

143 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Appalachian Power Company
Kentucky Power Company
AEP Generation Resources Inc.

Docket No. EC13-28-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued April 29, 2013)

1. On October 31, 2012, American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCo), Kentucky Power Company (KPCo), and AEP Generation Resources Inc. (AEP Generation) (collectively, Applicants) filed an application seeking authorization under sections 203(a)(1)(A) and 203(a)(1)(D) of the Federal Power Act (FPA)¹ for an internal reorganization involving transfers of certain generating facilities from AEP Generation to APCo and KPCo (Proposed Transaction) in conjunction with the termination of an existing generation pooling agreement (Pool Agreement).² The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.³ As discussed below, we will authorize the Proposed Transaction as consistent with the public interest.

¹ 16 U.S.C. §§ 824b(a)(1)(A), (D) (2006).

² As described in detail below, the Pool Agreement allows certain American Electric Power Company, Inc. (AEP) subsidiaries to operate their power supply facilities as an integrated system to meet their customers' energy requirements.

³ 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 *FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats.

(continued...)

I. Background

A. Description of the Parties

1. AEP and AEPSC

2. Applicants are direct or indirect subsidiaries of AEP. AEP is a multistate electric utility holding company. Its operating companies provide electric service at wholesale and retail in parts of eleven states.⁴ The AEP operating companies located within the PJM Interconnection, L.L.C. (PJM) footprint, APCo, KPCo, Indiana Michigan Power Company (I&M), Kingsport Power Company (Kingsport), Ohio Power Company (Ohio Power), and Wheeling Power Company (collectively, AEP East Companies), have transferred operational control of their transmission facilities to PJM. AEPSC is a service company that provides management and professional services to AEP and its utility operating companies.

2. APCo

3. APCo is a direct, wholly-owned subsidiary of AEP that is engaged in the generation, transmission, and distribution of electric power. It serves approximately one million retail customers in Virginia and West Virginia and has six wholesale customers under formula rates. APCo also has a full requirements wholesale power sales agreement with its affiliate, Kingsport.⁵ The total amount of generating capacity owned by APCo is approximately 6,800 megawatts (MW), including a one-third undivided interest in Unit No. 3 of the John E. Amos generating station. APCo owns transmission facilities that are

& Regs. ¶ 31,253 (2007) (*Supplemental 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). See also *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 (2006), FERC Stats. & Regs. ¶ 31,225 (2006).

⁴ AEP's operating companies serve customers in Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia.

⁵ Kingsport, which serves retail customers in Tennessee, does not own any generating facilities.

under the operational control of PJM. Transmission service is provided over such facilities pursuant to the PJM Open Access Transmission Tariff (PJM OATT).

3. KPCo

4. KPCo is a direct, wholly-owned subsidiary of AEP that is engaged in the generation, transmission, and distribution of electric power. It serves about 173,000 retail customers in eastern Kentucky. It also serves two wholesale customers under formula rates. The total amount of generating capacity owned by KPCo is approximately 1,080 MW. KPCo owns transmission facilities that are under the control of PJM. Transmission service is provided over such facilities pursuant to the PJM OATT.

4. AEP Generation

5. AEP Generation is an indirect, wholly-owned subsidiary of AEP that was formed on December 8, 2011 for the purpose of owning and operating the electric generation assets of Ohio Power.⁶ In a separate application filed in Docket No. EC13-26-000, Ohio Power and AEP Generation are requesting authorization for a transaction in which Ohio Power proposes to transfer its generating facilities and associated liabilities to AEP Generation in order to effectuate the corporate separation of Ohio Power's generation and marketing businesses from its transmission and distribution businesses pursuant to Ohio's restructuring law (Corporate Separation Transaction).⁷ On October 17, 2012, Ohio Power's corporate separation plan was approved by the Public Utilities Commission of Ohio.⁸ As more fully described below, upon consummating the Corporate Separation Transaction, AEP Generation is proposing to sell and APCo and KPCo to purchase AEP Generation's interests in two of the generating plants acquired from Ohio Power. Applicants anticipate that, upon completion of the Corporate Separation Transaction, AEP Generation will be a public utility and will have authority from the Commission to make wholesale power sales at market-based rates.

⁶ Ohio Power is a direct, wholly-owned subsidiary of AEP.

⁷ Orders authorizing the Corporate Separation Transaction and the merger of APCo and Wheeling Power Company are being issued by the Commission concurrently with this order.

⁸ Public Utilities Commission of Ohio, Finding and Order, Case No. 12-1126-EL-UNC, Approval of Amendment to Ohio Power's Corporate Separation Plan (filed as Exhibit L to Ohio Power and AEP Generation's application in Docket No. EC13-26-000).

B. The Pool Agreement

6. Applicants state that, for approximately 60 years, APCo and KPCo have been parties to the Pool Agreement among the AEP East Companies that own generating facilities: APCo, I&M, KPCo, and Ohio Power (collectively, the Pool Members). Applicants explain that, pursuant to this arrangement, the Pool Members have engaged in integrated planning and operation of their power supply facilities and allocated generation-related costs and benefits among the Pool Members. Under the Pool Agreement, the Pool Members combine their power supply facilities to operate as an integrated system, with AEPSC as agent. Thus, the Pool Members have jointly satisfied their combined needs for capacity and energy, even though some Pool Members from time to time had surplus generating capacity while other Pool Members were capacity deficient. In this regard, Applicants state that, for a number of years, APCo and KPCo have been capacity deficient Pool Members.⁹

7. Applicants explain that, due to various major changes affecting the electric utility industry, including the introduction of open access to transmission facilities and advent of regional transmission organizations, the Pool Members have decided to terminate the Pool Agreement effective January 1, 2014.¹⁰ Applicants further state that, with the termination of the Pool Agreement, APCo and KPCo will be required to obtain additional generation to enable them to satisfy their capacity requirements in PJM and to meet their customers' energy requirements. Applicants state that the Proposed Transaction will allow APCo and KPCo to meet these requirements in a cost effective way.¹¹

⁹ Application at 5-7.

