UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of	**)**	
Market-Based Rates for Public Utilities	**)**	**Docket No. RM04-7-000**

Prepared Remarks of R. Alan Kelley
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January 28, 2005

Good morning. My name is Alan Kelley. I am Senior Vice President of Generation for Ameren Corporation. I would like to thank the Commission for offering me this opportunity to be here today.

In its conference agenda regarding this panel, the Commission asked whether its current regulations and enforcement policies used to address affiliate abuse and reciprocal dealing are adequate? I believe they are.

Particularly as bolstered by changes made in the last year, the Commission's current policies effectively ensure that affiliates of franchised utilities receive no preferential treatment and that affiliated and non-affiliated entities compete on a level playing field. By contrast, it would harm both consumers and competition if the Commission changed its current policies in a manner that placed affiliates at a competitive disadvantage relative to non-affiliates.

I will elaborate on both these points. Before doing so, however, I would like to briefly discuss the unusual circumstances in which Ameren operates. Those circumstances create the context for my comments today.

Ameren is an electric and gas utility holding company with operations throughout the Midwest United States. Ameren owns, among other assets, four utility operating companies in Illinois and Missouri that together serve 2.3 million electric customers. Owing in large part to the policies of the Illinois Commerce Commission and the Missouri Public Service Commission, the asset make-up of Ameren's utility operating companies differs markedly by state. Ameren's Illinois-based operating companies have largely divested their generation assets and now are essentially "wires only" companies. In contrast, Ameren's Missouri-based operating company, AmerenUE, continues to own and operate the vast majority of the generation resources on which it relies.

In addition to its utility operating companies, Ameren owns two major non-utility generating companies and a power marketer. Ameren's non-utility generating companies own approximately 5,700 MW of generating capacity that is used to serve the power needs of Ameren's Illinois-based operating companies and is marketed into the wholesale power markets in the Midwest.

Ameren recognizes the importance of protecting consumers and promoting wholesale power markets in which all participants compete on a level playing field. The Commission is committed to these goals, which can be put at risk if franchised utilities give preferential treatment to their affiliates. Codes and Standards of Conduct, among other things, ensure that affiliated generators or marketers do not receive preferential access to transmission information. Similarly, the Commission's policies on affiliate transactions ensure that affiliates are placed on a level playing field with non-affiliates for long-term power and asset sales. These current policies adequately protect against affiliate abuse and reciprocal dealing.

Since 1991, the Commission has used the *Edgar* standards to evaluate market-based rate affiliate power sales in order to ensure that such transactions are not the result of affiliate abuse and that proposed prices are consistent with competitive outcomes. Twice in the last year, the Commission has extended *Edgar*'s[1] reach to enhance scrutiny of affiliate transactions in other contexts. First, last February, the Commission extended the *Edgar* standards to cover cost-based power sales between affiliates.[2] Second, in a July order involving Ameren, the Commission held that the *Edgar* standards would apply prospectively to transfers of jurisdictional assets between affiliates.[3]

In that order, the Commission also established guidelines for competitive solicitations and stated that if a utility issuing a Request for Proposals followed these guidelines, it would do much to satisfy the *Edgar* standards. Highlighting the core of its concern about affiliate abuse, the Commission further stated that the "fundamental objective of the solicitation guidelines is that the affiliate should have no undue advantage over non-affiliates in the solicitation process."[4]

As indicated in this order, the Commission's current policies on affiliate abuse protect consumers and competition by preventing preferential treatment for affiliates and ensuring that affiliates and non-affiliates compete on equal footing. As long as the Commission retains those goals, its Code and Standards of Conduct regulations, and expanded use of the *Edgar* tests are up to the task.

The final question posed on the agenda for this panel, however, could be read as raising the question of whether the Commission should alter its policies on affiliate abuse. That question asks: "Do even legitimate affiliate dealings impede the development of competitive wholesale markets?" If the Commission were to answer this question in the affirmative, it might conclude that in addition to preventing preferential treatment for affiliates and ensuring that affiliates and non-affiliates compete on a level playing field, the Commission also should restrict "legitimate affiliate dealings."

Any such shift in the goals of the Commission's policies on affiliate abuse would be a great mistake. Commissioner Kelliher stated last July, that "[t]he Commission has a legal duty to promote competition, not competitors."[5] If the Commission were to adopt policies that place affiliates at a competitive disadvantage relative to non-affiliated entities, it would harm both

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[1] *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,1382 (1991).

[2] *Southern Calif. Edison Co. on behalf of Mountainview Power Co., LLC*, 106 FERC ¶ 61,183 (2004).

[3] *Ameren Energy Generating Co.*, 108 FERC ¶ 61,081 (2004).

[4] *Id.* at P 69.

[5] *Id.* C. Kelliher dissent at n. 74.

consumers and competition. Competition breeds efficiency, which creates the greatest benefits for consumers in the long-run. If competition were stifled, such as by placing affiliates at a competitive disadvantage, consumers would suffer in the long-run. As long as there is no preferential treatment, affiliates must allowed to compete with non-affiliates wherever and whenever they want.

Ameren's Illinois-based utilities, for example, will be holding an auction next year for all of their power needs beginning January 1, 2007. Their affiliates must be permitted to bid in this auction – which Ameren, with stakeholder and ICC input, has designed to comply with the guidance provided by the Commission in its July 2004 *Ameren* and *Allegheny Energy*[6] orders. Prohibiting Ameren's affiliates from participating will not only be patently unfair, but will result in less competition and, most likely, higher prices.

There may be instances in which an affiliate is the most efficient provider of power based, for instance, on their knowledge of the area built up over long years of service. In such instances, consumers benefit from the selection of that most efficient option; competition also benefits because less efficient competitors are forced to build up their own knowledge and offerings. Placing affiliates at a competitive disadvantage – by restricting "legitimate affiliate dealings" – would amount to an unwarranted subsidy to non-affiliated entities by promoting their selection even where they are not the most efficient alternative. Ultimately, consumers would suffer and pay higher prices as a result.

Again, thank you for offering me this opportunity to participate in today's discussion. I would be happy to answer any questions you may have.

[6] *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004).