

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ameren Energy Marketing Company,
Central Illinois Public Service Company,
Central Illinois Light Company,
Illinois Power Company, and
Union Electric Company

Docket No. ER06-831-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued June 1, 2006)

1. In this order, we grant an application under section 205 of the Federal Power Act (FPA),¹ by Union Electric Company (Union Electric)² and Ameren Energy Marketing Company (Ameren Energy Marketing) requesting Commission authorization to make power sales to their affiliates, Central Illinois Public Service Company (CIPS), Central Illinois Light Company (CILCO), and Illinois Power Company (Illinois Power), (collectively, the Ameren Illinois Utilities) pursuant to the Illinois Competitive Procurement Auction (CPA), which was approved by the Illinois Commerce Commission (Illinois Commission) on January 24, 2006. This authorization will be effective as of the date of issuance of this order. This order concludes that this competitive solicitation, as described below and conducted consistent with the process described herein, for the first CPA auction scheduled to commence in September 2006 satisfies the Commissions concerns regarding affiliate abuse and will result in rates that are just and reasonable.

¹ 16 U.S.C. § 824d (2000).

² In its application, Union Electric uses the name Union Electric Company d/b/a AmerenUE. However, Union Electric Company is the legally recognized name of this company. Therefore, Union Electric Company is the official name used throughout this order.

Background

2. On April 5, 2006, Union Electric and Ameren Energy Marketing jointly submitted a request for authorization to make power sales to their affiliates, the Ameren Illinois Utilities. Union Electric and Ameren Energy Marketing state that the requested authorization will permit Union Electric and Ameren Energy Marketing to participate in the CPA and to make power sales to their affiliates, the Ameren Illinois Utilities, if Union Electric and/or Ameren Energy Marketing are successful bidders in the auction held pursuant to the CPA. Union Electric and Ameren Energy Marketing state that the CPA fully complies with the Commission's standards for approving affiliate sales that result from the participation in a competitive procurement process and further state that the resulting rates will be just and reasonable.
3. Union Electric and Ameren Energy Marketing state that CILCO provides electricity to approximately 200,000 electric customers in east and central Illinois. Union Electric and Ameren Energy Marketing state that CILCO transferred its generation to AmerenEnergy Resources Generating Company (AERG) in October 2003, pursuant to a State of Illinois Restructuring Law,³ and that CILCO obtains its full requirements for power and energy to serve its customers under a power supply agreement with AERG that expires on December 31, 2006.⁴ Union Electric and Ameren Energy Marketing also state that CILCO's transmission system is under functional control of the Midwest Independent Transmission System Operator (Midwest ISO).⁵
4. Union Electric and Ameren Energy Marketing state that CIPS provides electricity to nearly 325,000 retail electricity customers in central and southern Illinois. Union Electric and Ameren Energy Marketing state that in 2000, CIPS transferred its generation to Ameren Energy Generating Company pursuant to a State of Illinois Restructuring Law in 2000,⁶ and that CIPS currently purchases energy and capacity from Ameren Energy Marketing pursuant to a power purchase agreement that expires on December 31, 2006.⁷ Union Electric and Ameren Energy Marketing also state that the CIPS transmission system is under functional control of the Midwest ISO.
5. Union Electric and Ameren Energy Marketing state that Illinois Power provides electric service to approximately 600,000 retail electric customers in northern, central and

³ See *Cent. Ill. Light Co.*, 99 FERC ¶ 62,143 (2002).

⁴ See *Cent. Ill. Generation, Inc.*, 101 FERC ¶ 61,082 (2002).

⁵ See *Cent. Ill, Light Co.*, 86 FERC ¶ 62,233 (1999).

⁶ See *Cent. Pub. Serv. Co.*, 89 FERC ¶ 62,125 (1999).

⁷ See *Madison Gas & Elec. Co.*, 90 FERC ¶ 61,115 (2000).

southern Illinois. Union Electric and Ameren Energy Marketing state that Illinois Power jointly owns three diesel generators with a combined net generating capacity of 5.25 MW. Union Electric and Ameren Energy Marketing state that Illinois Power purchases the majority of the electricity it supplies to retail customers through long-term power purchase agreements. Union Electric and Ameren Energy Marketing also state that Illinois Power has transferred functional control of its transmission facilities to the Midwest ISO.

