

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

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Upper Peninsula Power Company
Integrys Energy Group, Inc.
Balfour Beatty Infrastructure Partners GP Limited

Docket Nos. EC14-68-000
EL14-39-000

Upper Peninsula Power Company ES14-28-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES, GRANTING PETITION FOR DECLARATORY
ORDER, AND AUTHORIZING ISSUANCES OF SECURITIES

(Issued August 20, 2014)

1. On March 14, 2014, as amended on April 10 and July 18, 2014, Upper Peninsula Power Company (Upper Peninsula Power), Integrys Energy Group, Inc. (Integrys) and Balfour Beatty Infrastructure Partners GP Limited (Balfour Beatty GP), in its capacity as general partner of Balfour Beatty Infrastructure Partners, L.P. (Balfour Beatty LP) (collectively, Applicants) filed a joint application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ (Section 203 Application). Also, on March 14, 2014, as amended on April 10 and July 18, 2014, Upper Peninsula Power filed an application pursuant to section 204 of the FPA² requesting authorization to issue securities (Section 204 Application). As part of the April 10, 2014 amendment, Applicants also filed a petition for declaratory order pursuant to section 305(a) of the FPA³ (Petition) with respect to one aspect of the transaction described in the Section 203 Application.

¹ 16 U.S.C. §§ 824b(a)(1), 824b(a)(2) (2012).

² 16 U.S.C. § 824c (2012).

³ 16 U.S.C. § 825d(a) (2012).

2. In the Section 203 Application, Applicants request authorization for: (1) the proposed acquisition by Upper Peninsula Power Holding Company (Upper Peninsula Power Holding), a corporation to be formed by Balfour Beatty GP in its capacity as general partner of BBIP AIV, L.P. (BBIP AIV), a limited partnership to be formed by Balfour Beatty GP, of 100 percent of the issued and outstanding shares of capital stock of Upper Peninsula Power from Integrys; and (2) the proposed distribution of Upper Peninsula Power's indirect interest in American Transmission Company, LLC (ATC) to Integrys (collectively, the Proposed Transaction).

3. In the Petition, Applicants request that the Commission find that the proposed distribution by Upper Peninsula Power of its indirect interest in ATC to Integrys will not violate section 305(a) of the FPA.⁴

4. In the Section 204 Application, Upper Peninsula Power requests authorization to issue: (1) long-term, unsecured intercompany debt in an amount not to exceed \$110 million; and (2) revolving, unsecured debt under a third party credit facility in an amount not to exceed \$15 million.

5. As discussed in detail below, the Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement⁵ and we authorize the Proposed Transaction under FPA section 203 as consistent with the public interest.⁶ For

⁴ Though styled as a request for authorization under FPA section 305(a), we construe the Petition as a request for a determination by the Commission that, based on the facts and circumstances presented, the distribution by Upper Peninsula Power of its indirect interest in ATC to Integrys will not be unlawful under FPA section 305(a).

⁵ *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008) (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).

⁶ The authorization in this proceeding is made under section 203 of the FPA, and is not an authorization for Upper Peninsula Power, as licensee of certain hydro units, to

(continued...)

the reasons stated below, we also grant Applicants' Petition under FPA section 305(a). In addition, we conditionally grant Upper Peninsula Power authorization to issue securities under FPA section 204, as discussed below.

I. Background

A. Description of the Parties

1. Upper Peninsula Power and Integrys

6. Applicants state that Upper Peninsula Power is a public utility organized under the laws of Michigan that is engaged in the generation, purchase, distribution and sale of electric energy to approximately 52,000 retail customers in its franchised territory in the Upper Peninsula of Michigan. Upper Peninsula Power does not own any transmission facilities⁷ (other than transmission necessary to interconnect its generation facilities to the grid) and does not have any transmission customers. It owns 18 generating units, which are located in Michigan and have a combined capacity of approximately 81 megawatts. The Commission has authorized Upper Peninsula Power to sell electric energy, capacity, and ancillary services at wholesale at market-based rates.⁸ Applicants state that Upper Peninsula Power has no wholesale cost-based power sales customers.⁹ Upper Peninsula

transfer those units until authorization is also received pursuant to section 8 of the FPA, 16 U.S.C. § 801 (2012). We note that, under the Proposed Transaction, Upper Peninsula Power is not proposing to transfer its hydro units; it will retain ownership of its hydro units. Therefore, section 8 of the FPA is not implicated under the Proposed Transaction, and Upper Peninsula Power did not file an application pursuant to section 8 of the FPA in connection with the Proposed Transaction. We advise Upper Peninsula Power that if it seeks to transfer its hydro units in the future, it must obtain authorization to do so under section 8 of the FPA.

⁷ See *Upper Peninsula Power Company*, 95 FERC ¶ 61,487 (2001) (order authorizing the transfer of ownership and operational control of Upper Peninsula Power's transmission facilities to ATC). ATC owns and operates transmission facilities in Wisconsin, Michigan, Illinois, and Minnesota. ATC is a member of Midcontinent Independent System Operator, Inc. (MISO), which exercises operational control over ATC's transmission facilities, but ATC provides the day-to-day operation and control of its transmission facilities.

⁸ See, e.g., *Upper Peninsula Power Company*, Docket No. ER10-1901-000 (Sept. 2, 2010) (delegated letter order).

⁹ See *infra* P 21.

Power is subject to the regulatory authority of the Michigan Public Service Commission (Michigan Commission).

7. Applicants state that Integrys, the parent company of Upper Peninsula Power, is a diversified energy holding company with regulated natural gas and electric utility operations serving customers in Illinois, Michigan, Minnesota and Wisconsin. Integrys also has an approximately 34 percent indirect ownership interest in ATC, a Commission-regulated electric transmission company, through Integrys' wholly-owned subsidiary, WPS Investments, LLC (WPS Investments), and has a nominal interest in ATC through its ownership of shares in ATC Management Company, Inc. (ATC Management). Integrys' non-regulated operations include the sale of electricity and natural gas in deregulated markets and investments in renewable energy assets.

2. Balfour Beatty GP

8. Applicants state that Balfour Beatty GP, a limited company registered in Guernsey, England, manages and has sole authority to determine, direct and decide all matters affecting Balfour Beatty LP, which is a limited partnership organized under English law, with offices in London and New York. Balfour Beatty LP is an infrastructure equity investment fund focusing on investments in utilities, energy and transport infrastructure in the United States, Canada and Europe. Balfour Beatty GP, in its capacity as general partner of Balfour Beatty LP, does not own or hold an interest in any assets that are subject to the Commission's jurisdiction.

B. Proposed Transaction

9. Applicants state that, pursuant to the terms of the Stock Purchase Agreement between Integrys and Balfour Beatty GP, in its capacity as general partner of Balfour Beatty LP,¹⁰ prior to the closing of the Proposed Transaction, Balfour Beatty GP will assign its rights and obligations under the Stock Purchase Agreement to Upper Peninsula Power Holding, a corporation to be organized under the laws of Delaware. Prior to the closing, Balfour Beatty GP will establish BBIP AIV, which will be a limited partnership organized under the laws of a state of the United States or the District of Columbia, with Balfour Beatty GP as its general partner. Upper Peninsula Power Holding will be a wholly-owned subsidiary of BBIP AIV.

10. At the closing, Applicants state that Upper Peninsula Power Holding will purchase from Integrys all of the issued and outstanding shares of Upper Peninsula Power's capital

¹⁰ The Stock Purchase Agreement was filed on a privileged and confidential basis as Exhibit I to the March 14, 2014 Section 203 Application.

stock. As a result of the Proposed Transaction, Upper Peninsula Power will become a direct, wholly-owned subsidiary of Upper Peninsula Power Holding and an indirect subsidiary of BBIP AIV.