¹⁰ Concurrently with this filing, AEPSC filed an application under section 205 of the FPA providing for the termination of the Pool Agreement and proposing a Power Coordination Agreement among APCo, KPCo, and I&M. AEP Generation and Ohio Power will also have an agreement (Bridge Agreement) with APCo, KPCo, and I&M to address transition issues associated with termination of the Pool Agreement, such as how the companies will meet their Fixed Resource Requirement obligations in PJM through May 31, 2015, and how they will address existing marketing and trading arrangements with third parties. *See* Docket Nos. ER13-233-000, ER13-234-000, ER13-235-000, ER13-236-000, and ER13-237-000. These filings are currently pending before the Commission.

¹¹ Application at 7.

C. Description of the Proposed Transaction

8. Applicants state that the purpose of the Proposed Transaction is to transfer to APCo and KPCo certain of the generating facilities acquired, as a result of the Corporate Separation Transaction, by AEP Generation from Ohio Power. According to Applicants, as a result of the Proposed Transaction, APCo and KPCo will be able to satisfy their capacity requirements in PJM and provide baseload generation to meet their customers' energy requirements when the Pool Agreement is terminated.¹²

9. Specifically, Applicants are requesting authorization for AEP Generation to sell and APCo to purchase the two-thirds undivided interest in Unit No. 3 of the John E. Amos generating station and for AEP Generation to sell and each of APCo and KPCo to purchase a 50 percent undivided interest in the Mitchell generating station. Applicants state that the interests will be acquired at net book value, which is equal to the net book value of these facilities in the hands of Ohio Power.

10. The John E. Amos generating plant is a three-unit coal-fired power plant located in Winfield, West Virginia with an average annual capacity rating of 2,900 MW. Ohio Power currently owns an undivided two-thirds interest in Amos Unit No. 3 (867 MW), while APCo owns the remaining one-third undivided interest (433 MW). The Mitchell generating station is a two-unit coal-fired plant located in Moundsville, West Virginia and has an average annual capacity rating of 1,560 MW. Ohio Power currently owns the entire Mitchell generating station.

11. Applicants state that there are several steps involved in the Proposed Transaction. First, AEP Generation will create two wholly-owned subsidiaries, NEWCO Appalachian and NEWCO Kentucky. AEP Generation will contribute its interest in Amos Unit No. 3 and a 50 percent undivided interest in the Mitchell plant to NEWCO Appalachian and will contribute the remaining 50 percent undivided interest in the Mitchell plant to NEWCO Kentucky. AEP Generation will then distribute the shares of NEWCO Appalachian and NEWCO Kentucky to its direct parent, an intermediate holding company.¹³ The intermediate holding company will then distribute the shares of NEWCO Appalachian and NEWCO Kentucky to its direct parent, AEP. Finally, NEWCO Appalachian will merge with and into APCo, with APCo being the surviving

¹² *Id.* at 8.

¹³ AEP Generation's immediate parent will be an intermediate holding company between AEP Generation and AEP Generation's ultimate parent, AEP.

entity, and NEWCO Kentucky will merge with and into KPCo, with KPCo being the surviving entity.¹⁴

12. The relevant mergers will be effectuated according to the terms of the Agreement and Plan of Merger and the Asset Contribution Agreement between APCo and NEWCO Appalachian and the Agreement and Plan of Merger and the Asset Contribution Agreement between KPCo and NEWCO Kentucky. The distribution of the shares of NEWCO Appalachian and NEWCO Kentucky by AEP Generation to its direct parent, and from its direct parent to AEP, will be carried out pursuant to board resolutions.¹⁵

II. Notice of Filing and Responsive Pleadings

13. Notice of the Application was published in the *Federal Register*, 77 Fed. Reg. 67,356 (2012), with interventions and protests due on or before December 17, 2012. On December 4, 2012, the Kentucky Attorney General and Kentucky Industrial Utility Customers, Inc. (collectively, Kentucky Protestors) filed a motion for extension of the comment date to January 14, 2013, and motion for shortened period to respond. On December 13, 2012, the Commission published notice that the date for responding to the motions was shortened to and including December 14, 2012. On December 14, 2012, the Applicants and the West Virginia Consumer Advocate filed answers to the Kentucky Protestors' motion. On December 17, 2012, the Commission extended the comment date to January 14, 2013.

14. Timely motions to intervene were filed by the Blue Ridge Power Authority; CPV Power Development, Inc.; Duke Energy Corporation; the Indiana and Michigan Municipal Distributors Association; the Industrial Energy Users-Ohio; the Old Dominion Electric Cooperative; Steel Dynamics, Inc.; and the West Virginia Consumer Advocate Division. The Virginia State Corporation Commission (Virginia Commission) and Public Service Commission of West Virginia (West Virginia Commission) filed notices of intervention and the Public Service Commission of the Commonwealth of Kentucky (Kentucky Commission) filed a notice of intervention and comments. Motions to intervene and protests were filed by the Kentucky Protestors; the Office of the Attorney General of Virginia, Division of Consumer Counsel (Virginia Consumer Counsel); and the Old Dominion Committee for Fair Utility Rates and East Tennessee Energy Consumers (collectively, Customer Protestors). A motion to intervene and supportive

¹⁴ Application at 9.