6. Union Electric and Ameren Energy Marketing state that Union Electric is a Missouri corporation that owns approximately 8,706 MW of generating capacity located within the states of Missouri and Illinois. Union Electric and Ameren Energy Marketing state that Union Electric is a transmission-owning member of the Midwest ISO and provides transmission service pursuant to the terms of the Midwest ISO's Open Access Transmission Tariff.

7. Union Electric and Ameren Energy Marketing state that Ameren Energy Marketing is a power marketer that does not own any generation, transmission or distribution facilities and does not have any captive customers.

8. Union Electric and Ameren Energy Marketing state that the Ameren Illinois Utilities have divested themselves of all but a *de minimus* amount of electric generation. However, the Ameren Illinois Utilities are obligated to supply electricity to their retail customers who do not choose an alternative supplier. Union Electric and Ameren Energy Marketing state that the Ameren Illinois Utilities currently serve their customers through long-term power supply contracts that will expire on December 31, 2006. Union Electric and Ameren Energy Marketing state that once these contracts expire, the Ameren Illinois Utilities will need to purchase electricity in the wholesale market to supply customers who continue to rely on the Ameren Illinois Utilities for retail service. To meet these obligations, the Ameren Illinois Utilities, will conduct an auction pursuant to the CPA.

9. Union Electric and Ameren Energy Marketing state that the CPA is a single procurement process whereby Ameren Illinois Utilities, as well as Commonwealth Edison Company, will procure power in a combined auction for retail customers who have opted not to buy from competitive retail suppliers. Applicants note that the Commission approved this same CPA process for use by Commonwealth Edison Company and Exelon Generation Company.⁸ Thus, Union Electric and Ameren Energy Marketing state that the Commission should likewise find here that authorization is appropriate under the *Edgar*⁹ and *Allegheny*¹⁰ principles. Bidders will be able to bid on

⁸ See *Commonwealth Edison Co.*, 113 FERC ¶ 61,278 (2006).

⁹ *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

both Ameren Illinois Utilities products as well as Commonwealth Edison products in the combined auction, subject to the terms of the auction and each bidder's own supply capabilities.¹¹ The Ameren Illinois Utilities are proposing to procure full requirements service in fixed quantities for set prices, for three particular load categories of retail customers: (1) residential and small business customers at a fixed price for supply terms of 17, 29 and 41 months; (2) large commercial and industrial customers with a peak demand of 1 MW or greater at a fixed price for a 17 month supply term; and (3) large commercial and industrial customers with an energy component price that varies hourly for a 17 month supply term.¹²

10. Union Electric and Ameren Energy Marketing state that the CPA allows potential suppliers to bid against each other to serve tranches of the Ameren Illinois Utilities' load. Union Electric and Ameren Energy Marketing state that the Illinois Commission approved the CPA on January 24, 2006, and the first CPA auction for which Union Electric and Ameren Energy Marketing seek authorization to participate in will be held in September 2006.

Notice of Filing and Responsive Pleadings

11. Notice of the Union Electric and Ameren Energy Marketing filing was published in the *Federal Register*,¹³ with motions to intervene and protests due on or before April 25, 2006. On May 12, 2006, the Missouri Office of the Public Counsel (Missouri Public Counsel) filed an untimely motion to intervene and protest to Union Electric and Ameren Energy Marketing's application. On May 30, 2006, Union Electric and Ameren Energy Marketing filed an answer to the Missouri Public Counsel's protest.

12. Missouri Public Counsel states that it does not oppose Union Electric's participation in the CPA. However, Missouri Public Counsel protests Ameren Energy Marketing's request to participate in the same CPA. Missouri Public Counsel argues that Ameren Energy Marketing's participation in the CPA would increase the likelihood of affiliate abuse occurring due to the financial incentives and information sharing among affiliates within the Ameren Corporation (Ameren Holding Company) structure.

¹⁰ *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082 at P 33 (2004) (*Allegheny*).

¹¹ Ameren Energy Marketing filing at 12.

¹² Applicants state that subsequent auctions will procure fixed price power for residential and small commercial customers for a 36 month supply term and for large commercial and industrial customers on 12 month supply terms.

¹³ 71 Fed. Reg. 23,914 (2006).

Discussion

A. Procedural Issues

13. We will grant Missouri Public Counsel's untimely motion to intervene given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Union Electric and Ameren Energy Marketing's answer and will, therefore, reject it.

