

13-1126

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 12-1571-E-PC

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY
Petition for approval of generation resource
transaction and related relief.

CASE NO. 13-1272-E-PW

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY
General Investigation to Determine Reasonable
Rates for Monongahela Power Company and
The Potomac Edison Company on and after
January 1, 2014.

COMMISSION ORDER

October 7, 2013

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CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 7th day of October 2013.

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COMMISSION ORDER

By this Order, the Commission approves a generation resource transaction subject to certain Commission imposed terms and conditions in addition to those terms and conditions contained in a partial Joint Stipulation and Agreement for Settlement (Joint Stipulation), a copy of which is attached in full text as Appendix A to the Order. In doing so, the Commission authorizes Monongahela Power Company (Mon Power) and The Potomac Edison Company (Potomac Edison, and with Mon Power, MP/PE) to complete a generation resource transaction involving Mon Power's ownership interests in the Harrison and Pleasants Power Stations, to impose a temporary transaction surcharge until rates from the next base rate case are in effect, to enter into certain affiliated agreements (Affiliated Agreements), and to adopt modified Expanded Net Energy Cost (ENEC) rates.

The net impact of the transaction surcharge and modified ENEC rates provide an immediate rate decrease of approximately \$16 million. Additional conditions imposed by the Commission limit the rate recovery on an Acquisition Adjustment to a share of net off-system sales margins made from newly-acquired Harrison generation, provide for adjustment to the Acquisition Adjustment allowed for ratemaking if the Federal Energy Regulatory Commission (FERC) determines that the fair market value of Harrison does not support the full amount of the Acquisition Adjustment, limits future dividends that Mon Power may pay under certain capital structure conditions, and requires MP/PE and

certain of their affiliates to file written statements of agreement to the limitations imposed in the Order. The Commission defers ruling on the request by MP/PE for protective treatment of certain information. In this Order the Commission also excuses MP/PE from filing a 2013 ENEC proceeding pursuant to petition filed in Case No. 13-1272-E-PW.

INTRODUCTION

The Commission is faced with a complex case that has been through two full hearings, one a full evidentiary hearing focusing on the litany of contested issues in the case, and one a full hearing addressing the issues embodied by the proposed settlement in the Joint Stipulation. The Joint Stipulation is opposed only by the West Virginia Citizens Action Group (WVCAG).

The issues in this case are important to the future of Mon Power and Potomac Edison, vital to the health, industry and citizenry of the State, and critical to the electric utility ratepayers of the State.

The Commission appreciates the efforts of the Stipulating Parties to resolve among themselves the issues in the case through the Joint Stipulation placed in evidence at the hearing on Friday, September 13, 2013. The existence of that Joint Stipulation, while presenting a nearly unanimous recommendation by the Parties, does not absolve us from examining all aspects of this proceeding that are relevant to the Commission decision including the record in the case, the Joint Stipulation, the arguments and briefs of all parties to the case and the reasonableness of the settlement as fashioned and shaped by the Joint Stipulation.

BACKGROUND

On November 16, 2012, MP/PE filed a Petition for Approval of a Generation Resource Transaction and Related Relief (Petition). Based on projections of capacity requirements and resources, as detailed in the 2012 Resource Plan filed with the Commission on August 31, 2012, in Case No. 11-1274-E-P, MP/PE in the Petition identified a significant deficit in the generating capacity available to serve their West Virginia load. To address this deficit, MP/PE filed a Petition, docketed as Case No. 12-1571-E-PC, proposing a generation resource transaction (Transaction) that would increase the net installed capacity of Mon Power by 1,476 megawatts.

The Transaction consists of (i) acquisition by Mon Power of the 79.46 percent ownership interest currently held by Allegheny Energy Supply Company, LLC (AE Supply) in the Harrison Power Station (Harrison), resulting in Mon Power being the sole owner of Harrison, (ii) acquisition by AE Supply of the 7.69 percent ownership interest held by Mon Power in the Pleasants Power Station (Pleasants), resulting in AE Supply being the sole owner of Pleasants, (iii) approval of certain Affiliated Agreements,

and (iii) implementation of a temporary base rate surcharge (Surcharge) to recover the ongoing net capital and operating costs related to the Transaction, effective as of the closing of the Transaction (Closing) and to remain in effect until new base rates are placed into effect.

The Mon Power net investment in the Transaction is in excess of \$1.1 billion. MP/PE contended that without immediate rate relief to provide for recovery of and on this investment and the additional expense to operate Harrison, Mon Power would not proceed with the Transaction. MP/PE asserted that the Surcharge would be offset by reductions in rates for purchased capacity and energy established in annual ENEC cases. MP/PE sought Commission approval of the Transaction in its entirety, including the Harrison Acquisition, the Pleasants Sale, certain affiliate agreements described in this Petition,¹ the Surcharge, and the associated ENEC rate adjustments. MP/PE further asserted that the Transaction is necessary, prudent, and reasonable, and satisfies all of the requirements of W.Va. Code §§24-2-12, 23-2-2, and 24-2-3. MP/PE proposed an aggressive procedural schedule for processing this case and requested a final order by April 15, 2013. MP/PE included with the Petition the prefiled direct testimony of five witnesses: Michael B. Delmar, Thomas A. Pezze, Thomas Houlihan, Kevin G. Wise, and Steven R. Staub. These witnesses supported various aspects of the relief requested in the Petition.

On November 26, 2012, Consumer Advocate Division of West Virginia (CAD) and the WVCAG filed separate petitions to intervene.

On November 27, 2012, CAD filed a response to the procedural schedule proposed by MP/PE. CAD argued that evaluation of the Transaction would involve an analysis of forecasted electricity requirements and the supply-side and demand-side resources available to meet the forecasted requirements. CAD also asserted that, with the difficulty in engaging an expert in those areas, the proposed procedural schedule submitted by MP/PE would not allow sufficient time. CAD stated that it was working with Staff and other parties to develop a revised schedule.

¹ In addition to the Asset Swap Agreement between Mon Power and AE Supply filed with the Commission on April 22, 2013, the "Affiliate Agreements" include (i) a Revised Amended Mutual Assistance Agreement among Mon Power, First Energy Generation Corp. (FE GenCo), and various other First Energy affiliates providing that FE GenCo would provide all staffing and operation services for generating stations owned by Mon Power, including Harrison; (ii) an Assumption and Indemnity Agreement between Mon Power and AE Supply, through which Mon Power will assume repayment and related obligations of AE Supply in respect of a \$73.5 million Note secured by certain facilities at Harrison; and (iii) a promissory note to be executed by Mon Power in favor of AE Supply to reflect the Mon Power repayment obligation under an expected bridge financing during the interim period between the Closing and the completion of permanent financing by Mon Power. Forms of these three agreements were provided in Exhibit J of the Petition.

On December 5, 2012, the West Virginia Energy Users Group (WVEUG) filed a petition to intervene, citing its legal interest in support of its petition.

On December 7, 2012, MP/PE filed a response to the November 27, 2012 CAD filing. MP/PE reiterated their request for an April 15, 2013 Commission Order. In support of its proposed schedule, MP/PE noted, among other reasons, (i) the benefit to Mon Power and its customers of ownership of Harrison during the summer of 2013 to help alleviate the impact of energy price fluctuations during summer months, (ii) the ability to offer the capacity of Harrison into the May 2013 Reliability Pricing Model Base Residual Auction for delivery year 2016/2017, and (iii) the potential to generate additional ENEC net revenues during the peak power price period of summer 2013.

On December 13, 2012 (revised December 17, 2012), CAD filed a Motion to Establish Procedural Schedule. CAD recommended a procedural schedule to include an April 22, 2013 evidentiary hearing and a June 24, 2013 Commission Order. CAD stated that Staff, WVEUG, and WVCAG agreed to that proposed schedule.

On December 18, 2012, the Utility Workers Union of America, AFL-CIO (UWUA) and its Local 304, Scott Pedigo, Justin Hutson, Randy Matheny, Cam Sayre, J.J. Muto, and Joseph Pellegrin (collectively, the UWUA Group), filed a petition to intervene, citing its legal interest in support of its petition.

By Orders entered December 18, 2012, and December 21, 2012, the Commission granted pro hac vice admission pursuant to separate motions filed by UWUA and the Sierra Club.

On December 21, 2012, Staff filed its Initial Joint Staff Memorandum. Staff recommended that the Commission require public notice of this filing and the anticipated rate impact of the Transaction. Staff stated that it supported the CAD procedural schedule.

On December 21, 2012, MP/PE filed a letter in support of its previously filed proposed schedule.

On December 21, 2012, the Sierra Club filed a petition to intervene, citing its legal interest in support of its petition.

On January 4, 2013, the Independent Oil and Gas Association of West Virginia, Inc. (IOGA) filed a petition to intervene, citing its legal interest in support of its petition.

On January 17, 2013, MP/PE, Staff, CAD, and WVEUG filed an agreement whereby Staff, CAD, and WVEUG agreed not to file a motion to dismiss based on Staff concerns regarding the absence of a Rule 42 financial filing in the case, subject to filing a

base rate case by MP/PE within six months of completion of the Transaction (in the event of Commission approval).

On January 22, 2013, CAD filed a second motion to establish a procedural schedule. As a basis for that second motion, CAD stated that MP/PE had failed to respond to the CAD data requests in a timely manner. CAD further stated that it remained optimistic that it would be able to resolve the issues related to its data requests without filing a motion to compel responses, but that the delay in receiving full and complete responses to these requests had impaired the CAD ability to conduct an analysis of the Transaction and to prepare direct testimony under the procedural schedule previously proposed by CAD. CAD proposed a revised procedural schedule including a May 29, 2013 evidentiary hearing and a suggested date of August 1, 2013, for submission of a Commission Order. CAD stated that Staff, WVEUG, WVCAG, UWUA, Sierra Club, and IOGA agreed to its proposed revised schedule.

On January 23, 2013, the Commission issued an Order (i) granting the petitions to intervene and (ii) directing MP/PE and CAD to resolve their discovery dispute and report to the Commission regarding the resolution.

On January 29, 2013, MP/PE submitted supplemental direct testimony of Kevin G. Wise to reflect rate changes needed in this proceeding because of the December 17, 2013 Commission Order in Case No. 12-1238-E-GI.

On January 30, 2013, CAD filed a report on the discovery dispute as required by the January 23, 2013 Commission Order. CAD asserted that delays in discovery, combined with the recently revised testimony filed by MP/PE, had compromised the ability of CAD to prepare its case.

On January 30, 2013, MP/PE filed a report as required by the January 23, 2013 Commission Order. MP/PE stated that they had worked with CAD to facilitate discovery and were unaware that there had been a substantive delay that would create the need for a revised procedural schedule. MP/PE submitted a revised procedural schedule that used the proposed hearing and briefing dates originally proposed by CAD, but accelerated the Staff/intervenor and rebuttal testimony dates.

On February 5, 2013, WVCAG filed a letter objecting to the proposal by MP/PE to accelerate the due date for intervenor and rebuttal testimony. WVCAG asserted that its expert witness had conflicting, pre-existing deadlines in other jurisdictions.

On February 11, 2013, the Commission directed MP/PE to file a proposed public notice for review by the Commission. The proposed notice was to describe this filing and its potential rate impact, including a plain-language explanation of any assumptions and estimations necessary for the rate calculation.

On February 19, 2013, the Recording Secretary of the I.B.E.W. Local 2357, AFL-CIO (IBEW) filed a petition to intervene by IBEW. As cause, the petition stated that the organization represented approximately 150 Mon Power employees.

On February 20, 2013, MP/PE filed a proposed public notice as required by the February 11, 2013 Commission Order.

On March 7, 2013, the Commission issued an order (i) granting the petition of the IBEW to intervene and (ii) requiring publication of a Public Notice of Proposed Transaction and Change in Rates.

On March 11, 2013, West Virginia Oil and Natural Gas Association (WVONGA) filed a petition to intervene, citing its legal interest in support of its petition.

On March 20, 2013, the Commission issued an order granting the petition of WVONGA to intervene.

On March 29, 2013, West Virginia Coal Association (WVCA) filed a petition to intervene, citing its legal interest in support of its petition.

On April 4, 2013, MP/PE filed an affidavit of publication of the Commission-required public notice.

On April 9, 2013, the Commission issued an order granting the petition of the WVCA to intervene.

On April 15, 2013, the West Virginia State Building and Construction Trades Council, AFL-CIO (Building Trades), filed a petition to intervene, citing its legal interest in support of its petition.

On April 22, 2013, MP/PE filed the Asset Swap Agreement, which formalized the arrangement set forth in the Memorandum of Understanding provided with the Petition.

On April 26, 2013, Staff filed the direct testimony of Edwin L. Oxley and Donald E. Walker; CAD filed the testimony of Byron L. Harris, Billy Jack Gregg, and J. Richard Hornby; the WVEUG filed the testimony of Stephen J. Baron; WVCAG filed the testimony of David A. Schlissel and Catherine E. Kunkel; the Sierra Club filed the testimony of Jeffrey E. Loiter; the WVCA filed the testimony of William E. Raney and James J. Laurita, Jr.; the Building Trades filed the testimony of Steve White; and WVONGA filed the testimony of Michelle Bloodworth.

On May 16, 2013, MP/PE filed Orders of FERC approving the two transfers under Section 203 of the Federal Power Act and authorizing the proposed financing under Section 204 of the Federal Power Act.

On May 17, 2013, MP/PE filed the rebuttal testimony of Mr. Delmar, Mr. Pezze, Mr. Houlihan, Mr. Wise, Mr. Staub, Stanley F. Szwed, Edward C. Miller, Harvey L. Wagner, and Judah L. Rose. WVEUG filed the rebuttal testimony of Mr. Baron, and the WVCA filed the rebuttal testimony of Mr. Laurita and Mr. Christopher T. Marsh.