¹⁵ *Id.* at 9-10. The forms of each of these agreements are filed as Exhibit I to the Application.

comments were filed by Exelon Corporation (Exelon). On January 29, 2013, Applicants filed an answer.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Authorization of Proposed Transaction Under Section 203

1. Standard of Review Under Section 203

17. 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."¹⁶ The Commission's analysis of whether a transaction is consistent with the public interest generally involves the consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁷ 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."¹⁸ 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.¹⁹

¹⁶ 16 U.S.C. § 824b(a)(4) (2006).

¹⁷ See *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁸ 16 U.S.C. § 824b(a)(4).

¹⁹ 18. C.F.R. § 33.2(j) (2012).

2. Effect on Competition

a. Applicants' Analysis

18. Applicants assert that the Proposed Transaction will have no adverse effect on horizontal competition because no generation will enter or leave the AEP corporate family as a result of the Proposed Transaction. Therefore, Applicants state that the Proposed Transaction cannot have a concentrating effect under the Commission's horizontal market power analysis.²⁰ Further, according to Applicants, the Commission has previously determined that internal corporate reorganizations, such as the Proposed Transaction, have no adverse effect on competition.²¹

19. Applicants also state that the Proposed Transaction will not have an adverse effect on vertical market power because the Proposed Transaction is an internal corporate reorganization and will not result in the AEP corporate family owning or controlling any new entities that provide inputs to electricity products or electric generation products. Applicants further state that the Proposed Transaction does not involve the transfer of transmission facilities, except limited facilities needed to connect the Amos Unit No. 3 and Mitchell generating units to the grid. Moreover, Applicants state that APCo and KPCo previously turned over operational control of their transmission facilities to PJM. According to Applicants, wholesale transmission service over such facilities will continue to be provided pursuant to the rates and terms of the PJM OATT on file with the Commission, thus eliminating any concern about transmission-related vertical market power.²²

²⁰ Application at 12 (citing *American Electric Power Service Corp.*, 100 FERC ¶ 61,346 (2002) (finding that “transfers that realign facilities under the same parent company generally will not change the concentration of generation ownership in the market” and thus do not raise competitive concerns)).

²¹ *Id.* (citing *Ameren Corp.*, 131 FERC ¶ 61,240, at P 18 (2010) (holding that there will be no adverse effect on horizontal competition when the transaction involves an intra-corporate transfer of generating assets); *Cinergy Corp.*, 126 FERC ¶ 61,146, at P 32 (2009) (holding “[c]onsistent with our precedent, we find that the Proposed Transaction will have no adverse effect on competition.”) (citations omitted)).

²² *Id.* at 13 (citing *Cinergy Corp.*, 140 FERC ¶ 61,180, at P 37 (2012) (“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 have been turned over to PJM, the Proposed Transaction will have no adverse effect on horizontal or vertical competition.”); *EDF Dev., Inc.*, 126 FERC ¶ 61,141, at

(continued...)

b. Comments

20. Exelon states that it supports the Proposed Transaction because it will enhance wholesale competition and enable competitive retail markets in Ohio.²³

c. Commission Determination

21. Applicants have shown that the Proposed Transaction does not raise any horizontal or vertical market power concerns. The Proposed Transaction involves an internal corporate reorganization, with no transfer of generating facilities outside the AEP corporate family. Therefore, the Proposed Transaction will result in no change in market concentration. Also, the Proposed Transaction does not raise vertical market power concerns because operational control of APCo's and KPCo's transmission facilities has been turned over to PJM. For these reasons, we find that the Proposed Transaction will have no adverse effect on competition.

3. Effect on Rates

a. Applicants' Analysis

22. Applicants state that the Proposed Transaction will not have an adverse impact on rates charged to wholesale customers. They state that APCo currently has six wholesale customers served under formula rate agreements, as well as one contract under which it provides wholesale requirements service to Kingsport. Applicants state that KPCo makes sales to two wholesale customers under formula rate agreements.²⁴

23. Applicants state that, to the extent that the acquisition by APCo and KPCo of the interests in the two plants would affect rates under these agreements, it is because both companies will be unable to meet their capacity obligations through the Pool Agreement once it is cancelled. Applicants state that the costs associated with meeting their PJM

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.”) (citations omitted); *Okla. Gas & Elec. Co.*, 124 FERC ¶ 61,239, at P 57 (2008) (“[T]urning over functional control of an applicant’s transmittal facilities to a Commission-approved RTO mitigates vertical market power concerns.”)).

²³ Exelon Comments at 1.

²⁴ Application at 15.

requirements and providing their customers with wholesale power, whether by acquiring existing generation, constructing new generation, or purchasing power, will naturally affect the rates their wholesale customers pay.²⁵ They note, however, that once the Proposed Transaction is complete, APCo and KPCo will no longer make capacity and/or energy payments under the Pool Agreement and thus will no longer flow those costs through their respective formula rates.²⁶

24. Applicants argue that their wholesale customers will not be adversely affected by the Proposed Transaction because “these customers do not have a contractual right to receive service from specific generating resources; nor do their formula rate contracts limit APCo’s or KPCo’s rights to acquire generating resources as needed to serve their respective customers.”²⁷ Further, Applicants claim that APCo’s and KPCo’s wholesale customers were aware when they entered into long-term power purchase agreements that, during the terms of such agreements, APCo and KPCo, respectively, might need to build or acquire additional generating capacity and that the costs associated with that capacity would flow through the formula rates.²⁸

²⁵ Applicants assert the Commission does not analyze rate changes under section 203 that would occur regardless of the transaction and that investment in transmission may offset costs incurred by the Proposed Transaction. *See* Application at 16, n.24 (citing *Boston Generating, LLC, et al.*, 113 FERC ¶ 61,016, at P 26 (2005) (“In reviewing an application under section 203 the Commission looks at the effects of the transaction on rates, not at rate changes that may occur regardless of the transaction.”); *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at PP 123-124 (2007) (“We disagree . . . that increased investment in both transmission and generation assets cannot be a countervailing benefit that allows a transaction that may increase rates to be consistent with the public interest. . . . [T]he Commission finds that any increased costs . . . attributable to prudent transmission investment do not make the Transaction contrary to the public interest.”)).

