy Resources Generating to Ameren Energy Resources. This will consolidate AmerenEnergy Resources Generating's assets with other market-related generation assets owned by Ameren.

33. Applicants explain that the Reorganization Transaction is not barred by 305(a) of the FPA. First, Applicants note that AIC's distribution of its interests in AmerenEnergy Resources Generating to Ameren does not provide benefits to any Ameren officers or directors because the interests in AmerenEnergy Resources Generating and its assets will remain in the Ameren corporate family. Second, according to Applicants, the AmerenEnergy Resources Generating stock is being distributed so the source of the distribution has been clearly identified. Third, Applicants state that the distribution is not excessive. They state that the accounting for the distribution of AmerenEnergy Resources Generating to Ameren will reduce AIC's retained earnings only by the amount of AmerenEnergy Resources Generating's retained earnings and will reduce AIC's paid-in capital accounts by the amount of Ameren's capital investment in AmerenEnergy Resources Generating.³³ After the distribution of AmerenEnergy Resources Generating, the AIC capital structure will consist of approximately 56 percent equity and 44 percent debt. Consistent with Commission precedent, and as an additional safeguard against excessive dividends being issued out of a utility, Ameren commits to maintain a minimum 30 percent equity capital structure at AIC after the Reorganization Transaction.³⁴

34. Finally, Applicants state that there will be no adverse effect on the value of shareholders' stock because the assets will be staying in the Ameren corporate family. Hence, Ameren shareholders will continue to have the same ownership interest in AmerenEnergy Resources Generating before and after the Reorganization Transaction. Moreover, Applicants state that because all of the outstanding common stock in AIC is held by Ameren, there will be no effect on the value of that stock to Ameren. In addition, current public holders of AmerenCIPS and AmerenIP preferred stock will not be impacted by AIC's distribution of AmerenEnergy Resources Generating to Ameren because AmerenEnergy Resources Generating is held under AmerenCILCO (i.e. AmerenIP and AmerenCIPS preferred stockholders have no interest in AmerenEnergy Resources Generating at this time and will have no interest after the distribution), and

³³ Application at 31.

³⁴ *Id.* at 32.

there will be no outstanding AmerenCILCO preferred stock at the time of the distribution.³⁵

Commission Determination

35. We will grant Applicant's petition because the concerns underlying section 305(a) of the FPA are not present in the circumstances of this reorganization transaction. Section 305(a) of the FPA reads:

It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital accounts.³⁶

The concerns underlying the enactment of section 305(a) included "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies. A key concern, thus, was corporate officials raiding corporate coffers for their personal financial benefit."³⁷

36. The Commission finds that the source of Applicants' proposed distribution has been clearly identified and nothing indicates that the distribution will be excessive or preferential. Moreover, the distribution will not harm shareholders because AIC will have the same shareholders both before and after the distribution. The distribution is less like a distribution of dividends than it is a corporate restructuring with a one-time distribution and subsequent contribution within the Ameren corporate family. For these reasons, and under the circumstances of this case, we will grant the petition and find that section 305(a) of the FPA is not a bar to Ameren's capital structure realignment. However, we will accept Ameren's commitment and condition our finding on Ameren complying with its commitment to maintain a minimum equity to total capital ratio of 30

³⁵ *Id.*

³⁶ 16 U.S.C. § 825d(a) (2006).

³⁷ *Entergy Louisiana Inc.*, 114 FERC ¶ 61,060, at P 12 (2006); *Exelon Corporation*, 109 FERC ¶ 61,172, at P 8 (2004); *ALLETE, INC.*, 107 FERC ¶ 61,041, at P 10 (2004).

percent and to retain an amount of debt that is within the range that will accommodate preservation of Ameren's current ratings.

E. Accounting Analysis

37. Applicants propose to transfer the book value of the assets, liabilities, and equity of AmerenCILCO and AmerenIP into AmerenCIPS to become AIC. Applicants also propose to transfer AmerenCILCO and AmerenEnergy Resources Generating purchase accounting related balances from Ameren's books to AmerenCIPS using utility plant accounts. The Commission's Uniform System of Accounts requires the acquisition of electric plant constituting an operating unit or system to be cleared through Account 102, Electric Plant Purchased or Sold, and any difference between the purchase price and the depreciated original cost to be recorded as an acquisition adjustment in Account 114, Electric Plant Acquisition Adjustments.³⁸ Accordingly, purchase accounting adjustments transferred to AmerenCIPS related to utility plant must be recorded in Account 114.³⁹ Applicants must also submit a proposal of final accounting within six months of the consummation of the Reorganization Transaction.

F. Other Consideration

38. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) We hereby grant authorization under section 203(a)(1) for the proposed transaction, as discussed in the body of this order, effective as of the date of this order.

³⁸ Electric Plant Instruction No. 5, Electric Plant Purchased or Sold, and Instructions to Account 102, Electric Plant Purchased or Sold, 18 C.F.R. Part 101 (2009).

³⁹ *Great Plains Energy Inc.*, 121 FERC ¶ 61,069, at P 64 (2007).

(B) Applicant's petition for declaratory order is hereby granted, as discussed in the body of this order.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. Applicants shall submit its final accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the entries, including a full explanation of purchase accounting journal entries.

(G) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the proposed transaction.

(H) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the transaction.

(I) Applicants shall notify the Commission within 10 days of the date that the reorganization transaction has been consummated.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.