On May 24, 2013, MP/PE filed a motion for protective order. In a Commission Order dated May 28, 2013, the Commission allowed parties until June 6, 2013, to file a response to this motion. No party filed a response.

On May 29-31, 2013, the Commission conducted three days of hearings, receiving testimony from twenty-three witnesses. References to the transcripts are designated as "Tr. I" (May 29, 2013 hearing); "Tr. II" (May 30, 2013 hearing); and "Tr. III" (May 31, 2013 hearing).

On July 9, 2013, MP/PE, Staff, CAD, WVCAG, the WVEUG, the Sierra Club, the WVCA, and the Building Trades filed initial briefs. MP/PE, the WVEUG, Staff, CAD, WVCAG, and the Sierra Club filed reply briefs on July 19, 2013.

On August 21, 2013, MP/PE, Staff, CAD, WVEUG, UWUA, the Building Trades, the WVCA, and the IBEW (collectively, the Stipulating Parties) filed the Joint Stipulation in resolution of the issues raised in this case. The Sierra Club subsequently executed the Joint Stipulation, and counsel filed an updated stipulation that included the signature of the Sierra Club's counsel on September 6, 2013.

WVONGA and IOGA were not parties to the Joint Stipulation, but each indicated that it took no position on the Joint Stipulation. WVCAG was the only party to indicate that it opposed the Joint Stipulation. The Stipulating Parties requested a final order approving the Joint Stipulation and Transaction "as soon as possible but no later than August 30, 2013," based on the expiration of the Asset Swap Agreement on September 1, 2013.

The material terms of the Joint Stipulation were set forth in paragraph 11 of the Joint Stipulation. The material terms modify important aspects of the Petition and incorporate various new commitments of MP/PE. The following is a general overview of the provisions of paragraph 11 of the Joint Stipulation and may not reflect the exact language of the Joint Stipulation.

(a) Employment Commitment. Within eighteen months after Closing MP/PE will hire fifty new employees, mostly in the distribution sector. MP/PE

will work with Staff to determine areas where these additional personnel are needed.

(b) Economic Development, Low-Income Support, and Education Commitments, to include:

(1) Economic Stability Credit. Industrial and large commercial customers served under Rate Schedules K and PP will receive a credit on monthly bills during the 2014 and 2015 calendar years. The credit is expected to provide cost savings to those customers of approximately \$2.3 million in the aggregate.

(2) Supporting Renewable Energy. Mon Power will retire \$100,000 of renewable energy credits. The retired credits will not be available to sell, trade, or apply toward obligations under the West Virginia Alternative and Renewable Portfolio Act.

(3) Low Income Energy Assistance. By June 2014, MP/PE will begin making yearly contributions of \$100,000 to the Dollar Energy Fund (or similar agency) to assist low income customers to pay their electric bills. These payments will continue for a total of five years for a total contribution under this program of \$500,000.

(4) Home Weatherization Assistance. By June 2014, MP/PE will begin making yearly contributions of \$100,000 to the West Virginia Office of Economic Opportunity's weatherization program to assist residential customers to make weatherization improvements to their homes. These payments will continue for a total of five years for a total contribution under this program of \$500,000.

(5) Governor's West Virginia Kids First Initiative. By December 2014, MP/PE will begin making yearly contributions of \$100,000 to the Governor's West Virginia Kids First Initiative to support energy efficient measures in public schools within MP/PE service territories. These payments will continue for a total of five years for a total contribution under this program of \$500,000.

The contributions described in paragraphs (b)(1)-(5) above will be made by MP/PE and will not be recoverable from MP/PE customers.

(c) Customer-Funded Contribution to Dollar Energy. Customers of MP/PE are currently funding a \$250,000 weatherization program on an annual basis. In the next base rate case of MP/PE, this \$250,000 will be redirected to

Dollar Energy, or an alternate low income energy assistance agency recommended by the Stipulating Parties.

(d) Encouraging Energy Efficiency. MP/PE will develop a Phase II Energy Efficiency Portfolio Plan designed to achieve, by May 2018, increased energy efficiency. MP/PE will use a Request for Proposal (RFP) when implementing their energy efficiency programs. MP/PE may seek to recover the administrative and program costs of the plan through rates.

(e) Mon Power's Acquisition of AE Supply's Interest in Harrison. The Stipulating Parties recommend that the Commission approve (i) the acquisition by Mon Power of the 79.46 percent ownership interest held by AE Supply in Harrison (making Mon Power the sole owner of Harrison) and (ii) the Mon Power sale to AE Supply of the Mon Power 7.69 percent ownership interest in Pleasants.

(f) Net Payment to AE Supply at Closing. The Stipulating Parties recommend that the Commission approve a net payment of approximately \$1.102 billion by Mon Power to AE Supply in consideration of the change of ownership of the Harrison and Pleasant properties as described in paragraph (e), above. This payment also includes a \$73.5 million credit to Mon Power for its assumption of an AE Supply pollution control note.

(g) Ratemaking Treatment for Harrison Acquisition and Pleasants Sale.

(1) Rate Base Amount for Surcharge.

(A) The Stipulating Parties agreed that MP/PE should be permitted to increase jurisdictional rate base by \$858,270,388 to reflect the acquisition of Harrison (Harrison Rate Base Amount)², offset by a reduction of \$62,419,055, to reflect the sale of Pleasants.

(B) Gain on Pleasants Sale. MP/PE seek to amortize the \$25.3 million gain from the sale of Pleasants over the sixteen-month duration of the Surcharge (described below).

(2) Future Regulatory Treatment of Rate Base Amount.

² The components of the Harrison Rate Base Amount, based on values at the time of the filing, are : Electric Plant in Service \$1,241,728,845; Accumulated Depreciation (\$667,607,064); Acquisition Adjustment \$258,818,178; Fuel Stock \$18,637,135; and Materials and Supplies \$9,088,280. The actual values at time of closing will likely vary by some relatively small degree. Mon Power will also purchase Construction Work In Progress (CWIP) at the book value as of the date of closing. The Harrison CWIP at the time of filing of the Petition was \$59,775,298.

(A) MP/PE agree not to seek recovery through rates of the difference between the Mon Power payment to AE Supply for Harrison and the Harrison Rate Base Amount.

(B) Mon Power will make an accounting entry to record an acquisition adjustment (Acquisition Adjustment) for the acquisition of Harrison. MP/PE may seek to amortize the Acquisition Adjustment over the remaining depreciable life of Harrison and recover the annual amortized amounts from MP/PE customers through rates.

(C) The other Stipulating Parties will not object to the inclusion in rate base of, and recovery of, a full return of and on, the Harrison Rate Base Amount.

(3) The Stipulating Parties recommend that the Commission should require Mon Power and Potomac Edison to allocate rate revenues from West Virginia rates proportionate to the demonstrated cost of service of each of the two companies. Quarterly adjustments should be made to maintain these proportions.

(h) Surcharge. MP/PE may impose a Surcharge in support of the costs of the Transaction beginning on the date of the Closing. The Surcharge will expire on the day new rates from MP/PE's next base rate case are placed into effect. The annual revenue requirement of the initial Surcharge is estimated to be \$113.4 million.

(i) Adjustment to ENEC Rates. On Closing, at the same time the Surcharge commences, MP/PE will reduce ENEC rates to reduce ENEC revenues by approximately \$129.5 million annually to reflect the ENEC revenues and costs from the additional generation. These ENEC rates will remain in place until the effective date of new ENEC rates. The Stipulating Parties recommend that MP/PE not file a 2013 ENEC proceeding and that ENEC rates remain unchanged until January 1, 2015, as a result of the 2014 ENEC proceeding.

(j) Filing of Tariff Sheets. MP/PE will file, within ten days of Closing, revised tariff sheets reflecting the Surcharge and the adjustment to ENEC rates.

(k) Filing of Base Rate Case. MP/PE will file a general base rate case no later than April 30, 2014.

(l) Accounting for the Transaction.

(1) On completion of the Transaction, Mon Power will record accounting entries to reduce the net book value of the Harrison plant to that level included in Harrison Rate Base Amount.

(2) MP/PE believe that the Transaction will not cause senior secured credit ratings for MP/PE to fall below Baa1 as rated by Moody's, or to fall below BBB+ as rated by Standard and Poor's.

(m) Capacity Procurement.

(1) MP/PE will develop an RFP, for review by the Commission and the Stipulating Parties, to address Capacity Shortfalls that exceed owned or contracted-for capacity resources by 100 megawatts or more. The RFP will allow proposals from both supply-side and demand-side resources.

(2) An RFP will not be necessary if (i) the Capacity Shortfall is from unusual and non-reoccurring circumstances and (ii) MP/PE reasonably believe that they will have adequate capacity resources to avoid a Capacity Shortfall.

(3) MP/PE are limited in their obligation to develop the RFP as described above.

(4) MP/PE may continue to conduct capacity resource planning and acquisition efforts in the normal course of business.

(n) Approval of Affiliate Agreements. The Stipulating Parties recommend that the Affiliate Agreements be approved pursuant to W.Va. Code §24-2-12(c).

(o) Coal Procurement. MP/PE will maximize the amount of West Virginia coal to be burned at Harrison consistent with statutory requirements and at the lowest available cost.

The Stipulating Parties agreed that the particulars of the Joint Stipulation, each of which they contended is an essential and integral element of a fair and reasonable resolution of the case, should be approved. They indicated, however, that the terms and conditions of the Joint Stipulation were contingent upon the Commission approval of the Transaction as amended by the Joint Stipulation without modification, and the subsequent Closing of the Transaction. Joint Stipulation, paragraph 18.

As was provided in paragraph 11(i) of the Joint Stipulation, on August 22, 2013, MP/PE filed on their behalf and on behalf of the Commission Staff, CAD and WVEUG a Joint Motion to Excuse MP/PE 2013 ENEC filing. In this filing, the parties agreed that a 2013 ENEC filing was unnecessary and would not be productive or useful because fuel costs and purchase power costs have not changed significantly during the past year, and the over-recovery of the deferred fuel balance was projected to be offset in rates by an under-recovery of 2014 forecast costs. The MP/PE request to forego this filing was made contingent on Commission approval of the Joint Stipulation. The motion also requested that MP/PE be excused from any requirement to report on the development of a potential Phase II Energy Efficiency Portfolio Plan given the MP/PE commitments in this regard in the Joint Stipulation. The Commission docketed this motion as Case No. 13-1272-E-PW.

On August 23, 2013, WVCAG filed its Objection to the Proposed Settlement (WVCAG Objection). WVCAG raised several points of opposition to the Joint Stipulation, namely that (i) the Transaction would violate the Merger Stipulation which was filed by Parties to resolve issues in Case No. 10-0713-E-PC, (ii) the Transaction ignores the importance of fuel diversity and burdens West Virginia ratepayers with a future that is over-dependent on coal, (iii) the total cost of the Transaction is not supported by substantial evidence, (iv) approving the Transaction without an RFP would be arbitrary and capricious, (v) risks of minority ownership of Harrison do not justify the need to purchase one hundred percent of Harrison, (vi) the Joint Stipulation fails to emphasize and incorporate energy efficiency provisions that can benefit all customers through avoidance of energy and capacity costs, and (vii) negotiations with AE Supply demonstrate a greater concern by MP/PE for the corporate shareholders of the parent company than for their own customers.

In a Commission Order dated August 26, 2013, the Commission acknowledged the filing of the Joint Stipulation and directed the parties to jointly propose a hearing date to sponsor it and allow for cross-examination and the presentation of evidence in opposition to it by WVCAG. Although the Commission noted the desire of the Stipulating Parties to move the matter forward quickly, it expressed concern about their proposed decision date of August 30, 2013, indicating that the issues to be decided in this proceeding are too numerous, too significant from a rate making and cost of service perspective, and too important to current and future ratepayers, MP/PE, and the economy of the State to suggest that they be treated in anything other than a detailed and thoughtful manner by the Commission.

The Commission also noted that it had maintained a policy of receiving testimony from stipulating parties that both explain and support their stipulations in cases with a substantial impact on ratepayers. This proceeding, with significant rate base and ratepayer impacts, and where all parties are not in unanimous agreement, required that the Stipulating Parties address why the Joint Stipulation is in the public interest and required an opportunity for the non-signatories to state their positions and objections about the

Joint Stipulation. The Commission required that all parties appear at a hearing with a witness to state whether, and why, the Joint Stipulation is, or is not, in the public interest.

On August 29, 2013, counsel for MP/PE filed an agreement among the parties to schedule the evidentiary hearing date on the Joint Stipulation for September 13, 2013. In a Procedural Order dated September 4, 2013, the Commission set the hearing for September 13, 2013, and required the parties to file an order of witnesses by September 11, 2013.

In Commission Orders dated September 10, 2013, and September 12, 2013, the Commission granted the request of various parties (the Building Trades, WVONGA, IOGA, and Sierra Club) to be excused from presenting witnesses at the September 13, 2013 hearing.

On September 10, 2013, WVCAG filed the supplemental direct testimony of Catherine Kunkel, in both public and confidential versions.

On September 11, 2013, MP/PE filed a witness order on behalf of the parties.

On September 13, 2013, the Commission held an evidentiary hearing on the Joint Stipulation. References to the transcript for the September 13, 2013 hearing are designated as "Tr. IV." MP/PE presented Kevin G. Wise to sponsor the Joint Stipulation on behalf of the Stipulating Parties. Mr. Wise explained the material terms of the Joint Stipulation and responded to examination from counsel for various parties and from the Commission. Stephen Baron for WVEUG, William B. Raney for the WVCA, Scott Pedigo for the UWUA and Cheryl Ranson for Staff presented testimony in support of the Joint Stipulation. The scheduled witness for CAD could not attend the hearing, but Counsel for CAD indicated its support for the Joint Stipulation. Through the admission of Ms. Kunkel's supplemental testimony, WVCAG presented testimony in opposition to the Joint Stipulation, and WVCAG cross examined all of the Stipulating Parties' witnesses. At the conclusion of hearing, the parties declined the opportunity to present closing statements in lieu of briefing, and the Commission submitted the case for decision.

