

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

NorthWestern Corporation
NorthWestern Energy Marketing, LLC
The Clark Fork and Blackfoot, LLC
Babcock & Brown Infrastructure Limited
BBI US Holdings Pty Ltd.
BBI US Holdings II Corp.
BBI Glacier Corp.

Docket No. EC06-127-000

ORDER AUTHORIZING MERGER

(Issued October 25, 2006)

1. On June 7, 2006, NorthWestern Corporation (NorthWestern) and its subsidiaries, NorthWestern Energy Marketing, LLC and the Clark Fork and Blackfoot, LLC (collectively, NorthWestern Companies), and Babcock & Brown Infrastructure Limited (BBIL), and its subsidiaries BBI US Holdings Pty Ltd., BBI US Holdings II Corp., and BBI Glacier Corp. (collectively, BBI Companies and together with the NorthWestern Companies, Applicants) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for the proposed indirect acquisition of NorthWestern. This transaction will result in the NorthWestern Companies becoming indirect, wholly-owned subsidiaries of BBIL.

2. The Commission has reviewed the proposed transaction under the Commission's Merger Policy Statement.² As discussed below, we will authorize the merger as

¹ 16 U.S.C. § 824b (2000), as amended by the Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-93 (2005).

² See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (*Merger Policy Statement*); see also *Revised Filing*

(continued...)

consistent with the public interest, as we find that it will not have an adverse effect on competition, rates or regulation, 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 company that is inconsistent with public interest.

I. Background

A. Description of the Parties

1. NorthWestern

3. NorthWestern is a public utility that in 2002 acquired the electric and natural gas transmission and distribution business of The Montana Power Company.³ In 2004, NorthWestern voluntarily reorganized under the protection of chapter 11 bankruptcy.

4. NorthWestern also provides state-regulated natural gas service in Montana, South Dakota, and Nebraska. It operates nonexclusive municipal franchises to purchase, transport, distribute and store natural gas in the Montana, Nebraska, and South Dakota communities it serves. In Montana, its distribution system consists of approximately 3,700 miles of underground pipelines and its transmission system consists of more than 2,000 miles of pipeline.⁴

Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001); *see also Transactions Subject to Federal Power Act Section 203*, Order No. 669, 71 Fed. Reg. 1348 (2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006).

³ *See The Montana Power Co. and NorthWestern Corp.*, 94 FERC ¶ 62,161 (2001).

⁴ NorthWestern is exempted from Commission jurisdiction under the Natural Gas Act (NGA) because it is a Hinshaw pipeline. As a Hinshaw pipeline, it is exempt from the Commission's jurisdiction under section 1(c) of the NGA. That section provides that, if all the gas the pipeline receives from out-of-state is consumed within the state and the pipeline is regulated by a state commission, it is not subject to NGA jurisdiction. *See ANR Pipeline Co.*, 116 FERC ¶ 61,002, at P 100 (2006).

5. NorthWestern provides wholesale and retail electric service in Montana and South Dakota. Its electric utility operations in Montana consist of a transmission system of approximately 7,000 miles of lines and 335 associated transformation and terminal facilities. This transmission system has interconnections to five major transmission systems in the Western Electricity Coordinating Council (WECC) area, and one interconnection to a system that connects with the Mid-Continent Area Power Pool (MAPP) region. NorthWestern's electric distribution system in Montana consists of 20,300 miles of overhead and underground distribution lines that serve approximately 316,000 customers. NorthWestern owns no rate-based generation in Montana. It owns 30 percent lease share in a 740 MW generation facility that serves wholesale customers in WECC.

6. In South Dakota, NorthWestern's electric utility operations consist of a transmission and distribution network comprised of approximately 3,200 miles of lines as well as 120 substations. The South Dakota operations serve approximately 57,287 retail customers and five bundled wholesale customers. NorthWestern has an interconnection and pooling arrangement with Otter Tail Power Company, Montana-Dakota Utilities Company, Xcel Energy, Inc., and Western Area Power Administration (WAPA). Because NorthWestern's Montana and South Dakota transmission facilities are neither physically connected, nor in the same North American Electric Reliability Council (NERC) region, NorthWestern maintains separate Open Access Transmission Tariffs (OATT) for operations in each state.

7. NorthWestern Energy Marketing is a power marketer that owns no generation, but has received market-based rate authorization. Clark Fork and Blackfoot, a wholly-owned subsidiary of NorthWestern, has received market-based rate authorization.

2. **BBIL**

8. BBIL, along with Babcock & Brown Infrastructure Trust, forms Babcock & Brown Infrastructure (BBI). BBI is an Australian-based utility infrastructure company that owns and manages infrastructure businesses worldwide. BBI owns companies in electricity transmission and distribution, gas transmission and distribution, and transport infrastructure, and has ownership interests in generation. BBI or its affiliates own interests in companies or assets in Australia, New Zealand, Europe, and the United States. BBI's affiliates own interests in wind-power generation facilities in operation, construction or development in California, Colorado, Illinois, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, and Texas. Further, BBIL's subsidiary acquired membership interests in Cross-Sound Cable Company, LLC (Cross-Sound), which owns the Cross Sound Cable project, a 24 mile long, 330 MW high voltage direct

current transmission system that runs between Connecticut and New York and links the electric grids operated by the ISO New England and New York Independent System Operator, Inc. (NYISO).

9. BBI US Holdings Pty Ltd. is a BBI holding company, a wholly-owned Australian subsidiary of BBIL, formed to hold the interests in BBI US Holdings II Corp. BBI US Holdings II Corp., a wholly-owned indirect subsidiary of BBIL, was formed to hold the equity interests in BBI Glacier and, following completion of the merger transaction, in NorthWestern. BBI Glacier, a wholly-owned indirect subsidiary of BBIL, is a special purpose company formed to merge with and into NorthWestern.

