

133 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

ITC Midwest LLC
Northern States Power Company, a Minnesota
Corporation

Docket No. EC10-75-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued November 23, 2010)

1. On June 18, 2010, ITC Midwest LLC (ITC Midwest) and Northern States Power Company, a Minnesota corporation (NSP Minnesota) (collectively, Applicants) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting authorization for the disposition of a transmission line from NSP Minnesota to ITC Midwest.
2. The Commission has reviewed the application under the Commission's Merger Policy Statement.² As discussed below, we will authorize the proposed transaction as consistent with the public interest. Although Applicants do not specifically state whether they seek authorization under section 203(a)(1) or 203(a)(2), in the instant order we will assert jurisdiction under section 203(a)(1). We remind applicants that when they submit an application seeking authorization under section 203 of the FPA, they are expected to specify the subsection(s) of section 203 under which they are seeking authorization.

¹ 16 U.S.C. § 824b (2006).

² See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

I. Background

A. Description of the Parties

3. ITC Midwest, a wholly-owned subsidiary of ITC Holdings Corp. (ITC Holdings), engages exclusively in the transmission of electric energy in interstate commerce. In 2007, the Commission authorized Interstate Power and Light Company (IPL) to sell to ITC Midwest all of its Commission-jurisdictional transmission assets rated at 34.5 kV and above in Iowa, Minnesota, Illinois, and Missouri, as well as all related property, facilities, and contracts, books, and records (ITC Midwest Transaction).³ ITC Midwest's transmission facilities are under the functional control of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and are subject to the terms of the Midwest ISO's tariff.⁴ ITC Midwest is affiliated with the following subsidiaries of ITC Holdings that are engaged in the transmission of electric energy in interstate commerce: International Transmission Company *d/b/a* ITCTransmission, Michigan Electric Transmission Company, LLC, and ITC Great Plains, LLC.

4. NSP Minnesota, a wholly-owned subsidiary of Xcel Energy Inc. (Xcel), is engaged in the transmission, distribution, and sale of electric energy in Minnesota, North Dakota, and South Dakota.⁵ NSP Minnesota provides wholesale and retail electric service and is regulated by the Commission, as well as by the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission. NSP Minnesota is affiliated with Northern States Power Company, a Wisconsin corporation, and they share the costs of their integrated generation and transmission systems pursuant to a Commission-approved Interchange Agreement.⁶ The transmission facilities of NSP Minnesota and its Wisconsin affiliate that are rated 100 kV and above are under the functional control of the Midwest ISO.

³ *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 94-136 (2007). ITC Midwest was formed to own and operate the transmission assets of IPL.

⁴ *Id.* P 16-63 (approving ITC Midwest's Attachment O Formula Rate).

⁵ NSP Minnesota also engages in the generation and purchase of electric energy in Minnesota, North Dakota, and South Dakota, as well as the purchase, transportation, distribution, and retail sale of natural gas in Minnesota and North Dakota. However, since no facilities related to these activities are being transferred, they are not relevant to our analysis as discussed further below.

⁶ *Xcel Energy Operating Cos.*, Docket No. ER01-1014-000 (Mar. 20, 2001) (unpublished letter order); *Xcel Energy Services Inc.*, Docket No. ER10-785-000 (Mar. 30, 2010) (unpublished letter order).

B. Description of the Transaction

5. Applicants propose the disposition of the Fox Lake transmission line (Fox Lake line), a 26 mile, single circuit, 161 kV line that connects the Lakefield Junction substation in Jackson County, Minnesota, to the Fox Lake substation in Martin County, Minnesota. ITC Midwest owns, maintains, and operates the Lakefield Junction and Fox Lake substations. NSP Minnesota initially designed, engineered, and constructed the transmission line, and IPL designed, engineered, and constructed the Lakefield Junction and Fox Lake substation modifications. Pursuant to a 2005 project design and construction services agreement between IPL and Northern States Power Company, IPL retained an option to purchase the transmission line and related substation equipment and facilities from NSP Minnesota.⁷