11. Applicants state that, immediately before the closing, Upper Peninsula Power will distribute or otherwise transfer its indirect ownership interests in ATC, together with all liabilities and obligations exclusively related to the indirect ownership interest in ATC, to Integrys, such that Upper Peninsula Power Holding will never possess a direct or indirect interest in ATC as a result of the Proposed Transaction. Integrys' interest in ATC is currently held by a wholly-owned subsidiary, WPS Investments, and Integrys has a nominal interest in ATC held via ownership of shares of ATC Management. WPS Investments is co-owned by: (1) Upper Peninsula Power, which holds an approximately 2 percent share; (2) Wisconsin Public Service Corporation (Wisconsin Public Service), an Integrys affiliate, which holds an approximately 12 percent share; and (3) Integrys, which holds an approximately 86 percent share. Immediately before the closing, Applicants state that Upper Peninsula Power will transfer its approximately 2 percent interest in WPS Investments to Integrys, which will increase Integrys' direct interest in WPS Investments to approximately 88 percent, and Upper Peninsula Power will transfer its interest in the shares of ATC Management to Integrys.¹¹ Applicants state that there will be no change in control of the ATC interests (or any shift in the ultimate beneficial ownership of the ATC interests) since Integrys already wholly-owns Wisconsin Public Service and, thus, already owns the remaining interest in WPS Investments.

12. Applicants further state that, in order to consummate the Proposed Transaction, and to assist in the post-closing transition of business functions, which are currently provided by Integrys subsidiaries, to Upper Peninsula Power, the Stock Purchase Agreement provides for two separate Transition Services Agreements, one between Upper Peninsula Power and Integrys Business Support, LLC, a service company under the Commission's rules,¹² and one between Upper Peninsula Power and Wisconsin

¹¹ Applicants state that they consider the distribution of the ownership interest in ATC within the Integrys holding company system to fall within the blanket authority set forth in 18 C.F.R. § 33.1(c)(2)(iii) (2014) for a holding company to acquire "[a]ny security of a subsidiary company within the holding company system." However, because this distribution is part of a larger transaction subject to Commission approval under FPA section 203(a)(1), i.e., the proposed transfer of Upper Peninsula Power, the Applicants also request authorization under FPA section 203(a)(2) for the distribution of the ownership interests in ATC. Applicants' March 14, 2014 Section 203 Application at 9 n.20.

¹² See 18 C.F.R. pts. 366-369 (2014).

Public Service, which become effective as of the closing of the Proposed Transaction. Applicants state that these Transition Services Agreements are services agreements only, and Integrys and its affiliates will not retain control or decision-making authority over Upper Peninsula Power pursuant to these agreements.

II. Notices of Filing and Responsive Pleadings

13. Notices of the two March 14, 2014 filings were published in the *Federal Register*, 79 Fed. Reg. 61,320 (2014), with interventions and protests due on or before April 4, 2014. On March 25, 2014, ATC filed two timely motions to intervene.

14. On April 10, 2014, Applicants filed an amendment to their Section 203 Application and Section 204 Application, and notice of the amendment was published in the *Federal Register*, 79 Fed. Reg. 22,130 (2014), with interventions and protests due on or before May 1, 2014. None was filed. Notice of the Petition, also filed on April 10, 2014, was published in the *Federal Register*, 79 Fed. Reg. 22,130 (2014), with interventions and protests due on or before May 12, 2014. None was filed.

15. On July 18, 2014, Applicants filed a second amendment to their Section 203 Application and Section 204 Application. Notice of this amendment was published in the *Federal Register*, 79 Fed. Reg. 44,167 (2014), with interventions and protests due on or before July 28, 2014. None was filed.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make ATC a party to these proceedings.

B. Standard of Review under FPA Section 203

17. 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 is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹³ Section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-

¹³ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

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.”¹⁴ 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.¹⁵

C. Analysis under FPA Section 203

1. Effect on Competition

a. Applicants’ Analysis

18. Applicants state that the Proposed Transaction will not have an adverse impact on competition and a horizontal competitive analysis screen is not required. Applicants explain that, under the Commission’s regulations, a horizontal competitive analysis screen is not required if the applicant “[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*.”¹⁶ Applicants state that Upper Peninsula Power does not own or control transmission facilities (other than transmission necessary to interconnect its generation facilities to the grid). However, it does own generating facilities in Michigan, within the MISO market. Upper Peninsula Power also has a market-based rate tariff on file with the Commission. In contrast, Applicants state that Balfour Beatty GP, in its capacity as general partner of Balfour Beatty LP, does not own or control any generation, transmission or distribution facilities within Upper Peninsula Power’s geographic market or elsewhere in the United States. Therefore, Applicants state that the Proposed Transaction does not raise horizontal market power concerns.

19. Applicants also state that the Proposed Transaction does not raise vertical market power concerns and a vertical competitive analysis is not required. Applicants explain that, under the Commission’s regulations, a vertical competitive analysis is not required if “[t]he merging entities do not provide inputs to electricity products (i.e., upstream relevant products) and electricity products (i.e., downstream relevant products) in the same geographic markets or that the extent of the business transactions in the same

¹⁴ 16 U.S.C. § 824b(a)(4) (2012).

¹⁵ 18 C.F.R. § 33.2(j) (2014).

¹⁶ 18 C.F.R. § 33.3(a)(2) (2014).

geographic markets is *de minimis*.”¹⁷ Although Upper Peninsula Power owns generation facilities in Michigan, Applicants state that the Proposed Transaction will not result in a combination of input assets and electric generation products because Balfour Beatty GP does not own or control, and is not affiliated with any entity that owns or controls, any natural gas transportation, natural gas storage, natural gas distribution, electric generation, or electric transmission assets in Upper Peninsula Power’s geographic market. Further, Applicants state that Balfour Beatty GP does not own or control any of the following assets in the United States: natural gas transportation, natural gas storage, natural gas distribution, electric generation, electric transmission, electric distribution, sites for generation capacity development, physical coal supply sources or access to the transportation of coal supplies.¹⁸

b. Commission Determination

20. In analyzing whether a transaction will adversely affect competition, the Commission first examines its effects on concentration in generation markets or whether the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation. Second, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. Applicants have shown that the Proposed Transaction will not have an adverse effect on competition in either respect. Upper Peninsula Power and Balfour Beatty GP do not conduct business in the same geographic market. While Upper Peninsula Power owns generation in the MISO market, Balfour Beatty GP does not own or control, and is not affiliated with any entity that owns or controls, any generation in that market or elsewhere in the United States. Balfour Beatty GP also does not own or control, and is not affiliated with any entity that owns or controls, inputs to electric generation or electric transmission assets in Upper Peninsula Power’s geographic market, which is the MISO market. Therefore, we find that the Proposed Transaction does not raise horizontal or vertical market power concerns.

2. Effect on Rates

a. Applicants’ Analysis

21. Applicants state that the Proposed Transaction will have no adverse effect on the rates of wholesale power customers because all of Upper Peninsula Power’s wholesale

¹⁷ 18 C.F.R. § 33.4(a)(2) (2014).

¹⁸ Applicants’ March 14, 2014 Section 203 Application at 13 and n.36.

sales of energy, capacity and/or ancillary services are made at market-based rates,¹⁹ and it has no cost-based power sale customers.²⁰ However, Applicants clarify that Upper Peninsula Power does offer to provide services to its customers pursuant to Upper Peninsula Power's Joint Tariff for Sales of Ancillary Services (JAST), and the rates for services under the JAST include stated and formula rates.²¹ Therefore, Balfour Beatty GP commits, for a period of five years after the closing of the Proposed Transaction, to hold harmless Upper Peninsula Power's customers under the JAST from transaction-related costs.²² Balfour Beatty GP states that, for that five-year period, Upper Peninsula Power will not seek to include transaction-related costs in the rates charged under the JAST, except to the extent that Upper Peninsula Power can demonstrate that transaction-related savings are equal to or in excess of the transaction-related costs included in the rate filing.²³

22. Applicants also state that the Proposed Transaction will have no adverse effect on the rates of transmission customers. Applicants explain that Upper Peninsula Power does not own or control any transmission facilities (other than transmission necessary to

¹⁹ Applicants state that the Commission has found that wholesale sales at market-based rates do not raise concerns for the purposes of the Commission's analysis of rate impacts. Applicants' March 14, 2014 Section 203 Application at 14 n.41 (citing *NorAm Energy Services, Inc.*, 80 FERC ¶ 61,120, at 61,382-83 (1997) (finding that in regard to market-based rate charges, because such charges allow for the recovery of only market prices, the proposed transaction will not result in an adverse effect on rates); *EDF Development, Inc.*, 126 FERC ¶ 61,141, at P 25 (2009)).

²⁰ Applicants' July 18, 2014 Amended Filing at 14. Upper Peninsula Power confirms that its Rate Schedule Nos. 54 and 56, previously accepted by the Commission in Docket Nos. ER05-164-001 and ER06-1209-000, have terminated pursuant to their own terms and Upper Peninsula Power no longer provides service pursuant to these agreements. *Id.* at 14 n.3.

