

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.

WPS Resources Corp. and Peoples Energy Corp.

Docket No. EC06-152-000

ORDER APPROVING MERGER

(Issued December 26, 2006)

1. On August 15, 2006, WPS Resources Corporation and its subsidiaries and affiliates (collectively, WPS Resources), and Peoples Energy Corporation and its subsidiaries and affiliates (collectively, Peoples Energy and together with WPS Resources, Applicants) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for the proposed acquisition of Peoples Energy by WPS Resources.

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 consistent with the public interest, as we find that it will not have an adverse effect on

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) (EPAct).

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 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).

competition, rates or regulation. We also find that it 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.

I. Background

A. Description of the Parties

1. WPS Resources

3. WPS Resources is a holding company headquartered in Wisconsin. It does not own or operate any facilities subject to the Commission's jurisdiction or any significant assets other than the stock of subsidiaries. Its subsidiaries are engaged in utility and non-utility operations throughout the United States and Canada. WPS Resources subsidiaries own regulated electric generation and distribution facilities in Wisconsin and Michigan that serve approximately 477,000 retail electric customers in those states. WPS Resources' subsidiaries own "unregulated"³ generation facilities in New York, Maine, Pennsylvania, Wisconsin, and Canada. In addition, WPS Resources' subsidiaries sell and distribute natural gas to approximately 669,000 retail customers in Wisconsin, Michigan, and Minnesota.

4. WPS Resources owns stock of the following subsidiaries: Wisconsin Public Service Corporation (WPSC), Upper Peninsula Power Company, Michigan Gas Utilities Corporation, Minnesota Energy Resources Corporation, WPS Resources Capital Corporation, WPS Nuclear Corporation, WPS Visions, Inc., Badger Energy Services, L.L.C.L.L.C., Upper Peninsula Building Development Company, Penvest, Inc., Brown County C-LEC, L.L.C., and WPS Investments, L.L.C.

5. WPSC is a public utility operating company wholly owned by WPS Resources. It provides regulated electric and natural gas service to approximately 425,000 retail electric and 308,000 gas customers in northeast and central Wisconsin and adjacent Upper Peninsula Michigan. WPSC owns approximately 1,800 MW of generation and jointly owns approximately 21,000 circuit miles of electric and approximately 7,580 miles of gas distribution facilities. WPSC and all WPS Resources affiliates that make wholesale sales of electricity are authorized to do so at market-based rates.⁴ WPSC has

³ "Unregulated" generation is a term sometimes used to refer to generation with market-based rates.

⁴ See *Wisconsin Public Service Corporation, et al.*, 110 FERC ¶ 61,353 (2005).

transferred its transmission facilities to the American Transmission Company, L.L.C. (ATC), and all transmission services throughout its service territory are provided by the Midwest Independent System Operator under the Energy Markets Tariff (MISO Tariff). WPS is also an owner or part owner of interests in other WPS Resources companies, including WPS Investments, L.L.C., ATC Management Inc., WPS Leasing, Inc., Wisconsin Valley Improvement Company, and Wisconsin River Power Company, which owns and operates facilities on the Wisconsin River and sells the electric output of the facilities to the two co-owners, Wisconsin Power and Light Company and Wisconsin River Power Company.⁵ WPS holds upstream capacity on the Great Lakes Transmission Limited Partnership and Viking Gas Transmission Company natural gas transmission line. It is a customer of ANR Pipeline Company and has authorization to import natural gas from Canada.⁶

6. Upper Peninsula Power Company (UPPCo) is a public utility operating company wholly owned by WPS Resources. It serves approximately 52,000 retail and 37 wholesale electric customers in a rural service territory in Michigan. UPPCo owns approximately 81 MW of generation and 3,070 circuit miles of electric distribution facilities. It has transferred its transmission facilities to ATC, and all transmission services throughout its service territory are provided under the MISO Tariff. UPPCo is an indirect part owner of WPS Investments, Inc. and a direct part owner of ATC Management.