B. Description of Merger

10. NorthWestern states that, since it emerged from voluntary chapter 11 bankruptcy in 2004, it has focused on its core utility operations. NorthWestern states that it has returned to financial stability, but that to maximize stockholder value, the Board determined that a sale of the company would be beneficial. Thus, on April 5, 2006, the Applicants entered into the Merger Agreement under which BBI Glacier will merge with and into NorthWestern.

11. Following the merger, NorthWestern will continue as the surviving corporation as a wholly-owned subsidiary of BBI. NorthWestern will maintain its organizational structure; the merger only involves a change in upstream ownership. The facilities affected by the merger that are subject to Commission jurisdiction are:
(1) NorthWestern's transmission facilities and its generation and power sale facilities used for sales for resale; (2) jurisdictional facilities owned by NorthWestern Energy Marketing, including its market-based rate schedule and any Power Purchase Agreements (PPAs) under that market-based rate schedule; and (3) jurisdictional facilities owned by Clark Fork and Blackfoot, including its market-based rate schedule and any PPAs under that market-based rate schedule.

II. Notice and Responsive Pleadings

12. Notice of the Applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 34,914 (2006), with interventions and protests due on or before June 28, 2006. The time for filing interventions, protests, and comments was subsequently extended to August 14, 2006.

13. Timely motions to intervene were filed by the Montana Large Customer Group, Missouri River Energy Services, and Heartland Consumers Power District. A Notice of intervention was filed by the South Dakota Public Utilities Commission (South Dakota Commission).

14. Motions to intervene and protest were filed by Colstrip Energy Limited Partnership (Colstrip), Yellowstone Energy Limited Partnership (Yellowstone), Basin Electric Power Cooperative and East River Electric Power Cooperative, Inc. (together, Basin and East River), and PPL EnergyPlus, LLC and PPL Montana, LLC (together, PPL Parties). A motion to intervene, preliminary comments and motion for extension of comment and protest period was filed by the Montana Consumer Counsel (MCC). A motion to intervene and comments was filed by MBIA Insurance Corporation (MBIA). Supplemental comments were also filed by MCC.

15. On June 15, 2006, the Applicants filed an answer to PPL Parties' protest (Applicants' June 15 Answer). On July 13, 2006, the Applicants filed an answer in response to the various protests and comments (Applicants' July 13 Answer). On August 29, 2006, the Applicants filed an answer to MCC's supplemental comments (Applicants' August 29 Answer).

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 (2006), the notices of intervention and timely, unopposed interventions and motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by Applicants because they have provided information that assisted us in our decision-making process.

B. Standard of Review under FPA Section 203

18. Section 203(a) of the FPA provides that the Commission must approve a merger if it finds that it "will be consistent with the public interest."⁵ The Commission's analysis under the Merger Policy Statement of whether a disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition;

⁵ 16 U.S.C. § 824b(a)(4) (2000), amended by EPAct 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-93 (2005).

(2) the effect on rates; and (3) the effect on regulation.⁶ EPAct 2005 amended section 203 to specifically require that the Commission also determine that the merger will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.⁷

1. Effect on Competition – Horizontal

a. Applicants’ Analysis

19. Applicants assert that the transaction will have no adverse effect on competition in the NorthWestern Market⁸ because neither BBIL nor any of its affiliates provide service, own or control any generating or transmission facilities in the NorthWestern Market. They add that BBIL’s affiliated energy assets are limited to wind energy projects in states that do not involve the NorthWestern Market⁹ and an independent transmission project that connects Long Island and Connecticut. Applicants assert that, because the merger does not result in any new combinations of generating assets that could have any effect on competition in the most narrowly defined relevant geographic or product market, no horizontal screen analysis is required.¹⁰

20. Applicants state that the proposed transaction involves an upstream change in ownership of the NorthWestern Companies, will not result in any increase in concentration in any relevant geographic markets, and therefore does not raise any horizontal market power concerns. Moreover, Applicants note that most of the output of

⁶ *Supra* note 2.

⁷ *Supra* note 5; *see* Order No. 669 at P 164-171.

⁸ Applicants define the NorthWestern Market as the Montana, South Dakota, North Dakota, Iowa, Nebraska, Wyoming (Yellowstone National Park) area; states in which the NorthWestern Companies provide service or own assets. Application at 11-12.

⁹ BBIL’s wind power projects are located in California, Colorado, Illinois, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, and Texas. Applicants state that with the exception of projects in New Jersey, Illinois, and New York, the output of each of BBIL’s wind energy project is committed under long-term power purchase contracts. Application, Exhibit B-1 at 4.

¹⁰ Application at 15-16.

NorthWestern's leasehold interest in a limited portion of a generation facility is currently sold under long-term contracts. After the merger, the output will continue to be sold to the current non-affiliated purchasers under the same rates, terms, and conditions as it is currently being sold.¹¹ Therefore, the Applicants argue that the transaction will not result in any consolidation of jurisdictional facilities and will have no effect on the market share or competitive position of the NorthWestern Market.

b. Protests

21. PPL Parties contend that the Applicants have not provided sufficient information to demonstrate that the Application qualifies for expedited review. PPL Parties state that, while Commission regulations permit the Commission to consider expedited treatment for merger applicants that do not require an Appendix A analysis, Applicants have not demonstrated that the analysis is not required. Specifically, PPL Parties add that Applicants have not shown that they are not competitors; or that they do not control generation through contract that places them in competition with each other. Nor have they demonstrated that they do not and cannot compete based upon generation they own when considering something other than the "most narrowly defined market." PPL Parties argue that, given NorthWestern's control of assets in Montana and the Dakotas, BBI's control of assets in Oregon and Colorado, and Applicants' possible control of other generation via contract, Applicants have not demonstrated that these assets could not compete with each other.¹²

c. Applicants' Answer

22. In their reply, Applicants claim that submission of a competitive analysis is not required in this proposed merger. Applicants reiterate that NorthWestern and BBIL do not conduct business in the same geographic markets. Applicants state that BBIL and its affiliates do not own or control any generation in the states where NorthWestern operates, *i.e.* Montana, South Dakota, Iowa, Nebraska, and Wyoming. Applicants state that BBIL's assets that PPL Parties refer to as potentially competing with NorthWestern assets in Montana and Dakotas are BBIL's wind energy projects in Oregon and Colorado,¹³ and that the output of each of these wind energy projects is committed under

¹¹ *Id.* at 16.