B. Affiliate Abuse Analysis

14. The primary issue in reviewing the Union Electric and Ameren Energy Marketing filing is whether the CPA 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.¹⁴

15. 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.¹⁵

16. In *Allegheny*, the Commission provided guidance as to how it 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:

¹⁴ See *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).

¹⁵ *Edgar*, 55 FERC ¶ 61,382 at 62,168.

(1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders and; (4) Oversight: an independent third-party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. As discussed below, the Commission finds that the CPA is an example of a process that satisfies these guidelines.

1. Transparency Principle

17. Union Electric and Ameren Energy Marketing state that the CPA 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.¹⁶ Union Electric and Ameren Energy Marketing state that a full evidentiary record was developed in an 11-month proceeding before issuance of approval by the Illinois Commission on January 24, 2006.

18. Union Electric and Ameren Energy Marketing state that the information made available in the CPA will provide an open, transparent, and non-discriminatory auction process for all bidders. Union Electric and Ameren Energy Marketing describe the duties of the auction manager, who will: (1) develop and maintain a website for the dissemination of CPA information to all interested parties, including needed documents, announcements of events, deadlines, and all load data; (2) post all queries and answers about the auction on the website; (3) plan, coordinate and conduct bidder information sessions, as necessary, at which bidder information packages will be distributed (this information will also be maintained on the website); (4) with respect to the auction, inform bidders about the details of the auction, including the number of tranches, the products sought, the load cap applicable to each section, and the starting price for each product; and (5) serve as a single point of contact for all bidders. Union Electric and Ameren Energy Marketing state that all bidders will have equal access to data, therefore no party will have an informational advantage in any part of the solicitation process.

19. Union Electric and Ameren Energy Marketing state that the process for implementation of each auction, including using an established bidder application process, satisfies the transparency principle of *Allegheny*. They also state that the CPA

¹⁶ Citing *Pub. Serv. Elec. & Gas Co. and PSEG Energy Resources & Trade LLC*, 111 FERC ¶ 61,152 (2005) (*PSE&G*). (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 [state commission] proceeding.”)

sets forth a timeline for the development of each auction. The auction rules must be issued and final supplier forward contracts will be submitted at least 105 calendar days in advance of the earliest auction commencement date, provided to the Illinois Commission staff for information purposes, and made available to the public, including prospective bidders.

20. Based on Union Electric and Ameren Energy Marketing's representations, the Commission finds that the CPA is consistent with the Commission's transparency principle guidelines.

2. Definition Principle

21. Union Electric and Ameren Energy Marketing contend that the CPA satisfies *Allegheny's* guidelines regarding the definition principle. Union Electric and Ameren Energy Marketing state that the products sought through the CPA are defined in a clear and nondiscriminatory manner. Specifically, Union Electric and Ameren Energy Marketing state that the Ameren Illinois Utilities are proposing to procure full requirements service in fixed quantities for set prices, for three particular load categories of retail customers: (1) residential and small business customers at a fixed price for terms of 17, 29 and 41 months; (2) large commercial and industrial customers with a peak demand of 1 MW or greater at a fixed price for a 17-month term; and (3) large commercial and industrial customers with an energy component price that varies hourly for a 17-month term. The CPA will proceed in rounds with the first round starting with the auction manager announcing the starting price for each product. Each bidder would then specify the number of tranches of each product the bidder is willing to supply at the announced starting price. After each round, if the number of tranches bid by all bidders exceeds the number of tranches needed by Ameren Illinois Utilities, then the auction manager announces a new, reduced price for each product before the next round of bidding begins. The auction continues this way and the price announced by the auction manager continues to decline until, for each product, the total number of tranches bid by possible suppliers falls to the point where it equals the number of tranches needed by Ameren Illinois Utilities. This establishes the clearing price.¹⁷

22. Union Electric and Ameren Energy Marketing also state that the CPA sets forth bidder qualification criteria and bid evaluation methods and that bidders have knowledge of the bidding and evaluation process before they place their bids. Specifically, the bidders must: (1) be a Midwest ISO market participant in good standing prior to 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) make a number

¹⁷ Ameren Energy Marketing filing at 10-11.

of certifications regarding the handling of confidential information and their independence from other bidders; (6) submit an indicative offer; and (7) submit a financial guarantee to support their indicative offer. 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.

