

143 FERC ¶ 61,075
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.

Ohio Power Company
AEP Generation Resources Inc.

Docket No. EC13-26-000

ORDER CONDITIONALLY AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued April 29, 2013)

1. On October 31, 2012, American Electric Power Service Corporation (AEPSC), on behalf of its affiliates Ohio Power Company (Ohio Power) and AEP Generation Resources Inc. (AEP Generation) (collectively, Applicants), filed an application under sections 203(a)(1)(A) and 203(a)(1)(D) of the Federal Power Act (FPA)¹ requesting authorization for an internal corporate reorganization that will result in the separation of Ohio Power's generation and power marketing businesses from its transmission and distribution businesses (Proposed Transaction). The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.² As discussed

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

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

below, we will conditionally authorize the Proposed Transaction as consistent with the public interest.

I. Background

2. Applicants state that, in 1999, the State of Ohio enacted legislation to allow Ohio retail electric customers to choose their own suppliers, beginning in 2001. The law also required electric utilities that supply competitive and non-competitive retail electric service to implement and operate under a corporate separation plan approved by the Public Utilities Commission of Ohio (Ohio Commission).³

3. According to Applicants, the Proposed Transaction “is being undertaken by Ohio Power pursuant to [the] Ohio restructuring law and has been approved by the Ohio Commission.”⁴ Applicants state that, as a result of the Ohio restructuring law, on March 30, 2012, Ohio Power filed with the Ohio Commission a proposal for full corporate separation of Ohio Power’s generation facilities from its transmission and distribution facilities. Under the separation plan, Ohio Power proposes to transfer its generation assets and other assets (including contractual entitlements) related to its generation business to AEP Generation, a newly-organized wholly-owned subsidiary of Ohio Power. The Ohio Commission approved Ohio Power’s corporate separation plan on October 17, 2012.⁵

A. Description of the Parties

1. American Electric Power Company, Inc. and AEPSC

4. American Electric Power Company, Inc. (AEP) is a multi-state electric utility holding company whose subsidiary operating companies provide electric service at wholesale and retail in parts of Ohio, Virginia, West Virginia, Tennessee, Kentucky, Indiana, Michigan, Arkansas, Louisiana, Texas, and Oklahoma. The AEP operating companies located within the PJM Interconnection, L.L.C. (PJM) footprint are Ohio Power, Appalachian Power Company (APCo), Kentucky Power Company (KPCo), Indiana Michigan Power Company (I&M), Kingsport Power Company (Kingsport), and Wheeling Power Company (Wheeling) (collectively, AEP East Companies). The AEP East Companies have transferred operational control of their transmission facilities to

³ Applicants October 31, 2012 Transmittal Letter at 13-14 (Application).

⁴ *Id.* at 12.

⁵ October 17, 2012 Ohio Commission Order in Case No. 12-1126-EL-UNC (Corporate Separation Order), filed as Exhibit L to the Application.

PJM. AEPSC is a service company that provides management and professional services to AEP and its utility operating subsidiaries.

2. Ohio Power

5. Ohio Power, a wholly-owned subsidiary of AEP, is an Ohio public utility engaged in the generation, transmission, and distribution of electricity in northwestern, east central, eastern, and southern Ohio.⁶ It serves about 1.5 million retail customers, serving more than 1,000 communities in 61 of Ohio's 88 counties. Applicants state that Ohio Power's generation is currently used to serve retail customers in its service area that are not served by a competitive retail electric service (CRES) provider under Ohio's retail choice program. Additionally, Ohio Power, along with the other AEP East Companies that own generation, helps to meet AEP's Fixed Resource Requirements (FRR) capacity obligations in PJM. Ohio Power has a full requirements wholesale power sales agreement with Wheeling, which serves West Virginia retail customers and does not own any generation. Ohio Power has an ownership interest in some or all of the units in 15 generating stations, totaling 11,700 megawatts (MW).⁷ Ohio Power also has contractual entitlements to purchase power.⁸

⁶ In 2011, Ohio Power merged with AEP's other wholly-owned Ohio utility subsidiary, Columbus Southern Power Company. *See Ohio Power Co.*, 136 FERC ¶ 62,001 (2011).

⁷ Specifically, in Ohio, Ohio Power has ownership interests in Cardinal Unit 1, Conesville Units 3, 4, 5, and 6, Darby Units 1, 2, 3, 4,5, and 6, General James M. Gavin Units 1 and 2, J.M. Stuart Units 1, 2, 3, and 4, Muskingum River Units 1, 2, 3, 4, and 5, Picway Unit 5, Racine Units 1 and 2, W.C. Beckjord Unit 6, Waterford Units 1, 2, 3, and 4, William H. Zimmer Unit 1. In West Virginia, it has ownership interests in John E. Amos Unit 3, Kammer Units 1, 2, and 3, Mitchell Units 1 and 2, and Philip Sporn Units 2, 4, and 5 (this order will refer to all of these interests, along with their associated interconnection facilities, as the Facilities).