7. WPS Resources Capital Corporation is an intermediate holding company that owns the capital stock of WPS Energy Services, Inc., which in turn owns Quest Energy, L.L.C., Advantage Energy, Inc., WPS Energy Services of Canada Corporation, WPS Power Development, L.L.C.,⁷ and 3096210 Nova Scotia Company.⁸ WPS Resources

⁵ See WPS Resources Corporate and Peoples Energy Corporation August 15, 2006 Application at 6 for a catalog of the percentage of ownership of outstanding shares by WPS in each subsidiary entity.

⁶ See also *Wisconsin Electric Power Company, et al.*, 81 FERC ¶ 61,050 (1997) and *Wisconsin Public Service Corporation*, 78 FERC ¶ 61,354 (1997).

⁷ WPS Power Development, L.L.C. in turn owns all or a portion of the ownership interests in a number of entities involved in electric power and/or steam generation, including Combined Locks Energy Center, L.L.C., Wisconsin Woodgas, L.L.C., Wisconsin Energy Operations, L.L.C., PDI Stoneman, Inc., Sunbury Holdings, L.L.C., WPS Empire State, Inc., WPS New England Generation, Inc., WPS Canada Generation, Inc., and ECO Coal Pelletizations No. 12, L.L.C.

Capital Corporation, through WPS Energy Services, Inc. and its affiliated companies, provides non-regulated natural gas, electricity and alternate fuel supplies, as well as energy management and consulting services, to retail and wholesale customers in the United States and Canada,⁹ and is authorized to engage in wholesale electricity sales at market-based rates.¹⁰

8. Michigan Gas Utilities Corporation (MGU) is a public utility operating subsidiary owned by WPS Resources that was formed to own and operate natural gas distribution assets serving approximately 161,000 customers in southern Michigan. Minnesota Energy Resources Corporation (MERC) is a public utility operating subsidiary owned by WPS Resources that was formed to own and operate natural gas distribution assets serving approximately 200,000 customers in Minnesota. WPS Nuclear Corporation is a subsidiary of WPS Resources that is in the process of winding down its business due to the sale of the Kewaunee Nuclear Power Plant.¹¹ Badger Energy Services, L.L.C. (Badger) was formed by WPS Resources (whole owner) to own a part interest in Badger Energy Services, a corporation that provides propane and other energy-related services in Wisconsin. WPS Resources also owns or has part interest in a number of other companies that are not engaged in energy-related businesses.¹²

⁸ See Application at 8-11 for a complete description of the affiliates and subsidiaries of WPS Resources Capital Corporation.

⁹ Application at 8.

¹⁰ Docket No. ER96-1088.

¹¹ See Application at 11.

¹² WPS Visions, Inc. has a small investment in a real estate development project in Wausau, Wisconsin. Upper Peninsula Building Development Company owns an office building in Houghton, Michigan, which UPPCo leases for its corporate headquarters. Penvest, Inc. participates in telecommunications and real estate ventures in Michigan, and is part owner of Superior Technologies, Inc. Brown County C-LEC, L.L.C. holds an ownership interest in a Wisconsin corporation that provides local exchange and telephone communication services in northeastern Wisconsin.

2. Peoples Energy

9. Peoples Energy, through its subsidiaries, is engaged in utility and non-utility operations in the Midwest, including selling and distributing natural gas to approximately 985,000 retail customers in Illinois and providing interstate transportation and storage services. Its subsidiaries also conduct gas exploration and production, and makes wholesale and retail gas and retail electric sales in the Midwest. Peoples Energy states that it does not own, operate or control any electric transmission and distribution facilities and that it is in the process of selling its indirect, partial and non-operating ownership interest in a single electric generating facility in Illinois, after which it will be engaged in electric wholesale and retail marketing services exclusively.

