

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Commonwealth Edison Company  
and Exelon Generation Company

Docket No. ER06-43-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued December 16, 2005)

1. In this order, we grant an application under section 205 of the Federal Power Act (FPA),<sup>1</sup> by Exelon Generation Company (ExGen) requesting Commission authorization to make power sales to its affiliate, Commonwealth Edison Company (ComEd). This authorization will be effective as of the date of issuance of this order. ExGen will make these sales pursuant to the proposed Illinois Auction Proposal (IAP), if this auction is approved by the Illinois Commerce Commission (Illinois Commission). This order concludes that this competitive solicitation, as described below, satisfies the Commission's concerns regarding affiliate abuse and will result in rates that are just and reasonable. In addition, we will deny a request by the Illinois Attorney General (AG) to set these matters for hearing.

**Background**

2. On October 17, 2005, ComEd and ExGen (collectively, "Applicants") jointly submitted for filing the above-referenced application under section 205 of the FPA requesting that the Commission accept for filing: (1) a service agreement between ExGen and ComEd under ExGen's market-based rate tariff; and (2) two standardized supplier forward contracts for use in the proposed auction. The Applicants state that the service agreement would permit ExGen to participate in auctions held as part of the proposed IAP and the standardized supplier forward contracts would be executed in the event that ExGen is a winning bidder in an auction held as part of the IAP. The Applicants seek Commission confirmation that the proposed auction format and design would be consistent with the Commission's guidance regarding affiliate sales that result

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<sup>1</sup> 16 U.S.C. § 824d (2000).

from participation in competitive procurement processes<sup>2</sup> and request that the Commission accept for filing the service agreement and the two supplier forward contracts.

3. ComEd engages in the purchase, transmission, distribution and sale of electricity to residential, commercial, industrial and wholesale customers in Northern Illinois. ComEd does not own any generation and as required by the Illinois Restructuring Law, ComEd's fossil generation fleet was sold to non-affiliates and its nuclear fleet was transferred to ExGen. ComEd's transmission system is under the operational control of PJM Interconnection, L.L.C. (PJM). ComEd currently purchases its requirements from ExGen under an agreement that expires December 31, 2006.

4. ExGen was created in 2001, when Exelon Corporation restructured its business operations following the merger between Unicom Energy, Inc. and PECO Energy Company. ExGen delivers energy to wholesale customers under long-term and short-term contracts including the contract expiring at the end of 2006 for the load requirements of ComEd.

5. The Applicants state that ComEd has obligations in Illinois as a provider of last resort (POLR) to provide generation services to retail customers who do not or cannot choose an alternative supplier. Since ComEd no longer owns any generating capacity, ComEd currently purchases all the power necessary to satisfy its POLR obligation from its affiliate, ExGen, through a power supply contract that expires on December 31, 2006, as noted above. Applicants state that once the contract expires, ComEd will need to procure power from the market to fulfill its POLR obligations. To meet these obligations, it is applying to the Illinois Commission to conduct an auction to procure needed energy, capacity, and certain ancillary services.

6. In their submittal, the Applicants seek Commission confirmation that the proposed IAP is consistent with the Commission's guidelines in *Edgar* and *Allegheny*. The Applicants state that the proposed IAP is modeled on the process that the Commission approved for use in New Jersey.

7. The Applicants state that the proposed IAP allows potential suppliers to bid against each other to serve tranches of ComEd's load and ComEd's acquisition price will be the lowest price at which the demands of its customers can be satisfied simultaneously. ComEd anticipates that the initial IAP auction will be held in September 2006 and annually each year thereafter.

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<sup>2</sup> See *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*); *Allegheny Energy Supply Company, LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

### **Notice of Filing and Responsive Pleadings**

8. Notice of the Applicants' filing was published in the *Federal Register*, 70 Fed. Reg. 61,972 (2005), with motions to intervene and protests due on or before November 7, 2005. The Illinois Commission filed a notice of intervention raising no issues. Timely motions to intervene, along with comments, were filed by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation), Midwest Independent Power Suppliers (MWIPS),<sup>3</sup> the Electric Power Supply Association (EPSA), and Midwest Generation EME, LLC (Midwest Generation). The AG filed a timely motion to intervene and protest. Applicants filed an answer to the protest.