6. IPL transferred the purchase option to ITC Midwest as part of the 2007 facilities sale.⁸ In letters dated January 18, 2008, and November 19, 2009, ITC Midwest elected to exercise the purchase option. Subsequently, ITC Midwest and NSP Minnesota negotiated an asset purchase agreement in which NSP Minnesota will sell, transfer, or assign, and ITC Midwest will acquire, the Fox Lake line.⁹

7. ITC Midwest currently owns a parallel 161 kV line connecting the Fox Lake and Lakefield Junction substations, and it is included in the ITC Midwest pricing zone.¹⁰

⁷ Application at 3 (citing Project Design and Construction Services Agreement by and between Northern States Power Company *d/b/a* Xcel Energy and Interstate Power and Light Company for the Lakefield Junction-Fox Lake 161 kV Transmission Line Project (July 29, 2005), as amended).

⁸ ITC Midwest June 18, 2010 Application at 13 (Application).

⁹ *Id.* The assets connected to the Fox Lake line that will be transferred include: (1) the Fox Lake line and applicable easements; (2) all related NSP Minnesota-owned Fox Lake substation and Lakefield Junction substation assets and applicable easements; (3) all related permits, licenses, authorizations, certificates and approvals that are transferable; (4) all related contracts that are assignable; (5) all related Construction Work in Progress; (6) all related good, merchantable and usable inventory; (7) all related representations, guarantees and warranties, to the extent assignable, not included in assignable contracts; and (8) all related claims, cause of action, and potential cause of action. *Id.* (citing Asset Purchase Agreement at ¶ 2, attached to the Application as Exhibit I).

¹⁰ *Id.* at 19.

C. Notice of Filing and Responsive Pleadings

8. Notice of the application was published in the *Federal Register*, 75 Fed. Reg. 37,423 (2010), with interventions and protests due on or before July 9, 2010. The Iowa Utilities Board filed a notice of intervention, and the Midwest TDUs filed a timely motion to intervene. IPL filed a timely motion to intervene and comments, as well as a subsequent answer and protest. Applicants filed an answer to IPL's comments, as well as a motion to reject – or in the alternative, an answer to – IPL's protest. Applicants also filed an errata to correct their application.

II. Discussion

A. Procedural Issues

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Standard of Review Under Section 203

11. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹¹ Section 203 also requires the Commission, before it approves a transaction, to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."¹² The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or a pledge or encumbrance of utility assets.¹³

¹¹ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹² 16 U.S.C. § 824b(a)(4) (2006).

¹³ 18 C.F.R. § 33.2(j) (2010).

C. Analysis Under Section 203

1. Effect on Competition

a. Applicants' Analysis

12. Applicants state the proposed transaction will have no adverse effect on competition, and that there is no need to submit horizontal or vertical market power analyses. With respect to horizontal competition, Applicants state that the proposed transaction involves only transmission facilities; therefore, there will be no harm to competition in any relevant market.¹⁴ With respect to vertical competition, Applicants state that the proposed transaction involves only the acquisition of transmission assets, and no transfer of generation facilities or inputs to electric power generation; therefore, the transaction raises no vertical market power concerns.¹⁵

b. Commission Determination

13. In analyzing whether a transaction will adversely affect competition, the Commission first examines its effects on concentration in generation markets or whether the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation. The Commission has recognized that transactions involving only the transfer of transmission facilities should not raise competitive concerns.¹⁶ Because only transmission facilities will be transferred, we find that the proposed transaction will not have an adverse effect on horizontal competition.

14. Second, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. Because there is no transfer of generation facilities or inputs to electric power generation, we find that the proposed transaction will not have an adverse effect on vertical competition.

¹⁴ Application at 17.

¹⁵ *Id.* at 18.

¹⁶ *See* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,903 (recognizing that there is no need for a Competitive Analysis Screen when a transaction only involves a disposition of transmission facilities); *DTE Energy Co.*, 97 FERC ¶ 61,330, at 62,572 (2001) (“anticompetitive effects are unlikely to arise in a transaction that only involves a disposition of transmission facilities”).