¹² PPL Parties' Protest at 5.

¹³ Eurus Combine Hills I LLC wind energy project in Oregon and the Cedar Creek Wind Energy, LLC in Colorado. Applicants' June 15 Answer at 4.

long-term PPAs. Applicants assert that the Commission has consistently recognized that generating capacity committed under long-term PPAs does not present any generation market power concerns.¹⁴

d. Commission Determination

23. We find that the Applicants have shown that the combination of their generation capacity will not harm competition in any relevant market. Applicants do not need to provide additional information regarding horizontal competitive impacts. The proposed acquisition of NorthWestern by BBI does not result in any new combinations of generating assets that would compete in the same geographic markets. Further, the potentially competing capacity of BBI is controlled by other parties under long-term contracts, which effectively removes the resources from the Applicants' control.¹⁵

2. Effect on Competition – Vertical

a. Applicants' Analysis

24. Applicants claim that the transaction raises no vertical market power concerns because the transaction will not create or enhance vertical market power. Applicants argue that, because BBI and its affiliates do not own or control transmission or inputs to electricity production in the NorthWestern Market, BBI and its affiliates cannot be perceived as potential competitors in the NorthWestern Market. Therefore, Applicants argue that they are not required to file a vertical competitive analysis. Applicants further note that Montana has retail choice for both gas and electricity, further mitigating vertical market power concerns.¹⁶

b. Protests

25. PPL Parties assert that NorthWestern is seeking to change Montana legislation to permit it to own generation rather than purchasing it via contract. PPL Parties argue that

¹⁴ Applicants' June 15 Answer at 3-4.

¹⁵ See *Southern Co. Energy Marketing, L.P.*, 81 FERC ¶ 61,009, at 61,043 (1997) and *accord, Destec Energy, Inc. and NGC Corp.*, 79 FERC ¶ 61,373, at 62,571 (1997).

¹⁶ Application at 17.

these efforts may limit competition to serve NorthWestern and evade the Commission's *Edgar* policies¹⁷ regarding affiliate purchases. They conclude that such efforts may therefore present issues of vertical market power.¹⁸

c. Applicants' Answer

26. Applicants reply that PPL Parties have not claimed that a vertical power analysis is required. They state that PPL Parties' arguments are irrelevant to the Commission's determination as to whether the proposed transaction would affect vertical market power.¹⁹

d. Commission Determination

27. We find that the proposed merger will not create or enhance vertical market power. In Order No. 642, the Commission stated that a merger cannot impair competition in "downstream" electricity markets if it involves an input supplier (the "upstream" merging firm) that sells: (1) an input that is used to produce a *de minimis* amount of the relevant product; or (2) no product into the downstream electricity geographic market.²⁰ In this merger, BBIL and its affiliates do not service, own or control any generating, transmission facilities, or inputs to electricity production in the NorthWestern Market. Its affiliated energy assets are limited to wind generations in the states discussed above. Therefore, the transaction will not result in any new combinations of transmission and generation that would compete in the same geographic markets. Accordingly, we find that the transaction does not create or enhance the incentive or ability of applicants to adversely affect prices or output in a downstream electricity market or discourage entry by new generators.²¹ We find that the proposed merger will not create or enhance vertical market power. Further, we find PPL Parties' argument regarding Montana legislation to be unrelated to our analysis of this transaction since it involves Montana legislation and is outside the scope of the Commission's review under section 203. We note that any change in legislation is speculative; and affiliate power sales will require Commission approval.

¹⁷ *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991).

¹⁸ PPL Parties' Protest at 6.

¹⁹ Applicants' June 15 Answer at 4-5.

²⁰ Order No. 642 at 31,903.

²¹ *Id.* at 31,904.

3. Effect on Rates

a. Applicants' Analysis

28. Applicants argue that the transaction will not adversely affect the rates, terms, and conditions of the service provided by NorthWestern. Applicants commit to hold wholesale sales and transmission customers harmless for five years from rate increases that result from the costs related to the merger, to the extent that the costs exceed merger-related savings.²²

b. Protests

29. Basin and East River argue that the proposed merger could lead to higher rates or a decrease in the reliability of the system. Basin, East River and MCC argue that the corporate credit markets have indicated some doubt about BBI's ability to fund the proposed acquisition successfully. Basin and East River note that Standard & Poor's (S&P) has placed NorthWestern on a "negative Credit Watch," while MCC states that S&P has indicated a potential downgrade of BBI's senior secured debt rating to below investment grade. Basin and East River state that Moody's Investor Service (Moody) has listed an "assortment of challenges" facing the reorganized corporation, and MCC states that Moody has placed BBI's Baa3 senior secured debt rating on review for possible downgrade. Basin and East River argue that failure to improve NorthWestern's credit rating as a result of this transaction is a missed opportunity for NorthWestern to improve its financial position. They speculate that these added costs will lead to cost-cutting measures to enable the company to service debt, and that operation and maintenance costs are likely targets for cost cutting. This could result in decreased system reliability and customer satisfaction.²³ MCC argues that Montana consumers should not have to pay higher rates because of the increased costs of debt due to financial risks associated with this acquisition.²⁴

30. Basin and East River state that while Applicants have committed to hold transmission customers harmless from rate increases, it is not clear from the Application that they will protect Integrated System Tariff's (IS Tariff) customers from higher costs resulting from the merger. NorthWestern is a transmission customer under the IS Tariff

²² Application at 18.