⁸ These entitlements consist of a power purchase agreement with AEP Generating Company, a wholly-owned generating subsidiary of AEP, to purchase the output of the Lawrenceburg generating plant in Lawrenceburg, Indiana, station agreements with Buckeye Power, Inc. (Buckeye) and its affiliates relating to the Robert P. Mone plant in Van Wert, Ohio, and the Cardinal Plant under which Ohio Power operates those generating plants and Ohio Power and Buckeye and its affiliates have rights to capacity and energy from the plants. They also include an Inter-Company Power Agreement among Ohio Valley Electric Corporation (OVEC) and its sponsoring companies

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6. Applicants state that, for the past 60 years, Ohio Power and the other AEP East Companies that own generation have been parties to a pooling arrangement (Pool Agreement) under which they engage in the integrated planning and operation of their power supply facilities. Applicants state that, as a result of regulatory changes, including the Ohio Power corporate separation plan, Ohio Power and the other parties to the Pool Agreement have determined that the Pool Agreement has outlived its usefulness and have given each other notice of termination of the agreement effective January 1, 2014.⁹

3. AEP Generation

7. AEP Generation was formed on December 8, 2011, as a direct subsidiary of Ohio Power. As described below, upon closing of the Proposed Transaction, AEP Generation will still be an indirect, wholly-owned subsidiary of AEP, but it will no longer be a direct subsidiary of Ohio Power. Thus, the Proposed Transaction will achieve the structural corporate separation of Ohio Power's generation and marketing businesses from its transmission and distribution businesses. Applicants anticipate that, upon completion of the Proposed Transaction, AEP Generation will be a public utility and will have authority from the Commission to make wholesale power sales at market-based rates.

B. Description of the Proposed Transaction

8. Pursuant to the Proposed Transaction, Ohio Power proposes to transfer its existing generating units, contractual entitlements, fuel-related assets and contracts, and other generation-related assets to its wholly-owned subsidiary, AEP Generation, at net book value.¹⁰ The Proposed Transaction will not include the transfer to AEP Generation of contracts that Ohio Power has entered into to purchase renewable power from certain wind and solar facilities. At closing, AEP Generation will assume the liabilities associated with the transferred assets, including generation-related debt and liabilities associated with certain generating plants that have been retired. Ohio Power will then

(including Ohio Power), under which Ohio Power has rights to purchase power from OVEC-owned generating resources.

⁹ Application at 3. The termination of the Pool Agreement is discussed in filings under section 205 made concurrently with the Application in this proceeding. *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.

¹⁰ Applicants state that the Ohio Commission expressly approved the transfer of the Facilities at net book value. *Id.* at 15-16 (citing Corporate Separation Order in Case No. 12-1126-EL-UNC at 42).

distribute the shares of AEP Generation to AEP, which, in turn, will contribute this stock to a wholly-owned direct subsidiary holding company.¹¹

9. Applicants state that Ohio Power's long-term indebtedness is composed of general obligations that are not secured by the generation assets to be transferred and consist of two types, senior notes and pollution control revenue bonds. They state that Ohio Power may issue new notes to AEP and use the proceeds to manage debt maturities before the Proposed Transaction's close. According to Applicants, such notes would be subject to approval by the Ohio Commission. Applicants also state that their intention is for pollution control revenue bonds with tender dates that precede the Proposed Transaction's closing to be transferred to AEP Generation "as soon as practicable after closing."¹² To achieve this, AEP Generation or its holding company, would reissue new, separate pollution control revenue bonds in its own name and use the proceeds to redeem the existing bonds. Applicants expect this transfer to be completed within six months of the Proposed Transaction's closing. Applicants state that pollution control revenue bonds with tender dates after the Proposed Transaction's closing will transfer to AEP Generation in the manner described above on or about their tender dates. AEP Generation will be contractually responsible for the carrying costs of the transferring pollution control revenue bonds after the Proposed Transaction's closing. Applicants state that this arrangement is consistent with the Ohio Commission's ruling in the Corporate Separation Order.¹³

10. During a transition period beginning at the Proposed Transaction's closing through May 31, 2015, AEP Generation will sell capacity and energy to Ohio Power under a partial requirements wholesale Power Sales Agreement (PSA). According to Applicants, the PSA will allow Ohio Power to service Standard Service Offer (SSO) customers, that is, those Ohio Power retail customers that are not being served by a CRES provider before May 31, 2015. During this period, Ohio Power will procure a portion or all of the energy for its SSO customers through competitive energy auctions in addition to what it will receive pursuant to the PSA. Contemporaneously with filing of the Application in this proceeding, AEP Generation filed the PSA in Docket No. ER13-232-000.

¹¹ *Id.* at 15-17. The form of Asset Contribution Agreement filed as Exhibit I to the Application sets forth the terms of the Proposed Transaction.

¹² *Id.* at 16.

¹³ *Id.* at 17.

II. Notice of Filing and Responsive Pleadings

11. Notice of the Application was published in the *Federal Register*, 77 Fed. Reg. 67,356 (2012), with interventions and comments due on or before November 30, 2012. Notices of intervention were filed by the Public Service Commission of West Virginia, the Virginia State Corporation Commission, and the Kentucky Public Service Commission (Kentucky Commission).

12. Blue Ridge Power Agency, the Attorney General of the Commonwealth of Kentucky, CPV Power Development, the Indiana and Michigan Municipal Distributors Association, Buckeye, Old Dominion Electric Cooperative, FirstEnergy Service Company, and Duke Energy Corporation (Duke) filed motions to intervene.

13. The Industrial Energy Users-Ohio (IEU-Ohio) and the Ohio Consumers' Counsel (OCC) filed motions to intervene and protests. Exelon Corporation (Exelon) filed a motion to intervene and comments in support of the Application. Duke filed an answer to IEU-Ohio's protest on December 17, 2012. On December 17, 2012, Applicants also submitted an answer to IEU-Ohio's and OCC's protests. IEU-Ohio submitted an answer to Duke's and Applicants' answers. Applicants submitted a second answer on January 10, 2013. On January 14, 2013, the Kentucky Commission filed comments in this docket and in Docket Nos. EC13-27-000 and EC13-28-000.¹⁴

III. Discussion

A. Procedural Issues

14. 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.

