

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PSEG Waterford Energy LLC,
American Electric Power Service
Corporation, and
Columbus Southern Power Company

Docket No. EC05-98-000

ORDER AUTHORIZING DISPOSITION AND ACQUISITION OF
JURISDICTIONAL FACILITIES

(Issued September 19, 2005)

1. In this order, we will grant the application (Application)¹ filed by PSEG Waterford Energy LLC (PSEG Waterford), Columbus Southern Power Company (Columbus), an operating affiliate of American Electric Power Service Corporation (AEP Service),² and AEP Service (collectively, Applicants). Applicants seek Commission approval, under section 203 of the Federal Power Act (FPA),³ of their proposal whereby PSEG Waterford will transfer to Columbus the jurisdictional facilities associated with the Waterford generating station (Waterford Facility)⁴ and a related interconnection agreement. We have reviewed the proposed transfer under the Commission's Merger Policy Statement⁵ and will authorize it as consistent with the public interest.

¹The Application was filed on June 24, 2005. On June 27, 2005, Applicants corrected certain minor, non-substantive, and typographical errors.

² AEP Service, a subsidiary of American Electric Power Company (AEP), provides management and professional services to AEP and its operating company subsidiaries.

³ 16 U.S.C. § 824b (2000).

⁴ The jurisdictional facilities are a 345 kV station with step-up transformers, circuit breakers, and associated equipment.

⁵ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *order on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger 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) (Revised Filing Requirements).

I. Background

A. The Parties

2. PSEG-Waterford is a subsidiary of PSEG Power LLC (PSEG Power), which in turn is a subsidiary of Public Service Enterprise Group, Inc. (PSEG).⁶ PSEG Power is a major independent power producer that integrates its generation operations with wholesale energy, fuel supply, energy trading, and marketing and risk management functions. It is the parent company for most of PSEG's power production in the United States, and has approximately 14,600 megawatts (MWs) of generating capacity.

3. AEP is a registered public utility holding company with more than 36,000 MW of generating capacity. Its grid of transmission lines reaches eleven states. The service territories of its operating affiliates, Appalachian Power Company, Columbus, Indiana Michigan Power Company (Indiana Michigan), Kentucky Power Company, Kingsport Power Company, Ohio Power Company (Ohio Power), and Wheeling Power Company, make up the AEP eastern transmission pricing zone (AEP East).

4. Columbus generates, sells, purchases, transmits, and distributes electric power to wholesale and retail customers in Ohio. It has 2,600 MW of generating capacity.

B. The Facility and Interconnection Agreement

5. The Waterford Facility, located in Washington County, Ohio, is an 820 MW natural gas-fired generating plant with three gas-fired combustion turbines and a condensing steam turbine. It interconnects with the transmission system of Ohio Power, which, like the transmission systems of other AEP affiliates, is under the control of the regional transmission organization (RTO), PJM Interconnection, L.L.C. (PJM).⁷ The Waterford Facility's interconnection is governed by an interconnection and operation agreement between PSEG-Waterford and AEP.⁸

⁶ The Commission has approved the merger of PSEG with Exelon Corporation (Exelon) to form Exelon Electric & Gas Corporation. *Exelon Corp.*, 112 FERC ¶ 61,011 (2005), *reh'g pending*. Additional federal and state approvals are still needed before the merger takes effect.

⁷ PJM has three divisions: PJM East, which includes the original members of PJM plus Duquesne Light Company (Duquesne); PJM West, which includes AEP, Allegheny Energy Company (Allegheny), Commonwealth Edison Company, and Dayton Power and Light Company (Dayton); and PJM South, which includes Virginia Electric Power Company. "Expanded PJM" is the term often used to refer to all PJM divisions.

⁸ Commission staff approved the interconnection agreement under delegated authority. January 3, 2001, Letter Order in Docket No. ER01-454-000.

C. Proposed Transfer

6. Applicants' proposal to transfer the Waterford Facility is subject to the terms and conditions of a May 24, 2005 purchase and sale agreement between PSEG Waterford and Columbus covering the generating plant and the associated jurisdictional facilities. Upon consummation of the transfer, PSEG will assign the facility's interconnection agreement to Columbus.