2. Effect on Rates

a. Applicants' Analysis

15. Applicants assert that the proposed transaction will have no adverse effect on rates because the Fox Lake line is being transferred at net book value. Moreover, NSP Minnesota and ITC Midwest use nearly identical Commission-approved transmission formula rates that are set forth under Attachment O of the Open Access Transmission, Energy and Operating Reserve Markets Tariff of the Midwest ISO.¹⁷ Applicants explain that the customers paying those rates will change from customers in the Northern States Power system pricing zone to customers in the ITC Midwest pricing zone.¹⁸

16. Applicants state that it is more appropriate to collect the Fox Lake line's revenue requirement from customers in the ITC Midwest pricing zone because the Fox Lake line is integrated with the ITC Midwest transmission system, and not the Northern States Power System. Applicants further explain that an older parallel line connected at the same substations as the Fox Lake line (Lakefield Junction and Fox Lake substations) is already included in the ITC Midwest pricing zone. Applicants argue that because the Fox Lake line is nearly equivalent in function and integrated in the same manner as the Lakefield Junction-Fox Lake transmission line, its costs are appropriately recovered from the same customers.¹⁹

17. ITC Midwest commits not to collect from transmission customers any transaction-related costs that exceed transaction-related savings for a period of five years. ITC Midwest agrees to identify any transaction-related costs it might seek to recover in rates and to demonstrate that those costs are exceeded by the savings produced as a result of the proposed transaction.²⁰

¹⁷ Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, First Revised Sheet Nos. 2739-46 (ITC Midwest); Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, First Revised Sheet Nos. 2747-54 (Northern States Power Companies). *See also ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 16-63 (approving ITC Midwest's Attachment O Formula Rate); *Xcel Energy Services Inc.*, 121 FERC ¶ 61,284 (2007) (approving NSP Minnesota's Attachment O Formula Rates).

¹⁸ Application at 19.

¹⁹ *Id.*

²⁰ *Id.* at 20.

b. IPL's Comments

18. IPL contends that the proposed transaction will result in its customers, who are located in the ITC Midwest pricing zone, incurring additional costs associated with the Fox Lake line without receiving any quantifiable incremental benefits. IPL requests that the Commission defer action regarding the proposed transaction until IPL has had an opportunity to obtain more detailed information regarding the projected cost implications of the proposed transaction on its customers.

c. Applicants' Reply

19. Applicants reply that the Commission should not defer action and that it is appropriate to include the costs of the Fox Lake line in the ITC Midwest pricing zone. Applicants argue that IPL, as a party to the original agreement, understands the proposed transaction and the rationale for it. ITC Midwest further explains that the proposed transaction is merely correcting an anomalous situation, in which IPL allowed NSP Minnesota to install transmission facilities between two IPL substations and parallel to existing IPL facilities, subject to an IPL option to purchase the Fox Lake line at a later date. The fact that IPL transferred all of its facilities and the purchase option to ITC Midwest should not prevent ITC Midwest from exercising the purchase option.

d. IPL's Protest

20. IPL points to the Application's statement that the Fox Lake line represents approximately two percent of ITC Midwest's gross transmission plant. IPL also states that the hold harmless protection offered by ITC Midwest protecting customers from transaction-related costs is a very small percentage of the actual transaction price. IPL therefore believes the benefits of the transaction for IPL's customers are insufficient to offset the cost increases the IPL customers will bear. IPL argues that ITC Midwest has failed to provide sufficient information to support the conclusion that the proposed transaction will not be detrimental to IPL customers.

e. Applicants' Answer to Protest

21. Applicants respond by stating that the public interest standard under section 203 does not require them to show any positive benefits, only the absence of a negative effect.²¹ Applicants further state that the Fox Lake line was identified by the Midwest ISO as a project needed for reliability in the Midwest ISO Transmission Expansion Plan for 2003. Applicants state that under the Midwest ISO Transmission Owners Agreement, IPL was responsible for the construction of the Fox Lake line, but that NSP Minnesota

²¹ ITC Midwest September 3, 2010 Filing at 6 (citing *Central Vermont Public Service Corp.*, 39 FERC ¶ 61,295, at 61,961 n.14 (1987)).