10. Peoples Energy owns interests in the following companies: The Peoples Gas Light and Coke Company, North Shore Gas Company, Peoples Energy Services Corporation, Peoples District Energy Corporation, Peoples Energy Production Company, Peoples NGV Corporation, Peoples Energy Resources Company, L.L.C.,¹³ and Peoples Energy Ventures, L.L.C.¹⁴

11. The Peoples Gas Light and Coke Company (Peoples Gas) owns and operates a natural gas transportation and distribution system serving approximately 830,000 customers in Chicago, Illinois.¹⁵ Peoples Gas owns Peoples Gas Light Exploration Company and Peoples Gas Neighborhood Development. North Shore Gas Company is a subsidiary of Peoples Energy providing retail natural gas distribution to approximately

¹³ Peoples Energy Resources Company, L.L.C. is affiliated with Peoples Energy Wholesale Marketing, L.L.C. and PERC Power, L.L.C.

¹⁴ Peoples Energy Ventures, L.L.C. is affiliated with Peoples Energy Business Services, L.L.C., Peoples Energy Home Services, L.L.C., Peoples Energy neighborhood Development, L.L.C., and Peoples Technology, L.L.C.

¹⁵ Peoples Gas is exempted from Commission jurisdiction under section 1(c) of the Natural Gas Act because it is a Hinshaw pipeline that is exempt from Commission's jurisdiction. 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.

155,000 customers in Illinois.¹⁶ It owns the outstanding common stock of North Shore Exploration Company. Peoples Energy Services Corporation provides wholesale and retail electric and natural gas services in Illinois, Michigan, Ohio and New York. It has been authorized to sell electricity at wholesale at market-based rates.¹⁷ Peoples District Energy Corporation is a subsidiary of Peoples Energy that is winding down its business following the sale of a district thermal heating and cooling facility in Chicago, Illinois.¹⁸ Peoples Energy Production Company is a wholly-owned subsidiary of Peoples Energy engaged in oil and natural gas production. Peoples NGV Corporation is a subsidiary of Peoples Energy established to promote the use of compressed natural gas vehicles in the Chicago area.

12. Peoples Energy Resources Company, L.L.C. (PERC), an intermediate holding company of Peoples Energy, owns all of the outstanding membership interests in several subsidiaries involved in wholesale gas marketing, natural gas liquids and power generation. PERC's subsidiaries include Peoples Energy Wholesale Marketing, L.L.C. (PEWM) and PERC Power, L.L.C. PEWM provides wholesale gas marketing services and propane-based peaking services, and makes gas purchases and sales. In addition, PEWM provides exchange services to gas utilities, assists power generators manage their gas supply, and purchases and resells refinery gas. PEWM owns Peoples Natural Gas Liquids, L.L.C. and PERC Canada, Inc. PERC Powers L.L.C. owns interests in power generation, including Peoples Elwood, L.L.C., Elwood Energy, L.L.C., Peoples Calumet, L.L.C., Valencia Energy, L.L.C., and COB Energy Facility, L.L.C.¹⁹

13. Peoples Energy Ventures, L.L.C. is a subsidiary of Peoples Energy and an intermediate holding company owning all membership interests in energy-related

¹⁶ North Shore is subject to the jurisdiction of the Illinois Commerce Commission and has received NGA section 7(f) approval to own and operate a service territory of approximately 10.4 miles of gas transportation facilities in Wisconsin. *North Shore Gas Company*, 83 FERC ¶ 61,149 (1998).

¹⁷ Peoples Energy Services Corporation, Docket No. ER01-2301-000 (August 8, 2001) (unpublished letter order).

¹⁸ Peoples District Energy Corporation was 50% owner of Trigen-Peoples District Energy Company, which owned and operated the cooling facility.

¹⁹ See Application at 14-15 for a complete description of the affiliated subsidiaries of PERC Power, L.L.C.

ventures, including Peoples Energy Business Services, L.L.C., Peoples Energy Home Services, L.L.C., Peoples Energy Neighborhood Development, L.L.C., and Peoples Technology, L.L.C.²⁰

B. Description of Merger

14. Applicants entered into a Merger Agreement under which Wedge Acquisition Corp., a wholly-owned, special purpose subsidiary of WPS Resources formed to effect the transaction, will merge with and into Peoples Energy. Peoples Energy will be the surviving entity and will become a direct, wholly-owned subsidiary of WPS Resources. All Peoples Energy subsidiaries will become indirect, wholly-owned subsidiaries of WPS Resources. Applicants state that, upon consummation of the merger, the shareholders of WPS Resources immediately prior to consummation will own approximately 57.6% of the outstanding common stock of WPS Resources, while the existing shareholders of Peoples Energy will own the remaining approximately 42.4% of the outstanding common stock.