On September 16, 2013, MP/PE filed two requested post hearing exhibits. On September 17, 2013, MP/PE filed a proposed order with the Commission and on September 18, 2013, WVCAG also filed a proposed order with the Commission.

On September 23, 2013, the Sierra Club filed a partial opposition to the motion to excuse the 2013 ENEC filing (docketed in Case No. 13-1272-E-PW). The Sierra Club objected to the request that MP/PE be excused from reporting on development of their Phase II energy efficiency plan, asserting that the request is inconsistent with the Joint Stipulation and formation of a stakeholder group.

On September 23, 2013, MP/PE filed a response to the Sierra Club objection stating that MP/PE intend to file a developed Phase II Plan pursuant to an RFP.

On September 23, 2013, the Commission issued an Interim Order notifying the parties that a thoughtful and complete evaluation of this case could not result in a final order by September 24, 2013, as requested by MP/PE.

On September 25, 2013, the Sierra Club filed a response to the September 23, 2013 MP/PE filing. The Sierra Club stated its concerns are allayed to the extent MP/PE, in consultation with stakeholders, makes a filing concerning development of the Phase II Plan within three months of the final order in Case No. 12-1571-E-PC, and includes in that filing a proposed timetable for the RFP process and submission of the Phase II Plan as contemplated by the Joint Stipulation.

All told, the parties produced over 2,850 pages of prefiled direct, rebuttal, and live testimony. Additionally, the Commission received and reviewed over 1,800 letters and petitions supporting or opposing the Transaction. Following the hearings the parties filed over 350 pages of argument in the form of initial and reply briefs or proposed orders.

Summary of the Joint Stipulation and Differences between the Transaction as Proposed and as Modified by Joint Stipulation

There are three significant differences between the terms of the Joint Stipulation and the Transaction proposed in the Petition.

1. The first category of Transaction differences relates to how the Joint Stipulation will reduce the rate base valuation of Harrison that will be used for establishing West Virginia jurisdictional revenue requirements, both for purposes of the Surcharge and for future base rate cases. Kevin G. Wise, Director, Rates and Regulatory Affairs for First Energy Service Company, explained at the September 13, 2013 hearing that the rate base initial valuation for the 1,576 Harrison MW acquired from AE Supply would be \$565 per/kW (including Construction Work in Progress (CWIP)), rather than the \$776 per/kW proposed in the Petition. This reduction represents a lower jurisdictional rate base amount of approximately \$332 million. Tr. IV (Wise) at 38-39.

2. The second category of Transaction differences between the Petition and the Joint Stipulation relates to rate impacts associated with the Surcharge and corresponding ENEC reduction. Not only will the lower rate base amount specified in paragraph 11(g)(1) of the Joint Stipulation be used in the Surcharge calculation, paragraph 11(h) of the Joint Stipulation provides that the return on equity used in the Surcharge rate will be reduced from the 10.5 percent rate requested in the Petition to a 10.0 percent rate, and the income tax expense component will be calculated at a twenty-five percent rate rather than the higher rate proposed in the Petition.

These changes served to reduce further the annual revenue requirement associated with the Surcharge to approximately \$113.4 million from the \$193 million level contemplated in the Petition. When combined with the shortened amortization period for recognition of the gain on the Pleasants sale and the reduction in the ENEC rates of an estimated \$129.5 million to reflect lower purchased power costs and net margins from off system sales associated with the additional generation capacity, at Closing customers under all rate schedules will immediately experience a decrease in rates. Based on the stipulated allocations of the revenue requirement changes among rate schedules, the net decrease for Rate Schedules K and PP (large industrial customers) is five percent and the net decrease for all other rate schedules is 1.5 percent. Joint Stipulation Ex. E.

3. The third category of Transaction differences between the original Petition and the terms of the Joint Stipulation relates to new or expanded employment, financial, energy efficiency and capacity acquisition commitments. These include (i) a commitment to increase employment in West Virginia by fifty employees, mostly in the distribution sector; (ii) a two-year rate credit for Rate Schedules K and PP customers; (iii) a \$100,000 retirement of renewable energy credits to spur the development of renewable energy resources; (iv) three separate \$500,000 contributions over a five-year period for the purposes of low-income energy assistance, home weatherization assistance, and to spur energy efficiency initiatives in public schools in MP/PE service territories; (v) increased energy efficiency targets; and (vi) a commitment to develop an RFP for capacity resources in the future. In addition, MP/PE are committed to file to redirect and reflect in rates a \$250,000 per year customer-funded contribution, currently directed to weatherization, to Dollar Energy or an alternative low-income energy assistance agency. Joint Stipulation at paragraph 11.

Collectively, these modifications to the Transaction, as negotiated by the Stipulating Parties, reflect compromises by MP/PE and are a part of the reason that Staff, CAD, WVEUG, and the Sierra Club support the settlement embodied by the Joint Stipulation.

Asserted Benefits of Transaction as Modified by Joint Stipulation

Mr. Wise outlined the reasons why the Transaction, as modified by the Joint Stipulation, was in the public interest. These included resolution of the MP/PE capacity shortage; increased employment; economic development support to industry; assistance to low-income customers; commitments to energy efficiency in schools; support for renewable energy; lower rates; commitments to expand funding for energy efficiency programs; increased capitalization for MP/PE; and an increased tax base for the State. In addition, Mr. Wise focused on the strength and high value of the Harrison asset. For these reasons, Mr. Wise encouraged the Commission to find that the Joint Stipulation is fair and

reasonable and in the public interest and to approve the Joint Stipulation by September 24, 2013. Tr. IV (Wise) at 57-58.

Other witnesses for the Stipulating Parties provided their own bases for Commission approval. Stephen Baron, WVEUG's witness, focused on the reduced rate impact of the acquisition (as compared to the initial proposal of MP/PE), the ratemaking arrangements for industrial customers and the economic stability credit. Tr. IV (Baron) at 95-100. Mr. Pedigo, the UWUA witness, works at the Harrison station and cited the need for additional employees there to continue appropriate levels of plant maintenance. Tr. IV (Pedigo) at 162-166. William B. Raney, the WVCA witness, stressed the value of West Virginia coal and the added benefits to the State and its citizens of continued West Virginia coal production and, particularly its use in West Virginia generation facilities.³ Tr. IV (Raney) at 147-149 and 157-161. Cheryl Ranson, Director of the Commission's Utilities Division, noted that the rate base reduction was significant to Staff in support of the Joint Stipulation and that the increased employment commitments would enable MP/PE to improve the quality of service delivered to customers. Tr. IV (Ranson) at 167-176. Counsel for CAD stated for the record that CAD supported the Joint Stipulation. Tr. IV at 202-203.

DISCUSSION

In their Initial Brief, MP/PE characterized the Transaction as involving uncomplicated components:

Although the Transaction is borne of a complex study of potential solutions to MP/PE's capacity and energy shortfalls, the Transaction's components are uncomplicated.

³ The Public Service Commission provisions of the West Virginia Code contain specific references by the Legislature stressing the significance of coal and coal production to the State. W.Va. Code §24-1-1(a)(3) provides that:

It is the purpose and policy of the Legislature in enacting this chapter [Chapter 24] to confer upon the public service commission of this state the authority to enforce and regulate the practice, services and rates of public utilities in order to:

* * * *

- (3) Encourage the well-planned development of utility resources in a manner consistent with the state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

W.Va. Code §24-2-1d which, in connection with requiring future electric generating capacity plans, suggested those requirements were to "maximize the use of electricity generated within the State by using coal or natural gas produced within the State"

Mon Power Initial Brief at 2.

We disagree. In the Order setting the hearing on September 13, 2013, to address the Joint Stipulation, the Commission set forth various issues raised in this proceeding.

As we have stated in prior cases, a joint stipulation is only a recommendation by the stipulating parties regarding what they believe is a reasonable settlement of the issues for consideration by the Commission.

Joint Stipulations in General

Chapter 24 of the West Virginia Code contemplates the use of joint stipulations in Commission proceedings. W.Va. Code §24-1-9(f). This Commission has stated repeatedly that it values stipulations and the efforts of parties to negotiate and reach stipulated results and that stipulations help us to expedite and resolve the many cases that the Commission must decide. For instance, in Bluefield Gas Company, Case No. 09-0681-G-42T (Order dated January 28, 2010) at 3, the Commission recognized the important role of stipulations in the ratemaking process:

The Commission values stipulations and appreciates the efforts of parties to reach reasonable and just settlements in rate and other proceedings. Stipulations are a significant assistance to the Commission in carrying out its statutory duties and frequently resolve many cases in a prompt, fair, reasonable and expedited fashion based on the arms-length negotiations of the parties. This can reduce litigation costs for the benefit of all parties and the ratepayers.

Id. at 2, 3.

The Joint Stipulation is evidence of what the parties to the Joint Stipulation believe is a reasonable resolution of the case and is persuasive; however, there remain both pre-existing and new issues raised by the Joint Stipulation that will be evaluated and decided by the Commission. When reviewing the proposed Joint Stipulation, the Commission is not bound by the terms of the Joint Stipulation and must reach a reasoned end result based on the record and a consideration of its statutory duties.⁴ Moreover,

⁴ Although not intended as an exhaustive analysis of Commission statutory duties, the Legislature has delegated to the Commission the authority and duty to regulate utilities to ensure fair regulation of utilities in the public interest; provide economical and reliable utility service; encourage development of utility resources in a manner consistent with state needs and productive use of state resources, such as coal; ensure reasonable rates; and, encourage energy conservation and effective and efficient utility management. The Commission is charged with appraising and balancing the interests of current and future customers, the general interests of the State's economy and the interests of utilities in its deliberations and decisions. W.Va. Code §24-1-1(a) and (b).

stipulated resolutions of issues present very different implications for the future, in different types of cases. For example, a stipulated agreement in a rate case, resulting in new tariff rates that remain subject to Commission review and modification in future rate proceedings, initiated either by the utility or by the Commission on its own motion, is different from a stipulated agreement resulting in a net \$1.1 billion investment by a utility. That is indeed a large end result that is not as easily unwound or prospectively modified as a rate case decision on going level expenses or rate of return.

Commission Modification or Conditional Acceptance of Joint Stipulations

As is acknowledged in the Joint Stipulation, the Commission reserves the right to accept, modify or reject a stipulation. Recognizing that the Joint Stipulation represents an overall settlement that the Stipulating Parties have agreed is fair and reasonable, the Commission will test that settlement by considering the evidentiary record. The results of that evaluation are compared to the Joint Stipulation to help us determine if the Joint Stipulation, as presented, is a fair, balanced, and reasonable resolution of the case.

We understand that in arriving at the Joint Stipulation in the case, the Stipulating Parties evaluated certain risks of litigation, the strength of their legal and factual arguments and positions, and a host of other factors and have compromised and in some instances abandoned certain positions in arriving at the settlement embodied in the Joint Stipulation. In evaluating the justness and reasonableness of the terms of the Joint Stipulation, the Commission acknowledges that the Stipulating Parties, through a vigorous litigation process including extensive audit, discovery and negotiation efforts, have presented a position on various issues that they believe is both fair and reasonable. Nonetheless, we cannot, given our statutory charge, accept a stipulation proposal solely on the basis that the Stipulating Parties agree that it is fair and reasonable. We must make that evaluation based on the record in the case, including the evidence related to the Joint Stipulation.

WVCAG Opposition to Joint Stipulation at September 13, 2013 Hearing

WVCAG, as the only party to oppose the Joint Stipulation, indicated opposition for a number of reasons, including its argument that the purchase price in excess of the net book value of Harrison prior to the merger-related fair value adjustment violated the Merger Stipulation (Case No. 10-0713-E-PC). WVCAG witness, Ms. Kunkel explained that the primary WVCAG opposition to the Transaction, even after the additional commitments under the Joint Stipulation, was that the purchase price for Harrison was too high relative to the benefits in terms of increased energy efficiency. Tr. IV (Kunkel) at 201. This opposition was based mainly on WVCAG assertion that the purchase price reflecting the merger-related fair value adjustment was a violation of the Merger Stipulation and the impact of the purchase price and rate base allowance of that high price on electric rates. Ms. Kunkel recast earlier exhibits to reflect the lower rate base and

revenue requirements resulting from the Joint Stipulation and testified that in her opinion the net present value of revenue requirements from the Transaction still exceeded the alternatives available to MP/PE. Tr. IV (Kunkel) at 183-202, and WVCAG Ex. CMK-D Supplemental (Kunkel).

Ms. Kunkel acknowledged that the increased costs of the Transaction, as compared to other options, crossed-over to a benefit sooner than had previously been calculated by other witnesses and that the higher costs of Harrison in the earlier years after acquisition were fully offset by benefits sooner than shown in previous exhibits. The revised exhibit also shows that the Harrison cost becomes less expensive than the market purchase scenario in the seventh year and results in a positive net present value of approximately \$400 million over the remaining life of Harrison. In response to UWUA cross, Ms. Kunkel admitted that if she had revised the graph to reflect the lower ten percent return on equity and twenty-five percent income tax rate included in the Joint Stipulation surcharge calculation, the net present value benefit would have been even greater. Tr. IV (Kunkel) at 187. She continued to maintain, however, that the increased early-year costs would likely be even higher and the later-year benefits would be lower than projected by MP/PE in the face of penalties or other costs incurred because of carbon emissions. She pointed out that a similar outcome would result if MP/PE projections of increasing prices in the PJM market were adjusted to reflect lower market prices. Tr. IV (Kunkel) at 179-202. The Commission does not find this testimony persuasive and Ms. Kunkel provided no evidence to support a lower net present value or a negative net present value based on the model assumptions she challenged. The Commission has analyzed the impact of various challenged model assumptions; (i) lower gas costs, (ii) carbon emission cost, (iii) a seventy percent capacity factor for Harrison and (iv) a fifty percent capacity for a combined cycle gas plant, and as explained below, found Harrison to be a more cost effective option at the lower rate base amount included in the Joint Stipulation.