²⁶ Application at 16.

²⁷ *Id.* (citing *Pub. Serv. Elec. & Gas Co.*, 88 FERC ¶ 61,299, at 61,917 (1999) (rejecting wholesale customer’s argument that it would be adversely affected by a transaction that would change the mix of generating resources and thereby could raise energy prices, and observing that the customer had “no contractual right under the [agreement] to receive service from specific generating resources . . . nor does the contract prevent the acquisition or sales of facilities by [seller].”)).

²⁸ *Id.*

25. With respect to wholesale rates under the Pool Agreement, Applicants state that, because they have agreed to terminate the Pool Agreement, the Proposed Transaction will have no impact under that agreement. Moreover, contemporaneously with the filing of the Application, AEPSC filed an application under section 205 of the FPA providing for the termination of the Pool Agreement and proposing a Power Coordination Agreement among APCo, I&M, and KPCo.²⁹ Applicants state that, under the new arrangement, APCo, I&M, and KPCo will need to have sufficient capacity and energy to meet their respective loads. Applicants state that this agreement will be subject to the Commission's review and approval in the section 205 proceeding.³⁰

26. Applicants further state that the Proposed Transaction will not have an adverse impact on transmission customers. They note that AEP Generation will not transfer any transmission facilities, except limited facilities needed to connect the transferred generating units to the grid. They state that no transmission facilities that are part of the bulk transmission system or included in transmission rate base will be transferred to APCo or KPCo. Therefore, Applicants argue that the Proposed Transaction will not cause APCo and KPCo to incur additional transmission costs that will flow through AEP pricing zone rates under the PJM OATT, and therefore the Proposed Transaction will have no adverse impact on transmission rates.³¹

27. Applicants state that, consistent with Commission policy and precedent under section 203, APCo and KPCo commit to hold their wholesale customers harmless from any transaction costs related to the Proposed Transaction for a period of five years following the closing date of the Proposed Transaction.³²

b. Protests

28. Customer Protestors argue that the Applicants have failed to demonstrate that the Proposed Transaction will have no adverse impact on rates. Therefore, they request that the Commission set the matter for a full evidentiary hearing. Customer Protestors argue that the Application has almost no information regarding the costs of the Proposed Transaction to APCo and the effects on the rates charged to its customers, which makes it

²⁹ See Docket Nos. ER13-233-000, ER13-234-000, ER13-235-000, ER13-236-000, and ER13-237-000 (pending before the Commission).

³⁰ Application at 17.

³¹ *Id.*

³² *Id.* at 14.

impossible for the Commission to ensure that rates will not be adversely affected by the Proposed Transaction. Customer Protestors assert that if Amos Unit No. 3 and the undivided interest in the Mitchell plant are transferred to APCo at a price (i.e., net book value) that exceeds their value, APCo's cost of service will be inflated. Customer Protestors reason that as a result, the Proposed Transaction could increase the rates of APCo's customers, including members of the Old Dominion Committee, a group of large industrial retail customers, and that members of East Tennessee Energy Consumers could be similarly affected since they are retail customers of Kingsport, a full requirements customer of APCo.³³

29. Customer Protestors also question Applicants' proposed hold harmless commitment. Specifically, Customer Protestors note that, in asserting that this commitment will provide adequate customer protection, Applicants have done nothing more than reference the Commission's decision in *Cinergy Corp.*³⁴ Customer Protestors question under what circumstances the Applicants' hold harmless obligation will be triggered and if those conditions would result in the potential for excessive rates.³⁵ Further, Customer Protestors assert that it is unclear how transaction costs will be measured or how savings will be calculated for purposes of demonstrating that the Proposed Transaction produced savings that exceeded the transaction-related costs. Customer Protestors maintain that this lack of information concerning the calculation of costs and savings raises substantial questions about whether the Applicants' proposed hold harmless commitment provides adequate protection for customers.³⁶

30. Finally, Customer Protestors argue that because the Tennessee Regulatory Authority, which has jurisdiction over Kingsport, cannot be expected to review the transaction, the Commission should scrutinize the cost and rate implications of the Proposed Transaction for Kingsport's retail customers.³⁷

³³ Customer Protestors' Protest at 4-5.

³⁴ 140 FERC ¶ 61,180 (2012).

³⁵ Customer Protestors' Protest at 5-6.

³⁶ *Id.* at 6-7.

³⁷ *Id.* at 7.

31. Kentucky Protestors assert that the impact on rates for KPCo's captive customers from the Proposed Transaction is unknown because the Applicants did not include any information in the Application that addresses the issue.³⁸

c. Answer

32. Applicants respond that the protests concern retail rate issues, not wholesale rate issues, and note that none of their wholesale customers protested the Application.³⁹ Applicants submit that Customer Protestors acknowledge that the state commissions in Virginia, West Virginia, and Kentucky will conduct their own reviews of the Proposed Transaction pursuant to their respective state laws. Applicants argue that the Commission should reject Customer Protestors' call for a hearing because Customer Protestors do not contest the Proposed Transaction's impact on wholesale rates. Furthermore, Applicants suggest that the Commission should not review the retail rate implications for Tennessee because the implications are the same as those before the Virginia and West Virginia Commissions.⁴⁰ Moreover, Applicants assert that Customer Protestors overlook the fact that the generation demand-related and energy-related components of its requirements contract with Kingsport are fixed and APCo cannot revise these charges without Commission approval under section 205.⁴¹ Applicants also state that the Kentucky Protestors' concerns regard retail rates and should also be addressed at the state level.⁴²

33. Applicants reiterate that their hold harmless commitment is consistent with Commission precedent and state that Customer Protestors' arguments amount to a request for clarification on how the commitment works. Therefore, they state these arguments should be rejected.⁴³

³⁸ Kentucky Protestors' Protest at 8.