9. MWIPS states that it has supported the proposed auction process as an intervenor in the Illinois Commission proceeding. Constellation, MWIPS, and Midwest Generation all support the Applicants' request and state that the proposed IAP complies with the Commission's guidelines set forth in *Edgar* and *Allegheny*.

10. Constellation contends that the proposed IAP will guard against any potential affiliate abuse. Constellation and MWIPS maintain that ExGen should be allowed to participate in the upcoming IAP because allowing a greater number of competitors would lead to a more robust competitive process. EPSA and Midwest Generation add that the proposed IAP is an open and transparent process, which does not give undue preference or discriminate in favor of ExGen, and that the IAP will promote retail rate stability and predictability.

11. MWIPS and EPSA also state that Commission acceptance of ComEd's filings by December 15, 2005 would be informative to the Illinois Commission and would allow the auction to be conducted on the schedule initially proposed by ComEd.

### **Discussion**

#### **A. Procedural Issues**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene and the Illinois Commission's notice of intervention serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to protests unless authorized by the

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<sup>3</sup> Comprised of a group of competitive power suppliers who are involved in developing and owning electric generation in Illinois and in selling energy at market-based rates.

decisional authority. We will accept Applicants' answer to the AG's protest because it provides information that aids us in our decision-making process.

**B. Affiliate Abuse Analysis**

13. The primary issue in reviewing Applicants' filing is whether the proposed IAP is structured in a manner that satisfies the Commission's concerns regarding affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted. The Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.<sup>4</sup>

14. When an entity presents this kind of evidence, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.<sup>5</sup>

15. In *Allegheny*, the Commission provided guidance as to how the Commission will evaluate whether a competitive solicitation process such as the one in the instant proceeding satisfies the *Edgar* criteria. As the Commission stated therein, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission stated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: transparency, definition, evaluation, and oversight. As discussed below, the Commission finds that the proposed IAP is an example of a process that satisfies these guidelines.

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<sup>4</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,167-69. See also *Connecticut Light & Power Co. and Western Massachusetts Electric Co.*, 90 FERC ¶ 61,195 at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217 at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027 at 61,059-60 (1999).

<sup>5</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,168.

### **Transparency Principle**

16. Applicants cite *PSE&G*,<sup>6</sup> where the Commission held that the “auction achieved transparency in the design phase through a collaborative process involving informed parties with diverse interests and an on-the-record, public New Jersey Board proceeding.”<sup>7</sup> Applicants state that the proposed IAP is the result of a significant collaborative effort spearheaded by the Illinois Commission, involving a diverse group of stakeholders participating in a series of workshops and meetings. Applicants state that a full evidentiary record has been developed by supporters and opponents of the proposal.

17. Applicants state that: (1) the IAP sets forth a timeline for the development of each auction and that each auction will be posted publicly and will provide ample opportunity for bidders to respond; (2) the IAP provides for and describes the bidder application process, which is to be completed well in advance of each auction; (3) the auction manager and not ComEd, determines which bidder satisfies the application; (4) all bidders will have equal access to data, therefore no party will have an informational advantage; and (5) the Illinois Commission’s Staff will monitor the bidding and evaluate the results. Applicants conclude that all of this information will provide an open, transparent, and non-discriminatory auction process for all bidders.

18. The AG objects that Applicants’ characterization of the stakeholder process gives the incorrect impression that all participants in that process reached a consensus in support of the Applicants’ proposed auction. The AG argues that this ignores the significant disagreements that arose in the process and states that the Commission should not base its decision on the premise that Illinois stakeholders all support ComEd’s proposal, because they do not. Moreover, the AG states that consumer representatives, whose constituents would have to pay the prices produced by the auction proposal, have argued vigorously against it. Applicants respond that, contrary to the AG’s assertions, its characterization of the stakeholder process is accurate. In fact, they state that the description “consensus positions” to describe certain recommendations is taken directly

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<sup>6</sup> *Public Service Electric & Gas Company and PSEG Energy Resources & Trade LLC*, 111 FERC ¶ 61,152 (2005) (*PSE&G*).