23. Based on these representations, the Commission finds that the CPA is consistent with the Commission's definition principle guidelines.

3. Evaluation Principle

24. Union Electric and Ameren Energy Marketing state that under the CPA, bidders must submit their 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 allowing the selection of each winning bidder 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. The auction manager will administer the CPA during all 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 the Ameren Illinois Utilities. Finally, the auction manager will evaluate results and select winners without any input from the Ameren Illinois Utilities and produce a report to the Illinois Commission. The Illinois Commission staff will monitor the implementation of all phases of the CPA and will also provide a report to the Illinois Commission.

25. Based on these representations, the Commission finds that the CPA is consistent with the Commission's evaluation principle guidelines.

4. Oversight Principle

26. Union Electric and Ameren Energy Marketing state that the CPA satisfies the oversight principle in *Allegheny*. Specifically, Union Electric and Ameren Energy Marketing state that an independent third party (the auction manager) who has no financial interest in any of the potential bidders (including Union Electric and Ameren Energy Marketing) or in the outcome of the procurement process, will oversee the design, administration and evaluation stages of the auctions held under the CPA.¹⁸ Union Electric and Ameren Energy Marketing also note that the auction manager will evaluate

¹⁸ See *Allegheny*, 108 FERC ¶ 61,082 at P 33.

the results of the auction and select winning bidders without any input from the Ameren Illinois Utilities. Union Electric and Ameren Energy Marketing state that the auction manager will review the CPA immediately following the auction's completion, submit a formal and confidential report to the Illinois Commission within two business days following the date on which the auction ends and will provide a report that will be publicly available.

27. Union Electric and Ameren Energy Marketing also point to the oversight to be provided by the Illinois Commission, stating that the Illinois Commission will be actively involved in each stage of the auction process. Specifically, Union Electric and Ameren Energy Marketing state that Illinois Commission staff will be present during the actual auction and will directly observe the auction manager's implementation of the auction process. Union Electric and Ameren Energy Marketing state that the Illinois Commission staff will also submit a formal report to the Illinois Commission following each auction.

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

C. Missouri Public Counsel Protest

29. The Missouri Public Counsel protests the instant application arguing that allowing both Union Electric and Ameren Energy Marketing to participate in the CPA will create the potential for affiliate abuse. While the Missouri Public Counsel does not dispute the reasonableness of the Commission's determination in *Commonwealth Edison* that a similar CPA process was sufficient for it to determine that the Illinois Auction Proposal satisfies the Commission's concerns regarding affiliate abuse, it alleges that the unique circumstances of two affiliates competing against each other in the CPA create the potential for affiliate abuse because of the financial incentives and information sharing that may take place among affiliates within the Ameren Holding Company corporate structure.¹⁹

30. The Missouri Public Counsel states that it does not oppose sales by Union Electric to the Ameren Illinois Utilities if Union Electric is a successful bidder in the CPA. However, the Missouri Public Counsel does oppose Commission approval of this same request for Ameren Energy Marketing.

31. Specifically, the Missouri Public Counsel is concerned that Ameren Energy Marketing's successful participation in the CPA will be a much higher priority for the

¹⁹ Missouri Public Counsel, Protest at 2-3.

Ameren Holding Company than will Union Electric's successful participation because Ameren Energy Marketing is not subject to cost-based state regulation and its earnings from wholesale power sales will always contribute to the earnings of the Ameren Holding Company. The Missouri Public Counsel believes that the earnings from Union Electric may not enhance Ameren Holding Company's earnings because Union Electric's power sales are reflected in cost-based retail rates as an offset (reduction) to Union Electric's native load fuel cost. The Missouri Public Counsel also contends that Ameren Holding Company's priority will be to secure long-term power contracts for the power from its affiliates (Ameren Energy Generating Company and AERG) that will become available once the contracts expire at the end of 2006.

32. As a result of these incentives, the Missouri Public Counsel expresses concern that Union Electric and Ameren Energy Marketing will share information and directly or indirectly cooperate in the bidding process. For example, the Missouri Public Counsel suggests that Union Electric may refrain from bidding in load categories or on specific items so that Ameren Energy Marketing offers the winning bid. The Missouri Public Counsel contends that such harm would benefit Ameren Holding Company's shareholders and adversely impact the captive customers of the Ameren Illinois Utilities, as well as the captive customers of utilities in neighboring states such as Missouri through impact on wholesale markets in the Midwest region.