²¹ *Id.* at 14.

²² *Id.* (asserting that the Commission has accepted this type of a hold harmless commitment as a sufficient ratepayer protection mechanism, and citing Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124; *Exelon Corp.*, 138 FERC ¶ 61,167, at PP 118-121 (2012); *Energy East Corp.*, 121 FERC ¶ 61,236, at P 29 (2007); *National Grid plc*, 117 FERC ¶ 61,080, at P 54 (2007); *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 62 (2010)).

²³ *Id.*

interconnect its generation facilities to the grid) and it has no transmission customers. Applicants also state that the Proposed Transaction does not involve any combination or disposition of transmission facilities. Further, Applicants assert that the internal reorganization of Integrys' upstream interest in ATC will not have any effect on transmission rates. Specifically, Applicants state that Upper Peninsula Power's distribution of its indirect interest in ATC to Integrys will have no adverse effect on transmission rates because the distribution will not result in a change in control over ATC.²⁴ Applicants also state that the internal reorganization of Integrys' indirect interest in ATC has no associated "acquisition premium."²⁵ Notwithstanding that fact, Integrys commits, for a period of five years after the closing of the Proposed Transaction, to hold harmless Wisconsin Public Service's and ATC's wholesale cost-based power sales customers and transmission customers from transaction-related costs. For that five-year period, Integrys commits that its subsidiaries Wisconsin Public Service and ATC will not seek to include transaction-related costs in their transmission revenue requirements or in their wholesale cost-based power sales rates, except to the extent they can demonstrate that transaction-related savings are equal to or in excess of the transaction-related costs included in the rate filing.²⁶ Applicants state that the Commission has approved this type of hold harmless commitment in its Merger Policy Statement and in a number of subsequent cases.²⁷

23. For these reasons, Applicants state that the Commission should conclude that the Proposed Transaction will not have an adverse impact on the rates of wholesale power and transmission customers.

b. Commission Determination

24. As set forth in the Commission's Merger Policy Statement,²⁸ the Commission primarily examines a transaction's effect on rates in order to protect wholesale power and

²⁴ Applicants' March 14, 2014 Section 203 Application at 14.

²⁵ *Id.* at 14 n.42.

²⁶ Applicants' July 18, 2014 Amended Filing at 14-16

²⁷ *Id.* at 15-16 (citing Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044, at 30,124; *Exelon Corp.*, 138 FERC ¶ 61,167 at PP 118-121; *Ameren Corp.*, 108 FERC ¶ 61,094, at PP 62-78 (2004); *Great Plains Energy Inc.*, 121 FERC ¶ 61,069, at P 48 & n.63 (2007)).

²⁸ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,126.

transmission customers. In this case, Upper Peninsula Power has no transmission customers and, as set forth below, we find that the Proposed Transaction will not have an adverse effect on the rates of Upper Peninsula Power's customers under the JAST, and Wisconsin Public Service's and ATC's wholesale cost-based power sales customers and transmission customers. We note that no party has raised any issues regarding the Proposed Transaction's effect on rates for wholesale power, transmission or JAST customers.

25. We find that the Proposed Transaction will not have an adverse effect on the rates of Upper Peninsula Power's wholesale power customers. Applicants state that all of Upper Peninsula Power's wholesale sales of energy, capacity and/or ancillary services are made at market-based rates. As we have previously determined, because market-based rate charges for wholesale power sales only allow for the recovery of market prices, the Proposed Transaction will not result in an adverse effect on the market-based rates of Upper Peninsula Power's wholesale power sales.²⁹ Applicants also state that Upper Peninsula Power has no wholesale cost-based power sales customers. However, Applicants clarified that Upper Peninsula Power does offer to provide services to its customers pursuant to the JAST and, therefore, we accept Balfour Beatty GP's commitment, for a period of five years after the closing of the Proposed Transaction, to hold harmless Upper Peninsula Power's customers under the JAST from transaction-related costs.

26. We also find that the Proposed Transaction will not have an adverse effect on the rates of Wisconsin Public Service's and ATC's wholesale cost-based power sales customers and transmission customers because of Integrys' hold harmless commitment to those customers. Therefore, we accept Integrys' commitment, for a period of five years after the closing of the Proposed Transaction, to hold harmless Wisconsin Public Service's and ATC's wholesale cost-based power sales customers and transmission customers from transaction-related costs.

27. We interpret Applicants' hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction and transition costs (both capital and operating) incurred to achieve merger synergies.³⁰ Transaction-related costs do not include any acquisition premium (or acquisition adjustment), including goodwill, associated with the Proposed Transaction. The Commission has stated that it "historically has not permitted rate recovery of acquisition

²⁹ *NorAm Energy Services, Inc.*, 80 FERC at 61,382-83.

³⁰ *See, e.g., Exelon Corp.*, 138 FERC ¶ 61,167 at P 118.

premiums.”³¹ Any acquisition premium (or acquisition adjustment) associated with the Proposed Transaction is not permitted to be included in rates absent Commission approval in a section 205 rate filing.³² The Commission will be able to monitor these hold harmless provisions, on behalf of Upper Peninsula Power, Wisconsin Public Service and ATC, respectively, under its authority under section 301(c) of the FPA³³ and the books and records provision of the Public Utility Holding Company Act of 2005,³⁴ and the commitments are fully enforceable based on the Commission’s authority under section 203 of the FPA.³⁵

28. 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 a formula rate, and therefore are able to alert the Commission to costs that might be transaction-related.³⁶ If Upper Peninsula Power, Wisconsin Public Service or ATC seek to recover transaction-related costs through its wholesale cost-based power sales rates, transmission rates, and/or JAST rates within five years after the Proposed Transaction is consummated, it must submit a compliance filing that details how it is satisfying the hold harmless requirement. If Upper Peninsula Power, Wisconsin Public Service or ATC seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the FPA section 205 docket in which the formula rate was approved by the Commission, as well

³¹ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,126.

³² *Duke Energy*, 86 FERC ¶ 61,227, at 61,816 (1999) (citing *Mid-Louisiana Gas Company*, 7 FERC ¶ 61,316, at 61,682, *reh’g denied*, 8 FERC ¶ 61,227 (1979), *aff’d sub nom. Transcontinental Gas Pipe Line Corp. v. FERC*, 652 F.2d 179 (D.C. Cir. 1981)) (rate recovery of an existing facility is general limited to the original cost of the facility).

³³ 16 U.S.C. § 825 (2012).

³⁴ Public Utility Holding Company Act of 2005, 42 U.S.C. § 16451 *et seq.* (2012) (PUHCA 2005). Applicants state that, as a result of the Proposed Transaction, Balfour Beatty GP and Upper Peninsula Power Holding will become holding companies pursuant to PUHCA 2005. Applicants’ March 14, 2014 Section 203 Application at 15. Applicants note that Integrys is currently a holding company under PUHCA 2005 and will remain so following the Proposed Transaction. *Id.* at 16.

³⁵ *See, e.g., Exelon Corp.*, 138 FERC ¶ 61,167 at P 119; *PPL Corporation and E. ON U.S. LLC*, 133 FERC ¶ 61,083, at P 26 (2010).

³⁶ *ITC Midwest*, 133 FERC ¶ 61,169, at P 25 (2010).

as in the instant FPA section 203 docket.³⁷ If Upper Peninsula Power, Wisconsin Public Service or ATC seek 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 be made in a *new* section 205 docket-and as well the instant section 203 docket.³⁸ The Commission will notice such filings for public comment.

29. In such filings, Upper Peninsula Power, Wisconsin Public Service or ATC 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 transaction.

3. Effect on Regulation

a. Applicants' Analysis

30. Applicants assert that the Proposed Transaction will not have an adverse impact on regulation, at either the federal or state level. With respect to federal regulation, Applicants explain that the Proposed Transaction will not change or impact the Commission's jurisdiction over Upper Peninsula Power, which is a Commission-regulated public utility, as defined by FPA section 201(e).³⁹ Applicants also state that no other parties to the Proposed Transaction will become a public utility as a result of the Proposed Transaction.