Ms. Kunkel also argued that the amortization of the gain to Mon Power from the sale of Pleasants over the sixteen-month duration of the Surcharge, rather than over a longer period of time, was an arbitrary decision that created the proposed initial net rate decrease associated with the Transaction, and that deviations from the MP/PE forecast might eliminate the decrease. WVCAG Ex. CMK-D Supplemental (Kunkel) at 3.

The Merger Stipulation

A significant controversy developed in this proceeding stemming from an earlier Stipulation and Agreement for Settlement (Merger Stipulation) related to Commission approval of the acquisition of Allegheny Energy, Inc. (Allegheny Energy) and its subsidiaries (specifically, MP/PE) by First Energy Corp (First Energy). Monongahela Power Company, et al., Case No. 10-0713-E-PC (Merger Case). In that proceeding, First Energy sought to acquire Allegheny Energy at a purchase price above the net book value of Allegheny Energy. One of the issues in that case was whether Mon Power or Potomac

Edison would attempt to directly reflect higher rate base or other costs due to the increment of purchase price over and above the net book value of Allegheny Energy for purposes of West Virginia jurisdictional revenue requirements, or whether First Energy would attempt an indirect recovery of the excess purchase price from West Virginia ratepayers.

In presenting testimony recommending approval of the acquisition, various parties cautioned that the approval should be conditioned on specific restrictions and assurances with regard to the acquisition, including with regard to the price that First Energy was paying for Allegheny Energy.

The Joint Petitioners will not pass through or attempt to recover from Mon Power or PE's rates or have those Companies customers fund any portion of an acquisition premium or purchase price for the Common Stock

Staff Ex. 2 (Oxley) at 10, Case No. 10-0713-E-PC.

The Joint Petitioners shall hold harmless ratepayers from the effects of all transaction costs and push down accounting for any acquisition premium, if required. This hold harmless includes all effects of these costs on revenue, expenses, and capitalization.

WVEUG Ex. 1 (Kollen) at 6, Case No. 10-0713-E-PC.

I recommend that, as a condition to approving the proposed merger, a firm commitment from Joint Petitioners be imposed that any positive Acquisition Adjustments resulting from the transaction will be permanently excluded from rates of the West Virginia utilities.

CAD Ex. RCS-D (Smith) at 33-34, Case No. 10-0713-E-PC.

The Merger Stipulation purported to address these concerns, and each party quoted above was apparently satisfied because they entered into the Merger Stipulation recommending approval of the merger. The specific language addressing this issue in the Merger Stipulation was:

Non-Recovery of Acquisition Premium/Goodwill. First Energy agrees that in future base rate proceedings of Mon Power or Potomac Edison in West Virginia, the regulatory capital structure used for Mon Power and Potomac Edison will not reflect any acquisition premium or "goodwill" associated with the Merger transaction.

and

No Regulatory Assets Related to Merger Accounting. Mon Power and Potomac Edison will not establish or record on their books any new regulatory assets related to merger accounting.

Merger Stipulation, Case No. 10-0713-E-PC, (Commission Order December 16, 2013), Ex. A at 8.

The Commission approved the merger conditioned on the commitments in the Merger Stipulation regarding the excess purchase price paid by First Energy for Allegheny Energy.

Initially, some parties to the present case argued that the proposed sale of Harrison at a price that included the fair value adjustment that had been made based on the purchase price paid by First Energy and the studies made with regard to the fair market value of the assets acquired violated the Merger Stipulation. MP/PE responded through the testimony of Mr. Harvey L. Wagner that the increased value of the Harrison plant recorded at the time of the Merger is neither goodwill nor an acquisition premium; instead, he explained that the increased value is a “fair value adjustment as required under GAAP in order to recognize the asset at its current market value at the date of acquisition.” MP/PE Ex. HLW-R (Wagner) at 21.

Mr. Wagner also suggested that the FERC accounting captures such fair value adjustments in account 114, Electric Plant Acquisition Adjustments, defined as the difference between the cost of electric plant acquired by merger and the original cost of that property, less accumulated provision for depreciation. He concluded that amounts recorded in account 114 do not represent goodwill or an acquisition premium. MP/PE Ex. HLW-R (Wagner) at 16.

The Commission considers this issue to be a threshold issue that cannot be ignored on the basis that there is a Joint Stipulation in this case. Even if the parties to the Joint Stipulation had indicated agreement with the intent of the Merger Stipulation and with Mr. Wagner’s rebuttal testimony (which they did not), WVCAG continues to oppose the transaction.

The Commission notes that Mr. Wagner’s description of purchase accounting and GAAP definitions of “fair value adjustment, acquisition premium, and goodwill” could be used for a determination that the language in the Merger Stipulation was crafted to allow a Mon Power or Potomac Edison fair value adjustment in rate base. This would have been possible under Mr. Wagner’s interpretations because he advocates that amounts recorded in Account 114 (Acquisition Adjustment) do not represent an acquisition premium or goodwill. MP/PE Ex. HLW-R (Wagner) at 21.

Under our System of Accounts (which is an earlier version of the present FERC System of Accounts), original cost electric plant means "the cost of such property to the person first devoting it to public service." The System of Accounts further provides that the entire difference between the acquisition price and the original cost is recorded as an Acquisition Adjustment. Thus, contrary to Mr. Wagner's testimony, any acquisition premium or goodwill is recorded as an Acquisition Adjustment.

For reasons unrelated to the technical arguments regarding GAAP accounting for fair value adjustments, acquisition premiums, or goodwill, the Commission determines that the request to sell Harrison to Mon Power at a price that exceeds the net original cost book value does not violate the Merger Stipulation.

The intent of the Merger Stipulation was to prevent First Energy and MP/PE from requesting an increased West Virginia jurisdictional rate base valuation related to the First Energy purchase price of Allegheny Energy in excess of book value at the time of the merger. Thus, we expected that the Merger Stipulation would assure all parties that Mon Power (and West Virginia rate base assets of Potomac Edison) would remain unchanged regardless of the amount paid by First Energy for Allegheny Energy. Pursuant to the Merger Stipulation, First Energy could not push down or allocate any return requirement or expenses that would be intended to compensate it for the excess purchase price of Allegheny Energy. The Commission has found no evidence in the record that indicates the value of the current assets of MP/PE have been impacted by the Merger-related accounting entries.

The Merger Stipulation was not intended and could not reasonably be extended to apply to all possible future affiliated asset transfers, such as the Transaction, that would have to come before us for approval. We believe that First Energy always was free to request a sale of assets to Mon Power at any price. Of course, this could not happen without approval of the Commission, and the Commission would be free to deny the request if it believed that the purchase price was unfair or unreasonable. In the alternative, if it was shown to be in the public interest, the Commission could approve the purchase even at a price in excess of net original cost, but disallow all or a portion of the resulting Acquisition Adjustment for ratemaking purposes.

The Commission consented to the First Energy/Allegheny Energy merger under W.Va. Code §24-2-12 subject to the commitments of the stipulating parties in that case. Although we conclude that the provision does not apply to this Transaction, the effect of the argument that the Merger Agreement is violated by the Transaction is to contend that the Commission is precluded from determining whether it is in the public interest for MP/PE to acquire Harrison at a price that exceeds net original book value.⁵ We believe

⁵ We undertook an extensive discussion of the Legislative History of the utility ratemaking authority and the ratemaking processes of the Public Service Commission of West Virginia as a part of our

that the contention that the Merger Stipulation from Case No. 10-0713-E-PC binds our efforts in this and future cases is inconsistent with the delegation of Legislative authority that is the heart of the public utility regulatory scheme in place.

The Transaction we are considering in this proceeding is a request for Mon Power to purchase an asset (Harrison) at a price that exceeds its net original cost as reflected on the books of AE Supply. Mon Power divulged that fact from the time of its Petition by showing that the journal entry to record the purchase includes an Acquisition Adjustment of nearly \$600 million. Mon Power did not attempt to hide that fact by pretending that the appropriate net Plant In Service balance on AE Supply books was \$1.2 billion and there would be no Acquisition Adjustment.

We may not even be facing this issue had Mon Power not attempted to shed favorable light on the \$1.2 billion purchase price for Harrison by announcing that it was merely paying the book value of Harrison as recorded on the books of AE Supply. Because Mon Power described the purchase as being at book value, once Parties recognized that the referenced book value included the merger-related fair value adjustment, the perception of a violation of the Merger Stipulation was born.

The fact is, the Transaction was not dictated, controlled, or dependent on the fair value adjustment made at the time of the merger. AE Supply was asking a price it felt was justified by the benefits the acquisition would bring to Mon Power, and MP/PE were asking that they be allowed to pay that price which included an Acquisition Adjustment. That request was not a violation of the Merger Stipulation.

analysis in Century Aluminum of West Virginia, Case No. 12-0613-E-PC, (Order issued October 4, 2012) (Century Order). See discussion, generally at Century Order at 5-15. As we said in the Century Order:

[T]he Court has consistently and emphatically held that the Commission is the sole authority to determine the public interest in utility regulatory matters. In 1914, the Court stated "it is not for the reviewing court to substitute its judgment for that of the Commission on question of expediency, or as to what would be the best in the interests of the petitioner, or of the public served. On all such question, we think the Legislature intended the judgment of the Commission should prevail."

Century Order at 14. United Fuel Gas Co. v. Public Serv. Comm'n, 73 W. Va. at 591, 80 S.E. at 939; Mountain State Water Co. v. Kingwood, 122 W.Va. 374, 9 S.E.2d 532 (1940); C&P Telephone Co. v. City of Morgantown, 144 W.Va. 149, 107 S.E.2d 489 (1959); State ex rel WDA v. Northern Wayne County PSD 195 W.Va. 135, 464 S.E.2d 777 (1995); South Charleston v. Public Serv. Comm'n, 204 W.Va. 566, 514 S.E.2d 622 (1999); West Virginia Citizens Action Group v. Public Serv. Comm'n, 175 W.Va. 39, 300 S.E. 2d 849 (1985).

Commission Evaluation of Transaction as Modified

The Need for Additional Capacity and the Impact of a Base-Load Power Plant on Short-Term Reserve Margins

The Commission has considered the need of MP/PE for the capacity represented by the Transaction, and finds that the need exists and the amount of capacity obtained by the Transaction is reasonable. MP/PE currently have a capacity deficiency and must rely on the PJM market for both capacity and energy. This deficiency will increase in the future. MP/PE project increases in peak demand of approximately 33 MW per year through 2028. MP/PE Ex. 1 (Petition) at Exhibit A (2012 Resource Plan) at 30.

MP/PE have recently deactivated three sub-critical coal-fired power plants. This deactivation contributes to the need and the urgency of added capacity. These deactivations are significant and reduce the installed capacity of Mon Power by 660 MW. Mon Power projects that its capacity, relative to load, will fall from eighty-four percent in 2012 to sixty percent by 2026. MP/PE Ex. 1 (Petition) at 2 and Ex. A (2012 Resource Plan) at 2 and 23.

Failure to deal with the market risk inherent in MP/PE capacity deficit is unacceptable. All four of the economic forecasts considered in the MP/PE 2012 Resource Plan (MP/PE Ex. 1 at Ex. A) anticipated a reduction in capacity prices after recent increases, followed by a sustained increase throughout the forecast period. Tr. II (Delmar) at 75-76. Both Mr. Hornby, the CAD expert witness, and Mr. Schlissel for the WVCAG and Sierra Club agreed with this projection of sustained increases. CAD Ex. JRH-D (Hornby) at 4; Tr. III (Hornby) at 27-28. Mr. Schlissel admitted that capacity market prices will ultimately increase with meaningful CO2 regulation and nuclear retirements. Tr. II (Schlissel) at 147. Mr. Hornby admitted that the capacity shortfall was a concern, and that it should continue only for a "distinct period" – for so long as it takes an RFP to determine whether there are any options with better fixed cost risk profiles than Harrison; in other words, he believes a matter of months. Mr. Hornby believes the risks associated with capacity deficits are present now. Tr. III (Hornby) at 17-20. Harrison represents a reasonable option to address the risk associated with a significant capacity shortfall.

The Transaction will return Mon Power to a ratio of installed capacity to load in excess of 100 percent, which means that Mon Power will have a reserve margin. Thin or negative reserve margins cannot be increased in a smooth curve when base-load capacity is added. The addition of base load units results in a jump in reserve capacity that is then gradually reduced over time as internal load grows. In the meantime, customers receive the benefit of off-system sales that are made from the reserve capacity.

There was some dispute regarding the accuracy of the MP/PE load forecasts and calculations of capacity shortfall. MP/PE used a restricted load forecast which produced a

2013 capacity shortfall of 938 MW and a shortfall of over 1,400 MW in 2026. Ms. Kunkel of the WVCAG used a different approach, expressing reserve margin in terms of unforced capacity obligations. Based on this different methodology, she projected a 2013 capacity shortfall of 770 MW, growing to 1,211 MW in 2026. Ms. Kunkel deleted the results of her calculations at hearing, noting that the figures could not be confirmed. Tr. III (Kunkel) at 126 and WVCAG Ex. CMK-D (Kunkel) at 3. In its testimony written prior to Ms. Kunkel's corrections at hearing, MP/PE maintained that Ms. Kunkel utilized the MP/PE restricted load forecast and then analyzed a capacity shortfall as if MP/PE forecast was an unrestricted load forecast. MP/PE Ex. MBD-R (Delmar) at 15-17.