II. Notice, Interventions and Protest

7. Notice of Applicants' filing was published in the *Federal Register*, with interventions and protests due on or before July 15, 2005. 70 Fed. Reg. 39,764 (2005). Exelon filed a timely motion to intervene. The Indiana and Michigan Municipal Distributors Association (Municipals)⁹ filed a timely motion to intervene and protest. On August 1, 2005, Applicants filed an answer to Municipals' protest (Answer).

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Standard of Review

10. Section 203(a) of the FPA provides that the Commission shall approve a disposition or acquisition of jurisdictional facilities if it finds that such action "will be consistent with the public interest." Under the Merger Policy Statement,¹⁰ 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. As discussed below, we will approve Applicants' proposed transfer as consistent with the public interest because we find that it will not adversely affect competition, rates, or regulation.

⁹ Municipals is an association of Indiana and Michigan municipal wholesale customers that have full requirements contracts with an AEP affiliate, Indiana Michigan.

¹⁰ See note 5, *supra*.

C. Effect on Rates and Municipals' Protest

11. In their Application, Applicants state that the proposed transfer will have no adverse effect on rates charged to any current wholesale customers within AEP East, as none of these customers is served under an arrangement whereby capacity-related charges would automatically adjust to include the costs of the Waterford Facility. Applicants cite Commission precedent that they say holds that in such circumstances, wholesale customers are sufficiently protected from the potential effect on rates.¹¹ Applicants state that all other wholesale customers of AEP East utilities are served under market-based arrangements, and that the Commission has found that such sales do not raise concerns about the adverse effect that a transaction may have on rates.¹² They add that Columbus' retail customers are protected by Ohio's adoption of retail choice.

12. Municipals protest Applicants' failure to offer ratepayer protection. They state that Applicants have failed to: provide all of the information needed for the Commission to decide about the effects of the proposed transfer on current ratepayers; confirm that the transfer will not affect customers and grandfathered contracts; or provide ratepayer protection. For these reasons, Municipals ask the Commission to reject the proposed transfer unless properly conditioned, and to require the Applicants to submit additional information and provide increased ratepayer protection. Municipals' concern is that after their full requirements contracts with Indiana Michigan expire on June 30, 2006, AEP will end sales under these contracts; under the contracts, proposed changes in rates require a filing under section 205 of the FPA.¹³ Municipals fear that, instead, AEP will propose formulary, cost-based rates, so that additional costs associated with the Waterford Facility would be charged to Municipals' members through the formula rate without prior approval from the Commission. Municipals state that AEP sent contract termination notices to Municipals' members in late 2004, to be effective 18 months from that time.¹⁴ Municipals state that AEP is thus seeking to terminate the very contracts that Applicants rely upon to show ratepayer protection.

¹¹ Applicants cite *Niagara Mohawk Holdings, Inc.*, 95 FERC ¶ 61,381 at 62,413-14, *reh'g denied*, 96 FERC ¶ 61,144 at 61,625 (2001) (*Niagara Mohawk*) (commitment not to recover merger-related costs in excess of merger-related savings, absent prior regulatory authorization, is meaningful ratepayer protection; should applicants seek to recover such costs, intervenors can raise concerns in that proceeding).

¹² Applicants cite *Destec Energy, Inc.*, 79 FERC ¶ 61,373 at 62,574-75 (1997) (no adverse effect on rates where no captive wholesale customers and sales are not cost-based).

¹³ 16 U.S.C. § 824d (2000).

¹⁴ The contracts provide, at section 3.2, that either party may cancel the contract at the end of its initial term by providing 18 months prior notice of intention to terminate.

13. Municipals argue that, instead of committing that the proposed transfer will not adversely affect wholesale rates, Applicants wrongly focus only on the effect of the proposed transfer on current wholesale customers and on capacity related charges. Municipals urge that capacity related charges are only one component of Applicants' overall rates, and that Applicants failed to address the other charges. In contrast, other utilities have committed in section 203 proceedings not to seek rate recovery of any merger-related costs that exceed merger-related savings (a "hold harmless" commitment).¹⁵ Municipals ask the Commission to condition approval of the proposed transfer on Applicants committing that the rates of Applicants' customers will not be affected. Municipals ask also for explicit assurance that the proposed transfer will not affect grandfathered contracts (which presumably means the Municipals' members' existing contracts).