¹⁴ In Docket No. EC13-27-000, Wheeling and APCo are seeking authorization for the merger of Wheeling into APCo (APCo-Wheeling Merger), and in Docket No. EC13-28-000, AEP Generation is seeking authorization to sell and APCo and KPCo to purchase interests in certain of the generating facilities now owned by Ohio Power that will be transferred to AEP Generation in the Proposed Transaction (APCo-KPCo Transaction). Those filings were also made on October 31, 2012. In its comments, the Kentucky Commission advised the Commission that, on December 19, 2012, KPCo had filed an application with the Kentucky Commission to request authorization to acquire such generating facilities from AEP Generation. Both the APCo-Wheeling Merger and the APCo-KPCo Transaction are being authorized in orders issued concurrently with this order.

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

B. Standard of Review Under Section 203

16. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁵ 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."¹⁶ 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.¹⁷

C. Analysis Under Section 203

1. Effect on Horizontal Competition

a. Applicants' Analysis

17. Applicants state 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. Applicants add that the Proposed Transaction thus cannot have a concentrating effect under the Commission's horizontal market power analysis.¹⁸

¹⁵ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁶ 16 U.S.C. § 824b(a)(4) (2006).

¹⁷ 18 C.F.R. § 33.2(j) (2012).

¹⁸ Application at 20-22.

b. Comments, Protests, and Answers

18. Exelon states that it supports the Proposed Transaction, as it will enhance wholesale competition and enable competitive retail markets in Ohio. Exelon asserts further that approval of the Proposed Transaction is necessary for Ohio Power to move from a cost-of-service model as a vertically-integrated utility to a model that relies upon a competitive wholesale and retail market structure.¹⁹

19. In its protest,²⁰ IEU-Ohio argues that Applicants have not demonstrated that the transfer of the Facilities to AEP Generation is consistent with competitive alternatives. Specifically, IEU Ohio argues that Ohio Power has failed to demonstrate that its proposal to transfer the Facilities to AEP Generation, an affiliate, at their net book value “is superior to a purchase price that reflects the full market value of the generation assets.”²¹ IEU-Ohio claims (based on evidence in another regulatory proceeding) that the fair market value of the Facilities exceeds net book value. IEU-Ohio asserts that, because the Proposed Transaction is an affiliate transaction between a market-regulated generator (AEP Generation) and a franchised utility (Ohio Power), the Applicants must demonstrate that the transfer price of the Facilities is similar to competitive alternatives.²² IEU-Ohio notes that, in *Ameren Energy Generating Co.*, the Commission announced that, in all future section 203 cases that involve the acquisition of an affiliate’s assets, it will review the transaction’s effect on competition based on the standards developed in *Boston Edison Co. Re: Edgar Energy Co.*²³ IEU-Ohio contends that Applicants have not

¹⁹ Comments of Exelon Corporation at 1.

²⁰ IEU-Ohio protested both the Proposed Transaction in this proceeding and the PSA filed in Docket No. ER13-232-000. We address in this order only those issues raised by IEU-Ohio that relate to the Proposed Transaction. The Commission will address the section 205 issues in Docket No. ER13-232-000.

²¹ IEU-Ohio Protest at 3.

²² *Id.* at 39-42.

²³ *Id.* at 39 (citing *Ameren Energy Generating Co.*, Opinion No. 473, 108 FERC ¶ 61,081, at P 59 (2004) (*Ameren*); *Boston Edison Co. Re: Edgar Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*)). In *Edgar*, which involved a wholesale power transaction between a franchised utility and an affiliate, the Commission gave three examples of how the franchised utility could demonstrate lack of affiliate abuse: (1) evidence of direct head-to-head competition between affiliated and unaffiliated suppliers; (2) evidence of the prices that non-affiliated buyers were willing to pay for similar services from the

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attempted to comply with the principles laid out in these cases. Among other things, Ohio Power did not undertake a competitive solicitation through a formal request for proposals, did not provide any evidence of the prices that non-affiliated entities would be willing to pay for the Facilities, and provided no “benchmarking” evidence of sales by non-affiliated sellers. Moreover, according to IEU-Ohio, Ohio Power and AEP Generation’s own numbers demonstrate that net book value is below the competitive market value for the Facilities. For these reasons, IEU-Ohio asks the Commission to reject the Application, or, alternatively, condition approval of the Proposed Transaction on an adjustment to the transfer price to reflect the higher of net book or market value.²⁴

20. Similarly, OCC argues that allowing Applicants to transfer the Facilities at net book value will adversely affect competition because the significant long-term value of these assets exceeds net book value. It concludes that the Proposed Transaction is likely to subsidize AEP Generation, the affiliate, at the expense of the Ohio Power’s residential utility consumers. According to the OCC, this subsidy will provide AEP Generation with an unfair advantage over other wholesale sellers. Consequently, OCC argues that the transfer of the Facilities should be at market value and that the long-term appreciation in value of the transferred units should go to Ohio Power’s customers.²⁵ Finally, while acknowledging that the Ohio Commission is permitting the transfer of the Facilities at net book value, OCC argues that, because rehearing of the Corporate Separation Order is pending, the Commission should make its own independent determination of whether transfer of the Facilities at net book value is in the public interest.²⁶

21. In response to IEU-Ohio, Applicants assert that the Commission has never applied the *Edgar* principles in the context of a state-approved transaction to effect state-mandated restructuring. Applicants point to other recent decisions in which the Commission approved generation transfers to affiliates at net book value to comply with Ohio’s restructuring requirements.²⁷

affiliate; and (3) “benchmark” evidence of the prices, terms and conditions of sales made by non-affiliated sellers.