ultimately built it. Applicants further state that IPL has essentially been enjoying the benefits of the Fox Lake line as a “free rider” and that IPL seeks to continue its exemption from paying for a line built in its territory to address a reliability need determined by the Midwest ISO.

f. Commission Determination

22. We find the proposed transaction will have no adverse effect on rates. We note that our analysis of rate effects under section 203 of the FPA differs from the analysis of whether rates are just and reasonable under section 205 of the FPA. Our focus here is on the effect that the proposed transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the proposed transaction.²²

23. The proposed transaction will occur at net book value and both NSP Minnesota and ITC Midwest utilize the same authorized rate of return, the Commission-approved 12.38 percent return on equity common to Midwest ISO transmission-owning utilities. IPL argues that its customers will incur a new cost without an incremental benefit. However, we are persuaded by ITC Midwest’s arguments that IPL’s customers will, under the new arrangement, now be paying for benefits they receive from having the Fox Lake line built in its territory. Moreover, the Commission has found that a rate increase may be offset by improvements in transmission that result from a proposed transaction.²³ IPL’s customers benefit from use of the Fox Lake line, which was identified as a project needed for reliability under the Midwest ISO Transmission Expansion Plan, and which connects two substations formerly owned by IPL and now owned by ITC Midwest. Also, the proposed transaction will result in a transfer of a transmission line to a transmission-only company, which, as the Commission has previously recognized, produces additional benefits offsetting a rate increase because the Transco business model may enhance asset management and responsiveness to market signals indicating when and where transmission investment is needed.²⁴ Thus, we find that the proposed transaction will have no adverse effect on rates.

²² See, e.g., Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123 (noting that an increase in rates “can still be consistent with the public interest if there are countervailing benefits that derive from the transaction”); see also *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 25-28 (2008) (*Startrans*); *ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 120-28.

²³ *ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 123-24.

²⁴ *Startrans*, 122 FERC ¶ 61,307 at P 27.

24. We accept Applicants' commitment not to collect from transmission customers, for a period of five years, any transaction-related costs that exceed transaction-related savings, which we interpret to include all transaction-related costs, not only costs related to consummating the transaction. In addition, the Commission will be able to monitor the Applicants' hold harmless provision under its authority under section 301(c) of the FPA²⁵ and the books and records provision of PUHCA 2005,²⁶ and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.

25. The Commission has found that a hold harmless commitment is enforceable and administratively manageable if customers have an opportunity to scrutinize costs before they are included in the formula rate, and therefore are able to alert the Commission to costs that might be transaction-related. If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates, they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as the instant section 203 docket.²⁷ We also note that, if Applicants seek to recover transaction-related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket.²⁸ The Commission will to notice such filings for public comment. In such a filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under section 205. Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the proposed transaction.

3. Effect on Regulation

a. Applicants' Analysis

26. Applicants state that the proposed transaction will not have an adverse impact on federal or state regulation. Applicants state that the rates, terms, and conditions of service for wholesale customers served by the Fox Lake line will continue to be regulated

²⁵ 16 U.S.C. § 825(c) (2006).

²⁶ 42 U.S.C. § 16452 (2006).

²⁷ In this case the filing would be a compliance filing in both the section 203 and 205 dockets.

²⁸ In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket.

by the Commission, and functional control of the facilities will remain with the Midwest ISO. Applicants state that the proposed transaction raises no concern relative to state regulation because the proposed transaction involves the disposition of discrete transmission facilities which are subject to the exclusive rate regulatory jurisdiction of the Commission. Further, Applicants note the Minnesota Commission must review and approve the proposed transaction.²⁹

b. Commission Determination

27. We find that neither state nor federal regulation will be impaired by the proposed transaction. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.³⁰ We find that the proposed transaction will not create a regulatory gap at the federal level, because the Commission will retain its regulatory authority over the rates over the facilities after the proposed transaction. We note that no party alleges that regulation would be impaired by the proposed merger, and that the Minnesota Commission has not asked the Commission to address the issue of the effect on state regulation.