15. Applicants state that the facilities affected by the merger that are subject to Commission jurisdiction are: (1) the market-based rate schedule owned by Peoples Energy, (2) the generation and power sales facilities owned by WPS Resources and its subsidiaries for purposes of the sale of electricity for resale; and (3) the 50% membership interest of Peoples Elwood, L.L.C. in Elwood Energy if the sale of that interest has not been completed prior to the Commission's approval of this transaction. The only securities affected are the common stock of WPS Resources and Peoples Energy.²¹

II. Notice and Responsive Pleadings

16. Notice of the Applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 51,599 (2006), with interventions and protests due on or before September 5, 2006.

17. Timely motions to intervene were filed by the Illinois Commerce Commission; the Public Service Commission of Wisconsin; Exelon Corporation; Wisconsin Public Power, Inc.; and Utility Workers Union of American, AFL-CIO, and UWUA Local Union No. 18007. A late-filed motion to intervene was filed by the Great Lakes Utilities. A motion

²⁰ See Application at 15-16 for a complete description of the affiliated subsidiaries of Peoples Energy Ventures, L.L.C.

²¹ Application at Exhibit H-1.

to intervene and protest was filed by Fox Energy Company, L.L.C. (Fox), the passive owner of the Fox Energy Center generating facility, a 600-megawatt generating facility in Wisconsin.²² On September 20, 2006, the Applicants filed an answer to Fox's protest.

18. On November 2, 2006, the Director of the Commission's Division of Tariffs and Market Development – West issued a letter order finding Applicants' application deficient on the issue of cross-subsidization. On November 6, 2006, Applicants filed a supplemental affidavit in order to provide clarifications and assurances sought in the deficiency letter. Notice of the supplemental filing was issued with protests due on or before November 13, 2006. None were filed.

III. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. 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 answer submitted by the Applicants because it has provided information that assisted us in our decision-making process.

B. Standard of Review under FPA Section 203

21. 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."²³ 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; (2) the effect on rates; and (3) the effect on regulation.²⁴ EPAAct 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

²² Fox Energy Company, L.L.C., September 5, 2006 Protest at 2.

²³ See EPAAct *supra* note 1.

²⁴ *Supra* note 2.

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.²⁵

C. Effect on Competition – Horizontal Market Power

1. Applicants' Analysis

22. Applicants argue that the transaction cannot have any horizontal competitive effects because, as of the date of consummation, neither Peoples Energy nor any of its subsidiaries will own or control any electric generation, transmission or distribution facilities. Accordingly, the transaction does not involve a single corporate entity obtaining ownership or control over the generating facilities of a previously unaffiliated entity, and thus a horizontal competitive screen analysis is not required. Applicants add that Peoples Energy's sole electric facilities are (1) a fifty percent ownership interest held by Peoples Elwood, L.L.C., in Elwood Energy, L.L.C., a 1,350 MW generating facility in Elwood, Illinois (Elwood Facility), and (2) a market-based rate schedule held by PE Services. Applicants state that the Elwood Facility's entire capacity is sold under long-term contracts, the earliest expiration date of which is December 31, 2012. The Commission has recognized that generation capacity committed under long-term power purchase agreements does not present any generation market power concerns. Further, Peoples Energy is in the processing of selling its interest in the Elwood Facility and exiting the electric generation business entirely. Thus, Applicants submit that the transaction will not result in any consolidation of jurisdictional facilities and, for that reason, will have no effect on the market share or competitive position of any of WPS Resources' subsidiaries in the geographic markets in which they operate.²⁶

2. Commission Determination

23. We find that Applicants have demonstrated that the merger does not raise horizontal competitiveness issues. Because no corporate entity will obtain ownership or control over the generating facilities of previously unaffiliated merging entities, Applicants need not submit a horizontal analysis.²⁷

²⁵ *Supra* note 7; *see* Order No. 669 at P 164-171.