²³ Basin and East River's Protest at 4-6.

²⁴ MCC's Supplemental Comments at 11.

of Basin and the WAPA. NorthWestern's charges for service under the IS Tariff are reduced to reflect a credit equal to the cost of service on NorthWestern's South Dakota transmission system because that transmission system is integrated with the Integrated System. The credits to NorthWestern are a component of the cost of service on the Integrated System. Therefore, if NorthWestern's cost of service under its own transmission tariff increases, the increased cost can be reflected in an increase in the credits that NorthWestern receives, and therefore would increase the cost of service on the Integrated System. Accordingly, Basin requests that the Commission order the Applicants to provide the same hold harmless assurances to Basin and its customers as they have provided to transmission customers.²⁵

31. MCC questions the effect of the transaction on rates. It submits that the accounting treatment that Applicants propose provides no assurance that the acquisition adjustment associated with the \$37 per share in consideration that BBI proposes to pay for NorthWestern will be excluded from rates. It states that Applicants have not made the showing required by the Commission that the acquisition has resulted in tangible and quantifiable benefits to customers.²⁶ It adds that the requirement of original cost ratemaking that acquisition adjustments be excluded from rates has been a consistent feature of Commission jurisprudence, and is in addition to Order No. 592's requirement that wholesale customers be kept harmless from merger costs that exceed merger benefits.²⁷ MCC maintains that the Commission recognizes a limited exception to this principle when the assets transferred will be put to a new public use and that ratepayers will reap substantial benefits from the sale or other type of transfer which they would not otherwise enjoy. MCC does not believe that such a showing could be made in the circumstances of this case.²⁸ MCC concludes that Montana's utility customers should not be placed at risk if it develops that the BBI Companies have chosen to pay a higher premium to acquire NorthWestern than just and reasonable rates based on NorthWestern's utility assets can support.²⁹

²⁵ Basin and East River's Protest at 6.

²⁶ MCC's Preliminary Comments at 6-7.

²⁷ *Id.* at 7.

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 9.

c. Applicants' Answer

32. Applicants argue that there has been no change to NorthWestern's credit rating since the announcement of the transaction. While S&P put NorthWestern on negative watch until it learns more about the financing plans of BBI, this action does not affect NorthWestern's credit rating or its access to capital markets. Applicants contend that it is not unusual for S&P to put companies on negative credit watch once a merger announcement has been made, pending S&P's evaluation of the transaction and the financing structure.³⁰ Applicants assert that Basin and East River have taken statements from an April 27, 2006 Moody's report out of context. According to the Applicants, the Moody's report actually provides a positive credit outlook, and further, another rating agency, Fitch, rates NorthWestern's senior secured debt at a solid investment grade.³¹ Therefore, Applicants contend that Basin and East River's allegations are unsubstantiated speculations that fail to satisfy the Commission's standard of review set forth in *Old Dominion Elec. Coop.*, that the relevant inquiry is not whether it is possible that the rates will be raised, but whether there is a reasonable probability that the credit downgrade will have that effect.³²

33. In response to Basin and East River's contention that it is not clear that Applicants will hold IS Tariff customers harmless from higher costs resulting from the merger, Applicants state that they have committed to not seek to recover the acquisition premium in wholesale or retail rates, including the rates on which NorthWestern obtains a credit under the IS Tariff. Applicants further note that any tariff rate changes would ultimately need to be approved by the Commission under the just and reasonable standard of section 205 of the FPA.³³

34. Applicants state that they are sensitive to MCC's concern that the acquisition premium paid by BBI should not result in higher rates for Montana consumers. Applicants state that they addressed this issue in their original application and confirm

³⁰ Applicants' July 13 Answer at 11.

³¹ *Id.* at 12.

³² *Id.* at 13, citing *Old Dominion Elec. Coop.*, 114 FERC ¶ 63,019, at P 31 (2006).

³³ *Id.* at 15.

that the acquisition premium will not be passed on to NorthWestern's wholesale or retail customers. Applicants argue that the Commission routinely relies on such assurances in approving mergers and acquisitions.³⁴

d. Reply to Answer

35. In its supplemental comments, the MCC questions whether just and reasonable retail and wholesale rates, based on original cost asset values, can support the price for the proposed acquisition. It states that this proposed \$2.2 billion transaction would be the largest acquisition undertaken by BBIL and would increase BBIL's gross enterprise value by approximately 45 percent. MCC asserts that the acquisition would be significantly leveraged through (a) the assumption of \$726 million in existing NorthWestern debt, (b) a combination of existing cash and as-yet-unissued equity securities totaling \$987 million, and (c) new debt in the amount of \$505 million.³⁵

36. MCC argues that the proposed transaction will likely create pressure to increase rates, without creating any real cost-of-service justification for such an increase. It notes that the acquisition premium BBI is paying for the assets is roughly one-third of the total acquisition price. MCC reiterates that the requirement of original cost ratemaking that acquisition adjustments be excluded from rates has been a consistent feature of Commission jurisprudence. The reason for excluding acquisition premiums from recovery through rates is to prevent utilities from conducting multiple asset transfers to increase their plant investment rate base, and thereby increasing their rates.³⁶ MCC argues that this is fundamental to utility rate regulation and is both distinct from and cumulative to Order No. 592's requirement that wholesale customers be kept harmless from merger costs that exceed merger benefits.³⁷ MCC claims that Applicants attempt to conflate these two distinct requirements by pointing to their commitment that customers will be insulated from merger-related costs (i) for a period of five years following the acquisition, (ii) to the extent that those costs exceed any benefits flowing from the acquisition as a commitment that "the acquisition premium will not be passed on to

³⁴ *Id.* at 5.

