

140 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Cinergy Corp.
Duke Energy Ohio, Inc.
Generating Facility LLCs
Duke Energy Piketon, LLC
Duke Energy Commercial Asset
Management, Inc.
DECAM Gas Facility LLCs
Duke Energy Commercial
Enterprises, Inc.
NewCo, LLC
Duke Energy Retail Sales, LLC
CinCap V, LLC

Docket No. EC12-90-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued September 5, 2012)

1. On April 2, 2012, Cinergy Corp. (Cinergy), on behalf of Duke Energy Ohio, Inc. (Duke Ohio); seven Generating Facility LLCs (Generating Facility LLCs);¹ Duke Energy Piketon, LLC (Duke Energy Piketon); Duke Energy Commercial Asset Management, Inc. (DECAM); Duke Energy Hanging Rock II, LLC, Duke Energy Washington II, LLC, Duke Energy Lee II, LLC, and Duke Energy Fayette II, LLC (collectively, DECAM Gas Facility LLCs); Duke Energy Commercial Enterprises, Inc. (Duke Energy Commercial Enterprises); NewCo, LLC (NewCo); Duke Energy Retail Sales, LLC (Duke Energy Retail Sales); and CinCap V, LLC (CinCap V) (collectively, Applicants) filed an

¹ Duke Energy Miami Fort, LLC; Duke Energy Beckjord, LLC; Duke Energy Stuart, LLC; Duke Energy Killen, LLC; Duke Energy Conesville, LLC; Duke Energy Zimmer, LLC; and Duke Energy Dicks Creek, LLC.

application (Application) seeking authorization under section 203(a)(1) and section 203(a)(2) of the Federal Power Act (FPA)² for an internal reorganization involving transfers of Duke Ohio's generating facilities and certain other jurisdictional facilities to the Generating Facility LLCs (Proposed Transaction).

2. On June 22, 2012, Cinergy, on behalf of Applicants, filed an amendment to the Application (June 22 Amendment). Applicants state that they inadvertently omitted from the list of facilities being conveyed Duke Ohio's interest in five generating facilities with 30 MW of nameplate capacity and the appurtenant interconnection facilities, located at two sites already described in the Application. In the June 22 Amendment, Applicants provided updated lists of facilities being conveyed.

3. Applicants also requested confirmation that certain aspects of the Proposed Transaction, specifically, the distribution by Duke Ohio of its ownership interests in two subsidiaries to Cinergy, are not barred by section 305(a) of the FPA.³ On June 29, 2012, Applicants filed a letter withdrawing, without prejudice, their request for such confirmation under section 305(a) of the FPA.⁴

4. The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁵ As discussed below, we will authorize the Proposed Transaction under sections 203(a)(1) and 203(a)(2), as we find that it is consistent with the public interest.

² 16 U.S.C. § 824b (2006).

³ 16 U.S.C § 825d(a); Application at 4, 32.

⁴ As a result, we will not address Duke Ohio's request for confirmation in this proceeding.

⁵ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001); *Transactions Subject to Federal Power Act Section 203*, Order No. 669, 71 Fed. Reg. 1348 (2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579, FERC Stats. & Regs. ¶ 31,225 (2006).

I. Background

A. Description of the Parties

1. Duke Energy Corporation

5. Applicants are all direct or indirect subsidiaries of Duke Energy Corporation (Duke Energy). Duke Energy is a diversified energy company with both regulated and unregulated utility operations. Duke Energy's regulated utility operations in the U.S. consist of its franchised electric and natural gas business segment, which serves approximately 4 million retail customers located in five states in the Southeast and Midwest regions. Its franchised electric and natural gas segment consists of regulated generation and electric and natural gas transmission and distribution systems. Duke Energy's electric operations include approximately 27,000 MW of generating capacity and a service area of approximately 50,000 square miles. Duke Energy subsidiaries also sell electricity at wholesale to incorporated municipalities and to public and private utilities. Duke Energy's natural gas operations include regulated natural gas transmission and distribution with approximately 500,000 customers located in southwestern Ohio and northern Kentucky. Duke Energy has four electric utility operating companies: Duke Ohio; Duke Ohio's wholly-owned subsidiary Duke Energy Kentucky, Inc. (Duke Kentucky); Duke Energy Indiana, Inc. (Duke Indiana); and Duke Energy Carolinas, LLC (Duke Carolinas).⁶

2. Cinergy Corp.

6. Cinergy is a direct wholly-owned subsidiary of Duke Energy and, in turn, is the direct parent of Duke Ohio and Duke Indiana.

3. Duke Energy Ohio, Inc.

7. Duke Ohio is a combination electric and natural gas public utility company that generates, transmits, distributes and sells electricity at retail and wholesale, and distributes and sells natural gas at retail in the southwestern portion of Ohio. Duke Ohio's retail electric operations are regulated by the Public Utilities Commission of Ohio

⁶ Application at 5-6. On July 2, 2012, Duke Energy completed its acquisition of Progress Energy, Inc., which wholly owns Carolina Power & Light Company and Florida Power Corporation. See *Duke Energy Corp.*, 136 FERC ¶ 61,245 (2011) and *Duke Energy Corp.*, 139 FERC ¶ 61,194 (2012). The information provided in the Application concerning Duke Energy's utility operations does not account for the operations of these two additional public utility subsidiaries.