Regardless of whichever forecast and calculation of deficiency is the most reasonable, MP/PE have a current and growing capacity deficiency. The Commission determines that the deficiency, whether it was 770 MW or 938 MW in 2013 and whether it is projected to be 1,211 MW or 1,400 MW in 2026, justifies the acquisition of additional capacity. As we explain later, we agree with MP/PE that the Transaction, as modified by the Joint Stipulation and as conditioned by this Order, does represent the most reasonable priced capacity for MP/PE. Acquiring the most reasonably priced capacity for long-term needs from a base-load plant almost always entails some reserve margin that may be higher than optimum, but which gradually reduces over time as internal load grows. The higher reserve margin is counterbalanced by the intent to continue to sell all of the power into the market, thus, making the potential for system profits that will benefit the customers. There is a need for additional capacity, and the proposed Transaction is a reasonable plan to acquire that capacity.

Harrison is a High-Value Asset with Real Benefits for MP/PE Customers and the State.

At the time of the First Energy/Allegheny Energy Merger in 2011, the value of Harrison to AE Supply was initially determined by KPMG and projected to May 1, 2013 as \$1.164 billion. Navigant, an independent company hired by Mon Power in 2012 to estimate the same value, determined the value as of December 31, 2012 to be \$1.333 billion or approximately \$170 million more than the proposed sale price. Co. Ex. TH-D (Houlihan) at 7; MP/PE Ex. 1 at 13 and at Ex. H.1 at 6.

Harrison is a good and valuable asset. It has relatively low operating costs and is equipped with an array of pollution control equipment. Tr. I (Rose) at 321-322.

Harrison will continue to be a proven contributor to the economy and well-being of north-central West Virginia. Harrison produces electricity with locally mined coal, consuming more than five million tons annually. MP/PE Ex. MBD-D (Delmar) at 37. The Transaction is expected to provide continued support of the West Virginia coal industry, help to preserve jobs for West Virginia miners, and benefit the overall economy. Sole ownership of Harrison by Mon Power, and Commission regulation of Harrison as a

rate-based, generating facility, should enhance the ability of Mon Power to support the West Virginia coal mining industry and help to preserve mining jobs over the long term. MP/PE Ex. 1 at 22-23; MP/PE Ex. MBD-R (Delmar) at 11-12.

Staff and CAD agree that Harrison is a valuable asset. Staff witness, Mr. Walker, indicated Harrison has many years of valuable life, and is on schedule for MATS compliance. Staff Ex. DEW-D (Walker) at 5. Likewise, Mr. Gregg testified of the value of Harrison. CAD Ex. BJG-D (Gregg) at 6-7.

The Need for a Request for Proposals (RFP)

Notwithstanding that MP/PE had no legal obligation to issue an RFP prior to filing this case, Parties to this proceeding originally argued that Mon Power should have issued an RFP for various types of energy and capacity resources and for various reasons. One reason for an RFP would have been to determine the cost of capacity and energy that might be available from alternative sources. A second reason appears to be the belief that an RFP could have been used to determine the value of Harrison.

The cost of reliable capacity and energy from alternative sources is demonstrated by the analysis of the cost of long-term investment and operating cost of alternatives to the purchase of an existing coal-fired base load plant. MP/PE presented evidence on the cost of new coal-fired generation, new nuclear generation, and new gas-fired generation. In all cases, the levelized cost of Harrison was the lowest cost alternative. MP/PE Ex. MBD-D (Delmar) at 16. This outcome was based on the original proposed rate base value of Harrison included in the Petition, which has been significantly reduced by the Joint Stipulation. The reduced rate base for Harrison lowers the levelized cost of the Transaction, making the Harrison option more beneficial as compared to other options.

Parties argued that some of the assumptions made in the Mon Power levelized cost analyses were questionable. This included the projected capacity factor for a natural gas-fired combined cycle plant, and the projected cost of natural gas. WVEUG Ex. 1 (Baron) at 10; WVCAG Ex. DAS-D (Schlissel) at 34-35; and CAD Ex. JRH-D (Hornby) at 21. Although the parties did not present their own projections using a higher capacity factor for a combined-cycle natural gas plant or using lower projected natural gas prices, the Commission has looked at the levelized costs using different assumptions for all of the options. After taking the lower rate-base value of Harrison into consideration, using any reasonable assumptions continues to result in the Transaction providing the lowest levelized cost as compared to the alternatives considered by MP/PE. For example, if we increase the assumed twenty-five percent natural gas unit capacity factor to fifty percent, we still conclude that Harrison is a better value. Similarly, including carbon emission costs reduces the difference between Harrison levelized costs and natural gas levelized costs, but using any realistic assumption for carbon emission costs, the Harrison costs remain lower than natural gas fired generation.

The original Mon Power levelized cost analysis resulted in a \$74 per MWh levelized cost of generation from Harrison. The levelized cost of a new natural gas combined-cycle plant was \$115 per MWh. After adjusting for the lower Harrison Rate Base Amount, the levelized cost of Harrison would be approximately \$70 per MWh, or about 61% of the levelized cost per MWh of a new natural gas combined-cycle unit.

Some of the arguments made by WVCAG and other Parties were that the levelized cost of Harrison was understated because it did not include any cost in anticipation of future carbon emission limits or related costs. It is not known when costs of carbon emission limits on existing generation will go into effect. Neither is it known whether future carbon limits and related costs on existing plants will apply to all carbon emissions, thereby impacting both coal and natural gas units, or whether the costs will apply to only incremental carbon emissions above the emission levels from natural gas plants. Either way, the cost of future carbon emission limits on Harrison will be greater than the cost applicable to a combined cycle natural gas plant. We have looked at a future cost of carbon emissions impacting all emissions, regardless of the fuel source. An assumed cost of \$20 per ton on all carbon emissions beginning in 2022 will increase the levelized cost of generation from Harrison to approximately \$81 per MWh. Similarly, because the carbon emissions from natural gas are much less than from coal, the same carbon related cost will increase the levelized cost of generation from a natural gas combined cycle plant to approximately \$119 per MWh. This still leaves the levelized cost of Harrison generation at about seventy percent of the cost of a natural gas combined cycle unit. We arrive at a similar relationship if we assume future carbon related costs applicable to only half of the Harrison emissions on a zero future cost on a gas-fired plant.

Parties also argued that the levelized cost of a natural gas combined-cycle plant were overstated because Mon Power used an unreasonably low twenty-five percent natural gas capacity factor in its analysis. Changing the capacity factor of a combined cycle natural gas plant to fifty percent reduces the levelized cost to \$83 per MWh. This closes the gap between the levelized cost of Harrison and the levelized cost of a combined cycle natural gas plant significantly; however, the levelized cost of Harrison is still lower.

Another important factor to consider is that the levelized cost analysis does not take into consideration the extent to which off-system sales of energy or capacity can be credited to MP/PE revenue requirements, thereby offsetting some of the cost of new capacity and reducing rates. Because of the lower capacity increments of natural gas combined cycle units and because of their relatively higher cost of generation per MWh (contributing to the lower expected capacity factor of a natural gas unit), it is not likely that there would be any excess capacity or energy for the off-system sales markets. Harrison, on the other hand would provide MP/PE with a reserve margin and capability to produce energy in excess of their internal load needs. Thus, one factor that cannot be

overlooked is that the cost to customers will be a net cost, after crediting off-system sales margins against the cost of new capacity and generation.

While there is a cost to owning a reserve margin and to generating additional power, the availability of a capacity reserve and energy will result in off-system sales in the PJM market that would not be possible under the natural gas combined cycle plant option. Under the various scenarios included in the record, there are projections of off-system sales margins from both capacity and energy sales. Credits to the cost of generation from a natural gas combined cycle unit will either not be available at all, or will be much smaller than credits from sales of capacity and energy from Harrison into the PJM market. After crediting these margins against the cost of generation, the net cost of generation from Harrison will be even lower than the levelized costs discussed above.

We find that the analyses performed comparing other base load generation to Harrison are more valuable for our consideration of the cost of alternatives to the Transaction than a variety of mixed proposals that might or might not have come from an RFP for capacity and energy.

The Commission further does not agree that the market value of Harrison should have been determined by issuing an RFP for third-parties to purchase Harrison. If AE Supply really intended to sell Harrison to the highest bidder, it might have issued an RFP. It did not do so because it did not wish to sell the plant on the market.

Attempting to get valid bids just to ascertain what Mon Power should pay for Harrison is not realistic. The issue of the advisability of requiring MP/PE to issue an RFP for capacity resources and the likely impact of an RFP was discussed at length at the hearing. Much of that testimony fell into the "would too"/ "would not" category as to the likely favorable versus unfavorable impact of such an RFP. See, Tr. I-IV, generally.

In summary, we were not persuaded by any of the testimony that an RFP would have been decisive on the determination of the availability or price of capacity resources. Further, MP/PE are under no legal or statutory requirement to issue an RFP, and the Commission does not believe the record is sufficient to show that the failure to issue an RFP constituted a violation of W.Va. Code §24-2-12. No party to the proceeding provided a legal argument to the contrary.

Long-Term Benefit of Harrison

As discussed above, there is substantial evidence that Harrison is a sound and well-maintained generating facility with low operating costs, historically high capacity factors, installed environmental controls and ongoing plans for additional controls for MATS compliance. That said, however, the value of the Harrison plant to customers is dependent on the cost of an alternative power supply and the cost of operating Harrison is

dependent on a number of unknowns, the most significant being the possibility of future new costs imposed on carbon emissions and the possibility of low market prices for power in the PJM market. MP/PE Exs. JLR-R (Rose) at 39-47, MBD-R (Delmar) at 18-19, Staff Ex. DEW-D (Walker) at 5, and CAD Ex. BJG-D (Gregg) at 6-7.

The prospects of future carbon regulation and additional environmental regulation on coal-fired generation are not remote or unlikely. Rarely does a day pass that the news does not report some “new” significant event affecting the future of coal-fired generation.⁶ The expected future federal efforts to reduce carbon emissions and increase the cost of coal-fired generation are not limited to new coal-fired power plants.⁷ There are concerns regarding the future benefits of Harrison at levels projected by MP/PE.

The issue facing the Commission, then, is whether the benefits of power supply from Harrison will remain into the foreseeable future even if the benefits may be less than projected by Mon Power. A significant factor of the benefit analysis hinges on the expected profits for future system sales. As explained below, we will hedge the risk to rate-payers by establishing a condition regarding inclusion of the Acquisition Adjustment in rates.

Allowing an Acquisition Adjustment in Rate Base

It is unfortunate that from the initial filing, MP/PE have confused the difference between Mon Power inheriting an Acquisition Adjustment that is “necessary” or created solely because of the fair-value adjustments made by AE Supply at the time of the First Energy/Allegheny Energy Merger (that would be contrary to the Merger Stipulation) and a request to sell an asset to Mon Power at a price in excess of the net original cost book value. This confusion comes from MP/PE initially appearing to claim that the justification for the purchase price of Harrison is the fair value of the plant recorded on the AE Supply books at the time of the Merger. The higher than original cost Harrison value on AE Supply books is caused by GAAP accounting for the excess amount paid for Allegheny Energy stock at the time of the Merger. This argument makes it appear that the justifications for the high purchase price and the high rate base value originally requested

⁶ On September 21, 2013, the Charleston Gazette contained an article, the introductory paragraph of which stated:

Linking global warming to public health, disease and extreme weather, the Obama administration pressed ahead Friday with tough requirements to limit carbon pollution from new power plants, despite protests from industry and Republicans that it would dim coal's future.

⁷ Next year, according to The Wall Street Journal, the EPA will propose a rule to impose vast new anti-carbon costs on existing plants in a bid to eliminate what remains of coal power. The target after that will be natural gas, and anything else that emits the demon carbon. Wall Street Journal September 25, 2013: Banning Demon Coal.

for Harrison was dependent on the fair value adjustment related to the excess over book value paid by First Energy for Allegheny Energy at the time of the Merger.

MP/PE should have focused less, or not at all, on the higher value recorded on the AE Supply books, and focused instead on the fact that they were requesting approval to purchase Harrison at a price in excess of net original cost and that they believed that the price was a fair price regardless of the unrelated merger accounting.

The Commission could consider that request without any consideration of the merger accounting. Although we normally do not allow Acquisition Adjustments in rate base, we have on occasion considered exceptions to that practice for good cause shown. We are not required to consider, and would not consider, that a reasonable purchase price is supported by the higher than original cost value recorded on the AE Supply books at the time of the merger. We consider, instead, the reasonableness of the proposed price based on the public interest in West Virginia. The fair market price, and the price that we will consider for ratemaking purposes, can be evaluated by the Commission based on current economic conditions. Our decision on both the reasonable price and the ratemaking that we will approve is unrelated to the excess purchase price paid by First Energy at the time of the merger. Thus, a decision on whether Harrison should be purchased for \$1.2 billion, \$600 million, or any other number, is not dependent on the book value on the AE Supply books, but instead is based on other factors, none of which are influenced by the fair value adjustment of Harrison pursuant to the merger accounting.

The original request to acquire Harrison for \$1.2 billion (net of Pleasants sale, \$1.1 billion) and record an Acquisition Adjustment of approximately \$589 million is consistent with regulatory accounting adopted and required by this Commission in the Commission prescribed Uniform System of Accounts. Mon Power proposed this accounting from the very beginning of this case, thereby acknowledging that the fair value adjustment recorded on the AE Supply books has no bearing on accounting for utility plant acquisitions under the Commission prescribed Uniform System of Accounts.

Pursuant to the Uniform System of Accounts, the disposition of the Acquisition Adjustment is subject to approval of the Commission. We have considered that request, independent of any consideration of the Merger Stipulation, and determine that the original request to allow the full \$589 million Acquisition Adjustment in rate base and to set rates based on a return on and of the \$589 million Acquisition Adjustment is not reasonable.

We have, however, further considered a below-the-line write off of a portion of the \$589 million Acquisition Adjustment and allowance of a lesser Acquisition Adjustment for ratemaking purposes. The Joint Stipulation proposes that we approve a write-off of approximately \$332 million of the Acquisition Adjustment and allow only \$257 million of the Acquisition Adjustment in rate base.