31. With respect to state regulation, Applicants state that the Proposed Transaction is subject to the jurisdiction of the Michigan Commission and will have no adverse effect on the Michigan Commission's ongoing regulatory authority over Upper Peninsula Power.⁴⁰ Applicants further state that, on June 6, 2014, the Michigan Commission issued an order approving the Proposed Transaction, subject to the conditions set forth in a

³⁷ In this case, the filing would be a compliance filing in both the FPA section 203 and FPA section 205 dockets.

³⁸ In this case, the filing would be a compliance filing in the 203 docket, but a rate application in the section 205 docket.

³⁹ 16 U.S.C. § 824(e) (2012).

⁴⁰ Applicants' March 14, 2014 Section 203 Application at 16.

settlement agreement attached to the order and a 30-day appeal period following the date of issuance of the order and notice of such order.⁴¹

32. Applicants also state that Upper Peninsula Power's transfer to Integrys of Upper Peninsula Power's approximately 2 percent indirect interest in ATC is subject to the Public Service Commission of Wisconsin's approval.⁴²

b. Commission Determination

33. 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 is focused on ensuring that it does not result in a regulatory gap at the federal level or the state level.⁴³ We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its authority over Upper Peninsula Power after consummation of the Proposed Transaction. In the Merger Policy Statement, the Commission stated that it ordinarily will not set the issue of the effect of a transaction on the 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.⁴⁴ We note that no party alleges that state regulation will be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

4. Cross-Subsidization

a. Applicants' Analysis

34. Applicants state that, under FPA section 203, the Commission will approve a proposed transaction "if it finds that the proposed transaction will be consistent with the public interest, and 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

⁴¹ Applicants' July 18, 2014 Amended Filing at 16 (citing Order of Mich. Pub. Serv. Comm'n, Case No. U-17564 (June 6, 2014)).

⁴² Applicants' March 14, 2014 Section 203 Application at 16.

⁴³ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,125.

⁴⁴ *Id.*

company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”⁴⁵ Applicants state that the Commission has explained that the cross-subsidization “concern arises in a corporate structure that has at least one franchised public utility with captive customers and one or more non-utility affiliates or market-regulated utility affiliates (*i.e.*, utilities regulated on a market rather than a cost basis).”⁴⁶ Applicants also state that the Commission has further explained that “the concern about cross subsidization is principally a concern over the effect of a transaction on rates.”⁴⁷

35. Applicants state that the Proposed Transaction does not present the potential for cross-subsidization, noting that Upper Peninsula Power’s wholesale sales of energy, capacity and/or ancillary services are made at market-based rates pursuant to Upper Peninsula Power’s market-based rate authority; it has no cost-based power sales customers;⁴⁸ and it does not own any transmission facilities (other than transmission necessary to interconnect its generating facilities to the grid). Applicants explain that section 33.2(j)(1)(i) of the Commission’s regulations requires an applicant to disclose any existing pledges or encumbrances of utility assets.⁴⁹ Applicants state that Upper Peninsula Power currently has encumbrances of its utility assets, including \$60 million in long-term debt notes and \$8.9 million (as of December 31, 2013) in short-term debt notes to Integrys.⁵⁰ However, Applicants state that, pursuant to section 5.9 of the Stock

⁴⁵ Applicants’ March 14, 2014 Section 203 Application at 16-17 (citing 16 U.S.C. § 824b(a)(4) (2012)).

⁴⁶ *Id.* at 17 (citing Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 14).

⁴⁷ *Id.* (citing Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 167).

⁴⁸ As previously noted, Applicants clarified that Upper Peninsula Power provides services to its customers under the JAST, and Balfour Beatty GP commits, for a period of five years after the closing of the Proposed Transaction, to hold harmless Upper Peninsula Power’s customers under the JAST from transaction-related costs. *See supra* P 21.

⁴⁹ 18 C.F.R. § 33.2(j)(1) (2014).

⁵⁰ Applicants’ March 14, 2014 Section 203 Application, Exhibit M, and Applicants’ July 18, 2014 Amended Filing at 3 and 5. We note that the Applicants state that \$12.475 million was outstanding, as of June 30, 2013, in Upper Peninsula Power’s short-term debt notes issued to Integrys (Applicants’ March 14, 2014 Section 203 Application, Exhibit M), and \$8.9 million was outstanding, as of December 31, 2013, in

(continued...)

Purchase Agreement, this long-term and short-term debt will be cancelled prior to the closing of the Proposed Transaction.⁵¹

36. Furthermore, consistent with the assurances required by section 33.2(j)(1)(ii) of the Commission's regulations,⁵² Applicants state that, other than: (1) the distribution by Upper Peninsula Power to Integrys of Upper Peninsula Power's approximately 2 percent interest in WPS Investments and its shares of ATC Management; and (2) the proposed issuance of securities described in the Section 204 Application; each of which, they assert, raises no cross-subsidization concerns, the Proposed Transaction will not result in: (a) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (b) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (c) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (d) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under FPA sections 205 and 206.⁵³

37. Applicants assert that, although Upper Peninsula Power has filed a Section 204 Application in which it proposes to issue securities in conjunction with the Proposed Transaction, the issuance of those securities does not raise any cross-subsidization concerns and is consistent with the public interest.⁵⁴ As Upper Peninsula Power explains in its Section 204 Application, the amount of the requested authorization, \$125 million, was calculated and based on: (1) the elimination of certain preexisting intercompany notes payable at Upper Peninsula Power; (2) the spin-off of certain pension obligations

Upper Peninsula Power's short-term debt notes issued to Integrys (Applicants' July 18, 2014 Amended Filing at 3 and 5).

⁵¹ Applicants' March 14, 2014 Section 203 Application, Exhibit M.

⁵² 18 C.F.R. § 33.2(j)(1)(ii)(A)-(D) (2014).

⁵³ Applicants' March 14, 2014 Section 203 Application, Exhibit M.

⁵⁴ Applicants' July 18, 2014 Amended Filing at 18-20.

along with an addition in pension funding; (3) the relief of certain tax liability; and (4) the need for working capital to fund day-to-day operations and business needs.⁵⁵ Applicants assert that, because the amount of the authorization requested by Upper Peninsula Power in its Section 204 Application is based on the corresponding funding obligations set forth therein, the issuance of those proposed securities will be consistent with the public interest.

38. In addition, Applicants state that Michigan law grants the Michigan Commission the authority to review proposed transactions involving a transfer of control. Applicants explain that, in order to approve a proposed transaction, the Michigan Commission must find that the proposed transaction “will not result in the subsidization of a non-regulated activity through the rates paid by the customers of the affected jurisdictional regulated utilities.”⁵⁶ Applicants state that, under Michigan law, the Michigan Commission also has the authority to impose conditions on the proposed transaction.⁵⁷ As previously noted, Applicants state that the Michigan Commission issued an order approving the Proposed Transaction, subject to the conditions set forth in a settlement agreement attached to the order.⁵⁸

b. Commission Determination

39. Based on the facts and Applicants’ assurances included in the Section 203 Application, we find that Applicants have demonstrated that the Proposed Transaction will not result in inappropriate cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

40. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission’s ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company’s books and records. Section 301(c) of

⁵⁵ *Id.*; *see supra* PP 60-61.

⁵⁶ Applicants’ March 14, 2014 Section 203 Application, Exhibit M (citing *In re* Joint Application of Ameren Michigan Gas Storage, LLC, Mich. Pub. Serv. Comm’n, Case No. U-17438 at 2 (Sept. 24, 2013); *In re* Joint Application of Continental Energy Systems LLC, Mich. Pub. Serv. Comm’n, Case No. U-16969 at 5 (May 24, 2012)).

⁵⁷ *Id.* (citing MICH. COMP. LAWS ANN. §§ 460.6q(8), 460.6q(9)).

⁵⁸ *See supra* P 31 & note 41.

the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

5. Accounting Analysis

41. Applicants provided *pro forma* accounting entries recording the effects of the Proposed Transaction on the books of Upper Peninsula Power.⁵⁹ Applicants propose to record goodwill of approximately \$96.7 million on the books of Upper Peninsula Power. Applicants indicate that the goodwill balance is calculated by determining the difference between the total consideration paid to Integrys and liabilities assumed by Upper Peninsula Power Holding, and the fair market value of the net assets acquired, where the fair market value of the utility plant in service is its historical net book value.⁶⁰

42. Upper Peninsula Power proposes to record the goodwill amount by debiting Account 186, Miscellaneous Deferred Debits, and crediting Account 211, Miscellaneous Paid in Capital, consistent with prior Commission guidance.⁶¹ However, the Commission generally requires public utilities to maintain detailed accounting records associated with their push-down accounting so as to facilitate the evaluation of the effects of the transaction on common equity and other accounts in future periods if needed for ratemaking purposes.⁶² Consequently, we will require Upper Peninsula Power to maintain detailed accounting records associated with its push-down accounting. Upper Peninsula Power must use separate sub-accounts for maintaining the required information.