³⁵ MCC's Supplemental Comments at 5-6.

³⁶ *Id.* at 8, citing *Duke Energy Moss Landing, LLC*, 83 FERC ¶ 61,318, at 62,304 (1998).

³⁷ *Id.* at 7.

NorthWestern's wholesale or retail customers."³⁸ MCC argues that these two distinct propositions do not equate. MCC concludes that the Commission must clarify that acquisition premiums cannot be recovered in rates, and that insulating utility customers for a defined period of time from merger-related increases in costs that exceed merger benefits is an additional requirement that applies in the context of a utility acquisition.³⁹

37. MCC states that it is unclear whether BBI has the financial capability to acquire NorthWestern and to finance the infrastructure investment and energy supply requirements of NorthWestern's electric and gas utilities.⁴⁰ It adds that, given corporate markets' expressed doubt as to BBI's ability to fund the proposed transaction,⁴¹ Montana consumers may have to pay higher rates because of increased costs of debt due to financial risks associated with this acquisition.⁴²

e. **Answer to Reply**

38. Applicants maintain that the MCC raises no new issues.⁴³ Applicants maintain that it is not necessary for the Commission to clarify its policies governing recovery of an

³⁸ *Id.* at 7-8, citing Applicants' July 13 Answer at 5.

³⁹ MCC's Supplemental Comments at 9.

⁴⁰ *Id.* at 10. MCC notes that at the annual UBS Australasian Utilities Conference on June 28th of this year, BBI made a presentation indicating that it had yet to secure funding for its proposed acquisition of NorthWestern.

⁴¹ *Id.* MCC states that in reaction to BBI's announcement in April that it would finance a substantial portion of the NorthWestern acquisition with new debt capital, S&P indicated a potential downgrade of BBI's senior secured debt rating below investment grade. MCC adds that while Moody initially affirmed BBI's rating, it has placed BBI's senior secured debt rating on review for possible downgrade. BBI states that Moody justified this action with its concern over BBI's fast-evolving business risk profile and the company's growing funding needs related to a number of recently announced acquisitions in a short period of time.

⁴² *Id.*

⁴³ Applicants' August 29 Answer at 1.

acquisition premium because Applicants have already committed that they will not pass on the acquisition premium to NorthWestern's wholesale and retail customers, and the Commission's policies regarding recovery of an acquisition premium are clear.⁴⁴

f. Commission Determination

39. In the Merger Policy Statement, the Commission explained the need for ratepayer protection.⁴⁵ The Commission explained that to ensure that a merger is consistent with public interest, it must "protect the merging utilities' wholesale ratepayers and transmission customers from the possible adverse effects of the merger."⁴⁶ To that end, the Merger Policy Statement described various mechanisms that may be acceptable means of protecting ratepayers in particular cases, such as the hold harmless commitment for a significant period of time following the merger offered by the Applicants.⁴⁷ Thus, we find that Applicants have shown that the proposed merger will not adversely affect wholesale rates. In making this finding, we rely on Applicants' commitments to (1) hold wholesale sales and transmission customers harmless from rate increases that are the result of costs related to the merger for five years, and (2) not seek to recover the acquisition premium in wholesale or retail rates.⁴⁸

40. Additionally, we find Basin and East River's argument regarding NorthWestern's credit rating to be speculative. We note that the Moody's report that Basin and East River references provides no clear nexus to higher rates or lower reliability. Basin and East River provide no quantitative figures showing an effect on revenue resulting from possible credit downgrades. Therefore, we cannot conclude that there will be an impact on reliability. In order to draw the conclusion that the transaction will have an adverse effect on reliability, one must assume that transmission maintenance is the first expenditure reduced when merger benefits are less than the costs of the debt needed to finance the merger. The Commission cannot make this determination based on

⁴⁴ *Id.* at 2.

⁴⁵ Merger Policy Statement at 30,122-30,124

⁴⁶ *Id.* at 30,123.

⁴⁷ The Commission has accepted five-year commitments to hold customers harmless from rate increases as an appropriate period of time on limits to rate increases following mergers. *See Duke Energy Corp. and Cinergy Corp.*, 113 FERC ¶ 61,297 (2005); *PNM Resources, Inc.*, 110 FERC ¶ 61,204 (2005).

⁴⁸ The Commission does not have jurisdiction over NorthWestern's retail rates.

speculation that the merged company will cut transmission maintenance. Further, we note that Fitch rates NorthWestern's senior secured debt at a solid investment grade. Thus, we find that the available evidence does not support a finding that there is a reasonable probability that the credit downgrade speculated by intervenors will occur.

4. Effect on Regulation

a. Applicants' Analysis

41. Applicants contend that the transaction will not adversely affect federal regulation. For wholesale ratemaking, Applicants commit to follow the Commission's policy regarding the pricing of affiliate transactions for non-power goods and services. Applicants submit that this commitment ensures that NorthWestern and its affiliates will remain subject to the Commission's regulation regarding wholesale ratemaking effects of affiliate non-power transactions and eliminates any concern regarding wholesale ratemaking impacts of affiliate non-power transactions.⁴⁹ Applicants maintain that the transaction will not affect state regulation because NorthWestern will remain subject to the respective state commissions' jurisdictions after the merger.⁵⁰

b. Protests

42. MCC argues that the complex corporate structure resulting from the transaction will present a major challenge to all utility regulatory bodies having oversight responsibilities over NorthWestern's rates. It states that BBI uses operating cash flows to fund distributions to its securities holders and that these distributions are net of corporate overheads and management fees paid to BBI or other affiliates. Tracking, analyzing, and regulating these kinds of payments are complex. MCC adds that, at present, it is not possible to discern how, if at all, these corporate overhead and management fee costs add any genuine value to consumers that is properly recovered in rates. Furthermore, MCC asserts that this merger is even more complex because half of the holding company structure would be located in Australia, and subject to a different governing body for regulatory oversight.⁵¹

43. MCC thus urges the Commission to take steps to protect state regulation in connection with BBI's proposed acquisition of NorthWestern. First, it argues that

⁴⁹ Application at 19.