Considering the evidence of the alternative costs to Mon Power if it does not acquire Harrison, the benefits of power supply from Harrison, and the offsetting margins expected from sales into the PJM market, the Commission determines that departing from net original cost valuation and allowing a \$257 million Acquisition Adjustment for ratemaking purposes, as proposed by the Joint Stipulation, might be reasonable and in the best interests of West Virginia customers of MP/PE.

The Transaction as proposed in the Joint Stipulation, however, could be contrary to the best interest of West Virginia customers of MP/PE if there is legislation or regulations that would increase the net cost of generation at Harrison because of carbon emissions to such an extent as to offset the benefits to Mon Power customers that justify a rate base value inclusive of that level of Acquisition Adjustment.

The Commission is concerned about the cloudy horizon for carbon emissions and the margins on sales into the PJM market. Thus, we believe that the settlement in the Joint Stipulation may be reasonable and not adversely affect the public in this state if market conditions change as projected by MP/PE, resulting in higher priced power in PJM and increasing the net margins on sales into the PJM market that will be made by Mon Power. The increased net margins from the projections made by MP/PE will reduce the net cost of power supply from Harrison to the benefit of West Virginia customers.

Status-quo and Continued Minority Ownership of Generation

WVCAG argues that the Commission should not permit the acquisition of all of Harrison. We do not find error in approving the Joint Stipulation proposal for the acquisition for all of the AE Supply interest in Harrison. Neither Mon Power nor AE Supply expressed an interest or willingness in selling less than the entire interest, and the evidence is undisputed that AE Supply would not consent to minority ownership. Tr. I (Delmar) at 184. Based on MP/PE load forecasts, acquisition of the entirety of Harrison provides for capacity coverage only through 2018, just five years from now. MP/PE Ex. MBD-D (Delmar) at 37-38. Moreover, there are potential benefits that achieving the reserve margin expected by the Transaction provides MP/PE with opportunities for incremental profits (margins) from off-system sales that will be used to offset the costs of achieving a reserve margin.

There are risks of minority ownership of a jointly-owned plant that did not exist prior to the development of competitive power markets. While the plant today operates economically and efficiently under the direction of AE Supply, the point cannot be overstated. Competitive generation owners, as compared with regulated owners, have different economic motivations that can result in differences in their ability/willingness to make capital investment, approach to capacity markets, and participation in energy markets. MP/PE Ex. MBD-R (Delmar) at 8-12.

We find most persuasive the concern that the status-quo poses a risk to MP/PE customers since a minority owner of a power plant has an inability, or very limited ability, to influence long-term capital investment decisions. Absent the Transaction, MP/PE will continue to be dependent on Harrison and Pleasants for a portion of their installed capacity. They will also be dependent on AE Supply decisions regarding future plans for the type, amount, and timing of capital investments in these jointly-owned power plants. The capital investment strategy of AE Supply, which is interested in only the competitive markets, may not fit the needs of utility customers. Moreover, AE Supply decisions will be guided by consideration of needs at all other First Energy competitive power plants. Capital investment decisions that may make a lot of economic sense for Harrison may make less sense if it is more economically advantageous for First Energy to direct available capital to any one of a large number of competitive power plants.

MP/PE pointed out this potential downside risk of minority ownership in its rebuttal testimony:

As a minority owner Mon Power does not have the ability to control the overall investment strategy of Harrison. AE Supply may decide not to make a particular investment to comply with an environmental regulation (and thus not run the plant); to invest at a level sufficient only to meet its requirements and to over-comply at other facilities; or simply to delay an investment until market conditions improve or investment capital is available. In these situations, Mon Power would be faced with an array of poor choices: paying for the entire capital investment itself (even though it would only receive the benefit share of its minority interest), expending additional funds either through the self-funding of additional capital improvements or the purchase of emission allowances to meet its environmental compliance needs, or facing the expenses and potential workforce reductions associated with an idled asset until conditions improved based on the economics of the majority holder. In each case, Mon Power's customers would be negatively affected.

MP/PE Ex. MBD-R (Delmar) at 9.

This is not an unrealistic scenario. Utilities were faced with capital investment and operational decisions after passage of the Clean Air Act Amendments of 1990. Under these amendments, sulfur emissions were capped and a system of banking and trading of emission allowances was established. Decisions were made regarding complying with large sulfur emission reductions at one plant to produce allowances that could be used at other plants that continued to emit excess sulfur. Similarly, decisions regarding co-firing, complete fuel switching and increased usage of low-sulfur coal were considered on a system-wide economics basis rather than on the economics of plant by plant compliance.

At the time, all of the plants serving West Virginia customers were utility regulated plants and there were inter-utility agreements in place for sharing of costs between power plants regardless of their ownership. Thus, a decision to benefit an entire multi-state system, such as American Electric Power or Allegheny Energy, spread both costs and benefits to customers of all of the affiliated utility companies. The new paradigm that has resulted in a mix of a minority of utility regulated jointly-owned plants leaves the minority utility owner at risk if future regulations allow the same kind of system-wide capital and operational decision-making.

Neither WVCAG nor any other Party rebutted the MP/PE testimony regarding minority ownership risk.

A recent example of a decision to shut down a power plant rather than invest in additional emission controls is the AE Supply decision to deactivate Hatfield's Ferry. Hatfield's Ferry is located near Masontown, West Virginia. Hatfield's Ferry is similar in size and vintage to Harrison and is the first low-heat rate, supercritical coal-fired plant slated for deactivation. The announced reason for the deactivation of a relatively low operating cost plant is that the additional investment to comply with new EPA regulations is too high. Hatfield's Ferry and Fort Martin had just recently, in 2010, been retrofitted with sulfur scrubbers at a combined cost of \$1.3 billion for the two plants. Because it is a competitive power plant, Regulators and the Legislature in Pennsylvania had little control over the decision to deactivate the plant. On September 20, 2013, Reuters reported that PJM has determined that Hatfield's Ferry can be retired and the impact of the retirement on reliability can be handled by transmission upgrades. Reuters, September 20, 2013.⁸

Energy Efficiency and Demand Response Programs

The WVCAG argues that MP/PE have not sought sufficient energy efficiency and demand response to offset its energy and capacity deficits. Further, WVCAG argues that the Joint Stipulation does not include "Necessary Energy Efficiency Provisions." The Commission rejects this criticism of the Joint Stipulation. Energy efficiency and demand response are part of an ongoing program and are supported by MP/PE. MP/PE Ex. MBD-R (Miller) at 2. Yet, the record is clear that energy efficiency and demand response can cover only the tip of the iceberg of MP/PE capacity and energy deficiency. MP/PE have ongoing (Phase I) programs that will be reviewed and evaluated by a stakeholder group. Meetings of that group will continue to evaluate the Phase I programs to assess what is working, what is not, and to gauge customer interest in expansion of programs or new programs. *Id.* at 3.

⁸<http://www.reuters.com/article/2013/09/20/utilities-firstenergy-pjm-idUSL2N0HG20420130920>.

There is also a Phase II for Energy Efficiency and Demand Response Programs to be considered beginning later this year. Not insignificantly, MP/PE have committed to increased energy efficiency targets as part of the Joint Stipulation filed in this case, even though WVCAG did not join the Joint Stipulation. Neither the WVCAG Objection nor Ms. Kunkel's supplemental testimony directly criticized the expanded Energy Efficiency plan commitment aspect of the Joint Stipulation, and WVCAG did not contend that the target presented there (which, if achieved, will reduce the need for future capacity acquisitions) was unsatisfactory.

Unfair Negotiation Advantage

Although WVCAG did not provide evidence of unfair advantage to AE Supply, it seems to argue that Commission approval of the Transaction places interests of owners ahead of the interests of customers. The Commission sees no basis for this criticism.

The un rebutted testimony by MP/PE is that the Transaction was arm's length and that negotiations were sensitive to FERC rules regarding affiliated transactions and cross-subsidization and carefully adhered to FERC rules. MP/PE Ex. MBD-R (Szwed) at 7. There is no evidence in the record to the contrary, but we note that the Commission has established a condition to approval of the Transaction that would further protect MP/PE customers if the FERC ruled that any portion of the Acquisition Adjustment we will allow in rate base represents cross-subsidization.

Although WVCAG contends that its principal objection to the Joint Stipulation is that the price is too high, the evidence shows that both the significant agreed-upon reduction in the rate base amount, and the ultimate cost of Harrison that will flow through customer rates as conditioned herein, are reasonable.

The Commission has considered the impact on customers of the Transaction and finds that, as modified by the Joint Stipulation and with the conditions established by the Commission, it is not contrary to the interests of West Virginia customers of MP/PE.

Commission Conditions for Approval of the Asset Transfer Transactions

Because of the uncertainties, however, related to carbon emission costs and market prices, the Stipulating Parties have not demonstrated that a final decision to allow a \$257 million Acquisition Adjustment in rate base on a permanent basis subject to unrestricted rate recovery is reasonable and will not adversely affect the public. Based on the record in this case, approving the inclusion of only the \$257 million Acquisition Adjustment in rate base is reasonable as long as there is some mechanism in place for sharing of the risk of future carbon costs, market prices, or other factors that might diminish the value of Harrison to AE Supply if it retained ownership, and that would likewise reduce the value of Harrison to Mon Power if it acquired ownership.

The West Virginia customers of MP/PE should not solely bear that risk. In order to provide for an equitable sharing of risks, the Commission will approve the Transaction as modified by the Joint Stipulation, subject to certain additional conditions.

The conditions required by the Commission before we would approve (i) the Transaction as set forth in the Joint Stipulation, (ii) the impairment entry to reduce the Acquisition Adjustment to \$257 million, and (iii) the establishment of a surcharge to allow for recovery of the non-ENEC cost components of Harrison ownership by Mon Power, are:

1. First Energy and Mon Power must agree through written verified statements filed in the record in this case within ten days of the date of this Order that they understand and agree that if First Energy does not make additional equity investment in Mon Power to cover the decline in equity caused by the write-off of the \$332 million (pre-tax) Acquisition Adjustment, Mon Power must agree not to pay, and First Energy must agree that it will not receive, any dividends from Mon Power until the equity to total capital ratio of Mon Power returns to forty-five percent.
2. First Energy, AE Supply, Mon Power and Potomac Edison must agree through written verified statements filed in the record in this case within ten days of the date of this Order that they understand and agree to allow the initial \$257 million Acquisition Adjustment to be subject to adjustment through a refund from First Energy or AE Supply if the FERC determines that purchase price paid by Mon Power exceeds the fair market valuation of Harrison. If the FERC makes such a determination, the portion of the \$257 million Acquisition Adjustment that exceeds fair market value will be returned to Mon Power by either First Energy or AE Supply, and the refund will be credited to the Acquisition Adjustment account.
3. First Energy, Mon Power and Potomac Edison must agree through verified written statements filed in the record in this case within ten days of the date of this Order that they understand and agree that the return on, and return of, the \$257 million Acquisition Adjustment will be allowed in base rates only to the extent that fifty percent of the net margins from off-system transactions from the additional Harrison capacity acquired by Mon Power will support that return. The full return requirement will be allowed each year subject to prospective adjustment based on a review of the achieved net margins from off-system sales in relation to the amount of return requirement built into the initial surcharge, and thereafter base rates. During the initial Surcharge true-up period, and thereafter when the return component on the Acquisition Adjustment is built into base rates, we will consider fifty percent of net margins on off-system sales attributable to the additional Harrison capacity as available for return on, and of, the remaining balance of the

\$257 million Acquisition Adjustment authorized in this case. This will not affect the ENEC calculations. If the monthly accumulation of return requirements previously built into the initial surcharge and thereafter base rates of MP/PE between base rate cases exceed the allowable amount based on the achieved net margins on off-system sales, a prospective adjustment credit will be embedded in prospective base rates. If the monthly accumulation of return requirements previously built into the initial surcharge or base rate of MP/PE between base rate cases is less than the allowable amount based on the achieved net margins of off-system sales, no prospective adjustment will be made to base rates. Each base rate case will reset the balance of the net return components to allowable amount on the achieved net margins of off-system sales to zero.

The Commission determines that the Transaction, Rate Base treatment and the Surcharge mechanism as proposed and modified in the Joint Stipulation, subject to and including the conditions described above, are fair, reasonable, and in the public interest.

Consideration of Affiliate Agreements

No party has expressed opposition to the terms and conditions of the Affiliate Agreements. The Commission has reviewed the Affiliate Agreements. In the Merger Case, the Commission authorized Mon Power and Potomac Edison to enter into a previous version of the Revised Amended Mutual Assistance Agreement (Revised Agreement) filed in this case. For ease of reference, we will refer to the earlier agreement as the Prior Agreement. The Prior Agreement was limited to services and goods incidental to transmission and distribution facilities, office and storage space, storm support, managing and remediating environmental threats, meter testing and repair, transportation, vegetation management, records, collections from customers, and training. Indirect allocations of costs were limited to a regulated utility company multiple part factor. Non-utility indirect cost allocation factors were mentioned in the Prior Agreement, but none applied to the limited utility-related goods and services applicable to Mon Power and Potomac Edison participation in the Prior Agreement.

In this case, MP/PE ask for Commission approval to enter into the Revised Agreement. The Revised Agreement adds a provision for operation related to generation services and adds additional companies to the Prior Agreement previously authorized by the Commission. The additional companies are: First Energy Nuclear Operating Company, American Transmission Systems, First Energy Properties, Bay Shore Power Company, First Energy Generation Corp (FE GenCo), and Trans-Allegheny Interstate Line Company. The reasons stated in support of the Revised Agreement include the

addition of FE GenCo to the agreement and the addition of operation of generation facilities.⁹

The Petition in this case describes FE GenCo as having special expertise in operating fossil fuel-fired generating plants. FE GenCo currently provides staffing for and operates Harrison under an agreement with AE Supply. Mr. Delmar testified that FE GenCo will provide all staffing for and operation of the Harrison plant for Mon Power. FE GenCo will continue to provide staffing and operate Pleasants and other First Energy market-regulated power plants. MP/PE Ex. MBD-D (Delmar) at 36.