⁵⁹ See Applicants' July 18, 2014 Amended Filing, Exhibit C.1.A: Journal Entries for Revised Exhibit C.1.

⁶⁰ See *id.*, Revised Attachment B.3: Sources and Uses - Goodwill Calculation Estimate.

⁶¹ *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307 (2008); *Great Plains Energy Inc.*, 121 FERC ¶ 61,069; *Michigan Electric Transmission Company, LLC*, Docket No. AC03-9-000 (Feb. 5, 2004) (unpublished letter order).

⁶² *Michigan Electric Transmission Company, LLC and Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,164 (2006); *Niagara Mohawk Holdings Inc.*, 95 FERC ¶ 61,381, *reh'g denied*, 96 FERC ¶ 61,144 (2001); *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083.

43. Additionally, Applicants represent that Upper Peninsula Power is electing tax treatment for this transaction under section 338(h)(10) of the Internal Revenue Code, which they explain provides for a stock purchase to be treated as an asset purchase for tax purposes.⁶³ They represent that for tax purposes all assets and liabilities will be recorded at their fair value, and since there will be no difference between the tax basis and book basis of the assets and liabilities, accumulated deferred income taxes (ADIT) will be zero at the transaction closing date. Accordingly, Upper Peninsula Power proposes to adjust (i.e., reset to zero) all of the ADIT balances resulting from the Proposed Transaction. Applicants propose accounting entries that remove Upper Peninsula Power's ADIT balances by debiting and crediting various balances recorded in the ADIT accounts and crediting Account 211. Our approval for accounting purposes of Upper Peninsula Power's proposed treatment of ADIT is subject to our review of the final accounting entries. Also, to provide additional transparency, we will require Upper Peninsula Power to disclose the impact of the Proposed Transaction in its FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others. In particular, Upper Peninsula Power must explain the impact of the Proposed Transaction in the Notes to the Financial Statements and provide disclosure in footnotes to the affected accounts on the balance sheet of its FERC Form No. 1 in the year the accounting entries are made.

44. Further, Applicants estimate that they will incur transaction-related costs of \$18 million.⁶⁴ However, Applicants do not provide proposed accounting entries for recording of these costs. Also, Applicants do not provide information as to the type of such costs or whether Applicants intend to record these costs on the books of Upper Peninsula Power or Upper Peninsula Power Holding. Accordingly, Upper Peninsula Power's accounting treatment for all transaction-related costs will be subject to our review of the final accounting entries as discussed below.

45. Additionally, as previously noted, Balfour Beatty GP and Integrys provide hold harmless commitments from transaction-related costs on behalf of Upper Peninsula Power, Wisconsin Public Service and ATC. Consistent with Commission precedent,⁶⁵ transaction-related costs are non-operating in nature and must be recorded in Account

⁶³ See Applicants' April 10, 2014 Amended Filing, Revised Attachment B.2: Journal Entry Descriptions.

⁶⁴ See Applicants' July 18, 2014 Amended Filing, Revised Attachment B.3: Sources and Uses - Goodwill Calculation Estimate.

⁶⁵ See, e.g., *Exelon Corp.*, 138 FERC ¶ 61,167 at P 133.

426.5, Other Deductions.⁶⁶ Account 426.5 includes miscellaneous expense items which are non-operating in nature. Additionally, transition costs are generally considered to be operating in nature and may be recorded in an operating expense account or capitalized in an asset account, as appropriate.⁶⁷ This accounting for transaction-related costs, including transition costs, does not permit recovery through Upper Peninsula Power's JAST rates, or Wisconsin Public Service's and ATC's wholesale power or transmission rates, during the hold harmless period without first making a section 205 filing and receiving authorization from the Commission, consistent with the hold harmless requirements discussed above. Balfour Beatty GP must ensure that Upper Peninsula Power has appropriate accounting controls and procedures to ensure the proper identification, accounting, and rate treatment for all transaction-related costs incurred prior to and subsequent to the announcement of the Proposed Transaction, including all transition costs. Integrys must ensure that Wisconsin Public Service and ATC have appropriate accounting controls and procedures to ensure the proper identification, accounting, and rate treatment for all transaction-related costs incurred prior to and subsequent to the announcement of the Proposed Transaction, including all transition costs.

46. Finally, Upper Peninsula Power shall submit its proposed final accounting for the Proposed Transaction within six months after the transaction is consummated. The accounting submission shall provide all accounting entries made to the books and records of Upper Peninsula Power, along with appropriate narrative explanations describing the basis for the entries.

6. Reliability and Cyber Security Standards

47. Information and/or systems connected to the bulk system involved in this 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 database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk

⁶⁶ Transaction-related costs may include, but are not limited to, internal and external third party costs for legal, consulting, and professional services incurred to consummate the Proposed Transaction.

⁶⁷ Transition costs generally include integration and other operational costs generally incurred to achieve merger synergies.

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, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

D. Request for Declaratory Order under FPA Section 305(a)

1. Applicants' Request

48. In the Petition, Applicants request that the Commission find that the proposed distribution of Upper Peninsula Power's indirect interest in ATC to Integrys will not violate FPA section 305(a). Applicants state that the distribution of Upper Peninsula Power's interest in ATC will occur prior to the sale of the stock of Upper Peninsula Power to Integrys so that Upper Peninsula Power's indirect interest in ATC will still be part of the Integrys holding company system after the Proposed Transaction closes.

49. In support of its request, Applicants state that, although the distribution will be from Upper Peninsula Power's capital account, it is *de minimis*⁶⁸ and will have no effect on Commission jurisdictional rates. Applicants assert that the Commission has found that such distributions do not violate FPA section 305(a) where, as is the case here, the public utility making the distribution will have the same shareholders both before and after the dividends are paid, and shareholders will own the same assets before and after the distribution is made.⁶⁹ Further, Applicants assert that the proposed distribution falls within the category of distributions that the Commission has previously identified as not presenting the concerns that underlie FPA section 305(a) because the "distribution is less like a distribution of dividends than it is a corporate restructuring with a one-time distribution" within a corporate family.⁷⁰

⁶⁸ Upper Peninsula Power's indirect interest in ATC is an approximately 2 percent ownership share in WPS Investments and an approximately 2 percent ownership share in ATC Management. Applicants' March 14, 2014 Petition at 2, 19.

⁶⁹ *Id.* at 18 & nn.56, 57 (citing *Duke Energy Ohio, Inc.*, 137 FERC ¶ 61,137, at P 18 (2011); *Cincinnati Gas and Electric Co.*, 115 FERC ¶ 61,250, at P 14 (2006); *Exelon Generation Company, LLC*, 114 FERC ¶ 61,317, at P 14 (2006); *Ameren Corporation*, 131 FERC ¶ 61,240, at P 36 (2010); *Great Plains Energy Inc.*, 121 FERC ¶ 61,069 at P 72).

⁷⁰ *Id.* at 18 & n.58 (citing *Ameren*, 131 FERC ¶ 61,240 at P 36; *Cinergy Corp.*, 126 FERC ¶ 61,146, at PP 64, 67, 68 (2009); *Great Plains Energy Inc.*, 121 FERC ¶ 61,069 at P 72)).