<sup>7</sup> *PSE&G*, 111 FERC ¶ 61,152 at P 10.

from the Illinois Commission Staff's report to the Illinois Commission.<sup>8</sup> They argue that the final IAP that is now before the Illinois Commission enjoys widespread support, not only from Illinois Commission Staff, whose expert witness described it as "an efficient mechanism for procuring supply to serve ComEd's load at the best possible cost," but also from the majority of the other parties who have participated in the Illinois Commission proceeding. Applicants state that the proposal before the Illinois Commission is opposed only by the AG, the Citizens Utility Board, and the Cook County State's Attorney's Office. Applicants state that they sought unanimous support for the proposed IAP but were unable to reach it.

19. In *Allegheny*, the Commission did not state that the transparency principle requires the stakeholder process to reach full agreement on all the issues.<sup>9</sup> Rather, *Allegheny* states that the underlying transparency principle is that the competitive solicitation should be open and fair.<sup>10</sup> In the instant case, based on Applicants' representations, the Commission finds that the design, administration, and bid evaluation phases of the proposed IAP are consistent with the Commission's transparency principle guidelines. Moreover, ExGen's competitors have filed comments supporting the proposed auction process, asserting that ExGen should be allowed to participate in the upcoming IAP because allowing a greater number of competitors would lead to a more robust competitive process.<sup>11</sup> Other competitors add that the proposed IAP is an open and transparent process, which does not give undue preference or discriminate in favor of ExGen.<sup>12</sup> In addition, the AG does not raise any specific concerns in this regard. .

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<sup>8</sup> Regarding power procurement, the Staff's report provides:

Staff makes several recommendations. Chief among them is the recommendation that the [Illinois Commission] not attempt to mandate any particular procurement method. However, Staff does recommend that for certain utilities [i.e., large utilities that do not own significant generation], the [Illinois Commission] endorse one of the 12 procurement methods analyzed by the group: the vertical tranche auction. In support of this recommendation, Staff makes use of one of the primary areas of consensus: a list of 18 characteristics that members of the working group agreed would be part of an ideal procurement method.

Illinois Commission Staff Report at 3.

<sup>9</sup> See *Allegheny*, 108 FERC ¶ 61,082 at P 20, 22-25.

<sup>10</sup> *Id.* at P 22.

<sup>11</sup> Constellation Comments at 4, and MWIPS Comments at 2-3.

<sup>12</sup> EPSA Comments at 2-3, and Midwest Generation Comments at 2-3.

### **Definition Principle**

20. Applicants contend that the IAP satisfies *Allegheny's* guidelines regarding the definition principle. Applicants state that the products sought through the IAP are defined in a clear and nondiscriminatory manner. Specifically, Applicants state that ComEd is proposing to procure full requirements supply for three categories of retail customers: (1) residential and commercial customers under 400 kW of demand who are on a fixed price service; ComEd would be procuring supply for one, three, and five-year terms; (2) commercial and industrial customers with a demand between 400 kW and 3 MW who are on a fixed price service; ComEd would be procuring this supply for a one-year term; and (3) larger commercial and industrial customers over 3 MW of demand, and other customers whose service is based on the actual real-time PJM load weighted average locational marginal price for energy for the ComEd zone; ComEd will procure supply for a one-year term.

21. The Applicants also state that the IAP sets forth bidder qualification criteria, bid evaluation methods and bidders have knowledge of the bidding and evaluation process before they place their bids. Specifically, the bidders must: (1) demonstrate that they will be able to meet all PJM requirements of the supplier forward contracts by the start of the supply period; (2) agree to the terms of the supplier forward contracts; (3) agree to the terms of the auction rules; (4) submit to a creditworthiness evaluation; (5) submit an indicative offer; (6) submit a financial guarantee to support this indicative offer; and (7) make a number of certifications regarding the handling of confidential information and their independence from other bidders. Applicants state that bidders must agree to the terms of the supplier forward contracts in advance, there is no post bid negotiation, and the bids are evaluated on a price only basis.