²⁴ *Id.* at 42.

²⁵ Ohio Consumers’ Counsel Protest at 7.

²⁶ *Id.* at 8 -9.

²⁷ Applicants December 17, 2012 Answer at 6 (citing *Cinergy Corp.*, 140 FERC ¶ 61,180, at P 22 (2012); *Cinergy Corp.*, 126 FERC ¶ 61,146, at PP 24, 30, n.24 (2009); *FirstEnergy Corp.*, 112 FERC ¶ 61,243 (2005)).

22. Furthermore, Applicants state that the *Edgar* principles guard against affiliate abuse for the protection of captive retail customers, which is not a concern in this proceeding because the purpose of state-mandated restructuring in Ohio is to benefit retail customers, and the Ohio Commission has found that the transaction serves that purpose.²⁸ Also, Applicants point out that, under the Corporate Separation Order issued by the Ohio Commission, Ohio Commission staff, or an independent auditor, will audit the terms and conditions of the transfer of the generating assets “to ensure that no subsidiary or affiliate of [Ohio Power] that owns competitive generating assets has any competitive advantage due to its affiliation with [Ohio Power].”²⁹ Applicants note that the IEU-Ohio and OCC have already made similar arguments before the Ohio Commission, and that the Ohio Commission expressly concluded that the transfer of these assets at net book value is in the public interest.³⁰

23. With regard to IEU-Ohio’s allegation that Applicants’ own numbers indicate that the Facilities’ market value exceeds their net book value, Applicants assert that IEU-Ohio is referring to a study that contained no analysis of the stand-alone market valuation of these assets and “which was done for a completely unrelated purpose” and which “does not . . . purport to reflect the value of Ohio Power’s generation.”³¹

24. IEU-Ohio responds by stating that Ohio Power’s SSO and non-SSO customers are captive customers for capacity purchases through the term of the PSA. In particular, IEU-Ohio states that the PSA requires Ohio Power to receive and pay for “capacity supplied to Competitive Retail Electric Service . . . providers for non-SSO customers, pursuant to FRR-related obligations that [Ohio Power] claims under the PJM Reliability Assurance Agreement Among Load-Serving Entities (RAA).”³² IEU-Ohio claims that “both SSO and non-SSO customers are ‘captive’ to [Ohio Power] for non-competitive services and capacity during the entire term of the PSA.”³³ It also states that while CRES providers technically have the option of self-providing capacity, they cannot take advantage of this opportunity “during the life of the PSA” due to “the timing associated

²⁸ *Id.* at 7.

²⁹ *Id.* at 7-8 (citing Corporate Separation Order at ¶ 32(a)).

³⁰ *Id.* at 9-10.

³¹ *Id.* at 11.

³² IEU-Ohio January 2, 2013 Answer at 9.

³³ *Id.*

with the opportunity to self-provide.”³⁴ Hence, the *Edgar* standards apply to the Proposed Transaction and Applicants have the burden of proving that the transfer price of the Facilities is not the result of affiliate abuse and is calibrated to reflect the higher of fair market value or net book value.³⁵ Applicants respond by stating that IEU-Ohio’s answer “adds nothing substantive to the record and thus will not assist the Commission’s deliberative process.”³⁶

c. **Commission Determination**

25. Applicants have shown that the Proposed Transaction does not raise any horizontal 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.

26. In *Ameren*, the Commission stated that “[a]cquisitions involving affiliates have an inherent potential for discriminatory treatment in favor of the affiliate.”³⁷ As IEU-Ohio notes, the Commission announced that in future section 203 transactions involving the acquisition of an affiliate’s assets, the Commission would review the transaction’s effects on competition based on the standards developed in *Edgar* to “assure that a public utility’s acquisition of a plant from an affiliate is free from preferential treatment.”³⁸ The Commission noted its concern with “safety net” transactions, which involve transfers of merchant generation to an affiliated franchised electric utility when the market declines, thus giving the affiliated merchant generator a “safety net” that merchant generators not affiliated with a franchised utility lack. In order to demonstrate a lack of affiliate abuse in such circumstances, the Commission, invoking the *Edgar* standards, advised that, in future section 203 cases, the most effective way to show an absence of affiliate abuse would be through a formal solicitation for bids from other potential purchasers.³⁹

³⁴ *Id.*

³⁵ *Id.* at 10.

³⁶ Applicants January 10, 2013 Answer at 2.

³⁷ *Ameren*, 108 FERC ¶ 61,081 at P 59.

³⁸ *Id.*

³⁹ *Id.* P 67.

27. Subsequently, in connection with the merger of Duke Energy and Cinergy Corp. in 2005, the Commission addressed arguments by protestors that there was a “safety net” issue relating to an internal reorganization of the two merged companies, in which certain merchant generating plants owned by Duke Energy would be transferred to one of Cinergy Corp.’s franchised public utility subsidiaries.⁴⁰ The Commission noted that the analysis required by *Ameren* addresses the potential adverse effects on competition created by acquisitions involving affiliates because there was “an inherent potential for discriminatory treatment in favor of the affiliate.”⁴¹ The Commission further noted that in order for a profit-maximizing firm to have an incentive to pay an inflated price for an asset, it must be able to pass those inflated costs on to captive, cost-based ratepayers.⁴² The Commission went on to “clarify that the ‘safety net’ concern as discussed in *Ameren* is restricted to vertical foreclosure through regulatory evasion, which is relevant only if a utility can pass inflated costs onto captive cost-based customers.”⁴³

28. As an initial matter, we note that the facts of the present case do not raise the “safety net” concerns that the Commission addressed in *Ameren* and *Duke Energy*, in which the Commission’s focus was on the ability of a franchised utility to pass on to its captive customers inflated costs of generation assets purchased from an affiliate.⁴⁴ Moreover, Applicants are correct in pointing out that the Commission has not heretofore required *Ameren/Edgar* showings in any section 203 case in the context of intra-corporate generation transfers at net book value to comply with state restructuring initiatives.⁴⁵

29. Finally, we note that, since the addition of section 203(a)(4) in 2005⁴⁶ and the issuance of Order No. 669 and the Supplemental Policy Statement, the Commission has addressed the kinds of concerns described in *Ameren* by focusing upon whether a

⁴⁰ *Duke Energy Corporation and Cinergy Corp.*, 113 FERC ¶ 61,297 (2005) (*Duke Energy*).