³⁹ Applicants' Answer at 3-4.

⁴⁰ *Id.* at 9-10.

⁴¹ *Id.* at 9-10, n.13.

⁴² *Id.* at 6.

⁴³ *Id.* at 9, n.12.

d. Commission Determination

34. 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 will have on jurisdictional 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 transaction.⁴⁴ We find that the Proposed Transaction will not have an adverse effect on rates, as discussed more fully below.

35. Under the circumstances presented, the Commission finds that the Proposed Transaction will not have an effect on jurisdictional rates that is inconsistent with the public interest. In reviewing an application under section 203, the Commission looks at the effects of the transaction on rates, not the rate changes that may occur regardless of the transaction.⁴⁵ Applicants have provided adequate assurances that the Proposed Transaction will not have any adverse effect on jurisdictional transmission rates, and no party has argued otherwise. Furthermore, we are persuaded that any impact on APCo's and KPCo's wholesale customers from acquiring the Amos and Mitchell plant interests will result from termination of the Pool Agreement and, consequently, from APCo's and KPCo's need to acquire additional capacity, whether through construction of new generating plants, an acquisition of existing generating resources, or purchases of power, to meet their PJM capacity requirements. We emphasize that the rate impact of termination of the Pool Agreement is not before us in this proceeding; it is before the Commission in AEP's section 205 filings.⁴⁶

36. We recognize that any impact on wholesale rates of APCo and KPCo could affect retail rates of those companies. The Commission's examination of a section 203 transaction's rate impact does not concern the transaction's retail rate impacts, unless a state specifically asks the Commission to consider such rate impacts.⁴⁷ The role of the

⁴⁴ See *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 23 (2010); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 25 (2008); *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 120 (2007).

⁴⁵ *Boston Generating, LLC, et al.*, 113 FERC ¶ 61,016, at P 26 (2005).

⁴⁶ See Docket Nos. ER13-233-000, ER13-234-000, ER13-235-000, ER13-236-000, and ER13-237-000 (pending before the Commission).

⁴⁷ See *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,128.

relevant state commission is, among other things, to consider such effects.⁴⁸ No state commission, including Tennessee, has requested an examination here of retail rate impacts. Furthermore, there is no mechanism for APCo to flow through increased costs to Kingsport because the generation demand-related and energy-related components of the requirements contract are fixed.

37. We accept Applicants' commitment to hold harmless wholesale customers from transaction-related costs for a period of five years, consistent with Commission precedent.⁴⁹ We interpret Applicants' commitment to apply to all transaction related-costs, including costs related to consummating the Proposed Transaction. The Commission will be able to monitor Applicants' hold harmless commitment under its authority under section 301(c) of the FPA⁵⁰ and the books and records provision of the Public Utility Holding Company Act of 2005,⁵¹ and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.

38. If APCo or KPCo seek to recover transaction-related costs through their wholesale 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 APCo or KPCo 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.⁵² We also note that if APCo or KPCo seek to recover transaction-related costs in a filing in such five-year period, whereby APCo or KPCo is proposing a *new* rate (either a new formula rate or a new standard rate), then that filing must be made in a *new* section 205 docket as well as in the

⁴⁸ See *NSTAR*, 131 FERC ¶ 61,098, at P 26 (2010); *National Grid plc and Keyspan Corp.*, 117 FERC ¶ 61,080, at P 54 (2006); see also *Az. Pub. Serv. Co.*, 141 FERC ¶ 61,154, at P 43 (2012); *San Diego Gas & Elec. Co.*, 137 FERC ¶ 61,232, at P 34 (2011).

⁴⁹ See *Exelon Corp.*, 138 FERC ¶ 61,167, at P 118 (2012); *ITC Midwest LLC*, 133 FERC ¶ 61,169, at PP 24-25 (2010).

⁵⁰ 16 U.S.C. § 825(c) (2006).

⁵¹ 42 U.S.C. § 16452 (2006).

⁵² In this case the filing would be a compliance filing in both the sections 203 and 205 dockets.

instant section 203 docket.⁵³ The Commission will notice such filing for public comment. In such filings, APCo and KPCo 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 rates from being adversely affected by the Proposed Transaction.

39. We also find that the Proposed Transaction will have no adverse effect on transmission rates. We note that AEP Generation is not transferring any transmission facilities that are part of the bulk transmission system or included in transmission rate base and that the rates set for the use of the transmission facilities owned by APCo and KPCo are set forth in the PJM OATT.

4. Effect on Regulation

a. Applicants' Analysis

40. Applicants argue that the Proposed Transaction will have no adverse impact on regulation, at either the state or the federal level. Applicants state that the Proposed Transaction will not diminish the Commission's regulatory authority because each of APCo and KPCo will continue to be a public utility and will continue to be subject to the Commission's FPA jurisdiction. Applicants further state that the Commission will have jurisdiction over wholesale sales from the generating assets of APCo and KPCo, including the Amos Unit No. 3 and Mitchell plant, after the Proposed Transaction closes. Accordingly, Applicants maintain that the Proposed Transaction will have no adverse effect on federal regulation.⁵⁴

41. Applicants state that the Proposed Transaction also will not adversely affect state regulation. Applicants state that after the Proposed Transaction closes, APCo will continue to be subject to regulation by the Virginia Commission and the West Virginia Commission, and KPCo will continue to be subject to regulation by the Kentucky Commission. Accordingly, Applicants state that the Proposed Transaction will not have an adverse effect on state regulation.⁵⁵

⁵³ In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket.