²⁶ Application at 19-20.

²⁷ 18 C.F.R. § 33.3(a)(1).

D. Effect on Competition – Vertical Market Power**1. Applicants' Analysis**

24. Applicants argue that there can be no adverse effect on competition with respect to electric transmission because none of the Applicants or their subsidiaries own or control electric transmission assets in any geographic market. Applicants therefore conclude that the transaction will have no effect on the upstream electricity transmission market.

25. Applicants analyzed seven segments of the natural gas industry (exploration and production, gathering, processing, mainline transportation, storage, marketing and local distribution), concluding that either Peoples Energy and WPS Resources do not operate in the same geographic markets or, where there is overlap, that the markets are not highly concentrated. Applicants therefore state that the transaction raises no vertical competition issues with respect to natural gas.

2. Protests

26. Fox states that it is not apparent how Applicants treated the question of control of the Fox Energy Facility in their analysis. It states that WPS has entered into a long-term tolling agreement with Calpine Fox, L.L.C., the lessee of the Fox Energy Facility. Fox Energy cites a filing in an earlier case²⁸ in which WPS Resources assumed that WPSC controls the output of the capacity that it purchases under the tolling agreement, but then stated that the former reserved the right to argue in any future matter that WPSC did not control the output of this capacity. Fox Energy therefore argues that in order for the Commission to properly evaluate the competitive effects of WPS Resources' proposed acquisition of Peoples Energy, the Commission must have accurate and consistent data regarding, for instance, control of generation resources affected by the transaction. Fox Energy argues that since WPS Resources' position on this issue is unclear, questions arise as to the accuracy of other data in its submission.

3. Applicants' Answer

27. Applicants submit that the issue of who has operational control of the Fox Energy Facility is irrelevant to the Commission's review of the transaction under section 203. Applicants maintain that the results of their vertical competitive screen analysis are unaffected by the treatment of the Fox Energy Center. None of the seven upstream

²⁸ *Notice of Change in Status, Wisconsin Public Service Corp., et al.*, Docket No. ER95-1528-012, *et al.* (filed June 30, 2005).

natural gas markets are highly concentrated before the transaction and none are made highly concentrated as a result of the transaction. Applicants conclude that a change in the treatment of this single generator in the analysis would not affect their conclusions regarding the competitive effects of the transaction.²⁹

4. Commission Determination

28. In mergers combining electric generation assets with inputs to generating power (e.g., natural gas transmission or fuel supply assets), competition can be harmed if the merger increases the merged firm's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, the merged firm could impede entry of new competitors or inhibit existing competitors' ability to discipline or undercut an attempted price increase in the downstream wholesale electricity market by denying rival firms access to inputs or by raising their input costs. In this case, as discussed below, Applicants have shown that the proposed transaction does not raise any of these concerns.

29. Applicants have shown that the combination of natural gas transportation and electric generation assets will not adversely affect competition. The Commission has stated that in order for a merger to create or enhance vertical market power, both the upstream and downstream markets must be highly concentrated. For seven segments of the natural gas industry, Applicants have demonstrated that either Peoples Energy and WPS Resources do not operate in the same geographic market or, where there is overlap, that the markets are not highly concentrated. Therefore, the transaction raises no vertical competitive concerns with respect to the combination of Applicants' natural gas and energy generation operations. As neither of the Applicants own or control electric transmission assets, the transaction has no effect on the upstream electricity transmission market. We agree with Applicants' argument that the treatment of the Fox Energy Center in the analysis of the downstream market would not affect the result of the analysis.