⁴¹ *Id.* P 113.

⁴² *Id.* P 115.

⁴³ *Id.* P 116.

⁴⁴ *Id.*

⁴⁵ *Cinergy Corp.*, 140 FERC ¶ 61,180 at P 22; *Cinergy Corp.*, 126 FERC ¶ 61,146 at PP 24, 30; *FirstEnergy Corp.*, 112 FERC ¶ 61,243 at P 9.

⁴⁶ 16 U.S.C. § 824b(a)(4) (2006).

transaction subject to section 203 will result in inappropriate cross-subsidization.⁴⁷ If a section 203 applicant chooses not to include a traditional Exhibit M as part of its Application or explain why it qualifies for one of the “safe harbors” described in the Supplemental Policy Statement, it can instead make an *Ameren* showing.⁴⁸

30. For the foregoing reasons, we find that the Proposed Transaction will not have an adverse impact on competition.

2. Effect on Vertical Competition

a. Applicants’ Analysis

31. Applicants state that the Proposed Transaction only involves a change of control over generation. It does not involve transmission assets other than those “limited facilities needed to connect the generating units to the grid,”⁴⁹ or inputs to electric power generation. Therefore, Applicants assert that the Proposed Transaction raises no vertical market power concerns and no vertical competition analysis is necessary. Applicants add that Ohio Power has turned over operational control of its transmission facilities to PJM and that wholesale transmission service over such facilities will continue to be provided pursuant to the rates and terms of the PJM open access transmission tariff (OATT) on file with the Commission.⁵⁰

⁴⁷ *Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 13 (stating that the Commission’s cross-subsidization focus includes concerns about transactions where “a market-regulated affiliate . . . or a non-utility affiliate provides power or goods and services to a franchised public utility with captive customers . . . at a price above market or [where a franchised public utility with captive customers] sell[s] power to its marketing affiliate at below-market prices, thus transferring benefits from customers to shareholders”); Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 147 (stating that the Commission’s “primary focus has been on preventing a transfer of benefits from a traditional public utility’s captive customers . . . due to an intra-system transaction that involves power or energy, generation facilities, or non-power goods and services”).

⁴⁸ See, e.g., *FirstEnergy Service Company*, 143 FERC ¶ 61,062, at P 31 (2013).

⁴⁹ Application at 22.

⁵⁰ *Id.* at 21.

b. Commission Determination

32. We find that the Proposed Transaction will have no adverse effect on vertical competition because the Proposed Transaction involves an internal corporate reorganization and because Applicants have turned over operational control of their transmission facilities to PJM.

3. Effect on Rates

a. Applicants' Analysis

33. Applicants argue that the Proposed Transaction will not result in any adverse effect on wholesale transmission rates or wholesale requirements rates.⁵¹ Applicants state that Ohio Power currently has only one cost-of-service wholesale power sales agreement with its affiliate, Wheeling (Wheeling Contract). Applicants also state that AEPSC, on behalf of APCo and Wheeling, has contemporaneously filed an application under section 203 in Docket No. EC13-27 seeking approval for the APCo-Wheeling Merger. Contemporaneously with this transaction, AEPSC has also filed an application in Docket No. EC13-28-000 seeking authorization under section 203 for APCo to acquire from AEP Generation the two-thirds undivided interest in Unit 3 of the Amos generating plant and a 50 percent undivided interest in the Mitchell generating units (the APCo-KPCo Transaction), which are included among the Facilities to be transferred to AEP Generation in the Proposed Transaction.⁵²

34. Applicants state that if the APCo-Wheeling Merger closes at the same time as the APCo-KPCo Transaction, then the Wheeling Contract will terminate. If, however, the APCo-Wheeling Merger does not occur at the same time as the APCo-KPCo Transaction, AEP Generation will assume Ohio Power's obligations under the Wheeling Contract. In that event, however, since the non-fuel components of the Wheeling Contract are fixed, Applicants state that the Proposed Transaction would have no automatic impact on the contract's non-fuel charges.⁵³ Applicants state that modifying these charges would require a section 205 filing.

⁵¹ *Id.* at 22

⁵² This transaction also includes the sale of the Mitchell generating plant and appurtenant interconnection facilities and related assets and liabilities to APCo and KPCo. APCo and KPCo will each hold a 50 percent undivided interest in this plant.

⁵³ Wheeling's fuel charges under the Wheeling Contract will reflect the actual cost of the fuel consumed to serve its load. *Id.* at 23-24.