⁵⁴ Application at 18.

⁵⁵ *Id.*

b. Comments and Protests

42. The Virginia Consumer Counsel reminds the Commission of the regulatory dichotomy that exists between the jurisdiction of the Virginia Commission and the Commission and states that it is essential that any ruling on the instant Application not bind the Virginia Commission on the effect of the Proposed Transaction on retail rates.⁵⁶ The Virginia Consumer Counsel further informs the Commission that the Virginia Commission will likely explore the issue of the asset transfer to APCo and its cost.⁵⁷

43. Kentucky Protestors state that the Commission should recognize that the Kentucky Commission has independent authority to review components of the Proposed Transaction and requests that the Commission abstain from ruling until the Kentucky Commission has resolved the state level issues associated with the Proposed Transaction.⁵⁸ Furthermore, they suggest that the Commission should delay ruling on the Proposed Transaction until after the Kentucky Commission's proceedings conclude because of the deficiencies contained in the Application.⁵⁹ Kentucky Protestors state that the Commission should delay action because (1) Applicants did not identify the orders and approvals from state commissions, including the Kentucky Commission, that must be obtained for the Proposed Transaction as required by 18 C.F.R. § 33.2(i); and (2) the Kentucky Commission has authority to approve the financing of the KPCo portion of the Proposed Transaction and may determine the transfer is imprudent.

44. The Kentucky Commission states that KPCo has filed an application with it for the transfer and financing of the Mitchell plant interest.⁶⁰

⁵⁶ Virginia Consumer Counsel Protest at 8.

⁵⁷ *Id.* at 9. On December 18, 2012, APCo filed an application with the Virginia Commission in Case No. PUE-2012-00141 to request authorization to acquire the Amos Unit No. 3 and Mitchell plant interests.

⁵⁸ Kentucky Protestors' Protest at 2-4.

⁵⁹ *Id.* at 11-12.

⁶⁰ Kentucky Commission Comments at 1-2 (stating that the application has been docketed as PSCKY Case No. 2012-00589).

c. **Answer**

45. Applicants respond to Kentucky Protestors by stating that the state and federal proceedings are parallel and there is no need for the Commission to wait for the states to act. They state that as a general rule and in practice the Commission does not defer its own action on a section 203 application until the relevant states have acted.⁶¹

d. **Commission Determination**

46. 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.⁶² We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its authority over the affected companies after consummation of the Proposed Transaction.

47. In the Merger Policy Statement, the Commission stated that it 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. Further, the Commission stated that it will address such circumstances on a case-by-case basis.⁶³ We note that no state commission has requested that the Commission address the issue of the effect on state regulation.

48. The Kentucky Protestors request that the Commission delay ruling on the Proposed Transaction in order to allow the Kentucky Commission to rule on retail rate issues presented by the Proposed Transaction. We note that our approval of the Proposed Transaction does not decide any retail rate issues presented by the Proposed Transaction in state proceedings and, further, that it is not our policy to delay ruling when there are parallel proceedings.⁶⁴ Therefore, we will not delay action in order to allow the Kentucky Commission to rule on retail rate issues first.

⁶¹ Applicants' Answer at 4-5 (citing *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,127-128; *Allegheny Energy, Inc.*, 133 FERC ¶ 61,222 (2010)).

⁶² *Merger Policy Statement*, FERC Stats. & Regs. 31,044 at 30,124.

⁶³ *Id.* at 30,125.

⁶⁴ *Id.* at 30,127-128.

5. Cross-Subsidization

a. Applicants' Analysis

49. Applicants state that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Applicants note that when analyzing cross-subsidization issues under section 203, the Commission considers four matters: (1) 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, for the benefit of an associate company; (2) 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; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmissions service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) 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 FPA.⁶⁵

50. With regard to the first matter considered by the Commission when analyzing the potential for cross-subsidization, Applicants state that the transfer of jurisdictional facilities pursuant to the Proposed Transaction will not result in any improper cross-subsidization of a non-utility affiliate. They state that the Proposed Transaction is an internal asset transfer that involves the contemporaneous sequential transfer of certain generating units and related facilities from Ohio Power, a traditional public utility, to AEP Generation (which they state will also be a public utility when the Proposed Transaction closes, although not a traditional one), and then immediately to APCo and KPCo, which are traditional public utilities. They assert that AEP Generation serves merely as a “conduit” for the transfer of facilities between traditional public utilities because the facilities will transfer at net book value. Applicants state that the Proposed Transaction will not have an adverse effect on APCo’s or KPCo’s wholesale ratepayers because the purpose of the Proposed Transaction is to allow APCo and KPCo to satisfy their post-Pool Agreement capacity and energy obligations as described in section I.B

⁶⁵ 18 C.F.R. § 33.2(j)(1)(iii) (2012).

above. Finally, Applicants state that APCo and KPCo have made hold harmless commitments with regard to transaction-related costs incurred under the Proposed Transaction.⁶⁶