14. In their Answer, Applicants emphasize that they have not applied to raise wholesale rates in the Application. They point out that to alter the rates of Municipals' existing contracts, or the rates of any AEP East operating companies, they would first have to get Commission approval under section 205 of the FPA.

15. Applicants also state that Municipals are not entitled to be protected against future rate increases associated with the Waterford Facility. They state that Municipals' members are entitled to protection only during the remainder of the terms of their existing contracts.¹⁶

16. Applicants note that the Merger Policy Statement says that an "open season" for wholesale customers during which they can switch suppliers is effective ratepayer protection.¹⁷ Applicants argue that, by giving Municipals' members notices of termination under the existing contracts, AEP has given them the functional equivalent of an open season; the members will not be required to take service from Indiana Michigan after the Waterford Facility becomes part of Columbus' generation mix. Applicants state that Municipals' members will thus be free to take advantage of competitive markets and to buy power from Indiana Michigan or other providers, thus selecting their best option for buying power under contracts that will be subject to the Commission's approval. Any concerns that Municipals have with the terms of those future contracts can be raised in those proceedings.

¹⁵ Municipals cite *Niagara Mohawk*, 96 FERC ¶ 61,144 at 61,625 and *Consumers Energy Co.*, 94 FERC ¶ 61,018 at 61,032 (2001) (*Consumers*).

¹⁶ Applicants cite *New England Power Co.*, 82 FERC ¶ 61,179 at 61,660, *order on clarification and reh'g*, 83 FERC ¶ 61,275 (1998), *aff'd sub nom. Town of Norwood, Massachusetts v. FERC*, 202 F.3d 392 (1st Cir. 2000) (rate freeze proposal adequately protects wholesale customers for remainder of contracts (ten years) and customers not obligated to take service after contracts expire).

¹⁷ Merger Policy Statement, ¶ 31,044 at 30,124.

17. We will deny Municipals' requests that we reject the Application or that we condition our acceptance of it. Applicants have, in effect, offered an open season, which we have found to be effective ratepayer protection. There is a competitive market for generation in PJM West, where the Municipals' members are located, and Municipals' members will have time to explore other sources of generation.

18. As evidence that there is a competitive market, we rely on the unchallenged statements by Mr. Hamal that the only AEP East assets relevant to the proposed transfer are those located in or adjacent to PJM, which is one of the largest and most competitive electric markets in the world, and that Columbus' acquisition of the generating station from PSEG, which already has a significant share of the PJM generation capacity, does not appreciably change market concentration.¹⁸

19. Further, Municipals' members have at least 18 months to investigate supply alternatives to Indiana Michigan. Also, the members are within the control areas of PJM, which has a market monitoring unit that can implement market mitigation measures. For these reasons, we are satisfied that, within this time period, which is similar to an open season, the members can explore real alternatives to Indiana Michigan for their power requirements, when their existing contracts terminate.¹⁹

D. Effect on Competition

20. Applicants' analysts, Dr. Joe D. Pace and Mr. Cliff W. Hamal, identify three relevant products -- non-firm energy, capacity, and ancillary services -- in the geographic markets affected by the proposed transfer. Using the approach of the Competitive Analysis Screen, described in Appendix A of the Merger Policy Statement (Appendix A),²⁰ Applicants' analysts conclude that the merger will not harm competition in any relevant wholesale market.

1. Energy Markets

21. In analyzing the proposed transfer's effect on non-firm energy markets, Dr. Pace identifies Expanded PJM²¹ as the relevant geographic market likely to be affected. He

¹⁸ Hamal Affidavit at P 4.

¹⁹ In *American Elec. Power Service Corp.*, 100 FERC ¶ 61,346 at P71 (2002), the Commission found that an open season alone was inadequate ratepayer protection because the Commission had made a finding that AEP had unmitigated market power in the relevant geographic market (the Southwest Power Pool). Here, in contrast, there has been no finding that AEP has market power in the PJM market.

²⁰ Merger Policy Statement, ¶ 31,044 at 30,128-37. *See also* Appendix B, "Data Used for Competitive Analysis Screen," *Id.* at 30,138.