E. Effect on Rates

1. Applicants' Analysis

30. Applicants state two reasons that the proposed transaction will have no adverse effect on rates for wholesale power sales. First, Applicants commit to hold harmless customers taking wholesale power services from WPSC or UPPCo at cost-based rates from any transaction-related costs in excess of transaction-related savings for a period of

²⁹ Applicants' Answer at 3-4.

five years from consummation of the transaction. Second, further assurance that the Applicants' commitment will prevent any adverse impacts on rates is the Public Utility Holding Company Act of 2005 requirement that the Applicants and their associate companies make their books and records relating to costs available to the Commission and to state regulatory bodies.³⁰

31. Applicants similarly submit two reasons why the proposed transaction will have no adverse effect on transmission rates. First, Applicants contend that neither WPS Resources, Peoples Energy nor any of their subsidiaries own or control transmission facilities or provide transmission service subject to the Commission's jurisdiction. Second, although WPS Resources, WPSC and UPPCo collectively own a minority interest in ATC and ATC Management, which own and operate transmission facilities, operational control of those facilities has been transferred to the Midwest ISO, and open access transmission service is available to customers at rates determined in accordance with the MISO Tariff.

2. Commission Determination

32. As noted in the Commission's Merger Policy Statement,³¹ the Commission primarily examines a transaction's effect on rates in order to protect wholesale power and transmission service customers. In this case, there are no transmission customers to protect. We note that no party has raised any issues regarding the effect on rates.

33. Applicants have committed to hold the customers taking wholesale power services from WPSC or UPPCo at cost-based rates harmless from transaction-related costs in excess of transaction savings for a period of five years.³² If Applicants seek to recover merger-related costs through their wholesale rates, they must submit an informational filing to the Commission that details how they are satisfying the hold harmless requirement. In particular, in such a filing, Applicants must: (1) specifically identify the merger-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the merger. We have found the hold harmless commitment to be enforceable and administratively manageable in the formula rate context if customers have the opportunity to scrutinize costs before they are included in the formula rate, and therefore are able to alert the Commission to costs that, contrary to

³⁰ EPCRA 2005 §§ 1264 and 1265.

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

³² *See Merger Policy Statement* at ¶ 30,124.

Applicants' commitments, might be merger-related.³³ Such a hold harmless commitment would not require changes to the Applicants' formula rate, but will protect customers' wholesale rates from being adversely affected by the merger.

F. Effect on Regulation

1. Applicants' Analysis

34. Applicants argue that the proposed transaction will not adversely affect Federal regulation. All subsidiaries subject to the Commission's jurisdiction before consummation of the transaction will remain subject to the Commission's jurisdiction afterwards. In addition, Applicants argue that the proposed transaction will have no effect on the regulatory jurisdiction of any state commission over the Applicants' public utility operations. Each state will have the same jurisdiction and authority that it has today to regulate the business activities of the Applicants' subsidiaries after consummation of the transaction.

2. Commission Determination

35. The merger will not adversely affect Commission or state regulation. With respect to the merger's effect on state regulation, we note that the merger will not change any state commission's jurisdiction over any utility and, further, that no state commission has alleged that the merger will adversely affect state regulation. We conclude in these circumstances that the states will continue to protect retail ratepayers.³⁴ We also note that the Applicants must obtain the appropriate regulatory approvals before closing the transaction.

G. Cross-subsidization

1. Applicants' Analysis

36. Applicants assert that the proposed transaction will not result in cross-subsidization or pledge or encumbrance of utility assets. Applicants specifically verify that the proposed transaction will not result, at the time of consummation of the transaction or in the future, in: (1) any transfer of facilities between a traditional utility

³³ See *ITC Holdings Corp., et al.*, 116 FERC ¶ 61,271, at P 48 (2006) (*ITC-METC*).

³⁴ See *Merger Policy Statement* at ¶ 30,125.

associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities and an associate company; (2) any new issuances of securities by a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities for the benefit of an associate company; (3) any new pledges or encumbrances of a traditional public utility associate company that has captive customers or that owns or provides transmission services over jurisdictional transmission facilities for the benefit of any associate company; and (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission services over jurisdictional transmission facilities other than agreements attached to the Application.

37. Applicants state that all asset transfer arrangements and service arrangements between affiliates of WPS Resources after consummation of the transaction will be governed by the Non-Regulated Agreement and the Regulated Agreement attached to the Application. Applicants further submit that the terms of those Agreements, the procedures implemented by WPS Resources to monitor compliance with those Agreements, and the oversight by the state commission with jurisdiction over those Agreements will ensure that the transaction will not result in cross-subsidization now or in the future.