35. Applicants state that, consistent with Commission policy and precedent under section 203, Ohio Power commits to hold its wholesale transmission customers harmless from any transaction-related costs for a period of five years following the closing date. To the extent that the Wheeling Contract remains effective after the Proposed Transaction closes, AEP Generation commits to hold Wheeling harmless from any transaction costs related to the Proposed Transaction until the earlier of five years from closing or the date on which the Wheeling Contract terminates.⁵⁴

36. Applicants state that, contemporaneously with the filing of this Application, AEPSC has requested authorization in Docket Nos. ER13-233-000, ER13-234-000, ER13-235-000, ER13-236-000, ER13-237-000 to terminate the Pool Agreement. In Docket Nos. ER13-233-000, ER13-234-000, and ER13-235-000 AEPSC has also requested authorization for a Power Coordination Agreement among APCo, I&M, and KPCo. Applicants maintain that because the Pool Agreement's termination will occur contemporaneously with consummation of the Proposed Transaction, the Proposed Transaction will not affect the rates of, or charges to, other Pool Agreement members or their respective wholesale customers. Moreover, Applicants point out that the Power Coordination Agreement will be subject to the Commission's review and approval in the related section 205 proceeding.⁵⁵

37. Applicants state that the Proposed Transaction does not involve the transfer of transmission facilities, except those limited facilities that connect the generating units to the grid. They again point out that Ohio Power has turned over operational control of its transmission facilities to PJM and that 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. Applicants argue that the Proposed Transaction will not have an adverse impact on transmission customers within PJM because the rates for the AEP zone in PJM are derived from a cost-of-service formula. Applicants maintain that the only cost component of the formula that could be affected is the Ohio Power equity ratio used for determining the overall AEP return on equity component, because, following the Proposed Transaction's closing, Ohio Power will have a different capital structure. Applicants state, however, that Ohio Power's equity ratio – and thus its cost of capital – will not increase as a result of the Proposed Transaction. Applicants reason that since Ohio Power's equity ratio and its cost of capital can only decrease as a result of the Proposed Transaction, if there is any effect on transmission rates, the Proposed

⁵⁴ *Id.* at 22-23.

⁵⁵ *Id.* at 24-25.

Transaction will cause them to decrease. Consequently, there will not be any adverse impact on wholesale customers taking service under the PJM OATT.⁵⁶

38. Applicants state that in addition to wholesale customers that take service under the PJM OATT, AEP retail customers in Ohio and Virginia are billed (by Ohio Power and APCo) transmission costs based on the revenue requirement calculated under the AEP East formula rate in the PJM OATT. Applicants state that, for the reasons discussed in the preceding paragraph, to the extent that such customers' rates will be affected by the Proposed Transaction, they also will decrease. Accordingly, such customers likewise will not be adversely affected by the Proposed Transaction. Applicants state that the transmission component of the retail rates in jurisdictions other than Ohio and Virginia will be unaffected by the Proposed Transaction.⁵⁷

39. Applicants also state that they have undertaken the Proposed Transaction in compliance with a mandate imposed by the Ohio legislature and Ohio Commission. Furthermore, they state that the Ohio Commission has carefully reviewed and considered any retail customer impact resulting from the Proposed Transaction.

b. Commission Determination

40. 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. Our focus here is on the effect that the Proposed Transaction will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the transaction.⁵⁸ We find that the Proposed Transaction will not have an adverse effect on rates, as discussed more fully below.

41. We find that the Proposed Transaction will have no effect on wholesale rates. If the APCo-Wheeling Merger closes at the same time as the APCo-KPCo Transaction, the Wheeling Contract will terminate. If, however, the APCo-Wheeling Merger closes after the APCo-KPCo Transaction, the Proposed Transaction still would have no automatic impact on the rates under the Wheeling Contract, as the non-fuel components of the Wheeling Contract are fixed. We also find that the Proposed Transaction will have no

⁵⁶ *Id.* at 25-26.

⁵⁷ *Id.* at 26.

⁵⁸ 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).

adverse impact on wholesale requirements rates under the Pool Agreement because the Pool Agreement will terminate contemporaneously with the Proposed Transaction's consummation.

42. Furthermore, we find that the Proposed Transaction will have no adverse impact on transmission rates. We note that the only transmission facilities to be transferred are limited facilities that connect the generating units to the grid, and that Ohio Power has turned over operational control of its transmission facilities to PJM. 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. We note that the transmission rates for customers in the AEP zone of PJM are derived from a cost-of-service formula and that the only cost-of-service formula input that the Proposed Transaction could affect is Ohio Power's equity ratio. Because Ohio Power's equity ratio, and its cost of capital, will not increase as a result of the Proposed Transaction, the Proposed Transaction will not result in a transmission rate increase. Consequently, we find that the Proposed Transaction will not result in an adverse transmission rate impact.

43. We accept Ohio Power's commitment to hold harmless transmission customers and Wheeling from transaction-related costs.⁵⁹ If Ohio Power seeks to recover transaction-related costs through its transmission rates within five years of consummation of the Proposed Transaction, or through wholesale rates under the Wheeling Contract within the earlier of five years of consummation of the Proposed Transaction or termination of the Wheeling Contract, Ohio Power must submit a compliance filing that details how it is satisfying the hold harmless requirement. If Ohio Power seeks to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as the instant section 203 docket.⁶⁰ We also note that, if Ohio Power seeks to recover transaction-related costs in a filing whereby it is proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must

⁵⁹ Regarding formula rates, the Commission has found that a hold harmless commitment is enforceable and administratively manageable if customers have an opportunity to scrutinize costs before they are included in the formula rate, and therefore are able to alert the Commission to costs that might be transaction-related. *See Exelon Corp.*, 138 FERC ¶ 61,167, at P 120 (2012); *ITC Midwest LLC*, 133 FERC ¶ 61,169 at PP 24-25; *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 63 (2010); *PPL Corp.*, 133 FERC ¶ 61,083, at PP 26-27 (2010).