²¹ *See* note 7, *supra*.

uses Economic Capacity and Available Economic Capacity, as defined in Appendix A,²² to represent a supplier's ability to participate in the market. He uses the Delivered Price Test²³ to evaluate the effect on competition in the relevant markets during ten separate time periods.²⁴

22. Dr. Pace analyzes two scenarios relating to Exelon's and PSEG's planned merger:²⁵ (1) the "pre-Exelon-merger" scenario, where PSEG and Exelon are treated as separate companies; and (2) the "post-Exelon-merger" scenario, where PSEG and Exelon are treated as one company. Dr. Pace states that, in the post-Exelon-merger scenario, he assumes that the merged company has completed the divestitures to which Exelon and PSEG committed in the merger proceeding before the Commission.²⁶

23. Dr. Pace reports no failures of the Competitive Analysis Screen²⁷ for economic capacity in any season/load conditions in Expanded PJM. For the pre-Exelon-merger

²² Merger Policy Statement, ¶ 31,044 at 30,132. Each supplier's "Economic Capacity" is the amount of capacity that could compete in the relevant market given market prices, running costs, and transmission availability. "Available Economic Capacity" is based on the same factors but subtracts the suppliers' native load obligation from its capacity and adjusts transmission availability accordingly.

²³ *See Id.* at 30,130.

²⁴ Each of the three seasons, Summer (June through August), Winter (December through February), and combined Spring/Fall Shoulder season (the remaining months) has three load level periods, Super Peak, Peak, and Off-Peak, while Summer has an additional load level period, Extreme Peak. June 24 Filing, Attachment 1, "Pace and Hamal Affidavits" (henceforth Pace Affidavit or Hamal Affidavit), Pace Affidavit at P 30, 32.

²⁵ *See* note 6, *supra*.

²⁶ Pace Affidavit at P 16. In the Docket No. EC05-43-000 merger proceeding, Exelon and PSEG committed to divest 4,000 MWs of mid-merit and peaking capacity and to make baseload energy sales from 2,600 MWs of nuclear capacity. The Commission relied on those commitments, among others, when finding that the merger would not harm competition in any relevant wholesale electricity markets. *Exelon*, 112 FERC ¶ 61,011 at P 120, 144.

²⁷ *See* note 20, *supra*.

scenario, the post-transaction Herfindahl-Hirschman Index (HHI)²⁸ indicates unconcentrated markets for eight of the ten season/load conditions, and moderately concentrated markets for the other two season/load conditions, with transaction-related increases in concentration ranging from 0 HHI to 11 HHI. For the post-Exelon-merger scenario, the post-transaction HHIs indicate unconcentrated markets for six of the ten season/load conditions, and moderately concentrated markets for the other four season/load conditions, with no transaction-related increases in the HHI.²⁹

24. Dr. Pace also performed a Competitive Analysis Screen for Available Economic Capacity in Expanded PJM. He reports no screen failures in any season/load conditions in Expanded PJM for either the pre-Exelon-merger and the post-Exelon-merger scenarios. He finds that the proposed transfer will deconcentrate the relevant market in all season/load conditions where the Waterford Facility's running costs are within five percent of the assumed market price. Dr. Pace also concludes that the proposed transfer has no effect in other periods because AEP East has much less available Economic Capacity than either PSEG or PSEG and Exelon combined, due largely to AEP-East's significant native load obligation.³⁰

25. We find that Applicants have shown that the proposed transfer will not harm competition in any relevant energy market. Their Appendix A analysis shows no screen failures. In fact, the analysis indicates that the proposed transfer will deconcentrate the PJM energy markets under many of the season/load levels. Moreover, no party argues that the proposed transfer will harm competition.

2. Capacity Markets

26. Mr. Hamal analyzes the effect of the proposed transfer on capacity markets in Expanded PJM under both the pre-Exelon-merger and the post-Exelon-merger scenarios. He finds that the proposed transfer will not harm competition in any relevant capacity markets. He finds, in both scenarios, that the post-transfer concentration levels in the Expanded PJM capacity market are 744 HHI and 822 HHI, respectively, indicating an unconcentrated market. Mr. Hammal concludes that these findings pass the

²⁸ The HHI is a commonly accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1000 and 1800 points are considered moderately concentrated; markets where the HHI is above 1800 points are considered concentrated.