(Ohio Commission), and are subject to Ohio's electric utility restructuring statute, which initiated retail electric competition in Ohio starting in 2001. Duke Ohio partially or wholly owns generating units in 12 stations in Ohio (Duke Ohio Generating Assets).⁷ Some of these stations have multiple generating units. Duke Ohio also owns a nine percent interest in Ohio Valley Electric Corporation (OVEC) and has certain contractual rights to purchase power from generating resources owned by OVEC.⁸ Applicants provided a list of the Duke Ohio Generating Assets to be transferred as part of the Proposed Transaction.⁹

8. Duke Ohio has authorization to sell power at market-based rates, including power sales to, and purchases from, unregulated power sales affiliates.¹⁰ Applicants state that the Commission has determined that, because Duke Ohio has no captive wholesale or retail power sales customers, concerns over the potential for affiliate abuse are sufficiently mitigated to permit Duke Ohio to operate without affiliate restrictions on its interactions with its market-regulated power sales affiliates.¹¹

9. Duke Ohio also provides certain ancillary services within the PJM Interconnection, LLC (PJM) region. Duke Ohio's Rate Schedule No. 66 contains the revenue requirement for Duke Ohio's cost of providing reactive supply and voltage control to PJM.¹²

⁷ Pages 7-8 of the Application and pages 6-7 of the June 22 Amendment set forth each station's name, location, gross nameplate capability and Duke Ohio's share of the ownership and the gross capability of that share.

⁸ Application at 8.

⁹ June 22 Amendment at 6-7.

¹⁰ Application at 9 (citing Docket No. ER10-2033-000). Applicants state that Duke Ohio also shares two joint market-based rate tariffs with its affiliate, Duke Indiana, and that these tariffs were initially approved in *The Cincinnati Gas & Electric Company*, 77 FERC ¶ 61,172 (1996).

¹¹ Application at 9 (citing *Cincinnati Gas & Electric Co.*, 113 FERC ¶ 61,197 (2005) (approving Duke Ohio's request—under its prior name—for a code of conduct waiver); *Cinergy Corp.*, 128 FERC ¶ 61,102 (2009) (clarifying import of prior Cincinnati Gas & Electric Co. order waiving code of conduct and affiliate sales restrictions)).

¹² *Id.*

10. Duke Ohio owns transmission facilities that are under the operational control of PJM. Transmission service is provided over Duke Ohio's transmission facilities by PJM pursuant to the PJM Open Access Transmission Tariff (PJM Tariff).¹³

4. Jurisdictional Facilities

11. The jurisdictional facilities that will be transferred by Duke Ohio to the Generating Facility LLCs consist of the Duke Ohio Generating Assets and appurtenant interconnection facilities, certain power sales contracts entered into under Duke Ohio's market-based rate tariff, Duke Ohio's reactive supply rate schedule, and market-based rate tariffs of DECAM and its subsidiaries, and associated books and records.¹⁴ In addition, Duke Ohio will transfer its nine percent interest in OVEC to Duke Energy Piketon.

5. Generating Facility LLCs and Duke Energy Piketon, LLC

12. Applicants expect to transfer the Duke Ohio Generating Assets to the different Generating Facility LLCs and to transfer Duke Ohio's OVEC shares to Duke Energy Piketon. These companies have not yet been formed, and Applicants are still considering tax and other issues that may lead them to modify this structure slightly. Applicants state that while there could be minor variations in the structure of the Proposed Transaction depending on various tax and other commercial issues, the final structure, whether as currently contemplated (and as described below) or as one of the variations described in the Application, will meet the Commission's standards under section 203.¹⁵

6. Duke Energy Commercial Asset Management, Inc.

13. DECAM is a direct subsidiary of Duke Ohio. Applicants state that DECAM serves as the wholesale merchant agent for Duke Ohio and a number of Duke Energy's other generation and marketing businesses within Duke Energy's commercial business segment. DECAM has been granted authorization to sell power at market-based rates.¹⁶ It does not own any generation or transmission facilities but is parent to entities that own

¹³ *Id.*

¹⁴ *Id.* at 18-19.

¹⁵ *Id.* at 17, 19-21.

¹⁶ *Id.* at 11.

merchant gas-fired power plants located within PJM. Applicants state that, after the Proposed Transaction, DECAM will be a direct, wholly-owned subsidiary of Cinergy.¹⁷

7. DECAM Gas Facility LLCs

14. Applicants state that the DECAM Gas Facility LLCs are each direct, wholly-owned subsidiaries of DECAM. Applicants state that the DECAM Gas Facility LLCs acquired ownership of the Hanging Rock Generating Station, Washington Generating Station, Lee Generating Station, and Fayette Generating Station (DECAM Gas Facilities), respectively, through a prior internal reorganization of Duke Ohio, as described below.¹⁸ Applicants state that the DECAM Gas Facility LLCs have been granted authorization to sell power at market-based rates. Applicants state that after the Proposed Transaction closes, the DECAM Gas Facility LLCs will be indirect subsidiaries of DECAM.¹⁹

8. Duke Energy Commercial Enterprises, Inc. and NewCo, LLC

15. Duke Energy Commercial Enterprises is a direct, wholly-owned subsidiary of Cinergy Investments, Inc., an indirect subsidiary of Cinergy, and is the direct parent of Duke Energy Retail Sales and CinCap V as well as certain other companies that do not own jurisdictional facilities. Applicants state that Duke Energy Commercial Enterprises has authorization to sell power at market-based rates and that it does not own any generation or transmission facilities.

16. Applicants state that under the Proposed Transaction, Duke Energy Commercial Enterprises will be merged with and into a newly formed company and be an indirect subsidiary of DECAM. Applicants refer to this newly formed company as “NewCo, LLC” since the name of the resulting company has not yet been determined. Applicants state that, to the extent necessary and appropriate, Applicants will make a notice of succession filing related to Duke Energy Commercial Enterprises’ market-based rate tariff.²⁰

¹⁷ *Id.*

¹⁸ *Id.* at 12.