The Commission is concerned that operation of public utility generation will be turned over to FE GenCo, which will also operate the market-regulated plants of First Energy. We are concerned regarding separation of responsibilities for economic dispatch, market offers, and planned outages between utility regulated plants with captive customers and market-regulated plants. We also need further explanation from MP/PE whether provision of generation services by FE GenCo will be provided at cost or at higher market-based price if that exceeds the FE GenCo costs of operating the Mon Power generation plants. Finally, we need further explanation from MP/PE regarding the liabilities that FE GenCo may have if there are claims or damages related to the Mon Power plants resulting from operating decisions made by FE GenCo.

Considering these potential issues, and the fact that they were not explored at hearing, the Commission will not authorize Mon Power and Potomac Edison to enter into the Revised Agreement at this time. As explained in the Petition, following the First Energy/Allegheny Energy Merger, FE GenCo has been providing operating services for the Mon Power generation plants as a subcontractor to Allegheny Energy Service Corporation (AESC) pursuant to the terms of earlier Mon Power affiliated agreements with AESC. Until the Commission has had an opportunity to review further the Revised Agreement, Mon Power may continue operations as have been carried on since the Merger for all of its power plants, including Harrison. As has always been the case, the costs incurred by Mon Power are subject to review in future rate cases. The Commission may disallow, for ratemaking purposes, imprudent or excessive costs and may impute net margins from transactions in the PJM market if it is determined in a future case that the plant has not been run to secure margins from off-system sales in the best interest of the captive West Virginia customers of MP/PE. The Commission will issue a separate Order, in a new case number, opening a new docket for purposes of considering the Revised Agreement.

MP/PE requested approval to enter into affiliated agreements other than the Revised Agreement, specifically, an Assumption and Indemnity Agreement between Mon

⁹ The Commission has previously authorized Mon Power to enter into a Fuel Procurement Arrangement with FE GenCo and certain "Near-Term" fuel transactions, subject to certain conditions. Commission Order, December 17, 2012, Case No. 12-0506-E-PC.

Power and AE Supply and a promissory note to be executed by Mon Power in favor of AE Supply (Other Affiliated Agreements). We do not have the same concerns with these that we have with the Revised Agreement. The terms and conditions of the Other Affiliated Agreements are reasonable, no party to them has given an undue advantage over the other, and the Other Affiliate Agreements will not adversely affect the public in the State, all as required by W.Va. Code §24-2-12. Accordingly, the Commission grants its consent and approval to MP/PE entering into the Other Affiliate Agreements, without approving the specific terms and conditions thereof.

Future Actions Required

In accordance with their commitments in the Joint Stipulation, MP/PE are directed to: (i) file as a closed entry in this docket a schedule showing the calculation of the Net Payment within ninety days of the Closing of the Transaction, (ii) file revised tariff sheets reflecting the Surcharge and the adjustment to ENEC rates within ten days of Closing, with those tariffs being deemed effective on the day of Closing, (iii) file the written verified statements required with respect to the \$257 million Acquisition Adjustment, and (iv) file a general base rate case not later than April 30, 2014.

Motion for Protective Order

In the Motion for Protective Order, MP/PE requested permanent protective treatment of certain confidential information they filed under seal in response to various data requests of the parties (collectively, Confidential Information). MP/PE stated that the Confidential Information meets the criteria adopted by the Supreme Court of Appeals of West Virginia in State ex rel. Johnson v. Tsapis, 187 W.Va. 337, 419 S.E.2d 1 (1992) for determining whether permanent protective treatment is warranted, and that the disclosure of the Confidential Information would put it at a competitive disadvantage. No other party opposed the relief requested in the Motion for Protective Order.

The Commission concludes that it is not necessary to resolve the issue of confidential treatment at this time. No entity has requested that the Commission provide copies of any information for which protective treatment is sought, and no entity has asserted that it has been denied access to the documents. The Commission will continue to segregate and keep filed under seal the subject documents until such future time, if any, that the Commission receives a Freedom of Information Act (FOIA) request for them. Upon such filing the Commission will notify MP/PE and provide them with an opportunity to argue whether the documents should be given permanent protective treatment.

The Commission will grant the request to excuse the MP/PE 2013 ENEC filing as recommended by the Stipulating Parties at paragraph 11(i) of the Joint Stipulation.

FINDINGS OF FACT

1. MP/PE filed a Petition for Approval of a Generation Resource Transaction and Related Relief proposing a generation resource transaction that would increase the net installed capacity of Mon Power by 1,476 megawatts. The Transaction consists of (i) acquisition by Mon Power of the 79.46 percent ownership interest currently held by AE Supply in Harrison, resulting in Mon Power being the sole owner of Harrison, (ii) acquisition by AE Supply of the 7.69 percent ownership interest held by Mon Power in Pleasants, resulting in AE Supply being the sole owner of Pleasants, (iii) approval of certain affiliated agreements, and (iii) implementation of a Surcharge to recover the net capital and operating costs related to the Transaction, effective as of the Closing and to remain in effect until new base rates are placed into effect. November 16, 2012, Petition.

2. MP/PE filed an affidavit of publication of the March 7, 2013 Commission-required public notice regarding this proceeding.

3. No parties filed an objection to the May 24, 2013 MP/PE motion for protective order.

4. The Stipulating Parties (MP/PE, Staff, CAD, WVEUG, UWUA, the Building Trades, the WVCA, Sierra Club, and the IBEW) filed a Joint Stipulation in resolution of all issues in this case. Filings of August 21 and September 6, 2013. WVONGA and IOGA were not parties to the Joint Stipulation, but each indicated that it took no position on the Joint Stipulation. WVCAG was the only party to oppose the Joint Stipulation. WVCAG August 23, 2013 filing.

5. Pursuant to paragraph 11(i) of the Joint Stipulation, MP/PE filed on their behalf and on behalf of the Commission Staff, CAD and WVEUG a Joint Motion to Excuse MP/PE 2013 ENEC filing. August 22, 2013 filing in Case No. 13-1272-E-PW.

6. The parties produced over 2,850 pages of prefiled direct, rebuttal, and live testimony. Additionally, the Commission received and reviewed over 1,800 letters and petitions supporting or opposing the Transaction. Following the hearings the parties filed over 350 pages of argument in the form of initial and reply briefs or proposed orders.

7. There are three significant differences between the terms of the Joint Stipulation and the Transaction proposed in the Petition, (i) reduction in the rate base valuation of Harrison, (ii) rate impacts associated with the Surcharge and corresponding

ENEC reduction and reduction in the return on equity (to 10.0 %) and income tax expense component (to 25.0%), and (iii) new or expanded employment, financial, energy efficiency, and capacity acquisition commitments.

8. The Transaction as modified by the Joint Stipulation provides assorted benefits to MP/PE customers and to the State of West Virginia in the form of: resolution of the MP/PE capacity shortage; increased employment; economic development support to industry; assistance to low-income customers; commitments to energy efficiency in schools; support for renewable energy; lower rates; commitments to expand funding for energy efficiency programs; increased capitalization for MP/PE; an increased tax base for the State; a reduced rate impact of the acquisition; and benefits of continued West Virginia coal production. Tr. IV at 57-58 (Wise), 95-100 (Baron), 147-149 (Raney), and 157-176 (Raney, Pedigo, and Ranson).

9. Ms. Kunkel provided no evidence to support a lower net present value or a negative net present value based on the model assumptions she challenged.

10. Parties to the Merger Case (Case No. 10-0713-E-PC) cautioned that the approval should be conditioned on specific restrictions and assurances with regard to the acquisition, including with regard to the price that First Energy was paying for Allegheny Energy. Staff Ex. 2 (Oxley) at 10, Case No. 10-0713-E-PC; WVEUG Ex. 1 (Kollen) at 6, Case No. 10-0713-E-PC; and CAD Ex. RCS-D (Smith) at 33-34, Case No. 10-0713-E-PC.

11. Under the Commission System of Accounts, "original cost electric plant" means "the cost of such property to the person first devoting it to public service."

12. Under the Commission System of Accounts the entire difference between the acquisition price and the original cost is recorded as an Acquisition Adjustment.

13. Pursuant to the terms of the Transaction, Harrison will be purchased at a price that exceeds its net original cost as reflected on the books of AE Supply.

14. There is no evidence in the record that indicates the value of the current assets of MP/PE have been impacted by the Merger-related accounting entries.

15. MP/PE currently have a capacity deficiency and must rely on the PJM market for both capacity and energy. This deficiency will increase in the future. MP/PE Ex. 1 (Petition) at Ex. A (2012 Resource Plan) at 30.

16. MP/PE will experience increases in peak demand of approximately 33 MW per year through 2028. *Id.* at 30.

17. Deactivation of three sub-critical coal-fired power plants by MP/PE will reduce Mon Power's installed capacity by 660 MW, contributing to the need for added capacity. Id. at 2 and 23.

18. The Transaction will return Mon Power to a ratio of installed capacity to load in excess of 100 percent, resulting in a reserve margin.

19. A thin or negative reserve margin cannot be increased in a smooth curve when base-load capacity is added.

20. MP/PE and WVCAG presented contrasting positions regarding accuracy of the MP/PE load forecasts and calculations of capacity shortfall. MP/PE used a restricted load forecast which produced a 2013 capacity shortfall of 938 MW and a shortfall of over 1,400 MW in 2026. WVCAG expressed reserve margin in terms of unforced capacity obligations, projecting a 2013 capacity shortfall of 770 MW, growing to 1,211 MW in 2026, although Ms. Kunkel withdrew her figures at hearing. Tr. III (Kunkel) at 126 and WVCAG Ex. CMK-D (Kunkel) at 3. MP/PE Ex. MBD-R (Delmar) at 15-17.

21. Harrison is a good and valuable asset. Harrison (i) has relatively low operating costs and is equipped with an array of pollution control equipment, (ii) is in the middle of a major coal producing area, (iii) has many remaining years of valuable life, (iv) is on schedule for MATS compliance. Tr. I (Rose) at 321-322, Staff Ex. DEW-D (Walker) at 5, and CAD Ex. BJG-D (Gregg) at 6-7.

22. The levelized cost of Harrison was the lowest cost alternative when compared to the cost of long-term investment and operating cost of new coal-fired generation, new nuclear generation, and new gas-fired generation. MP/PE Ex. MBD-D (Delmar) at 16. The benefits of Harrison are further enhanced by the lower levelized cost of the Transaction pursuant to the reduced rate base in the Joint Stipulation.

23. Beginning with the lower rate-base value of Harrison, the levelized cost of Harrison remains the lowest cost alternative, even when subject to reasonable variations in assumptions, including for example, a doubling of the assumed capacity factor for a combined-cycle gas plant to fifty percent, and inclusion of a reasonable expectation of a costs imposed on carbon emissions.

24. The net value of the Harrison plant to customers is dependent on the cost of an alternative power supply and the cost of operating Harrison is dependent on a number of unknowns, the most significant being the possibility of future new costs imposed on carbon emissions and the possibility of low market prices for power in the PJM market. MP/PE Exs. JLR-R (Rose) at 39-47, MBD-R (Delmar) at 18-19, Staff Ex. DEW-D (Walker) at 5, and CAD Ex. BJG-D (Gregg) at 6-7.

25. The Joint Stipulation modifies the treatment of the Acquisition Adjustment. The Petition sought to allow the full \$589 million Acquisition Adjustment in rate base, setting rates based on a return on, and of, the \$589 million Acquisition Adjustment. The Joint Stipulation proposes approval of a write-off of approximately \$332 million of the Acquisition Adjustment, allowing only \$257 million of the Acquisition Adjustment in rate base.

26. Neither Mon Power nor AE Supply expressed an interest or willingness in selling less than the entire interest in Harrison.

27. AE Supply would not consent to minority ownership. Tr. I (Delmar) at 184.

28. Acquisition of the entirety of Harrison provides for capacity coverage only through 2018. MP/PE Ex. MBD-D (Delmar) at 37-38.

29. Competitive generation owners, as compared with regulated owners, have different economic motivations that can result in differences in their ability/willingness to make capital investment, approach to capacity markets, and participation in energy markets. MP/PE Ex. MBD-R (Delmar) at 8-12.

30. Neither WVCAG nor any other Party rebutted the MP/PE testimony regarding minority ownership risk.

31. Energy efficiency and demand response are part of an ongoing program and are supported by MP/PE. MP/PE Ex. MBD-R (Miller) at 2.

32. The Transaction was arm's length and negotiations were sensitive to FERC rules regarding affiliated transactions and cross-subsidization, and carefully adhered to FERC rules. MP/PE Ex. MBD-R (Szwed) at 7.

33. None of the parties opposed the terms and conditions of the Affiliate Agreements.

34. In the Merger Case the Commission authorized Mon Power and Potomac Edison to enter into a prior version of the Revised Agreement.

35. The Revised Agreement adds (i) a provision for operation related to generation services and (ii) additional companies.

36. FE GenCo currently provides staffing for and operates Harrison under an agreement with AE Supply. MP/PE Ex. MBD-D (Delmar) at 36.

37. Under the Revised Agreement, FE GenCo will provide all staffing for and operation of the Harrison plant for Mon Power. MP/PE Ex. MBD-D (Delmar) at 36.

38. The Revised Agreement was not addressed during any of the hearings in this case.

39. MP/PE requested permanent protective treatment of its Confidential Information. Motion for Protective Order.

40. No other party opposed the relief requested in the Motion for Protective Order. Additionally, no entity has requested that the Commission provide copies of the Confidential Information and no entity has asserted that it has been denied access to those documents.

CONCLUSIONS OF LAW

1. A joint stipulation is only a recommendation by the stipulating parties regarding what they believe is a reasonable settlement of the issues for consideration by the Commission.