2. Commission Determination

38. Under section 203(a)(4) of the FPA,³⁵ the Commission must find that the transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest. Section 33.2(j) of the Commission's regulations requires that an applicant intending to show that such cross-subsidization will not occur must file an explanation, with appropriate evidentiary support (Exhibit M to the application), assuring that no cross-subsidization or pledge or encumbrance of utility assets for the benefit of an associate company will result at the time of the transaction or in the future.

39. In Order No. 669, the Commission explained its concern regarding cross-subsidization as being "principally a concern over the effect of a transaction on rates."³⁶ Therefore, the Commission stated that applicants should proffer ratepayer protection mechanisms to assure that captive customers are protected from the effects of cross-

³⁵ 16 U.S.C. § 824b(a)(4) (as amended by EPAct 2005).

³⁶ Order No. 669 at P 167.

subsidization.³⁷ Among the types of protection mechanisms that can be proposed by merger authorization applicants are: a general hold harmless provision, which must be enforceable and administratively manageable, where the applicant commits that it will protect wholesale customers from any adverse rate effects resulting from the transaction for a significant period of time following the transaction; and a moratorium on increases in base rates (rate freeze), where the applicant commits to freezing its rates for wholesale customers under a certain tariff for a significant period of time. The Commission stated that it would address the adequacy of the proposed mechanisms on a case-by-case basis. The applicant bears the burden of proof to demonstrate that customers will be protected.

40. We find that, as required by our regulations, Applicants have provided sufficient assurances that their merger will not result, at the time of consummation or in the future, in cross-subsidization of a non-utility company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Commission requires applicants, in their explanations assuring that no cross-subsidization or pledge or encumbrance of utility assets for the benefit of an associate company will result, to disclose all existing pledges or encumbrances of utility assets and to include a detailed showing that the merger will not produce any of four prohibited results at the time of consummation or in the future.³⁸ Applicants have provided the verifications and information as required by our regulations. Applicants also state that at present, neither WPS Resources nor Peoples Energy has an internal corporate financing arrangement such as a money pool, within the meaning of the Commission's Order Nos. 634 and 634-A,³⁹ and certify that there are no

³⁷ Order No. 669-A at P 135.

³⁸ *Transactions Subject to FPA Section 203*, Order No. 669, 71 Fed. Reg. 1,348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g and clarification*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006). If an applicant cannot make the stated verifications, then it has the option of explaining how the cross-subsidization, pledge, or encumbrance is consistent with the public interest.

³⁹ *Regulation of Cash Management Practices*, Order No. 634, 68 Fed. Reg. 40,500 (July 8, 2003), FERC Stats. & Regs. ¶ 31,145 (2003), Order No. 634-A, 68 Fed. Reg. 61,993 (2003), FERC Stats. & Regs. ¶ 31,152 (2003).

present plans to establish a money pool for the holding company following consummation of the transaction. Applicants commit that should this change, they will “obtain all necessary regulatory authorizations before establishing any money pool arrangement in compliance with Order Nos. 634 and 634-A.”⁴⁰

The Commission orders:

(A) The proposed transaction 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 new pending or which may come before this Commission.

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

(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) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the merger.

(F) If the transaction results in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made.

(G) Applicants shall notify the Commission within 10 days of the date that the merger and disposition of jurisdictional facilities is consummated.

(H) 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.

⁴⁰ Supplemental Filing at P 5. The Commission notes, however, that Order Nos. 634 and 634-A do not require approval from the Commission before a utility may establish a money pool.

(I) WPS Resources shall submit its final accounting entries within six months of the date that the merger is consummated, and the submission shall provide the computation of excess purchase price over fair value, the accounting for any goodwill and/or acquisition adjustments, as well as the final allocation of the purchase price to the acquired subsidiary companies.

(J) WPS Resources shall provide proposed final accounting entries for the merger, including entries for any dispositions of assets as a result of the merger, in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. The accounting submission shall include narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.