²⁹ Pace Affidavit at P 35. In the post-Exelon-merger scenario, the HHI falls slightly because the combined Exelon/PSEG company has a larger pre-existing market share than AEP. That is, the transaction slightly deconcentrates the relevant market. *Id.*

³⁰ *Id.* at P 36.

Commission's Competitive Analysis Screen. Mr. Hamal also analyzes the effect of the transaction on the Expanded PJM available capacity market. He finds that, under the pre-Exelon-merger scenario, the proposed transfer deconcentrates the market, whereas in the post-Exelon-merger scenario, it increases concentration by 1 HHI, thus passing the Competitive Analysis Screen.

27. Mr. Hamal also analyzes the effect of the transfer on competition under PJM's proposed Reliability Pricing Model for capacity markets, which places the Waterford Facility and all of AEP East's existing generating capacity in PJM West.³¹ Mr. Hamal calculates the change in concentration for the PJM West capacity market, and finds that the transfer would increase market concentration by, at most, 30 HHI, which is below the Commission's threshold for moderately or highly concentrated markets.³²

28. We agree with the Applicants' analysis. We find that they have shown that the proposed transfer will not harm competition in affected capacity markets. Nor has any party disputed the findings of Applicants' analysts that, in Expanded PJM, under three of the four scenarios analyzed, the markets are unconcentrated and the transaction results in little or no increase in concentration. In the remaining scenario, the market is highly concentrated, but the transaction deconcentrates the market. Moreover, even using the narrower geographic market definition of PJM-West,³³ the transaction does not significantly increase market concentration.

3. Ancillary Services

29. Applicants state that PJM has competitive markets only for spinning reserves and regulation products and that the Waterford Facility does not participate in the latter market because it cannot provide regulation service. Therefore, Mr. Hamal analyzes only the market for spinning reserves. He concludes that the proposed transfer does not raise competitive concerns in PJM's Western Spinning Reserve Zone,³⁴ where the Waterford Facility is located. He states that the Waterford Facility is unlikely to be used

³¹ See note 7, *supra*. Mr. Hamal states that under this model, all load serving entities would be required to acquire sufficient capacity to serve their loads four years ahead of the delivery date, either bilaterally or through PJM-administered auctions. Hamal Affidavit at P 17-18.

³² Hamal Affidavit at P 19 & n.7. For moderately concentrated markets, where the HHI is between 1000 and 1800 points, the screening threshold for the change in HHI is 100 points. For highly concentrated markets, *i.e.*, those where the HHI is above 1800 points, the screening threshold for the change in HHI is 50 points. See Merger Policy Statement, ¶ 31,044 at 30,129.

³³ See note 7, *supra*.

³⁴ PJM's Western Spinning Reserve Zone consists of AEP East, Allegheny, Dayton, and Duquesne.

in providing spinning reserves because its costs of energy production, based on gas-fired steam and combustion turbine units, are higher than those of many other units in the region, which use coal. Additionally, the only other source of such gas-fired supply is the Lawrenceville, Indiana generating station, owned by PSEG. Therefore, Columbus' acquisition of the Waterford Facility from PSEG will make the market less concentrated by lowering HHIs by 666 points.

30. We find that the proposed transaction will not harm competition in PJM ancillary services markets. In the few hours in which PJM calls upon spinning reserves, suppliers in AEP-East would be competing against numerous other suppliers. Moreover, the proposed transaction actually deconcentrates the spinning reserves market because PSEG, which currently has a larger pre-transaction market share than AEP-East, will have had its spinning reserves reduced by the transfer.

4. Vertical Market Power Issues

31. Applicants state that acquisition of the Waterford Facility by Columbus, which, like other AEP affiliates, owns transmission facilities, will not raise any vertical market power concerns. They point out that PSEG Waterford is not transferring any transmission facilities other than incidental interconnection facilities. More importantly, all AEP East operating companies' transmission facilities are under the control of PJM. Applicants cite the Commission's holding that turning over operational control of transmission assets to a Commission-approved RTO mitigates vertical market power relating to generation and transmission.³⁵

32. We find that Applicants have correctly stated Commission policy, and that the proposed transfer of the Waterford Facilities to Columbus, which will add generation to AEP's existing generation and transmission assets, will not harm competition or raise problems of vertical market power. Our finding relies on AEP's previous transfer of operational control of its transmission facilities to PJM, a fully-functioning, Commission-approved RTO.³⁶ In addition, as the Commission stated when discussing vertical integration in the Revised Filing Requirements, we routinely evaluate the structural characteristics of upstream and downstream relevant markets when evaluating whether a

³⁵ *Ameren Corp.*, 108 FERC ¶ 61,094 at 57 (2004), *reh'g denied*, 111 FERC ¶ 61,055 (2005) (turning over operational control of transmission to an RTO make utility unable to use transmission to harm competition and thus mitigates vertical market power pertaining to generation and transmission).

