

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

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Ameren Energy Marketing Company

Docket No. ER09-870-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES
AND ACCEPTING AMENDED TARIFF SHEETS

(Issued May 11, 2009)

1. On March 20, 2009, Ameren Energy Marketing Company (Ameren Marketing) filed an application under section 205 of the Federal Power Act (FPA)¹ requesting authorization to make sales of electric capacity to affiliates at market-based rates pursuant to a competitive procurement process and an amendment to its market-based rate tariff that would allow Ameren Marketing to offer and sell electric capacity to its affiliates pursuant to the Illinois Power Agency Capacity Procurement Request for Proposals (Illinois Procurement). In this order, the Commission grants Ameren Marketing's request for authorization and accepts the amended tariff sheets for filing, effective June 1, 2009, subject to the compliance filing directed below.

I. Background

2. Ameren Marketing states that it is a power marketer and power broker and a wholly-owned subsidiary of Ameren Corporation, a publicly-traded company. Ameren Marketing has been authorized by the Commission to sell capacity, energy, and certain ancillary services at market-based rates. Ameren Marketing states that it does not own any generation, transmission, or distribution facilities, and does not have any captive customers. Ameren Marketing is the marketing agent for approximately 6,000 MW of electric generating capacity in Illinois through long-term agreements with affiliated and unaffiliated entities.

¹ 16 U.S.C. § 824d (2006).

3. Ameren Marketing states that in 1997, the State of Illinois initiated the restructuring of the state's electric power industry. As part of the restructuring, Illinois customers can seek service from an Illinois electric utility selling outside of its service area, or from any other entity certified by the Illinois Commerce Commission (Illinois Commission) to sell electricity to retail customers. Ameren Marketing's franchised public utility affiliates, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company (collectively, Ameren Illinois Utilities), remain the default electricity suppliers in their respective territories.

4. Ameren Marketing states that in 2007, the State of Illinois enacted the Illinois Power Agency Act, which created the Illinois Power Agency, which is responsible for the development of an annual procurement plan on behalf of Illinois' four largest utilities, the Ameren Illinois Utilities and Commonwealth Edison Company (Commonwealth Edison).² Ameren Marketing explains that the Illinois Power Agency is also responsible for the administration of a competitive procurement process to acquire the resources identified in the annual procurement plan the agency develops. Accordingly, the Illinois Power Agency has assumed responsibility for the procurement planning and process for the upcoming June 1, 2009 through May 31, 2012 planning period (2009 Illinois Procurement). Ameren Marketing states that this responsibility includes: (1) the development of a procurement plan, including a load forecast for the June 1, 2009 through May 31, 2012 period, and a supply portfolio, through which the Ameren Illinois Utilities will serve eligible retail customers that will not be served under preexisting contracts during the same period, and (2) the hiring of a procurement administrator.

5. In accordance with the 2009 Procurement Plan, the Illinois Power Agency's designated procurement administrator issued a request for proposals for monthly electric capacity to be supplied during the June 1, 2009 through May 31, 2012 planning period. Since it desires to participate in the 2009 Illinois Procurement, Ameren Marketing requests that the Commission accept the amended tariff sheets, which would authorize Ameren Marketing to make sales of electricity to the Ameren Illinois Utilities at market-based rates pursuant to the Illinois Procurement. Ameren Marketing also requests authorization to participate in future Illinois Procurements without the need to request further authorization from the Commission. It states that if the current Illinois Procurement process undergoes a material change, it will make a filing to seek authorization under the changed process.³

² Public Act 95-0481 included the Illinois Power Agency Act, 220 Ill. Comp. Stat. 3855/1-1, *et seq.* which created the Illinois Power Agency.

³ Ameren Energy Marketing Company, Amendments to Market-Based Rate Tariff at 4, Docket No. ER09-870-000 (March 20, 2009) (Ameren Marketing Filing).

6. According to Ameren Marketing, the tariff amendments are justified on several grounds. First, sales by Ameren Marketing to the Ameren Illinois Utilities would be consistent with Order No. 697⁴ and the Commission's regulations. Ameren Marketing explains that the Commission's regulations, as promulgated in Order No. 697, provide that entities like Ameren Marketing may not sell capacity or energy at market-based rates to an affiliated "franchised public utility with captive customers"⁵ without Commission authorization under section 205 of the FPA.⁶ Citing Order No. 697, Ameren Marketing explains that the converse of this rule is that a market-regulated public utility may sell wholesale power at market-based rates to an affiliate if that affiliate lacks wholesale and retail captive customers. Ameren Marketing states that the Ameren Illinois Utilities lack wholesale customers and generally do not make wholesale sales. With respect to retail customers, Ameren Marketing states that it is not requesting that the Commission find that the Ameren Illinois Utilities lack captive retail customers, and that such a finding is not necessary to grant the requested authorization and accept the amended tariff sheets.