22. Based on these representations, the Commission finds that the proposed IAP is consistent with the Commission's definition principle guidelines.

### **Evaluation Principle**

23. The Applicants state that bidders will submit standard application forms to the auction manager, and the auction manager will decide whether the bidders meet the requirements well in advance of each auction, therefore each winning bidder can be selected based solely on price. Documents describing the products, the auction design, the qualification requirements, and other aspects of the auction process will be provided through an auction website.<sup>13</sup> The auction manager will administer the IAP during all

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<sup>13</sup> The Applicants state that Part 1 application forms will be available to all bidders at least 85 calendar days prior to the earliest possible auction date and interested bidders will have until 45 days prior to the auction to successfully complete this form. Part 2

phases of the process including the dissemination of information, the qualification of bidders, the training of bidders, the conduct of the auction, and the preparation of a report to the Illinois Commission. The auction manager will answer any questions from interested parties and post questions and answers on the auction website for access by all interested parties. The auction manager will be the sole point of contact with all potential auction participants including ComEd affiliates. Finally, the auction manager will evaluate results and select winners without any input from ComEd and produce a report. The Illinois Commission Staff will monitor the implementation of all phases of the IAP and provide a report to the Illinois Commission. The public versions of the auction manager and Illinois Commission Staff Reports will be made available to all stakeholders a few weeks after the auction, and will form the basis of an annual improvement workshop in which all stakeholders can participate.

24. Based on these representations, the Commission finds that the proposed IAP is consistent with the Commission's evaluation principle guidelines.

### **Oversight Principle**

25. Applicants state that the Commission previously has held, with respect to the similar basic generation service (BGS) auctions held in New Jersey, that the detailed involvement of an independent consultant, the state commission and the state commission's independent advisor, provide sufficient independent third-party oversight of the design, administration, and bid evaluation stages of the auction.<sup>14</sup>

26. In this case, Applicants state that each auction under the proposed IAP will be conducted and implemented by an independent entity (the auction manager), who has no financial interest in any of the potential bidders, including ComEd and its affiliates, or in the outcome of the process.<sup>15</sup> Applicants state that the auction manager will oversee the design, administration, and evaluation stages of the auction. Applicants also note that the auction manager will, consistent with the *Allegheny* guidelines, be the sole link for transmitting information between potential bidders and the RFP issuer, as this ensures that the RFP design does not favor any particular bidder, particularly an affiliate.<sup>16</sup>

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application forms will be available 60 days prior to the auction date and bidders who successfully complete Part 1 must submit this form at least 35 days prior to the auction.

<sup>14</sup> See *PSE&G*, 111 FERC ¶ 61,152 at P 13.

<sup>15</sup> See *Allegheny*, 108 FERC ¶ 61,082 at P 33.

<sup>16</sup> See *id.* at P 34.

27. Applicants also point to the oversight to be provided by the Illinois Commission, stating that Staff will be intimately involved in the IAP, in consultation with experts as it deems appropriate. Among the Illinois Commission Staff's duties, Applicants state that the Illinois Commission Staff will work with the auction manager to establish protocols for the implementation of each auction. The Illinois Commission Staff also will be involved in the qualification and registration of bidders, a process which is run by the auction manager.

28. Based on these representations, the Commission finds that the Applicants' proposed IAP is consistent with the Commission's oversight principle guidelines.

### **C. AG's Protest and Applicants' Answer**

29. In its protest, the AG argues that the proposed IAP and the proposed agreements violate the Commission's affiliate abuse standards, as enunciated in *Heartland*,<sup>17</sup> because they would transfer benefits from ComEd's captive customers to shareholders. The AG argues that, under the IAP, prices would be determined by the clearing price in the auction and not by the lowest possible price. Thus, the AG argues that ComEd will pay the winning bidder higher prices than it would if it obtained power through direct bilateral negotiations. The AG states that ComEd refuses to negotiate with low-cost base load generators including ExGen to procure electricity by means of long-term, high volume bilateral contracts that, according to the AG, would produce the lowest possible price for ComEd's customers. The AG estimates that ExGen shareholder profits are likely to double as a result of the IAP.