4. Cross-Subsidization

a. Applicants' Analysis

28. Applicants seek waiver of the Commission regulation that requires disclosure of existing pledges and/or encumbrances of utility assets.³¹ Specifically, Applicants request a waiver of the requirement to list all current pledges and encumbrances of assets for NSP Minnesota on the grounds that, because the proposed transaction is an asset acquisition for a discrete facility and not a merger, any information beyond that already provided is not necessary for the Commission to be able to determine that the proposed transaction is consistent with the public interest.³²

29. Applicants also assert that the proposed transaction will not result in any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company. Applicants also state that the proposed transaction will not result in any new issuances of securities by a traditional public utility associate company that has captive customers, or that owns or provides transmission service over

²⁹ Application at 21.

³⁰ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

³¹ 18 CFR § 33.2(j)(1)(i) (2010).

³² Application at 25.

jurisdictional transmission facilities, for the benefit of an associate company. Further, Applicants make assurances that the proposed transaction will not involve any new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company. Applicants also state that if any issuance of securities or incurrence of indebtedness is necessary to close the proposed transaction, ITC Midwest will take such action for the purpose of financing the proposed transaction, not for the benefit of an associate company. Applicants state that if required, ITC Midwest will seek Commission approval pursuant to section 204 of the FPA³³ to issue securities and/or incur indebtedness in connection with the proposed transaction. Finally, Applicants state that the proposed transaction will not involve any new affiliate contract with a non-utility associate company because all of the operating companies of ITC Holdings are independent transmission companies.³⁴

b. Commission Determination

30. Based on the facts as presented in the applications, we find that the proposed transaction will not result in cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company. We grant waiver of the requirement to disclose existing pledges and encumbrances because Exhibit I provides sufficient information specific to the proposed transaction regarding utility pledges or encumbrances.

D. Other Considerations

31. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215.³⁵ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software,

³³ 16 U.S.C. § 824c (2006). We note that ITC Midwest concedes that any future issuances would be subject to the requirements of section 204, and in compliance with those requirements, the purpose of any subsequent issuances must be for utility purposes, not for the benefit of an associate company. Application at 24.

³⁴ Application at 23-25.

³⁵ 16 U.S.C. § 824o (2006).

equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, the North American Electric Reliability Corporation or the relevant Regional Entity may audit compliance with reliability and cyber security standards.

E. Accounting Issues

32. The Applicants state that the Fox Lake line will be transferred from NSP Minnesota to ITC Midwest at its net book value, which is estimated to be \$17,268,243.77 as of December 31, 2010. Therefore, the Applicants claim there is no acquisition premium associated with the transaction. ITC Midwest proposes to record the purchase of the transmission line through Account 102, Electric Plant Purchased or Sold, consistent with Electric Plant Instruction No. 5 (EPI 5).³⁶ It proposes to record the original cost of the transmission line in Account 101, Electric Plant In Service, and the related accumulated depreciation in Account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

33. NSP Minnesota proposes to record the sale of the transmission line by removing the original cost from Account 101 and the related accumulated depreciation from Account 108. However, NSP Minnesota does not propose to use Account 102 to record the sale. EPI 5 requires public utilities to use Account 102 when electric plant constituting an operating unit or system is purchased or sold.³⁷ Therefore, NSP Minnesota is directed to use Account 102 when recording the sale of the Fox Lake line to ITC Midwest.

The Commission orders:

(A) The proposed transaction is hereby authorized, as discussed in the body of this order.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

³⁶ 18 C.F.R Part 101 (2010).

³⁷ *Id.*

(E) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the proposed transaction.

(F) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the proposed transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Merger is consummated.

(H) Applicants shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. The Applicants shall submit their final accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the basis for the entries.

(I) If Applicants seek to recover merger-related costs through any formula rate, they must submit a compliance filing, which will be subject to notice and comment, to the Commission in this docket that details how they are satisfying the hold harmless requirement. In particular, in such a filing, Applicants must: (1) specifically identify the merger-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the merger.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.