¹⁹ *Id.*

²⁰ *Id.* at 13.

9. Duke Energy Retail Sales, LLC

17. Duke Energy Retail Sales is an indirect subsidiary of Cinergy and a direct, wholly-owned subsidiary of Duke Energy Commercial Enterprises. Duke Energy Retail Sales is a competitive retail electric service provider certified by the Ohio Commission, and engages in wholesale power transactions to facilitate its competitive retail electric service provider business operations. Applicants state that Duke Energy Retail Sales owns no generation or transmission facilities and that the Commission has granted Duke Energy Retail Sales market-based rate authority.²¹

10. CinCap V, LLC

18. CinCap V is an indirect subsidiary of Cinergy and a direct, wholly-owned subsidiary of Duke Energy Commercial Enterprises. Applicants state that the Commission has granted CinCap V market-based rate authority.²²

B. Prior Divestiture of Other Duke Ohio Generating Assets

19. Applicants state that the Proposed Transaction follows upon the divestiture in 2011 from Duke Ohio to the DECAM Gas Facility LLCs of Duke Ohio's natural gas-fired generating facilities (Prior Divestiture). The Prior Divestiture was approved by the Commission in 2009²³ and was consummated on April 1, 2011.²⁴ Applicants state that the Prior Divestiture was similar to the current Application. Applicants state that in the Prior Divestiture, Cinergy, Duke Ohio, DECAM (f/k/a Cinergy Power Investments, Inc.), and to-be-formed generating facility LLCs sought section 203 approval of an internal reorganization that would, in part, transfer all of Duke Ohio's generation facilities and appurtenant interconnection facilities to generating facility LLCs (Prior Divestiture Application).²⁵

²¹ *Id.*

²² *Id.* at 14.

²³ *Id.* (citing *Cinergy Corp.*, 126 FERC ¶ 61,146 (2009) (2009 Cinergy 203 Order)).

²⁴ *Id.* (citing Notice of Consummation, Docket No. EC08-78-000, *et al.* (Apr. 8, 2011)).

²⁵ *Id.* (citing *Cinergy Corp.*, Docket No. EC08-78-000, *et al.*, Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 of the Federal

(continued...)

20. Applicants explain that, as a result of developments in a proceeding before the Ohio Commission in 2008, the applicants to the Prior Divestiture Application amended the initial application in compliance with a retail settlement approved by the Ohio Commission. The Ohio Commission limited the Duke Ohio generating assets to be transferred to certain of Duke Ohio's gas generation facilities, but required Duke Ohio to retain, at that time, its remaining facilities. Applicants state that, even though the assets being transferred in the Proposed Transaction are different, the nature of the Proposed Transaction is very similar to that of the Prior Divestiture and the substantive analysis for this Proposed Transaction should be in all material respects the same as for the Prior Divestiture.²⁶

C. Ohio Stipulation

21. Applicants state that the Ohio Commission has approved Duke Ohio's proceeding with the Proposed Transaction, and that Duke Ohio now seeks authorization from this Commission. Applicants state that Ohio's restructuring law provides for competitive retail electric service and requires electric utilities supplying both competitive and non-competitive retail electric service to implement and operate under an Ohio Commission-approved corporate separation plan.²⁷

22. Applicants state that on June 20, 2011, Duke Ohio filed an application with the Ohio Commission to establish a new standard service offer in the form of an electric security plan (ESP). Applicants further state that on October 24, 2011, Duke Ohio and other parties to that proceeding filed the Ohio Stipulation, which, as part of a comprehensive retail rate settlement package, included a commitment by Duke Ohio to transfer title, at net book value, of its generation assets out of Duke Ohio, and to effectuate full legal corporate separation. Applicants state that on November 22, 2011, the Ohio Commission issued the Ohio ESP Order²⁸ adopting the Ohio Stipulation,²⁹

Power Act (Apr. 24, 2008); Amendment to Application and Request for Extended Notice Period for Comments (May 6, 2008)).

²⁶ *Id.* at 14-15.

²⁷ *Id.* at 15 (citing Ohio Rev. Code Ann. § 4928.17(A)).

²⁸ *Id.* at 16 (citing *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elect. Sec. Plan, Accounting Modifications, and Tariffs for Generation Serv.*, Docket No. 11-3549-EL-SSO, *et al.*, Opinion and Order (Nov. 22, 2011) (Ohio ESP Order), *Entry on Rehearing* (Feb. 23, 2012)). The Ohio ESP Order is included as an attachment in Exhibit L to the Application.

without modification, thereby requiring Duke Ohio, subject to approval by the Commission, to undertake the full structural corporate separation of Duke Ohio's generation assets from its transmission and distribution operations.³⁰

D. Description of Proposed Transaction

23. Applicants state that the principal purpose of the Proposed Transaction is to achieve full structural corporate separation of Duke Ohio's generation assets from its transmission and distribution business in accordance with the Ohio Stipulation and the Ohio ESP Order.

24. Applicants state that, under the structure contemplated by the Proposed Transaction, all generation held by Duke Ohio would be transferred to the Generating Facility LLCs³¹ and Duke Ohio's interest in OVEC would be transferred to Duke Energy Piketon.