30. The AG also states that ComEd's application contains a series of misstatements that concern material issues of fact and requests that a hearing be held to review these issues to ensure that ComEd's customers are adequately protected from affiliate abuse. The AG contends that the application contains the following misstatements: (1) "that the ComEd auction proposal is the result of a consensus of Illinois stakeholders;" (2) "that the ComEd auction proposal will result in the lowest price for its customers;" and (3) "that Commission approval of Applicants' request is necessary to counter the statements by the Illinois Governor and [AG], and would assist the [Illinois Commission]." The AG further argues that ComEd's proposal actually is an attempt to circumvent the Illinois Commission, and force the Illinois Commission to accept ComEd's proposal. In this regard, we note that the Illinois Commission has made no such argument herein and its Staff apparently supports the IAP as designed.

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<sup>17</sup> *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062 (1994) (*Heartland*).

31. The Applicants reply that the AG's claims that the IAP violates the Commission's affiliate abuse standards are without merit and note that the AG does not dispute ComEd's need to procure power for its customers in the wholesale market. Applicants argue that, while the passage quoted from *Heartland*,<sup>18</sup> is a general statement about affiliate abuse, it does not encapsulate the Commission's entire policy on this subject, which has evolved over fifteen years and which has culminated in the Commission's orders in *Allegheny* and in *Ameren*,<sup>19</sup> which outlined the guidelines to be used by the Commission in evaluating competitive procurement processes involving affiliates to avoid the transfer of benefits referenced in *Heartland*.

32. Applicants argue that the AG's arguments all but ignore the Commission's *Edgar/Allegheny* principles. In any event, Applicants argue that a sale at a market price that produces "too high" a return relative to the affiliate's costs does not constitute an impermissible transfer of benefits. Moreover, Applicants argue, the proposed Illinois IAP fully satisfies the Commission's *Edgar/Allegheny* principles and the AG has not shown, or even alleged, otherwise.

33. Applicants further argue that the AG's arguments have nothing to do with affiliate abuse and constitute a collateral attack on the Commission's well-established policies regarding competitive wholesale market design and on legislation enacted by the Illinois legislature in the Illinois Restructuring Act.<sup>20</sup> They add that the transfer of the nuclear generation fleet from ComEd to ExGen occurred and was approved by the Illinois Commission and by this Commission and that these transactions are not subject to review in this proceeding.

34. As to the AG's claim that ComEd is seeking to have the Commission intrude on a matter subject to state jurisdiction, the Applicants respond that the Commission has jurisdiction over this matter because the Commission has a responsibility to examine ComEd's proposed procurement process to determine whether a ComEd affiliate can participate in this process without an affiliate abuse issue being created.

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<sup>18</sup> In *Heartland*, the Commission stated that "[a]ffiliate abuse takes place when the affiliated public utility and affiliated power marketer transact in ways that result in a transfer of benefits from the affiliated public utility (and its customers) to the affiliated power marketer (and its shareholders)." 68 FERC at 62,062.

<sup>19</sup> *Ameren Energy Generating Company*, 108 FERC ¶ 61,081 (2004) (*Ameren*).

<sup>20</sup> Electric Service Customer Choice and Rate Relief Law of 1997, Public Act 90-561.

### **Commission Finding**

35. The issue before this Commission is whether the proposed IAP satisfies the Commission's concerns regarding affiliate abuse and otherwise would result in a just and reasonable wholesale rate. We find that the IAP satisfies the Commission's concerns regarding affiliate abuse because the IAP, as proposed, is consistent with the guidelines for competitive bid processes set forth in *Edgar* and *Allegheny* and will result in just and reasonable rates. The *Edgar/Allegheny* guidelines are designed to insure that the transactions between affiliates do not unduly favor affiliates and thereby protect captive customers from affiliate abuse. The AG has failed to demonstrate how the proposed IAP would violate these principles.