⁶⁰ In this case the filing would be a compliance filing in both the sections 203 and 205 dockets.

be made in a *new* section 205 docket as well as in the instant section 203 docket.⁶¹ The Commission will notice such filings for public comment. As part of the section 203 component of such a filing, Ohio Power must: (1) specifically identify the transaction-related costs it is seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction, in addition to any requirements associated with filings made under section 205. Such a hold harmless commitment will protect customers' transmission rates and wholesale power rates to Wheeling from being adversely affected by the Proposed Transaction.

44. The Commission will be able to monitor Applicants' hold harmless commitment under its authority under section 301(c) of the FPA⁶² and the books and records provision of the Public Utility Holding Company Act of 2005,⁶³ and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.

4. Effect on Regulation

a. Applicants' Analysis

45. 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 Ohio Power will continue to be a public utility and will continue to be subject to the Commission's FPA jurisdiction. Applicants state that AEP Generation will also be a public utility and subject to the Commission's regulation. Further, the Commission will have jurisdiction over wholesale sales from the Facilities after the Proposed Transaction closes.

46. In support of their claims that the Proposed Transaction will not adversely affect state regulation, Applicants state that they are undertaking this transaction to comply with state restructuring laws and policies and that the Ohio Commission has already approved the Proposed Transaction. Moreover, Ohio Power will continue to be subject to the Ohio Commission's regulation as an electric distribution utility after the Proposed Transaction closes.

⁶¹ In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket.

⁶² 16 U.S.C. § 825(c) (2006).

⁶³ 42 U.S.C. § 16452 (2006).

b. Commission Determination

47. 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.⁶⁴ 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 companies after the Proposed Transaction.

48. In the Merger Policy Statement, the Commission stated that it 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.⁶⁵ 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 state that 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 point out that Ohio Power is the only traditional utility involved in the Proposed Transaction. Specifically, Applicants state that the Proposed Transaction is an internal corporate restructuring that involves the transfer of generating units and generation-related assets from Ohio Power, a traditional public utility, to its affiliate, AEP Generation, which will also be a public utility when the Proposed Transaction closes.

50. Applicants add that they are undertaking the Proposed Transaction pursuant to Ohio's restructuring law consistent with state regulatory objectives to separate generation functions from transmission and distribution, transition to market-based pricing of generation service for retail customers, and promote retail shopping in Ohio. They also point out that the Ohio Commission has already found the transaction to be in the public interest. Applicants also state that Ohio retail customers are protected because they now

⁶⁴ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

⁶⁵ *Id.*, FERC Stats. & Regs. ¶ 31,044 at 30,125.

have the right to choose an alternative supplier. Additionally, Applicants reiterate that Ohio Power's transmission rates will not increase as a result of the Proposed Transaction and that Ohio Power has made a hold harmless commitment, as described above.⁶⁶

51. Furthermore, Applicants state that Ohio Power will not issue new securities in connection with the Proposed Transaction. Ohio Power will also not enter into any new pledge or encumbrance of its assets in connection with the Proposed Transaction. In addition to the Asset Contribution Agreement, Ohio Power and AEP Generation will enter into the PSA, which is an integral part of Ohio restructuring. Applicants continue that the Ohio Commission has approved the PSA's fundamental framework. Neither Ohio Power nor AEP Generation will be a party to the Power Coordination Agreement among APCo, I&M, and KPCo. This agreement will be subject to the Commission's separate review and authorization under a contemporaneously filed section 205 application. Ohio Power and AEP Generation will enter into a Bridge Agreement with APCo, KPCo, and I&M to address transition issues associated with termination of the Pool Agreement, such as how these companies will meet their FRR capacity obligations through May 31, 2015, and how they will address existing marketing and trading arrangements with third parties. That agreement also is subject to review and authorization by the Commission under section 205. The Applicants do not contemplate entering into any other affiliate contracts related to the Proposed Transaction.

b. Commission Determination

52. Based on the facts as 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. 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."⁶⁷ 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

⁶⁶ Application at 30-31.

⁶⁷ *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).

concern.⁶⁸ We note that Applicants have made a hold harmless commitment to protect wholesale ratepayers from transaction-related costs.

53. In addition, Applicants note that the Proposed Transaction is taking place pursuant to Ohio's restructuring law and is consistent with state regulatory objectives. As Applicants state, the Ohio Commission has expressly approved the transfer of the Facilities at net book value as consistent with the public interest. Applicants further state that a transfer at net book value is also consistent with recently-approved generation transfers to affiliates at net book value to comply with Ohio's restructuring requirements.

54. As a condition of our approval of the Proposed Transaction, we will require that all debt associated with the Facilities be transferred to AEP Generation or that AEP Generation otherwise become responsible for the payment of such debt in accordance with Ohio Power's commitments as reflected in the Corporate Separation Order, before Applicants submit their final accounting entries.⁶⁹ With this condition, and other commitments that Applicants have made (as discussed elsewhere in this order), we find that the Applicants have met their burden of proof regarding cross-subsidization issues and the Proposed Transaction will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

6. IEU-Ohio's Concerns Regarding Westar Conditions.

55. In its protest, IEU-Ohio argues that Applicants have failed to demonstrate that all of Ohio Power's debt used to finance the Facilities will follow these assets when transferred to AEP Generation. It argues that, consistent with *Westar Energy, Inc.*, the debt associated with a utility asset also must be divested upon the asset's divestiture.⁷⁰ IEU-Ohio further contends that even though Ohio Power's general debt obligations are not secured by its generation assets, the debt must still follow the assets. IEU-Ohio asserts that, in the absence of this rule, a "franchised public utility could provide its

⁶⁸ *Id.* P 167.