⁵⁰ *Id.*

⁵¹ MCC's Supplemental Comments at 11-13.

Applicants have been at best equivocal in acknowledging the authority of the Montana Public Service Commission (Montana Commission) “to act on the transaction,” as required by 18 C.F.R. § 2.26(e)(1). It concludes that if Applicants challenge the Montana Commission’s authority to act on the transaction in any respect, the Commission should require them to state such an intention clearly while there are still open regulatory processes to deal with the question. MCC states that Applicants’ failure to make such an unequivocal statement makes their application incomplete.⁵²

44. Second, the MCC requests that when Applicants have completed their application and the Commission takes action on it, the Commission state that nothing in its disposition of the application is in any way intended to interfere with the exercise of state regulatory commission jurisdiction over this transaction and the corporate structure the transaction would create.

c. Applicants’ Answer

45. Applicants claim that regulators’ ability to monitor regulated public utility operations in each jurisdiction in which NorthWestern operates will not be affected. NorthWestern will comply with all federal and state reporting requirements after the merger, and the BBI Companies will comply, and will cause NorthWestern to comply, with all federal and state reporting requirements. Applicants maintain that after the merger, NorthWestern will remain subject to all the same federal and state reporting requirements to which it is subject now. Applicants argue that no provision of the transaction requires NorthWestern to change its accounting policies or practices. NorthWestern will continue to report under U.S. Generally Accepted Accounting Principles (GAAP) after the transaction is consummated.⁵³

46. Applicants assert that NorthWestern will continue to be subject to the disclosure and filing requirements of the Securities and Exchange Commission as a consequence of its publicly traded debt, which adds another layer of transparency. NorthWestern will remain subject to, and comply with, the reporting requirements of the Commission, the Montana Commission, the South Dakota Commission, and the Nebraska Commission. Accordingly, Applicants argue that, contrary to the MCC’s concerns, there will be ample transparency for monitoring NorthWestern’s public utility operations at both the state and federal levels after consummation of the transaction. Applicants disagree with the MCC’s concerns regarding Montana Commission’s ability to protect Montana consumers

⁵² *Id.* at 13-14.

⁵³ Applicants’ Answer at 5-6.

after the merger. They argue that the state commissions can protect their own jurisdiction. Applicants have no authority to expand or restrict the Montana Commission's lawful jurisdiction, and do not purport to do so through this proposed merger.⁵⁴

d. Reply to Answer

47. The MCC states that the proposed acquisition's potential adverse effects on regulation are difficult to quantify. It provides as examples (1) the significantly greater complexity involved in monitoring the real cost of capital and relevant capital structure for NorthWestern's Montana utility operations in the context of an international holding company group structure and related asset trust, (2) the issues presented by future dividend payments intended to be "upstreamed" to another holding company to service acquisition-related debt, and (3) the need to verify, audit, and regulate corporate overheads and management fees proposed to be charged by foreign affiliates against Montana utility cash flows.⁵⁵

48. The MCC reiterates that because of the complexity of the regulatory challenge presented by this acquisition, the Commission should take steps to protect state regulation in connection with BBI's proposed acquisition of NorthWestern: (1) to hold the Applicants' failure to take an unequivocal position that the Montana Commission either does or does not have authority "to act on the transaction" as required by 18 C.F.R. § 2.26 renders their application incomplete; (2) once a completed application has been submitted, make and enter an order clarifying that: (a) its policies governing recovery of an acquisition premium in rates require a showing of concrete and quantifiable benefits to customers resulting from the acquisition, not merely the *pro forma* hold harmless condition for mergers generally; and (b) nothing in its disposition of the completed application is intended to interfere with the exercise of state regulatory commission jurisdiction over this transaction and the corporate structure the transaction would create; and (3) grant such other and further relief as may be necessary, just and appropriate in the circumstances.

e. Answer to Reply

49. Applicants answer that it is unnecessary for the Commission to clarify that its determination in this proceeding will not interfere with the state commissions'

⁵⁴ *Id.*

⁵⁵ MCC's Supplemental Comments at 3.

jurisdiction. In the FPA, Congress clearly delineated jurisdictional responsibilities. The FPA gives the Commission jurisdiction over the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale, and that this jurisdiction extends only to those matters which are not subject to regulation by the states. Applicants argue that it is clear that nothing in the Commission's disposition of this application can interfere with state regulatory commission jurisdiction over the transaction or the corporate structure the transaction would create.⁵⁶

50. In response to MCC, Applicants state that under "Other Regulatory Approvals Required in Connection with this Transaction," Applicants listed a "Joint Application in Compliance with Consent Order and Required Notification" (Montana Commission Application) with the Montana Commission. In the Montana Commission Application, Applicants request that the Montana Commission, upon review of this Application, issue an order that: (A) determines that NorthWestern has complied with the provisions of the Consent Order; (B) consents to BBIL's acquisition of the common stock of NorthWestern and the assumption of its debt, under the Merger Agreement, or in the alternative, expeditiously set the matter for a public hearing and decision. Applicants argue that their application is therefore complete.

f. Commission Determination

51. When 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 ratepayers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of 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.⁵⁷ Further, under sections 1264 and 1265 of EPAct 2005, the Commission and state commissions have the authority to gain access to books and records of companies within a holding company and holding companies.⁵⁸ Accordingly, the Applicants are required to make available books and

⁵⁶ Applicants' August 29, 2006 Answer at 2-3.

⁵⁷ 16 U.S.C. § 825(c) (2000). See *PacifiCorp*, 87 FERC ¶ 61,288 (1999).