36. Although the AG couches its argument in terms of "affiliate abuse", we find no merit in the AG's contention that the proposed IAP will result in a transfer of benefits from ComEd's customers to ExGen's shareholders. As discussed above, the Commission finds that the Applicants' proposed IAP satisfies the guidelines in *Edgar* and *Allegheny*. Accordingly, transactions between ComEd and ExGen that result from the IAP do not constitute affiliate abuse or result in a transfer of benefits from customers to shareholders in violation of the principle we stated in *Heartland*. We conclude here that the proposed IAP satisfies our affiliate abuse concerns and we find the AG's arguments alleging a potential for affiliate abuse to be unpersuasive.

### **AG's Arguments on Bilateral Negotiations**

37. The AG argues that that the better solution would be to have ComEd negotiate with ExGen and other energy suppliers to purchase the power it needs through high volume, long-term contracts, rather than through the proposed IAP auction. Applicants respond that the generation component of ComEd's retail rate will be determined under an auction process that has been tested for a number of years in New Jersey and found to produce just and reasonable results. They add that the substantial interest displayed by potential bidders in that type of auction has engendered high confidence that this competitive procurement methodology will yield the best obtainable market price if applied in Illinois.

38. As an initial matter, the AG's suggestion that directly negotiated rates might be lower than the rates that result from the IAP process is unsupported and irrelevant. Moreover, there is no persuasive evidence in the record to support the AG's argument that the prices offered in its proposed negotiation process would be lower than those that would be obtained through the IAP process, nor has the AG demonstrated that the rates resulting from the IAP process would be unjust, unreasonable, or unduly discriminatory or preferential.

39. Secondly, the AG ignores the fact that one of the reasons why the Commission adopted the *Edgar/Allegheny* principles was to avoid the potential for affiliate abuse that

could result if affiliates bilaterally negotiated contracts in private direct negotiations. The AG's suggested approach ignores the possibility that such negotiations could result in a transaction favoring the affiliate at the expense of the regulated utility's customers or the competitive market.

### **Other AG Price Concerns**

40. The AG also expresses a concern that the IAP auction would result in a risk premium, which will be included in bid prices. Applicants respond that, far from identifying a deficiency in the IAP, the AG's risk premium argument highlights one of its principal advantages. This advantage is that the full requirements product absorbs this risk in bid prices, thus shifting this risk from the buyer to the seller, with each bidder making its own judgments about how best to meet the supply obligation and manage the associated risks, and with the bidders competing on the basis of who can do this at the lowest cost. As a result, Applicants argue that the auction uses the forces of competition and the participation of numerous bidders who are sophisticated in risk management to obtain services customers need at the lowest possible prices. Further, they maintain that this is exactly the type of price discovery that leads to lower consumer costs. Indeed, they argue that the extensive evidence underlying the selection of the vertical tranche auction approach bears this out because these risk management costs are likely to result in lower overall energy costs to customers than a system that foregoes the benefits of a full requirements product, multiple suppliers and a diversity of risk management solutions.

41. Additionally, the AG raises several other concerns with the IAP itself including the issue of whether a single clearing price for all winning suppliers in the IAP will lead to a windfall for some suppliers, and whether holding an annual auction will lead to higher prices.

42. As discussed above, the issue before this Commission is whether the IAP satisfies the Commission's affiliate abuse concerns, and we have determined that the IAP as proposed satisfies the relevant guidelines. The appropriate parameters of the IAP itself are matters currently being considered by the Illinois Commission and nothing in this order is intended to foreclose the AG from presenting its arguments to the Illinois Commission in the pending state case on whether the Illinois Commission should approve the Applicants' proposed IAP.