33. The Missouri Public Counsel argues that the CPA approved by the Illinois Commission "does not contain adequate competitive safeguards to ensure that participation by both [Ameren Energy Marketing] and [Union Electric]... would not occur in a manner that best serves the financial interests of the [Ameren Holding Company]." ²⁰ Because of the unique circumstances of participation in the CPA by both Ameren Energy Marketing and Union Electric, the Missouri Public Counsel argues that the Commission's four *Allegheny* guidelines are necessary but not sufficient to ensure that the wholesale sales resulting from the CPA will be just and reasonable absent additional competitive safeguards in the CPA. ²¹ In particular, the Missouri Public Counsel takes issue with the effectiveness of the safeguards referenced by Union Electric and Ameren Energy Marketing.

34. The Missouri Public Counsel argues that the 35 percent load cap for affiliated entities will, under the unique circumstances of two affiliates competing for a limited share of the load, increase the potential for the Ameren Holding Company to favor

²⁰ Missouri Public Counsel, Protest at 4.

²¹ *Id.* at 5.

Ameren Energy Marketing over competing bidder and affiliate, Union Electric.²² The Missouri Public Counsel contends that such favoritism could occur by Union Electric “submitting bids that are high enough so they do not crowd [Ameren Energy Marketing] from winning most of the load within the 35 percent load cap.”²³

35. The Missouri Public Counsel also argues that the Association and Confidential Information Rules (ACIR) set forth in the CPA are not sufficient to protect against coordinated action among bidders. While the Missouri Public Counsel concedes that the ACIR “may discourage coordination among bidders”, they argue that the ACIR “are not likely to be effective in the circumstances presented in this case where the direct or indirect cooperation among bidders will be strongly encouraged by the financial interests of the [Ameren Holding Company].”²⁴ The Missouri Public Counsel also argues that the ACIR rules will not be effective against information sharing among affiliates due to Ameren Holding Company’s efforts to coordinate the plans and activities of its business lines and subsidiaries to ensure that they coincide with the financial interests of Ameren Holding Company and the interlocking positions held by members of the Ameren Holding Company senior management.

36. The Missouri Public Counsel contends that information sharing also currently takes place through a joint dispatch agreement between CIPS, Ameren Energy Generating, and Union Electric. The Missouri Public Counsel states that as a result of this joint dispatch agreement Union Electric and Ameren Energy Generating participate in an Operating Committee whose duties are to: “(1) monitor the adequacy of reserves for the parties and the combined system; (2) provide coordination of maintenance

²² In the CPA, the Illinois Commission approved a 35 percent load cap that will apply by section and will aggregate the bids of all of a bidder’s associated companies in applying this load cap. The load cap is designed to: (a) limit the influence that a single bidder can have on the auction results by limiting the number of tranches that a single bidder can win in either the fixed-price or the hourly section of the auction; (b) limit the extent to which any bidder can inflate its interest in the auction and mislead the auction manager; and (c) assure a diversity of suppliers and thereby reduce contracting and credit risks associated with any single bidder. *See Cent. Ill. Light Co. d/b/a AmerenCILCO, et al.*, Illinois Commerce Commission Docket Nos. 05-0160, 05-0161, 05-0162, at 108, 110 (2006). “Section” as used here means “either the Fixed Price Section or the Hourly Price Section within the Illinois Auction.” *See Ameren Energy Marketing filing, Attachment 1 at 10.*

²³ Missouri Public Counsel, Protest at 5.

²⁴ *Id.* at 11.

schedules for major generating resources; and (3) provide coordination to operate the combined system economically.”²⁵

37. Finally the Missouri Public Counsel asserts that the price paid by the Ameren Illinois Utilities for capacity and energy from their affiliate Ameren Energy Marketing will not reflect the results of a fair and open competitive solicitation process without the un-conflicted participation of Union Electric’s relatively low-cost generating capacity located close to the loads of the Ameren Illinois Utilities.²⁶