25. Applicants state that the Proposed Transaction consists of several steps that will occur seriatim at closing. Applicants explain that, under the currently planned structure, Duke Ohio will form the seven Generating Facility LLCs to hold the Duke Ohio Generating Assets, and will form Duke Energy Piketon to hold Duke Ohio's ownership interest in OVEC.³² Duke Ohio will then transfer its interest in each of the seven Duke Ohio Generating Assets to the seven Generating Facility LLCs and its interest in OVEC to Duke Energy Piketon pursuant to asset contribution agreements. Duke Ohio will also

²⁹ Application at 16 (citing *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elect. Sec. Plan, Accounting Modifications, and Tariffs for Generation Serv.*, Docket No. 11-3549-ELS-SSO, *et al.*, Stipulation and Recommendation at 25-28 (Oct. 24, 2011) (Ohio Stipulation)). The Ohio Stipulation was filed as Exhibit L(2) to the Application.

³⁰ Application at 15-16.

³¹ June 22 Amendment at 7-8.

³² Applicants also state that the Generating Facility LLCs and Duke Energy Piketon intend to obtain approval from the Commission to make wholesale sales of energy and capacity at market-based rates as of the time that the transaction closes. Applicants further explain that the Generating Facility LLCs and Duke Energy Piketon have been included as applicants to the extent any of these entities have become public utilities prior to closing. Application at 10, n.17.

transfer its reactive supply and voltage control rate schedule to the Generating Facility LLCs. Duke Ohio will then contribute its interests in the Generating Facility LLCs, except for Duke Energy Beckjord, LLC, as well as Duke Energy Piketon, to DECAM.³³

26. Applicants further explain that DECAM will then form a new single-member LLC, Coal and Gas HoldCo, which, in turn, will form two single-member LLCs, Coal Gen Financing HoldCo, LLC and Gas Gen Financing HoldCo, LLC. DECAM will contribute its interests in six of the seven LLCs within the Generating Facility LLCs along with its interests in Duke Energy Piketon and the DECAM Gas Facility LLCs to Coal and Gas HoldCo, LLC. Coal and Gas HoldCo, LLC will then contribute the DECAM Gas Facility LLCs and Duke Energy Dicks Creek, LLC to Gas Gen Financing HoldCo, LLC and will then contribute its remaining five Generating Facility LLCs plus Duke Energy Piketon to Coal Gen Financing HoldCo, LLC. Duke Ohio will then separately distribute its interests in Duke Energy Beckjord, LLC and DECAM to its parent, Cinergy. Gas Gen Financing HoldCo, LLC will also form NewCo as its direct, wholly-owned subsidiary. Duke Energy Commercial Enterprises will be merged with and into NewCo, with NewCo being the surviving entity.³⁴

27. Applicants state that, when Duke Ohio distributes its interest in DECAM to Cinergy, there will be an indirect change in control over the market-based rate tariffs of DECAM and its subsidiaries, and associated books and records. Applicants further state that, to the extent the Generating Facility LLCs have filed tariffs, those would be indirectly transferred as well. Applicants state that the merger of NewCo and Duke Energy Commercial Enterprises will result in a change of control over the market-based rate tariffs of Duke Energy Commercial Enterprises and its subsidiaries, Duke Energy Retail Sales and CinCap V.³⁵

28. Applicants state that prior to or following the closing of the Proposed Transaction, Applicants will file with the Commission any necessary notices of succession with respect to then-effective rate schedules that will be affected by the Proposed Transaction, and may also file ministerial changes to tariffs under section 205.³⁶

³³ *Id.* at 17.

³⁴ *Id.* at 17-18.

³⁵ *Id.* at 19.

³⁶ *Id.*

29. Applicants note that, although the Proposed Transaction could vary in minor ways from the description above, the four basic facts crucial to the Commission's criteria for evaluating such transactions under section 203 will not change. First, all affected Duke Ohio jurisdictional facilities will be transferred to Generating Facility LLCs or Duke Energy Piketon. Second, all Generating Facility LLCs and Duke Energy Piketon will be Duke Energy's wholly-owned direct or indirect subsidiaries. Third, except for Duke Ohio, no franchised utility affiliate of Applicants will be involved in the Proposed Transaction, and Duke Ohio will only participate as described in the Application. Fourth, no non-affiliate will gain direct or indirect control over any of the jurisdictional facilities involved in the Proposed Transaction.

30. Applicants also state that, while the Proposed Transaction may result in a change in control over fewer jurisdictional facilities than those described above, it will not result in a change in control of any additional jurisdictional facilities without permission. Applicants request that the Commission approve the Proposed Transaction as described or with the variations as discussed in the Application. Applicants commit to inform the Commission of any of the variations that occur when they provide notice of consummation of the Proposed Transaction.³⁷

II. Discussion

A. Procedural Matters

31. Notice of the Application was published in the *Federal Register*, 77 Fed. Reg. 21,552 (2012), with interventions and protests due on or before April 23, 2012. A timely motion to intervene, with limited comments, was filed by American Electric Power Service Corporation on behalf of its affiliates, Ohio Power Company (Ohio Power) and AEP Generation Resources, Inc. (AEP Generation Resources) (collectively, AEP). Notice of the June 22 Amendment was published in the *Federal Register*, 77 Fed. Reg. 39,236 (2012), with interventions and protests due on or before June 25, 2012. No further protests or comments were filed.

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene of AEP serves to make AEP a party to this proceeding.

³⁷ *Id.* at 20-21.

B. Section 203**1. Standard of Review under Section 203**

33. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it finds that the transaction “will be consistent with the public interest.”³⁸ The Commission’s analysis of whether a transaction is 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.³⁹ Section 203(a)(4) also requires the Commission 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.” 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 pledge or encumbrance of utility assets.⁴⁰

2. Effect on Competition**a. Applicants’ Analysis**

34. Applicants state that the Commission has held that internal corporate reorganizations such as the Proposed Transaction have no adverse effect on competition.⁴¹

35. Applicants state that, because the Proposed Transaction is an internal corporate reorganization, with no generation entering or leaving the Duke Energy corporate family,

³⁸ 16 U.S.C. § 824b(a)(4).