43. Further, with regard to the AG's concerns that under the proposed IAP all winning bidders would be paid a uniform price regardless of their actual cost of supplying electricity and that the clearing price would be set by the highest-cost winning bidder in the auction, this pricing methodology is known as the "single clearing price" method and has the benefit of encouraging all sellers to place bids that reflect their actual marginal opportunity costs. This method is in contrast to the "pay as bid" method, where each

bidder is paid only what it bids. Under the pay as bid method is that each bidder is encouraged to bid the highest price it believes will be accepted in the auction, because it will only be paid as much as it bids. Where sales from affiliates are involved, the pay as bid method could result in an affiliate being paid higher prices than non-affiliates. The single price method has been proposed and found to produce just and reasonable rates for all the energy and ancillary service markets currently operated by the independent system operators and regional transmission organizations under our jurisdiction.<sup>21</sup> Thus, we do not agree with the AG's notion that this should be an unacceptable method for use in the IAP.

### **AG Concerns about Statement of Facts**

44. Turning to the AG's contention that the ComEd/ExGen application contains misstatements of fact that necessitate a hearing, we find that none of the alleged misstatements of fact constitute material issues of fact sufficient to justify a hearing. Whether "the proposal is the result of a consensus of the Illinois stakeholders" is not an issue of material fact necessitating a hearing. As we stated above, the Commission's determination that the affiliate abuse guidelines are satisfied does not require a consensus by all stakeholders. Thus, that some stakeholders do not endorse the IAP is not determinative. In addition, the AG does not contest that the process was open and fair. Rather, the AG simply states it is not satisfied with the results. With respect to whether or not the proposal "will result in the lowest price for customers," we note that our standard for reviewing rates is whether those rates are just and reasonable.<sup>22</sup> Accordingly, in this case, we are reviewing the auction process to determine if its design is consistent with the guidelines in *Edgar* and *Allegheny*, and thus results in rates that are just and reasonable. Finally, whether "Commission approval of Applicants' request is necessary to counter the statements of the Illinois Governor and [the AG], and would assist the [Illinois Commission]" is not a disputed issue of fact relevant to the outcome here. However, we note that our finding in this order that the proposed IAP satisfies the guidelines set forth in *Edgar* and *Allegheny* is based solely on application of this

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<sup>21</sup> See, e.g., *New York Independent System Operator, Inc., order on reh'g*, 110 FERC ¶ 61,244, n. 76 (2005) (explaining why the NYISO uses a single price method). See also *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC & 61,074 (2001) (approving market clearing prices in energy and ancillary services markets).

<sup>22</sup> See *Potomac Electric Power Company v. Allegheny Power System*, 85 FERC ¶ 61,160 at n.7 (1998). See also *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir.), *cert. denied*, 469 U.S. 917 (1984) (affirming the Commission's finding that the utility only bore the burden to demonstrate that its proposed method of allocating costs was reasonable, not that it was more reasonable than an alternative method).

Commission's policy and is not intended to prejudge any issues before the Illinois Commission.

**D. Filing Requirements**

45. This order satisfies the requirement that ExGen first receives Commission authorization pursuant to section 205 of the FPA before engaging in power sales at market-based rates with an affiliate. In addition to requesting that we find that the proposed IAP is consistent with the safeguards in *Allegheny*, Applicants also specifically request that we accept for filing: (1) a service agreement between ExGen and ComEd under ExGen's market-based tariff; and (2) two standardized supplier forward contracts for use in the proposed auction. However, in light of the Commission's decision here to grant Applicants' request for authorization to make affiliate sales pursuant to the IAP, we need not put those agreements on file.<sup>23</sup> Consistent with the procedures the Commission adopted in Order No. 2001, ExGen must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>24</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>25</sup>

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<sup>23</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Order No. 2001, which implemented 18 C.F.R § 35.1(g) (2005), obviates the need to file with the Commission service agreements under market-based power sales tariffs, and requires, among other things, that public utilities electronically file Electric Quarterly Reports which include a summary of the contractual terms and conditions in every effective service agreement for market-based power sales.

<sup>24</sup> Required data sets for contractual and transaction information to be reported in Electric Quarterly Reports are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>25</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

The Commission orders:

Applicants' application for authorization for ExGen to make power sales to its affiliate, ComEd, pursuant to the IAP as presented herein is granted, effective as of the date of issuance of this order, as discussed in the body of this order and conditioned on the IAP being conducted consistent with the IAP process presented herein.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.