50. Applicants state that, in addition to the Commission's evaluation criteria under FPA section 305(a), the Commission has imposed certain conditions on public utilities that distribute dividends by requiring them to "maintain a minimum equity to total capital ratio of 30 percent and to retain an amount of debt that is within the range that will accommodate preservation" of the public utility's current ratings.⁷¹ Upper Peninsula Power states that it believes that such conditions are not necessary to prevent any inconsistency with FPA section 305(a) based on: (1) the nominal interests involved;⁷² (2) the substance of the interests, which involve membership interests of affiliate companies rather than cash or shares in Upper Peninsula Power; and (3) the context of the transfer itself, which involves Upper Peninsula Power's direct parent Integrys and facilitates the sale of Upper Peninsula Power by Integrys. However, if the Commission finds otherwise, Upper Peninsula Power states that it is prepared to accept such conditions as the Commission may find necessary to approve the proposed distribution.⁷³

2. Commission Determination

51. We will grant Applicants' Petition because the concerns underlying FPA section 305(a) are not present under the limitations and circumstances described in the Petition. FPA section 305(a) provides that:

It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or

⁷¹ *Id.* at 19 & n.59 (citing *Ameren*, 131 FERC ¶ 61,240 at P 36; *Cinergy Corp.*, 126 FERC ¶ 61,146 at P 69; *Great Plains Energy Inc.*, 121 FERC ¶ 61,069 at P 72; and *Payment of Dividends From Funds Included in Capital Accounts*, 146 FERC ¶ 61,108, at P 6 (2014) ("commitment by the public utility to limit the amount of dividends from paid-in capital so that common equity, as a percentage of total capitalization, is maintained at a minimum level (frequently, a minimum of 30 percent common equity as a percentage of total capitalization)").

⁷² *See supra* note 68.

⁷³ Applicants' March 14, 2014 Petition at 19.

paying of any dividends of such public utility from any funds properly included in capital account.⁷⁴

52. As the Commission has noted, the legislative history suggests that the concerns underlying the enactment of FPA section 305(a) included “that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies. A key concern, thus, was corporate officials raiding corporate coffers for their personal financial benefit.”⁷⁵

53. These concerns underlying FPA section 305(a) are not present under the limitations and circumstances described in the Petition. Specifically, the Commission finds that the source of Applicants' proposed distribution has been clearly identified and nothing indicates that the distribution will be excessive or preferential. Moreover, because Upper Peninsula Power will distribute its indirect interest in ATC to Integrys at the time that Upper Peninsula Power is still part of the Integrys holding company system, the distribution will not harm shareholders because Upper Peninsula Power will have the same shareholders (which are Integrys shareholders) both before and after the distribution, and shareholders will own the same assets before and after the distribution is made. Therefore, the proposed distribution is more a corporate restructuring of Integrys' interests in ATC with a one-time payment distribution by Upper Peninsula Power, rather than an ordinary payment of dividends by Upper Peninsula Power. For these reasons, we find that FPA section 305(a) is not a bar to Integrys' capital structure realignment of its interests in ATC. Indeed, the Commission has held that FPA section 305(a) is not a bar to the distribution of proceeds from capital account in a number of other cases, similar to this case, in which the “distribution is less like a distribution of dividends than it is a corporate restructuring with a one-time distribution” within a corporate family.⁷⁶

⁷⁴ 16 U.S.C. § 825d(a) (2012).

⁷⁵ *Citizens Utils. Co.*, 84 FERC ¶ 61,158, at 61,865 (1998) (footnotes omitted); *see also Entergy Louisiana Inc.*, 114 FERC ¶ 61,060, at P 12 (2006); *Exelon Corp.*, 109 FERC ¶ 61,172, at P 8 (2004); *ALLETE, Inc.*, 107 FERC ¶ 61,041, at P 10 (2004).

⁷⁶ *See, e.g., Ameren*, 131 FERC ¶ 61,240 at P 36; *Cinergy Corp.*, 126 FERC ¶ 61,146 at PP 64, 67-68; *Great Plains Energy Inc.*, 121 FERC ¶ 61,069 at P 72.

E. Analysis under FPA Section 204

1. Background

54. Upper Peninsula Power states that it is currently authorized by the Commission to issue both short-term and long-term debt. Specifically, it is authorized to issue: (1) short-term indebtedness in an amount not to exceed \$20 million outstanding at any one time over a two-year period commencing on July 31, 2013 through July 30, 2015;⁷⁷ and (2) long-term indebtedness in an amount not to exceed \$20 million outstanding at any one time over a two-year period commencing on August 1, 2013 through August 1, 2015.⁷⁸ Upper Peninsula Power also states that it has issued long-term indebtedness in a total amount equal to \$60 million pursuant to prior authorizations from the Commission.⁷⁹

2. Upper Peninsula Power's Application

55. Upper Peninsula Power states that it is submitting the Section 204 Application at the request of Balfour Beatty GP because of the proposed transfer of Upper Peninsula Power from Integrlys to Balfour Beatty GP. Upper Peninsula Power requests authorization to issue long-term intercompany debt (Intercompany Debt) in an amount not to exceed \$110 million outstanding at any one time, and to issue revolving, unsecured debt under a third party credit facility (Third Party Revolving Debt) in an amount not to exceed \$15 million outstanding at any one time.

56. Upper Peninsula Power states that the Intercompany Debt will be in the form of a long-term, unsecured promissory note between Upper Peninsula Power and its future parent company, Upper Peninsula Power Holding. Upper Peninsula Power states that Upper Peninsula Power Holding anticipates obtaining funding for the promissory note through a private placement bond issuance but, in the event that the bond issuance is not accomplished, Upper Peninsula Power Holding would utilize a credit facility (Term Facility) until such time that Upper Peninsula Power Holding is able to obtain funding

⁷⁷ March 14, 2014 Section 204 Application at 2-3 (citing *Upper Peninsula Power Company*, 144 FERC ¶ 62,010 (2013) (delegated letter order issued in Docket No. ES13-24-000 granting authorization to issue short-term indebtedness)).

⁷⁸ *Upper Peninsula Power Company*, Docket No. ES13-32-000 (July 31, 2013) (delegated letter order).

⁷⁹ March 14, 2014 Section 204 Application at 3 & n.6.

through a private placement bond issuance to replace the Term Facility.⁸⁰ Under the private placement bond issuance scenario or the Term Facility scenario, Upper Peninsula Power would issue the promissory note in favor of Upper Peninsula Power Holding and the term of the promissory note would be coterminous with Upper Peninsula Power Holding's obligations issued under the private placement bond issuance scenario or the Term Facility scenario. The Intercompany Debt will have a final maturity of no more than 30 years if funded through the private placement bond issuance and no more than three years if funded under the Term Facility.⁸¹ Upper Peninsula Power states that the Third Party Revolving Debt would be a direct obligation for Upper Peninsula Power under a revolving credit facility in an amount not to exceed \$15 million with a maturity date three years following the closing of the Proposed Transaction.

57. Upper Peninsula Power states that its total obligations between the Intercompany Debt and Third Party Revolving Debt will not exceed \$125 million. It requests that the proposed authorizations be made effective for a two-year period from the date of the effective date of the Commission's order approving the Section 204 Application. Upper Peninsula Power notes that it will continue to need its existing Commission authorizations under FPA section 204 until the closing of the Proposed Transaction at which time all of its debt obligations, including its existing Commission-authorized debt obligations, will be cancelled and replaced with Intercompany Debt.⁸² Upper Peninsula Power will use the new Commission authorizations sought in the Section 204 Application at and from the closing of the Proposed Transaction.⁸³

58. With respect to the Intercompany Debt, Upper Peninsula Power requests the Commission's authority to use an interest rate on the promissory note: (a) under the private placement bond issuance scenario, not to exceed 6.5 percent per annum (to provide for flexibility in connection with changes in market conditions); or (b) under the Term Facility scenario, not to exceed, at Upper Peninsula Power Holding's election, either (A) the one, two, three or six-month London Interbank Offered Rate (LIBOR), as may be adjusted for statutory reserve requirements of the Board of Governors of the Federal Reserve System, effective as of the date of issuance, plus up to 225 basis points; or (B) 125 basis points plus the Alternative Base Rate (ABR), which is the greatest of (i) the Prime Rate, (ii) the Federal Funds Effective Rate plus up to 50 basis points, or

⁸⁰ *Id.* at 4; Applicants' July 18, 2014 Amended Filing at 7, 9-10.

⁸¹ March 14, 2014 Section 204 Application at 11.

⁸² *Id.* at 3-4.

⁸³ *Id.* at 1.