³⁹ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

⁴⁰ 18 C.F.R. § 33.2(j).

⁴¹ Application at 22 (citing *Ameren Corp.*, 131 FERC ¶ 61,240, at P 18 (2010) (finding that an internal corporate reorganization transaction with no transfer of any generation assets outside the Ameren corporate family will have no adverse effect on competition); 2009 Cinergy 203 Order, 126 FERC ¶ 61,146 at P 32 (holding “[c]onsistent with our precedent, we find that the Proposed Transaction is an internal corporate reorganization that will have no adverse effects on competition”) (citations omitted)).

the Proposed Transaction cannot have a concentrating effect under the Commission's horizontal market power analysis.⁴²

36. Applicants state that the Proposed Transaction will also not have any adverse effect on vertical competition because the Proposed Transaction is an internal corporate reorganization and will not result in the Duke Energy corporate family owning or controlling any new entities that provide inputs to electricity products or electric generation products. Applicants also state that Duke Ohio has turned over operational control of its transmission facilities to PJM, and wholesale transmission service over such facilities will continue to be provided pursuant to the rates and terms of the PJM Tariff on file with the Commission, eliminating any concern about transmission-related vertical market power.⁴³ Applicants state that the Generating Facility LLCs will own no transmission facilities except those limited facilities necessary to connect the generating plants to the transmission grid and that, consequently, the Proposed Transaction raises no vertical market power issues.

b. Commission Determination

37. Consistent with our precedent, we find that, because the Proposed Transaction is an internal corporate reorganization and because operational control of Duke Ohio's transmission facilities has been turned over to PJM, the Proposed Transaction will have no adverse effect on horizontal or vertical competition.⁴⁴

⁴² *Id.* at 23 (*First Energy Corp.*, 94 FERC ¶ 61,179, at 61,619 (2001) (finding that “transfers that realign facilities under the same parent company will not change the concentration of generation ownership in the market” and thus do not raise competitive concerns)).

⁴³ *Id.* at 23-24 (*EDG Dev., Inc.*, 126 FERC ¶ 61,141, at P 23 (2009) (“Turning over operational control of transmission facilities to an independent entity mitigates any concerns about transmission related vertical market power because it eliminates a company’s ability to use its transmission system to harm competition.”) (citing *National Grid plc and KeySpan Corp.*, 117 FERC ¶ 61,080, at P 45 (2006); *American Elec. Power Co.*, 90 FERC ¶ 61,242, at 61,788 (2000), *review denied sub nom. Wabash Valley Power Assn. v. FERC*, 268 F.3d 1105 (D.C. Cir. 2001)); *Okla. Gas & Elec. Co.*, 124 FERC ¶ 61,239, at P 57 (2008) (“[T]urning over functional control of an applicant’s transmission facilities to a Commission-approved RTO mitigates vertical market power concerns.”)).

⁴⁴ *See Ameren Corp.*, 131 FERC ¶ 61,240, at P 18 (2010); 2009 Cinergy 203 Order, 126 FERC ¶ 61,146 at P 32; *First Energy Corp.*, 94 FERC ¶ 61,179, at 61,619

(continued...)

3. Effect on Rates

a. Applicants' Analysis

38. Applicants state that the Proposed Transaction will not have an adverse effect on rates for wholesale power sales. They state that Duke Ohio has no captive wholesale power sales customers and that Duke Ohio's wholesale power sales are at market-based rates. Applicants state that wholesale customers served under market-based rates are sufficiently protected because they are free to choose suppliers and are not served at rates with a cost basis that could be affected by the Proposed Transaction.⁴⁵

39. Applicants assert that the Proposed Transaction should not affect transmission rates because the only transmission facilities being transferred in the Proposed Transaction are appurtenant interconnection facilities and Duke Ohio is not transferring any transmission facilities that are part of the bulk transmission system or included in transmission rate base, operational control of Duke Ohio's transmission facilities has been turned over to PJM and the rates for the use of the transmission facilities owned by Duke Ohio are set forth in the PJM Tariff, and the stated revenue requirement as contemplated by Schedule 2 of the PJM Tariff set forth in the reactive supply and voltage control rate schedule will not change as a result of the Proposed Transaction.⁴⁶

40. Applicants also commit that for a period of five years following the date of the Proposed Transaction, they will hold transmission customers taking service under the

(2001); *EDG Dev., Inc.*, 126 FERC ¶ 61,141, at P 23 (2009) (citing *National Grid plc and KeySpan Corp.*, 117 FERC ¶ 61,080, at P 45 (2006); *American Elec. Power Co.*, 90 FERC ¶ 61,242, at 61,788 (2000), *review denied sub nom. Wabash Valley Power Assn. v. FERC*, 268 F.3d 1105 (D.C. Cir. 2001)); *Okla. Gas & Elec. Co.*, 124 FERC ¶ 61,239, at P 57 (2008).

⁴⁵ Application at 24-25 (citing *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326, at P 25 (2006) (holding that “when there are [market-based rates], the effect on rates is not of concern”) (citation omitted); *Ameren Corp.*, 131 FERC ¶ 61,240, at P 22 (holding that Ameren utilities' wholesale customers' rates will not be affected by the reorganization transaction since all sales from the output of transferred assets are made under market-based rate authority)).

⁴⁶ *Id.* at 25-26.