7. Ameren Marketing contends that its request is consistent with the authorization recently granted by the Commission to Commonwealth Edison. According to Ameren Marketing, in *Exelon Generation Co., LLC*, 126 FERC ¶ 61,031 (2009) (*Exelon Generation*), the Commission accepted for filing amendments to the market-based rate tariffs of affiliates of Commonwealth Edison that clarified their ability to sell to Commonwealth Edison pursuant to the Illinois Procurement.⁷ Ameren Marketing states that since the Illinois laws and regulations are identical in all material respects for both Commonwealth Edison and the Ameren Illinois Utilities, the Commission's findings in *Exelon Generation* are equally applicable to the Ameren Illinois Utilities as they are to Commonwealth Edison, and the Commission should accept Ameren Marketing's tariff amendments permitting the affiliate sales.

⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008).

⁵ 18 C.F.R. § 35.39(b) (2008).

⁶ 16 U.S.C. § 824d (2006).

⁷ Ameren Marketing Filing at 5 (citing *Exelon Generation*, 126 FERC ¶ 61,031 at P 43-47).

8. Ameren Marketing further asserts that the Illinois Procurement continues to be consistent with the Commission's principles regarding affiliate transactions at market-based rates established in *Boston Edison Co. re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*), and *Allegheny Energy Supply Co., L.L.C.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*). Ameren Marketing claims that it previously demonstrated to the Commission's satisfaction that the Illinois Procurement for the June 1, 2008 through May 31, 2009 procurement period (2008 Illinois Procurement) satisfied the criteria established in *Edgar* and *Allegheny*. According to Ameren Marketing, the 2009 Illinois Procurement, like the 2008 Illinois Procurement, has all of the qualities necessary for the Commission to find that the 2009 Illinois Procurement is consistent with the *Edgar* and *Allegheny* criteria. Ameren Marketing notes that: (a) the 2009 Illinois Procurement Plan has its genesis in state law and is developed and administered by an independent state agency set up for these sole purposes, and (b) the results of the solicitation must be approved by the state regulatory body, the Illinois Commission. Ameren contends that the 2009 Illinois Procurement is arguably superior to the 2008 Illinois Procurement from an *Edgar/Allegheny* standpoint because the 2009 Illinois Procurement was developed and administered by the Illinois Power Agency, not the Ameren Illinois Utilities. As a result, Ameren Marketing asserts that there is no ability for the Ameren Illinois Utilities to favor Ameren Marketing, their affiliate.

9. Ameren Marketing requests a June 1, 2009 effective date for the amended tariff sheets and requests waiver of the Commission's regulations to the extent necessary. It states that June 1, 2009 is the date sales of capacity are to commence under the capacity contracts awarded to sellers pursuant to the Illinois Procurement.

II. Notice of Filings and Responsive Pleadings

10. Notice of Ameren Marketing's filing was published in the *Federal Register*, 74 Fed. Reg. 14,119 (2009), with interventions, comments or protests due on or before April 10, 2009. None was filed.

III. Commission Determination

11. The Commission accepts the amended tariff sheets submitted by Ameren Marketing subject to it making a compliance filing adding to its market-based rate tariff a citation to this order as the authority for the waiver being granted.⁸ We conclude that affiliate abuse is not a concern in this case, and therefore that the affiliate restrictions in

⁸ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 916 (requiring that sellers include a provision identifying any exemptions from or waivers of Commission regulations that the seller has been granted *including cites to the relevant Commission orders*).

section 35.39 should not apply. As we found in *Exelon Generation*, the State of Illinois has a state-mandated competitive procurement process that includes an independent evaluator and that is subject to the oversight of the Illinois Commission. As part of that process, the Illinois Power Agency develops procurement plans on behalf of the state's largest utilities and implements a competitive procurement process for power purchases by those utilities on behalf of residential and small commercial customers, subject to the oversight and approval of the Illinois Commission. Based on our precedent in *Exelon Generation*, we find that "the Illinois Commission now has and will continue to have the ability to ensure a properly developed [procurement process] and to oversee a fair administration of such a [process] in order to protect retail customers."⁹ For this reason, and "in light of the competitive procurement process in place under Illinois law, and the protections available under that process, we ... conclude that there is no need to apply the Commission's affiliate restrictions."¹⁰ Accordingly, we grant Ameren Marketing waiver of the affiliate restrictions to allow Ameren Marketing to make sales of electric capacity to its affiliates pursuant to the Illinois Procurement.

The Commission orders:

(A) The application for authorization for Ameren Marketing to make sales of electric capacity to its affiliates, the Ameren Illinois Utilities, pursuant to the Illinois Procurement, is granted.

(B) The amended tariff sheets are hereby accepted, effective June 1, 2009, as discussed in the body of this order, subject to the compliance filing directed in Ordering Paragraph (C) below.

(C) Ameren Marketing is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

Kimberly D. Bose,
Secretary.

⁹ *Exelon Generation*, 126 FERC ¶ 61,031 at P 46.

¹⁰ *Id.* at P 47.