51. With regard to the second matter, the issuance of new securities, Applicants state that neither APCo nor KPCo will issue any securities in connection with the Proposed Transaction for the benefit of an associate company. Applicants state that APCo and KPCo will reflect the generating units on their balance sheets at Ohio Power's net book value and that financing for the Proposed Transaction will be provided in a way that generally maintains the companies' existing debt and equity ratios. Applicants state that as soon as practicable after closing of the Corporate Separation Transaction, Ohio Power pollution control revenue bonds (PCRBs) that have tender dates prior to the closing would be transferred by Ohio Power to AEP Generation, the only non-traditional utility involved in the transaction. The PCRBs that have tender dates after the closing would transfer to AEP Generation on or about their tender dates. Applicants state that AEP Generation will be made contractually responsible for the costs of carrying the transferring PCRBs after closing. Applicants state that, to the extent permitted, the series of Ohio Power PCRBs related to Amos Unit No. 3 and the Mitchell plant will be further transferred to APCo and KPCo, as appropriate. To accomplish such transfer, each of APCo and KPCo will reissue new, separate PCRBs in its own name and transfer the proceeds from the reissued PCRBs to redeem the series of PCRBs related to Amos Unit No. 3 and the Mitchell plant, releasing Ohio Power from any further obligation for such PCRBs. APCo and KPCo will be made contractually responsible for costs of carrying these transferring PCRBs after closing.⁶⁷

52. With regard to the third matter considered, Applicants state that neither APCo nor KPCo will enter into any new pledge or encumbrance of its assets in connection with the Proposed Transaction, at the time of the Proposed Transaction or in the future.⁶⁸

53. Regarding the fourth matter considered, new affiliate contracts, Applicants state that other than the transaction agreements and the Power Coordination Agreement and Bridge Agreement, APCo and KPCo do not contemplate entering into any affiliate contracts related to the Proposed Transaction, at the time of the Proposed Transaction or in the future. Applicants note that APCo, KPCo, and I&M have agreed to enter into the Power Coordination Agreement, and APCo, KPCo, I&M, Ohio Power, and AEP

⁶⁶ Application at 20-21.

⁶⁷ *Id.* at 21-22.

⁶⁸ *Id.* at 23.

Generation have agreed to enter into the Bridge Agreement because of the cancellation of the Pool Agreement. Applicants state that these new arrangements will be subject to the Commission's review and authorization under section 205.⁶⁹

54. Applicants state that they have made a detailed showing regarding the absence of any improper cross-subsidization in the Application. Therefore, they request a waiver to provide any additional information pursuant to 18 C.F.R. § 33(j).⁷⁰

b. Protests

55. Kentucky Protestors state that Applicants have failed to show that the Proposed Transaction is consistent with the public interest because Applicants failed to show that it passes all the prongs of the Commission's cross-subsidization test. First, they state that the Proposed Transaction involves a transfer of facilities between a traditional public utility with captive customers, KPCo, and an associate company, AEP Generation. They state that Applicants' characterization of AEP Generation as a "conduit" between Ohio Power and APCo and KPCo is misguided because AEP Generation is the applicant in this proceeding and was not formed for the purpose of the Proposed Transaction. Therefore, the Kentucky Protestors claim that if the sales price is too high or the capacity is unneeded, then the captive retail customers in Kentucky would be subsidizing AEP's unregulated operations.⁷¹

56. Second, Kentucky Protestors assert that, as a result of the Proposed Transaction, KPCo would need to issue securities, either now or in the future, to pay for its share of the Mitchell plant. They state that this issuance of securities would likely benefit AEP Generation, since it will be able to sell the Mitchell plant interest without a loss and, potentially, at a cost above the fair market value.

57. Third, the Kentucky Protestors maintain that the Proposed Transaction will result in new affiliate contracts, including the merger agreement between KPCo and a non-utility associate company, NEWCO Kentucky. Thus, Kentucky Protestors argue that the Application fails to satisfy three of the four factors of the Commission's cross-subsidization test.⁷²

⁶⁹ *Id.*

⁷⁰ *Id.* at 31.

⁷¹ Kentucky Protestors' Protest at 6-7.

⁷² *Id.* at 7

58. Kentucky Protestors state that, because Applicants failed to provide the adequate assurances that the Proposed Transaction will not result in cross-subsidization of a non-utility associate company, AEP is required to explain how such cross-subsidization will be consistent with the public interest. Kentucky Protestors state that Applicants failed to meet this burden because they failed to address fundamental issues that would be considered if the Proposed Transaction were at arms-length, rather than a transaction between AEP affiliate companies.⁷³ Furthermore, Kentucky Protestors state that Applicants must show that the transaction was at the lower of cost or fair market value because the Commission's regulations, set forth in 18 C.F.R. § 35.44(b)(2), recognize the importance of ensuring that a transaction between a utility with captive customers and its affiliate is priced at the lower of cost or fair market value.⁷⁴

59. Kentucky Protestors also raise other issues that they argue the Applicants must address in order for the Proposed Transaction to be in the public interest, specifically: (1) that it does not have adverse impacts on KPCo's fuel diversity; (2) that it will not result in an excessive reserve margin;⁷⁵ (3) that it does not constitute a transfer of risk from AEP Generation to KPCo under the guise of meeting PJM reserve requirements;⁷⁶ and (4) that the Mitchell plant interest sold to KPCo are a reasonable, prudent, or least-cost option for KPCo to meet its reserve requirements.⁷⁷

60. Kentucky Protestors state that the Commission should deny Applicants' request for waiver of the requirement to provide additional information under 18 C.F.R. § 33.2(j). They assert that the magnitude of the costs associated with the Proposed Transaction requires additional information and scrutiny.⁷⁸ Kentucky Protestors state that the Applicants' submission fails to satisfy the Commission's requirements for cross-subsidization and therefore, the Commission should either dismiss the Application without prejudice and direct Applicants to re-file with greater detail or set the matter for

⁷³ *Id.*

⁷⁴ *Id.* at 7-8.

⁷⁵ *Id.* at 8.