D. Commission Determination

38. The *Edgar* criteria and *Allegheny* guidelines are designed to ensure that the transactions between affiliates do not unduly favor affiliates and thereby protect captive customers from affiliate abuse. The Missouri Public Counsel admits that the CPA fully meets the Commission’s standards for approving affiliate sales from participation in a competitive procurement process in *Edgar* and *Allegheny*.²⁷ However, it challenges Union Electric and Ameren Energy Marketing’s application by arguing that the CPA does not contain adequate competitive safeguards to protect against affiliate abuse. The Missouri Public Counsel’s arguments are speculative and the Missouri Public Counsel has failed to demonstrate or document how the participation of Union Electric and Ameren Energy Marketing in the CPA, as approved and overseen by the Illinois Commission, will result in a transfer of benefits from captive ratepayers of the Ameren Illinois Utilities to the Ameren Holding Company shareholders. As discussed below, we conclude that the CPA satisfies our affiliate abuse concerns and we find the Missouri Public Counsel’s arguments alleging a potential of affiliate abuse to be unpersuasive.

39. As an initial matter, we note that the Missouri Public Counsel’s challenge to the CPA, as approved by the Illinois Commission, is not appropriately raised before us. The Missouri Public Counsel should have raised its concerns about the alleged lack of adequate competitive safeguards in the CPA before the Illinois Commission in the proceeding that ultimately approved the CPA.

40. The issue before this Commission is whether the CPA satisfies the Commission’s concerns regarding affiliate abuse and otherwise would result in just and reasonable wholesale rates. We find that the competitive solicitation process satisfies the

²⁵ *Id.* at 13.

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 2.

Commission's concerns regarding affiliate abuse because we find the CPA consistent with *Allegheny* guidelines.

41. The Commission requires that entities with market-based rate authorization that are affiliated with a public utility with a franchised service territory adhere to a code of conduct governing sharing of information and personnel. Missouri Public Counsel argues that Ameren Energy Marketing and Union Electric could share information that could result in Union Electric refraining from bidding in load categories to promote Ameren Holding Companies' financial interests. Ameren Energy Marketing's code of conduct prohibits Ameren Energy Marketing from sharing information with Union Electric.²⁸ Specifically, the Ameren Energy Marketing code of conduct states that any personnel of Union Electric engaged in load requirement sales is prohibited from providing to a subsidiary of Ameren Corporation any market information such as price or terms unless that market information is simultaneously disclosed to the public.²⁹ The Ameren Energy Marketing code of conduct also states that "to the extent practicable, personnel of [Union Electric] engaged in the marketing or purchasing of wholesale power or transmission for Load Requirement Sales service will operate separately from the personnel of [Ameren Energy Marketing] engaged in the marketing or purchasing of wholesale power or transmission for Load Requirements Sales service."³⁰ Therefore, the type of activity that the Missouri Public Counsel suggests could occur is prohibited under the Ameren Energy Marketing code of conduct.

42. The Commission also relies on the electric energy market anti-manipulation rules codified in the Commission's regulations to prevent any manipulative or fraudulent affiliate activities. The electric energy market anti-manipulation rules broadly prohibit fraud in connection with the purchase or sale of electric energy or transmission services, subject to the jurisdiction of the Commission.³¹ In particular the electric energy market anti-manipulation rules state that it is "unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy to: (1) use or employ any device,

²⁸ Code of Conduct for Officers and Employers of Ameren Concerning Business Relationships and the Sharing of Market Information with Marketing Affiliates, effective date February 15, 2000. Docket No. ER00-816-000 (Ameren Energy Marketing code of conduct).

²⁹ *Id.* at section 5.

³⁰ *Id.* at section 9.

³¹ *Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC ¶ 61,047, FERC Stats. & Regs. ¶ 31,202, reh'g denied, 114 FERC ¶ 61,300 (2006).

scheme, or artifice to defraud, [or] (2) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.”³² In enforcing the electric energy market anti-manipulation rules, the Commission retains broad remedial powers, including the authority to order disgorgement of profits, the option of conditioning, suspending, or revoking market-based rate authority, and significant civil penalty authority for any violation of the electric energy market anti-manipulation regulations.³³ Were Union Electric and Ameren Energy Marketing to engage in the kinds of activities described by the Missouri Public Counsel in its protest, such activities could constitute a violation of the electric energy market anti-manipulation regulations and, thus, subject the perpetrator to the Commission’s broad remedial powers.

