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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35780]

Dynergy Inc., Illinois Power Holdings, LLC and Illinois Power Holdings II, LLC—
Acquisition of Control Exemption—Coffeen and Western Railroad Company and
Joppa & Eastern Railroad Company

Dynergy Inc. (Dynergy), Illinois Power Holdings, LLC (IPH) and Illinois Power Holdings II, LLC (IPH II)¹ (collectively, Applicants), all noncarriers, have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of the Coffeen and Western Railroad Company (CWRC) and the Joppa & Eastern Railroad (JERR), both Class III rail carriers that operate within the State of Illinois.

According to Applicants, Dynergy, a noncarrier holding company, and Ameren Corporation (Ameren) have entered into an agreement dated March 14, 2013, in which Dynergy's wholly owned subsidiary, IPH, will acquire Ameren's subsidiary, Ameren Energy Resources Company, LLC (AER) and AER's subsidiaries, Ameren Energy Generating Company (AEGC), Ameren Energy Resources Generating Company, Ameren Energy Fuels and Services Company, and Ameren Energy Marketing Company, including several electric generating plants, and other properties of AER. As part of that agreement, Dynergy, through IPH and IPH II, also will acquire control through stock

¹ Both IPH and IPH II are wholly owned subsidiaries of Dynergy.

ownership of CWRC and JERR.² The stock of CWRC is currently owned by AEGC, a wholly owned subsidiary of AER. The stock of JERR is currently owned by Electric Energy, Inc., in which AEGC holds an 80% ownership interest. The remaining 20% ownership interest is held by Kentucky Utilities Company. Applicants state that, following consummation of the transaction, AER will be wholly owned by IPH and AER's name will be changed to Illinois Power Resources Company, LLC, and AEGC will be wholly owned by Illinois Power Resources Company, LLC and its name will be changed to Illinois Power Generating Company.

Applicants intend to consummate the transaction on or about December 2, 2013.

Applicants state that: (1) the rail lines operated by CWRC and JERR do not connect with each other or with any rail lines operated by rail carriers in the Dynege corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines operated by CWRC and JERR with each other or with any railroad in the Dynege corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees.

Section 11326(c), however, does not provide for labor protection for transactions under

² A redacted version of the agreement was filed with the notice of exemption. The Applicants concurrently filed a motion for protective order pursuant to 49 C.F.R. § 1104.14(b) to allow the filing under seal of the unredacted agreement. That motion will be addressed in a separate decision.

§§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than November 22, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35780, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy must be served on Andrew B. Kolesar III, Slover & Loftus LLP, 1224 Seventeenth Street, N.W., Washington, DC 20036.

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Decided: November 12, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.