⁵⁸ *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 Fed. Reg. 75,592, (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197, at ¶ 31, 109 (2005), *order on reh'g*, Order No. 667-A, 71 Fed. Reg. 28,446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, (continued...)

records for examination, if necessary, to the Commission and the respective state commissions. Further, the Applicants have made a commitment to comply with all federal and state reporting requirements after the acquisition. We construe this commitment as agreeing to provide the Commission access to all books and records within the scope of section 301(c) of the FPA and our approval of the proposed transaction is based on this understanding.

52. We find that the proposed merger will not have a negative effect on state regulation. In response to the MCC, we find that nothing in the Commission's disposition of this application will interfere with the exercise of state regulatory commission jurisdiction over the transaction. Moreover, in the Merger Policy Statement, the Commission noted that it will address the merger's effect on retail markets if the state commission lacks adequate authority under state law and requests the Commission to do so.⁵⁹ However, no state commission has filed a protest in this proceeding.⁶⁰

5. Cross-Subsidization

a. Applicants' Analysis

53. Applicants argue that the transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. They contend that the transaction will not result in: (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost based regulation for the benefit of an associate company; or (4) new affiliate contracts between a non-utility associate company

order on reh'g, Order No. 667-B, 71 Fed. Reg. 42,750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

⁵⁹ Merger Policy Statement at 30,128.

⁶⁰ South Dakota Commission filed a protest but withdrew it on September 21, 2006 to facilitate the on-going settlement negotiations with NorthWestern.

and a traditional utility associate company with wholesale or retail customers served under cost-based regulation, or non-power goods and services agreements subject to review under FPA sections 205 and 206.⁶¹

54. Applicants state that any cross-subsidization between NorthWestern's utility operations and any BBI Companies is unlikely because none of the BBI Companies or affiliates own generation in any of the markets served by NorthWestern. Applicants state that BBI Companies or affiliates do not sell or purchase electric energy, or any non-power goods or services, from NorthWestern. Also, Applicants confirm that BBI Companies or affiliates do not own or operate an energy trading desk.⁶²

55. Applicants further assert that any transactions with NorthWestern's affiliates are and will continue to be subject to the regulation by the Montana, South Dakota, and Nebraska Commissions, as well as the Commission. Moreover, Applicants state that they are required to comply with the Montana Commission's ring-fencing requirements contained in the stipulation of the settlement agreement between Montana Commission, MCC, and NorthWestern, and intend to do so under the BBI holding company structure, as follows:⁶³

- NorthWestern will maintain the ownership and control of its public utility assets, facilities, and operations;
- Under the BBI holding company structure, NorthWestern's public utility assets will be owned and maintained separate and apart from BBI's ownership, risks, and operations of any other businesses it now owns or may acquire;
- NorthWestern will not issue new debt except as authorized by the Commission, the Montana Commission, and other state commissions;

⁶¹ Application at 20.

⁶² *Id.*, Exhibit M at 2.

⁶³ The settlement agreement arose out of the financial investigation instituted by the Montana Commission during NorthWestern's filing of bankruptcy. At MCC's request, the Montana Commission started an investigation to determine whether NorthWestern's financial difficulties would affect Montana ratepayers and whether to impose upon NorthWestern regulatory and structural provisions to protect Montana ratepayers from harm. NorthWestern, MCC, and the Montana Commission negotiated to resolve issues from the financial investigation and the bankruptcy proceeding, resulting in a settlement agreement with ring-fencing measures. *See Stipulation and Settlement Agreement*, July 8, 2006, at 1-2.

- NorthWestern will not pledge its assets to secure the indebtedness of an affiliated company, except as may be authorized by the Commission and the Montana Commission;
- NorthWestern will not provide loans, guarantees, advances, equity investments or working capital to an affiliated company, except as allowed by the Commission and the Montana Commission;
- NorthWestern will not enter into any contract with a subsidiary or an affiliate where the costs of the contract are to be recovered in utility rates paid by ratepayers, except as may be authorized by the Commission and the Montana Commission; and
- NorthWestern will maintain such separate books and accounting records for its utility operations as is required by the Commission, and will allow the Commission reasonable access to such books and records in accordance with applicable law.

b. Protests

56. MBIA argues that effective ring-fencing measures, or corporate and financial separation measures, are key to protecting the utility side of a utility holding company's business from the risks of the non-utility side of the business.⁶⁴ The types of ring-fencing measures in the Stipulation and Settlement Agreement can help to protect the financial integrity of NorthWestern's regulated utility business and protect against cross-subsidization. MBIA adds that there should also be a corporate separation requirement that utility business not be conducted within affiliates that also engage in non-utility business. However, it appears that NorthWestern will maintain its current divisional corporate structure, which provides no corporate separation of its regulated utility business from NorthWestern, the parent company. MBIA therefore requests that the Commission take note of the conditions that can help protect the financial integrity of NorthWestern's regulated utility business and protect against cross-subsidization.⁶⁵

c. Applicants' Answer

57. Applicants state that the transaction will not result in any risk of cross-subsidization. Applicants again state that the ring-fencing provisions in the settlement agreement between NorthWestern, the MCC, and the Montana Commission will be honored after the merger. They also state that NorthWestern applies these ring-fencing

⁶⁴ MBIA's Comments at 3.