43. The design of the CPA, including the ACIR, contains provisions that address the situations envisioned by Missouri Public Counsel such as: “(1) a qualified bidder must certify that it is not associated with any other qualified bidder according to the criteria as defined in the Illinois Auction Rules, or it must identify any and all bidders with which it is associated along with a description of the nature of any and all such associations; (2) the qualified bidder must certify that it has not entered into any agreement with any other qualified bidder regarding the amount to bid at certain prices, the auction product(s) for which bids are placed, when or at what prices bids are withdrawn or switched, and/or the amount of exit prices; (3) the qualified bidder must certify that it does not have any knowledge of confidential information relative to the bidding strategy of any other qualified bidder; and (4) the qualified bidder must certify that it will not disclose confidential information relative to its bidding strategy except to entities explicitly named as entities with which the bidder has entered into a bidding agreement or a joint venture for the purpose of participating in a Section.”³⁴

44. With regard to the Missouri Public Counsel’s argument that the CPA’s 35 percent load cap for affiliated entities may increase the incentive for the Ameren Holding Company to favor Ameren Energy Marketing over Union Electric, we note that the rules governing communication and sharing of information, including the CPA’s ACIR³⁵ and the Ameren Energy Marketing code of conduct, would protect against a scenario such as the one which the Missouri Public Counsel describes. Any sharing of information

³² 18 C.F.R. § 1c.2 (a) (1) and (3).

³³ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 115 FERC ¶ 61,053 at 26 (2006).

³⁴ Ameren Energy Marketing filing, Attachment 1 at 22-24.

³⁵ Association and Confidential Information Rules, found at http://www.illinois-auction.com/resources/auction/Illinois_Auction_Rules_5-15_redline.pdf.

between Union Electric and Ameren Energy Marketing regarding which company would bid and what percentage of the 35 percent load cap each company should win would violate the Ameren Energy Marketing code of conduct as accepted by this Commission and the CPA as approved by the Illinois Commission, respectively.

45. Regarding the Missouri Public Counsel's concern for the inadequacy of the ACIR to protect against coordinated action in bidding, review of the ACIR reveals at least one rule that addresses this very concern. That rule states that, "[i]f two bidders qualified for the same Section are associated with one another, the Auction Manager in consultation with [Illinois Commission] staff will determine whether the two qualified bidders can both participate to bid for that Section, as well as the terms and conditions of such participation. The Auction Manager in consultation with [Illinois Commission] staff may require bidders that are qualified to bid for the same Section and that are associated with one another to bid as one entity or to take other appropriate actions so as to no longer be associated with one another."³⁶ The ACIR rule addresses the very issue regarding coordinated action which the Missouri Public Counsel raises in protest to Union Electric and Ameren Energy Marketing's application.

46. Based on the foregoing, we are not persuaded by the Missouri Public Counsel's protest and find that there are adequate safeguards in the Commission's requirements with regard to affiliate sales and in the CPA design to address the hypothetical scenarios posed in the Missouri Public Counsel's protest.

47. Accordingly, the Commission concludes that the competitive solicitation process described by Union Electric and Ameren Energy Marketing satisfies the Commission's concerns regarding affiliate abuse and will, if conducted consistent with the process described here, result in just and reasonable rates. Therefore, the Commission grants Union Electric and Ameren Energy Marketing's request for authorization to make affiliate sales to Ameren Illinois Utilities pursuant to the first CPA auction to scheduled to commence in September 2006, as discussed herein. Union Electric and Ameren Energy Marketing must receive prior approval from the Commission under section 205 of the FPA for any other sales to affiliates with a franchised electric service territory pursuant to subsequent CPAs.

48. This order satisfies the requirement that Union Electric and Ameren Energy Marketing first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates with an affiliate. Consistent with the procedures the Commission adopted in Order No. 2001, Union Electric and Ameren Energy Marketing must file electronically with the Commission an Electronic Quarterly

³⁶ *Id.* at P 66.

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.³⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.³⁸

The Commission orders:

The application for authorization for Union Electric and Ameren Energy Marketing to make power sales to its affiliate, the Ameren Illinois Utilities, pursuant to the first CPA auction scheduled to commence in September 2006 is granted, conditioned upon the CPA being conducted consistent with the process described above, effective as of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³⁷ Required data sets for contractual and transactional 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.fer.gov/docs-filing/eqr.asp>.

³⁸ 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.