(iii) the one-month LIBOR, as may be adjusted for statutory reserve requirements of the Board of Governors of the Federal Reserve System, effective as of the date of issuance, plus up to 100 basis points.⁸⁴

59. With respect to the Third Party Revolving Debt, Upper Peninsula Power requests the Commission's authority to use an interest rate not to exceed, at Upper Peninsula Power's election, either (A) the one, two, three or six-month LIBOR, as may be adjusted for statutory reserve requirements of the Board of Governors of the Federal Reserve System, effective as of the date of issuance, plus up to 200 basis points for LIBOR borrowings; or (B) 100 basis points plus the ABR for alternative base rate borrowings.⁸⁵

60. Upper Peninsula Power explains that the Intercompany Debt will be used, in large part, to replace pre-existing indebtedness and finance Upper Peninsula Power's asset base.⁸⁶ In particular, Upper Peninsula Power explains that, although no funds will be provided directly to it pursuant to the Intercompany Debt, Upper Peninsula Power will be receiving consideration, as part of the Proposed Transaction, corresponding to the following obligations currently borne by it: (1) first, under the terms of the Stock Purchase Agreement, Upper Peninsula Power's long-term debt in the amount of \$60 million, along with \$8.9 million (as of December 31, 2013) in intercompany notes payable by Upper Peninsula Power, will be eliminated; (2) second, in anticipation of the Proposed Transaction, Upper Peninsula Power's pension obligation was spun-off by Integrys into a separate pension plan effective as of January 31, 2014, which resulted in Integrys providing additional pension funding to Upper Peninsula Power in the amount of \$27 million; Balfour Beatty GP will reimburse Integrys for this additional \$27 million in pension funding; and (3) third, Upper Peninsula Power will be relieved of \$58.672 million in deferred tax liability.⁸⁷ Balfour Beatty GP states that it anticipates that the amounts associated with the pension fund and tax liability will be financed with a debt-to-equity ratio of 45 percent debt and 55 percent equity, which would result in a new debt funding requirement of \$38.55 million. Applicants state that adding the eliminated

⁸⁴ Applicants' July 18, 2014 Amended Filing at 12-13.

⁸⁵ *Id.*

⁸⁶ *Id.* at 3-6. Upper Peninsula Power explains that, pursuant to section 5.9 of the Stock Purchase Agreement for the Proposed Transaction, its existing debt obligations, including the obligations authorized by the Commission, will be cancelled at the time of the closing of the Proposed Transaction and replaced with the Intercompany Debt. March 14, 2014 Section 204 Application at 3-4.

⁸⁷ Applicants' July 18, 2014 Amended Filing at 3-6.

debt of \$68.9 million with the new debt funding requirement of \$38.55 million equals approximately \$107.5 million, with the remaining balance of the \$110 million requested authorization for Intercompany Debt being used for other miscellaneous items, as well as to provide a cushion for any final adjustments that might be required.⁸⁸

61. Upper Peninsula Power explains that the Third Party Revolving Debt, together with equity contributions from Upper Peninsula Power Holding, will be used for Upper Peninsula Power's working capital, to fund day-to-day operations, for the purpose of maintaining, operating and/or improving existing construction programs and other operational and business needs.⁸⁹

62. Upper Peninsula Power states that the purposes and facts described in the Section 204 Application show that the proposed issuance of securities is for a lawful corporate purpose. It states that, under the laws of the State of Michigan under which Upper Peninsula Power is organized, it is permitted to issue its securities for proper corporate purposes that are necessary and appropriate and consistent with the proper performance by Upper Peninsula Power in its service as a public utility. It states that the issuance of the Intercompany Debt and Third Party Revolving Debt: (1) is consistent with Upper Peninsula Power's corporate purposes, as set forth in its Articles of Incorporation,⁹⁰ to perform its service as a public utility; (2) is reasonably necessary, appropriate and consistent with the proper performance by Upper Peninsula Power of its service as a public utility and will not impair its ability to perform that service; and (3) is the most cost-effective means available for Upper Peninsula Power to replace pre-existing indebtedness and finance UPPCO's asset base, and to fund its operations.⁹¹ In addition, Upper Peninsula Power states that it will comply with the Commission's *Westar*

⁸⁸ *Id.* at 4, 6. Applicants also state that these matters, as well as all of the financial terms and conditions of the Proposed Transaction described in the Section 203 Application, are subject to the jurisdiction and review procedures of the Michigan Commission in Case No. U-17564. *Id.*

⁸⁹ *Id.*

⁹⁰ Upper Peninsula Power states that a copy of the relevant portion of its Articles of Incorporation is included in Exhibit A of its March 14, 2014 Section 204 Application. March 14, 2014 Section 204 Application at 12 n.9.

⁹¹ *Id.* at 9.

policy⁹² establishing four restrictions placed on public utility issuances of secured and unsecured debt.

3. Requests for Waiver

63. Upper Peninsula Power requests waiver of the Commission's competitive bidding or negotiated placement requirements, set forth in the Commission's regulation in 18 C.F.R. § 34.2(a) (2014).⁹³ Upper Peninsula Power states that the nature of the Intercompany Debt and Third Party Revolving Debt for which it seeks authorization is not adaptable to either competitive bids or negotiated placement, and that the issuances of such securities are expected to result in financing arrangements and interest rates that are more favorable to Upper Peninsula Power than the alternatives available to it from third parties in the market. Upper Peninsula Power also states that it will take appropriate steps to ensure that the issuance of such securities will be accomplished so as to provide it with the lowest cost of money and greatest net proceeds that can be provided for such securities in order to safeguard the interests of its shareholders and customers, and ensure that it issues securities consistent with the public interest.⁹⁴

64. Upper Peninsula Power also requests waiver of the Commission's requirement, set forth in the Commission's regulation in 18 C.F.R. § 34.4(b) (2014), to include a copy of all resolutions of the applicant's directors authorizing the issuance of securities for which the application is made.⁹⁵ Upper Peninsula Power states that it believes that good cause exists to grant this waiver because Upper Peninsula Power is concurrently seeking a change in control whereby Upper Peninsula Power will no longer be a subsidiary of Integrys and, upon receiving the Commission's authorization requested in the Section 203 Application, it will become a wholly-owned subsidiary of Upper Peninsula Power Holding. After the consummation of the change in control, Upper Peninsula Power states that it will gain a new set of directors. Accordingly, Upper Peninsula Power requests that the Commission grant its Section 204 Application, conditioned upon Upper Peninsula Power notifying the Commission that its newly-installed directors have authorized the issuance of securities for which the application is made.⁹⁶ In this regard,

⁹² *Id.* at 5 (citing *Westar Energy, Inc.*, 102 FERC ¶ 61,186 (*Westar*), *order on clarification*, 104 FERC ¶ 61,018 (2003)).

⁹³ *Id.* at 7-8.

⁹⁴ *Id.*

⁹⁵ *Id.* at 8.

⁹⁶ *Id.*

Applicants provided a copy of the draft, unexecuted resolution of the board of directors of Upper Peninsula Power, and Balfour Beatty GP committed that the draft resolution will be submitted to the new Upper Peninsula Power board of directors for consideration, and the resulting executed resolution will be filed at the Commission within 10 days after the date of the closing of the Proposed Transaction.⁹⁷

4. Commission Determination

65. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.⁹⁸

66. In *Westar*, the Commission explained that in reviewing filings under FPA section 204, the Commission evaluates a public utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio.⁹⁹ An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments.¹⁰⁰ The interest coverage ratio is the sum of income before interest and income taxes divided by total interest expense. The Commission generally requires the FPA section 204 applicant to demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice the total interest expense.¹⁰¹ This is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.¹⁰²

⁹⁷ Applicants' July 18, 2014 Amended Filing at 13.

⁹⁸ 16 U.S.C. § 824c(a) (2012).

⁹⁹ *Westar*, 102 FERC ¶ 61,186 at P 15.

¹⁰⁰ *Id.*

¹⁰¹ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008)).

¹⁰² *Id.*

67. As required, Upper Peninsula Power has filed, as Exhibits C, D and E to the Section 204 Application, *pro forma* financial statements for the 12-month period ending December 31, 2013. Exhibit E.4 shows that Upper Peninsula Power has a *pro forma* interest coverage ratio of 2.35.¹⁰³

68. We find, based on the statements and financial information set forth in the Section 204 Application, that Upper Peninsula Power has demonstrated that the proposed issuances of securities: (1) are for lawful objects within the corporate purposes of Upper Peninsula Power and compatible with the public interest, are necessary or appropriate for, or consistent with, the proper performance by Upper Peninsula Power of service as a public utility, and will not impair Upper Peninsula Power's ability to perform that service; and (2) are reasonably necessary or appropriate for such purposes.