PJM Tariff in the Duke Energy Ohio and Kentucky zone harmless from including in rates costs arising from the Proposed Transaction.⁴⁷

b. Commission Determination

41. We find that the Proposed Transaction will not adversely affect wholesale rates. The Applicants represent that Duke Ohio has no captive wholesale customers and its wholesale sales are made under market-based rate authorizations. The Commission has previously stated that, when there are market-based rates, the effect on rates is not of concern.⁴⁸ The effect on rates is not of concern in these circumstances because market-based rates will not be affected by the seller's cost of service and, thus, will not be adversely affected by the Proposed Transaction.

42. We also find that the Proposed Transaction will have no adverse effect on transmission rates. We note that Duke Ohio is not transferring any transmission facilities that are part of the bulk transmission system or included in transmission rate base, that rates for the use of the transmission facilities owned by Duke Ohio are set forth in the PJM Tariff, and that Applicants represent that the stated revenue requirement on which the reactive supply and voltage control rate schedule is based will not change as a result of the Proposed Transaction. We also rely on the Applicants' hold harmless commitment with respect to transmission customers.⁴⁹ Accordingly, we accept Applicants' commitment not to collect from transmission customers costs associated with the Proposed Transaction for a period of five years, consistent with Commission precedent.⁵⁰ We interpret Applicants' commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction.

43. The Commission will be able to monitor Applicants' hold harmless commitment under its authority under section 301(c) of the FPA⁵¹ and the books and records provision

⁴⁷ *Id.* at 26.

⁴⁸ *See, e.g., Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326, at P 25 (2006).

⁴⁹ Application at 3, 24.

⁵⁰ *See Exelon Corp.*, 138 FERC ¶ 61,167, at P 118 (2012); *International Transmission Company*, 139 FERC ¶ 61,003, at PP 16-17 (2012).

⁵¹ 16 U.S.C. § 825(c).

of the Public Utility Holding Company Act 2005,⁵² and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.

44. If Applicants seek to recover transaction-related costs through their transmission rates within five years after the Proposed Transaction is consummated, 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 within such five-year period, 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 in the instant section 203 docket.⁵³ We also note that, if Applicants seek to recover transaction-related costs in a filing in such five-year period, whereby Applicants 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.⁵⁴ The Commission will notice such filings for public comment. In such filings, 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' transmission rates from being adversely affected by the Proposed Transaction.⁵⁵

4. Effect on Regulation

a. Applicants' Analysis

45. Applicants state that the Proposed Transaction will have no effect on federal regulation. Specifically, Applicants argue that the Commission's jurisdiction over Duke Ohio will not change as a result of the Proposed Transaction, and the Commission will have jurisdiction over wholesale sales from Duke Energy Piketon and the Generating Facility LLCs, which will be public utilities. Applicants state that the Commission's

⁵² 42 U.S.C. § 16452 (2006).

⁵³ In this case, the filing would be a compliance filing in both the section 203 and 205 dockets.

⁵⁴ In this case, the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket.

⁵⁵ See *Exelon Corp.*, 138 FERC ¶ 61,167, at P 120 (2012); *ITC Midwest LLC*, 133 FERC ¶ 61,169, at PP 24-25 (2010); *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 63 (2010); *PPL Corp.*, 133 FERC ¶ 61,083, at PP 26-27 (2010).

jurisdiction over CinCap V, DECAM, Duke Energy Commercial Enterprises, Duke Energy Retail Sales and the DECAM Gas Facility LLCs also will not change as a result of the Proposed Transaction.⁵⁶

46. Applicants also state that the Proposed Transaction will have no effect on state jurisdiction. Applicants state that the only entity involved in the Proposed Transaction that is subject to state regulation is Duke Ohio, which is subject to Ohio's retail ratemaking jurisdiction. Applicants note that Ohio provides for corporate separation, subject to the establishment of an approved corporate separation plan by the Ohio Commission,⁵⁷ and requires Ohio Commission approval for an electric distribution utility to sell or transfer a generating asset.⁵⁸

47. Applicants note that Duke Ohio's divestiture arises out of a commitment that Duke Ohio made in settlement of its retail rate case, which was approved by the Ohio Commission.⁵⁹ Applicants state that transfer of the Duke Ohio Generating Assets from Duke Ohio is therefore consistent with the Ohio Commission's application of its jurisdiction in the very case in which Duke Ohio's retail power sales rates were established. Applicants further state that Duke Ohio will continue to be subject to regulation as an Ohio electric distribution utility by the Ohio Commission after the Proposed Transaction closes. Applicants state that accordingly, the Proposed Transaction will not have an adverse effect on state regulation.⁶⁰

b. Commission Determination

48. 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.⁶¹ 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 affected companies after the Proposed Transaction. In the Merger Policy Statement, the Commission stated that it

⁵⁶ Application at 26.

⁵⁷ *Id.* at 27 (citing Ohio Rev. Code Ann. § 4928.17(A)).

⁵⁸ *Id.* at 26-27 (citing Ohio Rev. Code Ann. § 4928.17(E)).

⁵⁹ *Id.* at 27 (citing Ohio ESP Order at 45-46).

⁶⁰ *Id.*

⁶¹ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

ordinarily will not set the issue of the effect of a transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission stated that it may set the issue for hearing, and that it will address such circumstances on a case-by-case basis.⁶² We note that no party alleges that regulation would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

5. Cross-subsidization

a. Applicants' Analysis

49. Applicants contend that, based on facts and circumstances that are known to them or are reasonably foreseeable, both at the time of the Proposed Transaction or in the future, the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Applicants note that, when analyzing cross-subsidization issues under section 203, the Commission considers four matters: (A) 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; (B) Any new issuance of securities by 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; (C) Any new pledge or encumbrance 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; or (D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.⁶³ Applicants disclose their existing pledges and encumbrances of utility assets, as required under Order No. 669-A and 18 C.F.R. § 33.2(j)(1).⁶⁴

⁶² *Id.* at 30,125.