⁶⁵ *Id.* at 4.

provisions in each jurisdiction in which it operates and thus controls the risk of cross-subsidization. Applicants add that BBI does not own any generation located in or near any of the NorthWestern control areas and does not engage in power marketing, nor does it own or control any non-utility business that provides or could provide goods or services to NorthWestern. Applicants also state that the market-based rate tariffs of the NorthWestern Companies as well as the Commission's Standards of Conduct⁶⁶ provide significant protection against cross-subsidization.⁶⁷

d. Commission Determination

58. In Order No. 669, the Commission stated that certain protections may be necessary, on a case-by-case basis, in order to protect against cross-subsidization of a non-utility associate company, pledge or encumbrance of utility assets, and affiliate abuse. The Commission stated that applicants should offer ratepayer protection mechanisms to assure that captive customers are protected from the effects of cross-subsidization.⁶⁸ Therefore, the Commission directed section 203 applicants to provide an explanation with appropriate evidentiary support as Exhibit M to the application: (1) of how it is providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company; or (2) if no such assurance can be provided, an explanation of how such cross-subsidization, or encumbrance will be consistent with the public interest.⁶⁹

59. We find that, consistent with Order No. 669, Applicants have demonstrated that the proposed merger will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. In the Applications' Exhibit M, the Applicants provide measures to protect ratepayers, including the ring-fencing measures contained in the settlement agreement between Montana Commission, MCC, and NorthWestern. We find that these measures are adequate safeguards against any potential for cross-subsidization of a non-utility associate company.

⁶⁶ 18 C.F.R. § 358 (2006).

⁶⁷ Applicants' July 13 Answer at 4.

⁶⁸ Order No. 669 at P 167-168.

⁶⁹ *Id.* at P 164.

60. Further, while MBIA asks for protection of the financial integrity of Northwestern through “a corporate separation” of NorthWestern’s regulated utility business from the parent company, it does not explain how BBI’s proposed acquisition of Northwestern would result in improper cross-subsidization of a non-utility associate company, particularly since MBIA is challenging the pre-existing corporate structure of Northwestern.

6. Accounting Issue

a. Protests

61. The MCC argues that the Applicants’ description of their proposed accounting treatment for the acquisition raises concerns that are not adequately addressed in the Application.⁷⁰ Specifically, the MCC is concerned that there are two offsetting acquisition adjustment amounts booked to Account 114, Electric Plant Acquisition Adjustments,⁷¹ to account for the transfer of consideration for the acquisition without an explanation.

b. Commission Determination

62. As described in the Notes to Proposed Accounting Entries, Applicants provide an explanation as to why they use the two offsetting acquisition adjustment amounts booked to Account 114. Specifically, the entry to Account 114 in Journal Entry No. 1 is part of the *pro-forma* adjustment to eliminate the historical proprietary capital of NorthWestern. The entry to Account 114 in Journal Entry No. 2 depicts the *pro-forma* adjustment to record the purchase price of NorthWestern to BBI. According to the Application, this *pro-forma* adjustment was calculated by multiplying NorthWestern’s outstanding common stock at March 31, 2006, adjusted for outstanding warrants, restricted shares, and deferred stock units, by the purchase price of \$37 per share.⁷² Therefore, we find that the Application provides an adequate explanation of the proposed acquisition adjustment in Attachment 4 of the Application, in the Notes to Proposed Accounting Entries.

⁷⁰ MCC’s Preliminary Comments at 6.

⁷¹ 18 C.F.R. § 101 (2006).

⁷² See Application, Attachment 4.

7. Other Issues**a. Protests**

63. Yellowstone and Colstrip have long-term PPAs under which they sell all capacity and associated energy from a generating unit to NorthWestern. Both parties oppose the proposed merger unless they are able to obtain assurances that NorthWestern will continue to honor its obligations under the PPAs and that no party will take any action to frustrate NorthWestern's ability to do so or otherwise prejudice Yellowstone's or Colstrip's rights under the PPAs.

b. Reply to Answer

64. Applicants confirm that NorthWestern will continue to honor its obligations under the PPAs with Yellowstone and Colstrip. Applicants state that under contract law, the upstream change in control of NorthWestern cannot, by itself, modify the terms and conditions of those PPAs. As a result, following the consummation of the transaction, NorthWestern's obligations to perform these contracts will be identical.⁷³

c. Commission Determination

65. We find that the Applicants have adequately addressed the concerns raised by Yellowstone and Colstrip in regard to their PPAs.

8. Waivers

66. We grant the Applicants' request for waiver of section 33.2(C)(3) of the Commission's regulations so that they may provide an organizational chart showing only the direct upstream ownership, as the other affiliate members of Applicants' corporate groups will not be affected by the Transaction. We also grant the Applicants' request for waiver of the requirements of Part 33.2(c)(6) of the Commission's regulations to the extent that it requires Applicants to provide information about wholesale power customers or unbundled transmission customers served by Applicants' affiliates outside of the NorthWestern Market. Finally, we grant the Applicants' request for waiver for the requirement of Part 33.2(d) of the Commission's regulations to provide a description of the jurisdictional facilities of their parent companies, associates and affiliates. We find that the Applicants have a number of energy affiliates in markets in areas of the country and the rest of the world that will not be affected by the merger. They have provided sufficient information on energy affiliates and wholesale customers in markets that could

⁷³ Applicants' July 13 Answer at 7.

be affected by the merger so that we can review the transaction's effect on competition, rates, regulation, and determine whether the transaction results in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company that is inconsistent with the public interest. Therefore, we will grant the requested waivers.

The Commission orders:

(A) Applicants' proposed merger is authorized, as discussed in the body of this order, including, but not limited to, the Commission's acceptance of the Applicants' commitments to (i) hold wholesale sales and transmission customers harmless for five years from rate increases that are the result of costs related to the merger; and (ii) not seek to recover the acquisition premium in rates.

(B) The waiver requested by Applicants is hereby granted.

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

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

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

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

(G) If the Proposed Acquisition result 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 shall be made.

(H) Applicants shall submit its merger accounting to the Commission within six months after the merger is consummated. The accounting submission shall provide: (1) all accounting entries necessary to effect the merger, along with narrative explanations describing the basis for the entries, and (2) an explanation as to why the

acquisition premium should be recorded in Account 114, Electric Plant Acquisition Adjustments, and how the amortization of the balance in Account 114 will be accomplished.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.