⁷⁶ *Id.* at 8-9 (alleging that Applicants are using the transaction to put the market risk of the generation on KPCo's captive customers).

⁷⁷ *Id.* at 9-10.

⁷⁸ *Id.* at 10.

hearing. Alternatively, Kentucky Protestors state the Commission could wait for the Kentucky Commission's decision before acting.⁷⁹

c. Applicants' Answer

61. Applicants reply that, since Kentucky Protestors concede that the concerns they outline in their pleading relate to the impact of the Proposed Transaction on the captive retail customers of KPCo, Kentucky Protestors have filed their protest in the wrong forum. Applicants assert that these issues are properly raised before the state commissions and that Kentucky Protestors' attempt to raise them as failures of the Commission's cross-subsidization analysis is inappropriate.⁸⁰

62. Applicants reiterate that AEP Generation's role in the Proposed Transaction is a pass-through because the facilities will transfer to it at net book value and then immediately transfer to KPCo (and APCo) at the same net book value. Applicants argue that since AEP Generation's net on the transfer is zero, there is no subsidy of any kind conferred on it, including a subsidy from future issuances of securities by KPCo.⁸¹

63. Applicants also dispute Kentucky Protestors' contention that the very existence of a contract between affiliates, in and of itself, constitutes a failure of the cross-subsidization test. Applicants state that the agreement between KPCo and NEWCO Kentucky exists solely to implement a part of the Proposed Transaction and will have been fully performed once the Proposed Transaction closes. The Applicants state that Kentucky Protestors do not even attempt to explain how it could possibly result in impermissible cross-subsidization, and thus this contention warrants no further scrutiny.⁸²

64. Applicants conclude that Kentucky Protestors' cross-subsidization arguments center on whether the Proposed Transaction is prudent and whether KPCo is "paying too much for the Mitchell capacity." They state that the Kentucky Commission should make these determinations and that the Commission should reject them as issues under its cross-subsidization analysis.⁸³

⁷⁹ *Id.* at 10-11.

⁸⁰ Applicants' Answer at 6.

⁸¹ *Id.*

⁸² *Id.* at 6-7.

⁸³ *Id.* at 7.

d. Commission Determination

65. Based on the facts presented in the Application, 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.

66. The Commission's focus, as it pertains to cross-subsidization, "has been on preventing the transfer of benefits from a traditional public utility's captive customers to the shareholders of the public utility's holding company due to an intra-system transaction that involves power or energy, generation assets, or non-power good and services."⁸⁴ Furthermore, "the concern about cross-subsidization is principally a concern over the effect of a transaction on rates" and adequate ratepayer protections such as a hold harmless commitment can alleviate that concern.⁸⁵ We note that Applicants have made a hold harmless commitment to protect wholesale ratepayers from transaction-related costs.

67. The Proposed Transaction involves transfers of generation assets from a market-regulated merchant generator to two utilities with captive customers. However, the transfers of those assets from AEP Generation to APCo and KPCo are at the same prices that AEP Generation will pay for the assets, resulting in no net benefit or loss to AEP Generation. Therefore, there is no transfer of benefits from APCo and KPCo's captive customers to AEP's shareholders. Furthermore, as Applicants note, Kentucky Protestors' primary concern is the effect of the purchase prices on retail rates and other concerns relating to the prudence of the purchase, that is, whether KPCo is paying too much for the Mitchell plant interest.⁸⁶ As we note above, the Kentucky Commission is reviewing this transaction. We agree with Applicants that state commissions are the proper forums for the retail rate and prudence concerns raised by the Kentucky Protestors and no protestors raised the issue of the impact of the Proposed Transaction on wholesale rates.

⁸⁴ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200, at P 147 (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).

⁸⁵ Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 167.

⁸⁶ Kentucky Protestors' contention that Applicants must show that the Mitchell plant interest will be transferred to KPCo at the lower of cost or fair market value because the Commission's regulations, set forth in 18 C.F.R. § 35.44(b)(2), is misplaced. Section 35.44 of the Commission's regulations concerns the sale of non-power goods or services between a franchised utility with captive customers and a market regulated power sales affiliate and not the sale of generation assets.

68. Furthermore, Kentucky Protestors' concerns regarding cross-subsidization from issuance of new securities and affiliate contracts are unfounded. Any new securities issued by APCo and KPCo will be to effectuate the transfer of existing debt from Ohio Power to APCo and KPCo, through AEP Generation. As with the transfer price, this transfer of debt does not provide an opportunity for cross-subsidization to AEP Generation. Furthermore, the agreement between KPCo and NEWCO Kentucky is not a new affiliate contract that raises a cross-subsidy concern because it is limited in purpose and duration to only effectuate the Proposed Transaction and internal reorganization.

69. Therefore, we reject Kentucky Protestors' request that we require Applicants to re-file their application and deny their request to set the Proposed Transaction for hearing. We also deny Kentucky Protestors' request that we wait for the Kentucky Commission to resolve the retail rate issues before it. As stated above, it is not the Commission's policy to delay ruling on a pending transaction until after a state commission has acted. We grant Applicants' request for waiver to supply additional information pursuant to section 33.2(j) of the Commission's regulations in Exhibit M because the Applicants have provided the information required to show that the Proposed Transaction would not result in cross-subsidization in the body of the Application.

6. Other Issues

70. Information and/or systems connected to the bulk power system involved in the Proposed Transaction may be subject to reliability and cyber security 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 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, 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.

The Commission orders:

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

(B) Applicants must inform the Commission within 30 days of any material change in circumstances that departs from the facts the Commission relied upon in granting the application.

(C) 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.

(D) 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.

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

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

(G) 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. 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 of the entries.

(H) Applicants shall notify the Commission within 10 days of the date on which the transaction is consummated.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.