69. Accordingly, we authorize, pursuant to FPA section 204, the following issuances of securities subject to the terms and conditions set forth below:

a. Upper Peninsula Power is authorized to issue Intercompany Debt in an amount not to exceed \$110 million outstanding at any one time. The Intercompany Debt will be in the form of an unsecured promissory note between Upper Peninsula Power and its future parent company, Upper Peninsula Power Holding, and will have a final maturity of no more than 30 years if funded with the proceeds of Upper Peninsula Power Holding's private placement bond issuance and no more than three years if funded by borrowings under its Term Facility.

b. The interest rates for the Intercompany Debt will: (a) under the private placement bond issuance scenario, not exceed 6.5 percent per annum; or (b) under the Term Facility scenario, not exceed, either (A) the one, two, three or six-month LIBOR, as may be adjusted for statutory reserve requirements of the Board of Governors of the Federal Reserve System, effective as of the date of issuance, plus up to 225 basis points; or (B) 125 basis points plus the ABR, which is the greatest of (i) the Prime Rate, (ii) the Federal Funds Effective Rate plus up to 50 basis points, or (iii) the one-month LIBOR, as may be adjusted for statutory reserve requirements of the Board of Governors of the Federal Reserve System, effective as of the date of issuance, plus up to 100 basis points.

c. To ensure that Upper Peninsula Power does not issue Intercompany Debt with an interest rate that is higher than the interest rate that Upper Peninsula Power Holding obtains on Upper Peninsula Power's behalf (through a private placement bond issuance or under the terms of the Term Facility), we condition Upper Peninsula Power's authority to issue Intercompany Debt on the limitation that the interest rate of Upper

¹⁰³ Applicants' July 18, 2014 Amended Filing, Revised Exhibit E.4.

Peninsula Power's Intercompany Debt shall be no greater than the interest rate that Upper Peninsula Power Holding obtains on Upper Peninsula Power's behalf (through a private placement bond issuance or under the terms of the Term Facility).

d. To ensure that Upper Peninsula Power does not issue Intercompany Debt to Balfour Beatty GP in an amount that is greater than the consideration that Upper Peninsula Power receives from Balfour Beatty GP as a result of the Proposed Transaction, we condition Upper Peninsula Power's authority to issue Intercompany Debt on the limitation that the amount of Upper Peninsula Power's Intercompany Debt shall be no greater than the amount of consideration Upper Peninsula Power receives from Balfour GP in the Proposed Transaction.¹⁰⁴

e. Upper Peninsula Power is authorized to issue Third Party Revolving Debt in an amount not to exceed \$15 million outstanding at any one time. The Third Party Revolving Debt will be in the form of unsecured debt, will have a final maturity of no more than three years, and will be issued under a revolving credit facility.

f. The interest rate for the Third Party Revolving Debt will not exceed, either: (A) the one, two, three or six-month LIBOR, as may be adjusted for statutory reserve requirements of the Board of Governors of the Federal Reserve System, effective as of the date of issuance, plus up to 200 basis points for LIBOR borrowings; or (B) 100 basis points plus the ABR for alternative base rate borrowings.

g. As required by the Commission's regulation in 18 C.F.R. § 34.4(b) (2014), and consistent with Applicants' commitment, Upper Peninsula Power must submit a compliance filing to the Commission, within 10 days after the closing of the Proposed Transaction, with Upper Peninsula Power's executed board of directors' resolution authorizing the issuance of securities for which this Section 204 Application is made.

70. We grant these FPA section 204 authorizations effective as of the date of this order and for a two-year period after the date of this order, provided however, that Upper Peninsula Power is only authorized to use the section 204 authorizations granted herein on and after the closing of the Proposed Transaction. Upper Peninsula Power's pre-existing section 204 authorizations will remain in effect until the closing of the Proposed Transaction. Upon closing of the Proposed Transaction, Upper Peninsula Power's pre-

¹⁰⁴ See *supra* P 60 for the discussion of the consideration that Upper Peninsula Power will receive from Balfour Beatty as a result of the Proposed Transaction, and the resulting calculation of Upper Peninsula Power's Intercompany Debt issued to Balfour Beatty.

existing section 204 authorizations in Docket Nos. ES13-24-000 and ES13-32-000 are terminated.

71. We also grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

72. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.¹⁰⁵ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. In the Section 204 Application, Upper Peninsula Power acknowledges that any secured or unsecured debt securities issued pursuant to the authorizations requested in the Section 204 Application will be subject to the four restrictions on such securities specified in *Westar*,¹⁰⁶ and we will condition our authorizations granted here upon those restrictions specified in *Westar*.

The Commission orders:

(A) The Proposed Transaction is hereby authorized under FPA section 203, 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 Section 203 Application.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or 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.

¹⁰⁵ *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

¹⁰⁶ March 14, 2014 Section 204 Application at 12.

(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) Upper Peninsula Power shall submit its proposed final accounting for the Proposed Transaction within six months after the Proposed Transaction is consummated. The accounting submission shall provide all accounting entries made to the books and records of Upper Peninsula Power, along with appropriate narrative explanations describing the basis for the entries.

(H) Upper Peninsula Power shall maintain detailed accounting records associated with its push-down accounting, as discussed in the body of this order. Upper Peninsula Power must use separate sub-accounts for maintaining the required information.

(I) Upper Peninsula Power shall disclose the impact of the Proposed Transaction in its FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others. Upper Peninsula Power must explain the impact of the Proposed Transaction in the Notes to the Financial Statements and provide disclosure in footnotes to the affected accounts on the balance sheet of its FERC Form No. 1 in the year the accounting entries are made.

(J) If Upper Peninsula Power, Wisconsin Public Service or ATC seek to recover transaction-related costs through its wholesale power, transmission, and/or JAST rates within five years of the date of the consummation of the Proposed Transaction, it must first submit a section 205 filing that details how it is satisfying the hold harmless requirement. In particular, in such filings, Upper Peninsula Power, Wisconsin Public Service or ATC 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 transaction.

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

(L) Applicants' Petition is hereby granted, as discussed in the body of this order.

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

(N) Upper Peninsula Power is hereby authorized to issue Intercompany Debt in an amount not to exceed \$110 million outstanding at any one time, at the interest rates stated in the body of this order.

(O) Upper Peninsula Power is hereby authorized to issue Third Party Revolving Debt in an amount not to exceed \$15 million outstanding at any one time, at the interest rates stated in the body of this order.

(P) The section 204 authorization for Intercompany Debt is subject to the condition, as discussed in the body of this order, that the interest rate for Upper Peninsula Power's Intercompany Debt shall be no greater than the interest rate that Upper Peninsula Power Holding obtains, on Upper Peninsula Power's behalf, through a private placement bond issuance or under the terms of the Term Facility.

(Q) The section 204 authorization for Intercompany Debt is subject to the condition, as discussed in the body of this order, that the amount of Upper Peninsula Power's Intercompany Debt shall be no greater than the amount of consideration Upper Peninsula Power receives from Balfour GP in the Proposed Transaction.

(R) The section 204 authorizations are subject to the condition, as required by the Commission's regulation in 18 C.F.R. § 34.4(b) (2014), and consistent with the Applicants' commitment, that Upper Peninsula Power submit a compliance filing to the Commission, within 10 days after the closing of the Proposed Transaction, with Upper Peninsula Power's executed board of directors' resolution authorizing the issuance of securities for which this Section 204 Application is made.

(S) The section 204 authorizations granted in this order are effective as of the date of this order and terminate two years thereafter, provided however, that Upper Peninsula Power is only authorized use the section 204 authorizations granted herein on and after the closing of the Proposed Transaction.

(T) Upper Peninsula Power's pre-existing section 204 authorizations will remain in effect until the closing of the Proposed Transaction. Upon closing of the Proposed Transaction, Upper Peninsula Power's pre-existing section 204 authorizations in Docket Nos. ES13-24-000 and ES13-32-000 are terminated.

(U) The section 204 authorizations granted in this order are subject to the restrictions on secured and unsecured debt as outlined in *Westar*.

(V) Upper Peninsula Power is hereby granted waiver of the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) (2014).

(W) Upper Peninsula Power must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43 and 131.50 (2014), no later than 30 days after the sale or placement of long-term debt or equity securities or the entry into guarantees or assumptions of liabilities.

(X) The section 204 authorizations granted in this order are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(Y) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission. Commissioner Norris is not Participating.

(S E A L)

Kimberly D. Bose
Secretary.