⁶⁹ *See Cinergy Corp.*, 126 FERC ¶ 61,146, at PP 52, 57 (2009) (requiring that all debt associated with generation assets be transferred before the submission of final accounting entries). As discussed further below, IEU-Ohio has taken issue with Applicants' proposal with regard to debt used to finance the Facilities.

⁷⁰ IEU-Ohio Protest at 35 (citing *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 20 (2003) (*Westar*)).

affiliate with an anti-competitive market advantage and could subsidize the affiliate at the expense of the utility's ratepayers.”⁷¹

56. Moreover, IEU-Ohio takes issue with what it describes as Applicants' vague discussion of Ohio Power's senior notes and pollution control revenue bonds, arguing that the Application states that Ohio Power will hold onto pollution control revenue bonds with tender dates after the Proposed Transaction's close until “on or about” their tender dates. According to IEU-Ohio, Applicants also state that they will likely transfer the pollution control revenue bonds with tender dates prior to closing within six months of closing. IEU-Ohio maintains that because the pollution control revenue bonds were necessary to fund pollution control improvements to the assets, they are used for “utility purposes” and, therefore, must transfer to AEP Generation upon consummation.⁷²

57. While it states that Applicants failed to clearly describe how they will treat Ohio Power's senior notes, IEU-Ohio concedes that some of the senior note debt likely had purposes other than generation. Nonetheless, IEU-Ohio asserts that *Westar* demands that any debt that “can be attributed to the generation facilities must necessarily transfer . . . along with [them].”⁷³ It also states that the Commission must decide the appropriate proportion of senior note debt to transfer with the Facilities and that Ohio Power and AEP Generation must provide the information necessary for the Commission to make this determination. IEU-Ohio asserts that the Applicants' failure to provide such information in the interim is sufficient reason to reject the Application.⁷⁴

58. In their answer, Applicants argue that there is nothing vague about Ohio Power's commitment in the Application regarding the transfer of debt and other liabilities to AEP Generation, pointing out that the Application flatly states that “AEP Generation. . . will . . . assume at closing the liabilities associated with the transferred assets,” including “the retired plants and the liabilities associated with [them].”⁷⁵ Consequently, Applicants conclude that, even assuming that *Westar* applies, the Application satisfies its requirements.

⁷¹ *Id.* at 36.

⁷² *Id.* at 37.

⁷³ *Id.*

⁷⁴ *Id.* at 38.

⁷⁵ Applicants December 17, 2012, Answer at 12 (citing Application at 16).

59. Furthermore, Applicants state that the Corporate Separation Order clarifies that Ohio Power must transfer all generation-related liabilities “except those for which assumption or transfer is prohibited, cannot be effectively negotiated under the terms of the contract or that would result in substantially increased liabilities for Ohio Power if transferred, in which case AEP Generation . . . must be contractually responsible for all costs resulting from such liabilities.”⁷⁶ Additionally, Applicants state that the Ohio Commission’s order requires that all new contractual obligations have a successor-in-interest clause that transfers Ohio Power’s responsibilities and obligations to AEP Generation upon transfer of the Facilities. The Ohio Commission also specifically directs that Ohio Power’s customers be held harmless for the cost of any pollution control revenue bonds temporarily retained by Ohio Power until they become “callable.” Applicants further state that the Ohio Commission will audit the terms and conditions of the Proposed Transaction to ensure compliance with Ohio’s restructuring laws and the Ohio Commission’s order.⁷⁷

60. In *Westar*, the Commission announced that, in connection with all future public utility issuances of secured and unsecured debt authorized by the Commission under section 204 of the FPA,⁷⁸ it would impose certain conditions, including, as relevant here, the requirement that if any utility assets financed with such debt are divested or “spun off,” then the associated debt must “follow” those assets.⁷⁹

61. The Commission has not heretofore imposed *Westar*-like conditions in a section 203 order, and is not persuaded to do so here, whether cast as a competition or cross-subsidization issue. For one thing, all of Ohio Power’s debt issuances are subject to approval by the Ohio Commission, meaning that they are exempt from our jurisdiction under section 204.⁸⁰ Moreover, as discussed above,⁸¹ as a condition of our authorization of the Proposed Transaction, we are requiring that all debt associated with the Facilities be transferred to AEP Generation, or that AEP Generation otherwise become responsible for the payment of such debt in accordance with Ohio Power’s commitments as reflected

⁷⁶ *Id.* at 12-13.

⁷⁷ *Id.* at 13.

⁷⁸ 16 U.S.C. § 824c (2006).

⁷⁹ *Westar Energy, Inc.*, 102 FERC ¶ 61,186 at PP 20-21.

⁸⁰ 16 U.S.C. § 824c(f) (2006).

⁸¹ *Supra* P 54.

in the Corporate Separation Order, before Applicants submit their final accounting entries. We are satisfied that, under the Corporate Separation Order, Ohio Power has made appropriate commitments to transfer generation-related liabilities (including debt) to AEP Generation, or otherwise provide for its payment, subject to ongoing audit.

7. Other Issues

62. 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 section 215 of the FPA. 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 conditionally authorized, as discussed in the body of this order.

(B) Applicants shall account for the Proposed 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 Proposed Transaction is consummated, and the accounting submission shall provide all of the accounting entries and amounts related to the Proposed Transaction along with narrative explanations describing the basis for the entries.

(C) Applicants must transfer all debt associated with the Facilities to AEP Generation before Applicants submit their final accounting entries.

(D) 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.

(E) 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.

(F) 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.

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

(H) Applicants, to the extent that they have not already done so, shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(I) 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.