³⁶ *See American Electric Power Co. and Central and South West Corp.*, Opinion No. 442, 90 FERC ¶ 61,242 at 61,788, *order on reh'g*, Opinion No. 442-A, 91 FERC ¶ 61,129 (2000), *aff'd sub nom. Wabash Valley Power Ass'n. v. FERC*, 268 F.3d 1105 (2001) (AEP's turning operational control of its transmission facilities to an RTO is adequate remedy for market power concerns about using combined transmission and generation to frustrate competition).

merged firm would have the ability and incentive to adversely affect prices and output.³⁷ Here, the relevant downstream electricity markets are not highly concentrated. We find no harm to competition resulting from the proposed transaction leading to Columbus' combination of upstream fuel supplies and downstream generation capacity.

E. Effect on Regulation

33. As explained in the Merger Policy Statement and the Revised Filing Requirements, the Commission's primary concern with the effect on regulation of a transaction involves possible changes in the Commission's jurisdiction that would diminish Commission authority to protect ratepayers against affiliate abuse because a registered holding company is formed, thus invoking the jurisdiction of the Securities and Exchange Commission. We are also concerned that a regulatory gap may arise at the state level should the affected state commission lack authority to act on the proposed merger.³⁸ Applicants state that neither concern exists here. AEP has agreed to abide by the Commission's *Ohio Power* policy regarding the treatment of costs and revenues related to any intra-company transactions. Applicants state further that state regulation will not decrease as a result of the proposed transfer and hence the effectiveness of state regulation will not be impaired.

34. We note that no entity has raised concerns about the proposed transfer's effect on state or federal regulation. No state has indicated that it lacks jurisdiction to consider the proposed transfer's effect on retail rates, and no state commission has intervened in this proceeding. We rely on Applicant's commitment to adhere to the Commission's *Ohio Power* policy.³⁹ We therefore find that the proposed transfer will impair neither state nor federal regulation.

G. Availability of Information

35. Municipals state that they were unable to conduct a fully informed review of the proposed transfer because Applicants had requested privileged treatment of portions of their Application. Municipals ask the Commission either to require Applicants to provide more specific information or to set the matter for evidentiary hearing.

³⁷ See Revised Filing Requirements, ¶ 31,111 at 31,910-11.

³⁸ See Merger Policy Statement, ¶ 31,044 at 30,24-25, and Revised Filing Requirements, ¶ 31,111 at 31,914-15. For discussion of the court decision in *Ohio Power Co. v. FERC*, 954 F.2d 779, 782-86 (D.C. Cir.), cert. denied, 498 U.S. 73 (1992) (*Ohio Power*), its effect on the Commission's authority to protect ratepayers against affiliate abuse, and the Commission's *Ohio Power* policy, see *Boston Edison Co.*, 95 FERC ¶ 61,079 at 61,237 (2001).

³⁹ See note 38, *supra*.

36. Applicants answer that Municipals can receive copies of the non-public, proprietary information in the Application by agreeing to the terms of the Protective Agreement included in that filing.

37. We find that the terms of the Protective Agreement, Attachment No. 3 to the Application, are reasonable. Therefore, we see no need to order Applicants to provide more specific information or to set this matter for evidentiary hearing.

The Commission orders:

(A) Applicants' proposed transfer is hereby authorized, as discussed in the body of this order.

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

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

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

(E) If the transfer results in changes in the status or the upstream ownership of Applicants' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2005) shall be made.

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

(G) Applicants are hereby directed to notify the Commission within ten days of the date that the transfer has been consummated.

(H) Columbus is hereby directed to account for the transfer of the facilities in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts, and also to file its proposed accounting within six months of the date that the transfer is consummated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.