⁶³ 18 C.F.R. § 33.2(j)(1)(ii)(A)-(D).

⁶⁴ Application at 27-28 and Exhibit M.

50. With regard to the first matter considered by the Commission when analyzing for potential cross-subsidization, Applicants state that the Proposed Transaction will result in the transfer of the Duke Ohio Generating Assets from Duke Ohio, the only traditional utility involved in the Proposed Transaction, to the Generating Facility LLCs. Applicants also state that the Proposed Transaction will cause DECAM, the DECAM Gas Facility LLCs, Duke Energy Commercial Enterprises, Duke Energy Retail Sales, CinCap V, Duke Energy Piketon and the Generating Facility LLCs to become direct or indirect wholly-owned subsidiaries of Cinergy outside of Duke Ohio's chain of ownership.⁶⁵ They argue that because Ohio is a retail open access state, Duke Ohio has no captive wholesale or retail customers and no wholesale or retail power customers served at rates that are tied to whether Duke Ohio owns or does not own generation. Applicants state that Duke Ohio sells reactive power at cost-based rates, and it will be transferring its voltage support and reactive supply rate schedule as part of the Proposed Transaction, but that rates under this rate schedule are based on a stated revenue requirement that will not be affected by the Proposed Transaction. Applicants also state that, while Duke Ohio has transmission customers served at cost-based rates under the PJM Tariff, the costs of the Duke Ohio Generating Assets will not be included in those rates.

51. Regarding the second consideration, the issuance of new securities, Applicants state that Duke Ohio will not issue new securities in connection with the Proposed Transaction at the time of the Proposed Transaction or in the future. Applicants state that prior to, at the time of, or following the Proposed Transaction, some of Duke Ohio's debt may be paid down or restructured to reduce Duke Ohio's overall debt position so that it is in line with the reduction in Duke Ohio's equity resulting from transfer of the Duke Ohio Generating Assets. Applicants state that, although Duke Ohio may issue new securities in the future, any such new securities would be issued only for purposes of financing utility operations and not in connection with the Proposed Transaction.⁶⁶

52. With regard to the third consideration, Applicants state that Duke Ohio will not enter into any new pledges or encumbrances in connection with the Proposed Transaction

⁶⁵ *Id.* at 29, n. 67. Applicants state that pursuant to the terms of the Asset Contribution Agreement, the Generating Facility LLCs will also assume at closing all liabilities associated with the transferred assets as well as with Duke Ohio's retired plants that are incurred after the transfer. The retired generating assets liabilities that will be transferred pursuant to the Proposed Transaction include the Plum Street Station, Newport Station, Loveland Station, Middletown Station, West End (Units 1,2,3,4, and 5), Miami Fort (Units 1,2,3,4, and 5), Dicks Creek CT Unit 2, and Miami Fort CT Units 1 and 2.

⁶⁶ Application at 30.

at the time of the Proposed Transaction, and there are no plans to do so in the future. Applicants state that, although Duke Ohio may issue traditional utility first mortgage bonds in the future, any such new secured debt would be issued only for purposes of financing future utility operations and not in connection with the Proposed Transaction. Applicants state that, other than Duke Ohio, no traditional utility is involved in the Proposed Transaction, and none will enter into any new pledges or encumbrances associated with the Proposed Transaction, now or in the future. Applicants state that they provided as part of Exhibit M all material pledges and encumbrances of the utility assets of Duke Ohio.⁶⁷

53. Regarding the fourth consideration, new affiliate contracts, Applicants state that, in addition to the Asset Contribution Agreements, Duke Ohio plans to enter into interconnection agreements with the Generating Facility LLCs. Applicants state that Duke Ohio will ensure that any necessary FPA section 205 filings related to any of these agreements, or any purchases of energy or capacity from an affiliate, are will be made pursuant to prior authorization granted by the Commission pursuant to FPA section 205; they anticipate that such sales will be pursuant to market-based rate tariffs. Applicants state that Duke Ohio will fulfill its PJM Fixed Resource Requirement obligation with capacity purchases from, among others, Duke Ohio affiliates and that Duke Ohio also plans to purchase power to serve its standard service offer load through the auction process established in the Ohio Stipulation and approved by the Ohio Commission.⁶⁸

54. Applicants state that Duke Ohio's affiliate, DECAM, and other existing affiliates are permitted to make such sales to Duke Ohio because Duke Ohio lacks captive customers, and Applicants anticipate that Duke Energy Piketon and the Generating Facility LLCs will seek similar market-based rate authority. Applicants state that no sales of power will be made between Duke Ohio and affiliates without prior authorization.⁶⁹ Applicants note that the Commission has determined that Duke Ohio's customers are protected from affiliate abuse related to affiliate contracts and that the

⁶⁷ *Id.*

⁶⁸ *Id.* at 30-32 (citing Ohio Stipulation, at 7-12 (establishing competitive bidding process that Duke Ohio will comply with to procure power to serve standard service offer load for duration of the electric security plan through May 31, 2015)).

⁶⁹ *Id.* at 31 (citing *Cincinnati Gas & Electric Co.*, 113 FERC ¶ 61,197 (revising Cinergy Power Investments, Inc. market-based rate tariff to allow market-based sales to affiliates, including Duke Ohio); *Cinergy Corp.*, 128 FERC ¶ 61,102 (2009) (clarifying and affirming Commission's prior waiver of Cincinnati Gas & Electric Company's code of conduct and affiliate sales restrictions relative to its marketing affiliates)).

Commission has waived restrictions on affiliate power sales as well as code of conduct restrictions on pricing of sales of non-power goods and services accordingly.⁷⁰ Applicants state that none of the facts used to support the Commission's finding have changed.

b. Commission Determination

55. Based on Applicants' representations, we find that the Proposed Transaction will not result in cross-subsidization of or the pledge or encumbrance of utility assets for the benefit of an associate company.

56. The Commission's focus, as it pertains to cross-subsidization, has "been on preventing a transfer of benefits from a public utility's captive customers to shareholders of the public utility's holding company."⁷¹ Applicants represent that Duke Ohio does not have any captive wholesale customers and its wholesale sales are at market-based rates.⁷² Applicants also represent that their retail customers have full retail choice.⁷³ In addition, Applicants state that, while Duke Ohio sells reactive power at cost-based rates, and it will be transferring its voltage support and reactive supply rate schedule as part of the Proposed Transaction, rates under this rate schedule are based on a stated revenue requirement that will not be affected by the Proposed Transaction. Applicants also state that, while Duke Ohio has transmission customers served at cost-based rates under the PJM Tariff, the costs of the Duke Ohio Generating Assets will not be included in those rates.

57. Regarding the issuance of new securities, Applicants state that Duke Ohio will not issue new securities in connection with the Proposed Transaction at the time of the Proposed Transaction or in the future. Regarding the issue of new pledges or encumbrances, Applicants also state that Duke Ohio will not enter into any new pledges or encumbrances in connection with the Proposed Transaction at the time of the Proposed Transaction, and there are no plans to do so in the future. Regarding new affiliate

⁷⁰ *See id.*

⁷¹ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 13 (2007).

⁷² Application at 24-25 (citing *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326 at P 25 (2006) (holding that "when there are [market-based rates], the effect on rates is not of concern")).

⁷³ *Id.* at 24-25, 31-32.

contracts, Applicants state that while Duke Ohio plans to enter into interconnection agreements with the Generating Facility LLCs and to purchase energy and capacity from affiliates, Duke Ohio will ensure that any necessary FPA section 205 filings related to any of these agreements, or any purchases of energy or capacity from an affiliate, will be made pursuant to prior authorization granted by the Commission pursuant to FPA section 205. Applicants state that no sales of power will be made between Duke Ohio and affiliates without prior authorization to the extent that such authorization is necessary.

6. AEP's Comments

58. AEP notes that the driver for the Proposed Transaction is Ohio's restructuring law. AEP states that Ohio requires public utilities within its jurisdiction to implement full structural corporate separation and operate under a corporate separation plan approved by the Ohio Commission. AEP states that Ohio Power is subject to Ohio's restructuring law and that, like Duke Ohio, Ohio Power filed an application for corporate separation with the Ohio Commission (Ohio Power Application), and intends to file an application under section 203 with this Commission. AEP states that, as contemplated by the Ohio Power Application, Ohio Power is proposing to transfer its generating assets to AEP Generation Resources. AEP does not take a position on Applicants' filing but asserts that "there should be equal treatment regarding the application of Section 203 of the FPA to matters that will affect both AEP and [Duke Ohio]." ⁷⁴ AEP states that it "expects that consistency will be the Commission's intention, but seeks to ensure that there are not unintended outcomes, particularly as to [certain assets] in which [Duke Ohio] and Ohio Power both have interests." ⁷⁵ Accordingly, AEP requests that, in the context of the Commission's review of its yet-to-be-filed application under section 203, the Commission treat entities subject to the Ohio restructuring law comparably and that the provisions of the FPA should be applied in a consistent and non-discriminatory manner.

59. AEP does not contest the Proposed Transaction or request any relief or action that can be given in this proceeding. AEP's application, when filed, will be accorded the appropriate review under the FPA.

⁷⁴ AEP Comments at 5.

⁷⁵ *Id.* at 6.

7. Accounting Issues

a. Applicants' Request

60. In Attachment 1 to the Application, Applicants provided *pro forma* accounting entries to record the transfer of generation facilities, and other assets and liabilities, from Duke Ohio to its newly-created Generating Facility LLC subsidiaries, and the subsequent distribution of these subsidiaries to Cinergy, Duke Ohio's parent. Applicants request approval to forego the use of Account 102, Electric Plant Purchased or Sold, for the proposed transfer because the entities are under common control and the transfer will be recorded at book value.⁷⁶

b. Commission Determination

61. Account 102 is used as an interim control account to record all aspects of a transaction involving the acquisition or transfer of operating units or systems. The use of this account is an important accounting control that helps ensure that acquisitions and transfers of operating units or systems are properly accounted for, whether or not the entities involved in the transaction are members of the same corporate family. Therefore, we reject Applicants' request and will require Applicants to record the transfer through Account 102 consistent with the instructions of Electric Plant Instruction No. 5 of the Commission's Uniform System of Accounts.

8. Other Issues

62. Information and/or systems connected to the bulk system involved in this Proposed Transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, 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, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.⁷⁷

⁷⁶ Application at 41.

⁷⁷ See *Exelon Corp.*, 138 FERC ¶ 61,167 at P 134.

The Commission orders:

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

(B) Duke Ohio shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. Duke Ohio shall submit its final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the Proposed Transaction along with narrative explanations describing the basis for the entries.

(C) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the application.

(D) 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 costs, or any other matter whatsoever now pending or which may come before the Commission.

(E) 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.

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

(G) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(H) If Applicants seek to recover transaction-related costs through their transmission rates, they must first submit a compliance filing in this docket that details how they are satisfying the hold harmless requirement in addition to a section 205 filing. In particular, 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.

(I) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated. Applicants will include in this notification a description of any variations to the Proposed Transaction, as discussed in the body of this order, that have occurred.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.