2. Among other duties and responsibilities, the Legislature has given the Commission the authority and duty to regulate utilities to ensure fair regulation of utilities in the public interest; provide economical and reliable utility service; encourage development of utility resources in a manner consistent with state needs and productive use of state resources, such as coal; ensure reasonable rates; and, encourage energy conservation and effective and efficient utility management. The Commission is charged with appraising and balancing the interests of current and future customers, the general interests of the State's economy and the interests of utilities in its deliberations and decisions. W.Va. Code §24-1-1(a) and (b).

3. When reviewing the proposed Joint Stipulation, the Commission is not bound by the terms of the Joint Stipulation and must reach a reasoned end result based on the record and a consideration of its statutory duties.

4. The Commission tests a settlement by considering the evidentiary record and comparing it to the stipulation to help determine if the stipulation, as presented, is a fair, balanced, and reasonable resolution of the case.

5. The Commission makes a determination that a stipulation is fair and reasonable not on assertions by the stipulating parties to that effect, but based on the record in the case, including the evidence related to the stipulation.

6. The Commission approved the First Energy/Allegheny Energy Merger based on conditions in the Merger Stipulation regarding the excess purchase price paid by First Energy for Allegheny Energy.

7. Pursuant to the Commission System of Accounts any acquisition premium or goodwill is recorded as an Acquisition Adjustment.

8. For reasons unrelated to the technical arguments regarding GAAP accounting for fair value adjustments, acquisition premiums, or goodwill, the Commission determines that the request to sell Harrison to Mon Power at a price that exceeds the net original cost book value does not violate the Merger Stipulation.

9. The intent of the Merger Stipulation was to prevent First Energy and MP/PE from requesting an increased West Virginia jurisdictional rate base valuation related to the First Energy purchase price of Allegheny Energy in excess of book value at the time of the merger.

10. The Merger Stipulation was not intended and could not reasonably be extended to apply to all possible future transactions, such as the Transaction, filed with the Commission for approval.

11. The contention that the Merger Stipulation from Case No. 10-0713-E-PC binds Commission decisions regarding Acquisition Adjustments in this and future cases involving MP/PE is inconsistent with the delegation of Legislative authority that is the heart of the public utility regulation under W.Va. Code §24-2-1, et seq.

12. The Transaction as filed in the Petition and as modified by the Joint Stipulation, is not a violation of the Merger Stipulation, and was not dictated, controlled, or dependent on the fair value adjustment made at the time of the First Energy/Allegheny Energy merger. Instead, AE Supply was simply asking a price it felt was justified by the benefits the acquisition would bring to Mon Power, and MP/PE were simply asking that they be allowed to pay that price which included an Acquisition Adjustment.

13. MP/PE is in need of additional capacity.

14. The amount of capacity to be obtained by MP/PE through approval of the Transaction is reasonable.

15. The capacity deficiency, whether it was 770 MW or 938 MW in 2013 and whether it is projected to be 1,211 MW or 1,400 MW in 2026, justifies the acquisition of additional capacity.

16. It is not unusual, and is to be expected, that acquiring the most reasonably priced capacity for long-term needs from a base-load coal plant almost always entails some reserve margin that may be higher than optimum, but which gradually reduces over time as internal load grows.

17. The Transaction constitutes a reasonable plan to acquire the additional capacity needed by MP/PE.

18. MP/PE had no legal obligation to issue an RFP prior to filing this case and the failure to issue an RFP does not constitute a violation of W.Va. Code §24-2-12.

19. The analyses presented regarding the cost of long-term investment and operating cost of new coal-fired generation, new nuclear generation, and new gas-fired generation obviates the need for the variety of mixed proposals that might or might not have come from an RFP for capacity and energy.

20. The value of an RFP in determining the market value of Harrison is, at best, based on conjecture, and is not beneficial to the analysis in this matter.

21. The prospects of future carbon regulation and additional environmental regulation on coal-fired generation are not remote or unlikely.

22. The reasonableness of a purchase price is based on the public interest, not on the original cost value recorded on the books of the entity selling the asset.

23. The fair market price, and the price for ratemaking purposes, can be evaluated based on current economic conditions and is unrelated to the excess purchase price paid by First Energy at the time of the First Energy/Allegheny Energy merger.

24. The request to acquire Harrison for \$1.2 billion (net of Pleasants sale, \$1.1 billion) and record an Acquisition Adjustment of approximately \$589 million, as contained in the Petition, is consistent with regulatory accounting pursuant to the Commission prescribed Uniform System of Accounts.

25. Pursuant to the Uniform System of Accounts the disposition of an Acquisition Adjustment is subject to approval of the Commission.

26. Departing from net original cost valuation and allowing a \$257 million Acquisition Adjustment for ratemaking purposes may be reasonable and not contrary to the best interest of West Virginia customers of MP/PE based on (i) alternative costs to Mon Power if it did not acquire Harrison, (ii) the benefits of power supply from Harrison, and (iii) the offsetting margins expected from sales into the PJM market.

27. A rate base value inclusive of the \$257 million Acquisition Adjustment as proposed by the Joint Stipulation is not contrary to the best interest of West Virginia MP/PE customers, provided the net cost of generation at Harrison does not exceed the benefits (specifically, sales into the PJM market) of Harrison.

28. Complete, as opposed to partial, acquisition of Harrison is in the best interest of MP/PE ratepayers.

29. Because of the uncertainties related to carbon emission costs and market prices, the Stipulating Parties have not demonstrated that a final decision to allow a \$257 million Acquisition Adjustment in rate base on a permanent basis subject to unrestricted rate recovery is reasonable and not contrary to the public interest.

30. Because West Virginia customers of MP/PE should not solely bear the risk associated with the uncertainties related to carbon emission costs, market prices, and other similar factors, approving the inclusion of only the \$257 million Acquisition Adjustment in rate base is reasonable, provided there is a sharing of those risks.

31. The conditions required prior to approving (i) the Transaction as set forth in the Joint Stipulation, (ii) the impairment entry to reduce the Acquisition Adjustment to \$257 million, and (iii) the establishment of a surcharge to allow for recovery of the non-ENEC cost components of Harrison ownership by Mon Power, are:

1. First Energy and Mon Power must agree through written verified statements filed in the record in this case within ten days of the date of this Order that they understand and agree that if First Energy does not make additional equity investment in Mon Power to cover the decline in equity caused by the write-off of the \$332 million (pre-tax) Acquisition Adjustment, Mon Power must agree not to pay, and First Energy must agree that it will not receive, any dividends from Mon Power until the equity to total capital ratio of Mon Power returns to forty-five percent.
2. First Energy, AE Supply, Mon Power and Potomac Edison must agree through written verified statements filed in the record in this case within ten days of the date of this Order that they understand and agree to allow the initial \$257 million Acquisition Adjustment to be subject to adjustment through a refund from First Energy or AE Supply if the FERC determines that purchase price paid by Mon Power exceeds the fair market valuation of Harrison. If the FERC makes such a determination, the portion of the \$257 million Acquisition Adjustment that exceeds fair market value will be returned to Mon Power by either First Energy or AE Supply, and the refund will be credited to the Acquisition Adjustment account.

3. First Energy, Mon Power and Potomac Edison must agree through verified written statements filed in the record in this case within ten days of the date of this Order that they understand and agree that the return on, and return of, the \$257 million Acquisition Adjustment will be allowed in base rates only to the extent that fifty percent of the net margins from off-system transactions from the additional Harrison capacity acquired by Mon Power will support that return. The full return requirement will be allowed each year subject to prospective adjustment based on a review of the achieved net margins from off-system sales in relation to the amount of return requirement built into the initial surcharge, and thereafter base rates. During the initial Surcharge true-up period, and thereafter when the return component on the Acquisition Adjustment is built into base rates, we will consider fifty percent of net margins on off-system sales attributable to the additional Harrison capacity as available for return on, and of, the remaining balance of the \$257 million Acquisition Adjustment authorized in this case. This will not affect the ENEC calculations. If the monthly accumulation of return requirements previously built into the initial surcharge and thereafter base rates of MP/PE between base rate cases exceed the allowable amount based on the achieved net margins on off-system sales, a prospective adjustment credit will be embedded in prospective base rates. If the monthly accumulation of return requirements previously built into the initial surcharge or base rate of MP/PE between base rate cases is less than the allowable amount based on the achieved net margins of off-system sales, no prospective adjustment will be made to base rates. Each base rate case will reset the balance of the net return components to allowable amount on the achieved net margins of off-system sales to zero.

32. Subject to the above conditions, the Transaction, the rate base treatment, and the Surcharge mechanism, all as proposed and modified in the Joint Stipulation, are fair, reasonable, and in the public interest.

33. The Commission will not authorize Mon Power and Potomac Edison to enter into the Revised Agreement at this time because of concerns regarding certain aspects of the Revised Agreement, including (i) operation of public utility generation and market-regulated plants of First Energy by FE GenCo, (ii) separation of responsibilities for economic dispatch, market offers, and planned outages between utility regulated plants with captive customers and market-regulated plants, (iii) whether provision of generation services by FE GenCo will be provided at cost or at higher market-based price if that exceeds the FE GenCo costs of operating the Mon Power generation plants, and (iv) liabilities that FE GenCo may have if there are claims or damages related to the Mon Power plants resulting from operating decisions made by FE GenCo,

34. Because FE GenCo has been providing operating services for the Mon Power generation plants pursuant to the terms of earlier Mon Power affiliated agreements with AESC, Mon Power may continue the current operation arrangement for Harrison

until the Commission has had an opportunity to review further the proposed Revised Agreement.

35. Pursuant to W.Va. Code §24-2-12, the terms and conditions of the Other Affiliated Agreements submitted for the consent and approval of the Commission, are reasonable, no party to them has given an undue advantage over the other, and will not adversely affect the public in the State.

36. In accordance with their commitments in the Joint Stipulation, the Commission should direct MP/PE to: (i) file as a closed entry in this docket a schedule showing the calculation of the Net Payment within ninety days of the Closing of the Transaction, (ii) file revised tariff sheets reflecting the Surcharge and the adjustment to ENEC rates within ten days of Closing, with such tariffs being deemed effective on the day of Closing, and (iii) file a general base rate case not later than April 30, 2014.

37. It is not necessary to resolve the issue of confidential treatment at this time.

38. In consideration of the impact of this proceeding on ENEC rates, it is reasonable to grant the request to excuse the MP/PE 2013 ENEC filing as recommended by the Stipulating Parties at paragraph 11(i) of the Joint Stipulation.

ORDER

IT IS THEREFORE ORDERED that the Commission grants its consent and approval to the proposed Transaction, as modified by the Joint Stipulation, and subject to the conditions described herein.

IT IS FURTHER ORDERED that MP/PE and the other Stipulating Parties comport themselves in accord with the terms of the Joint Stipulation as if expressly set forth in these ordering paragraphs, except as modified by the conditions set forth herein.

IT IS FURTHER ORDERED that approval of (i) the Transaction as set forth in the Joint Stipulation, (ii) the impairment entry to reduce the Acquisition Adjustment to \$257 million, and (iii) the establishment of a surcharge to allow for recovery of the non-ENEC cost components of Harrison ownership by Mon Power, are subject to the following conditions:

1. First Energy and Mon Power must agree through written verified statements filed in the record in this case within ten days of the date of this Order that they understand and agree that if First Energy does not make additional equity investment in Mon Power to cover the decline in equity caused by the write-off of the \$332 million (pre-tax) Acquisition Adjustment, Mon Power must agree not to pay, and First Energy must agree that it will not receive, any dividends from Mon

Power until the equity to total capital ratio of Mon Power returns to forty-five percent.

2. First Energy, AE Supply, Mon Power and Potomac Edison must agree through written verified statements filed in the record in this case within ten days of the date of this Order that they understand and agree to allow the initial \$257 million Acquisition Adjustment to be subject to adjustment through a refund from First Energy or AE Supply if the FERC determines that purchase price paid by Mon Power exceeds the fair market valuation of Harrison. If the FERC makes such a determination, the portion of the \$257 million Acquisition Adjustment that exceeds fair market value will be returned to Mon Power by either First Energy or AE Supply, and the refund will be credited to the Acquisition Adjustment account.
3. First Energy, Mon Power and Potomac Edison must agree through verified written statements filed in the record in this case within ten days of the date of this Order that they understand and agree that the return on, and return of, the \$257 million Acquisition Adjustment will be allowed in base rates only to the extent that fifty percent of the net margins from off-system transactions from the additional Harrison capacity acquired by Mon Power will support that return. The full return requirement will be allowed each year subject to prospective adjustment based on a review of the achieved net margins from off-system sales in relation to the amount of return requirement built into the initial surcharge, and thereafter base rates. During the initial Surcharge true-up period, and thereafter when the return component on the Acquisition Adjustment is built into base rates, we will consider fifty percent of net margins on off-system sales attributable to the additional Harrison capacity as available for return on, and of, the remaining balance of the \$257 million Acquisition Adjustment authorized in this case. This will not affect the ENEC calculations. If the monthly accumulation of return requirements previously built into the initial surcharge and thereafter base rates of MP/PE between base rate cases exceed the allowable amount based on the achieved net margins on off-system sales, a prospective adjustment credit will be embedded in prospective base rates. If the monthly accumulation of return requirements previously built into the initial surcharge or base rate of MP/PE between base rate cases is less than the allowable amount based on the achieved net margins of off-system sales, no prospective adjustment will be made to base rates. Each base rate case will reset the balance of the net return components to allowable amount on the achieved net margins of off-system sales to zero.

IT IS FURTHER ORDERED that the Commission does not grant its consent and approval of the Revised Agreement, and Mon Power and Potomac Edison may not enter into the Revised Agreement, pending further investigation and order of the Commission.

IT IS FURTHER ORDERED that Mon Power may continue the current operation arrangement for Harrison with FE GenCo until the Commission has had an opportunity to review further the Revised Agreement.

IT IS FURTHER ORDERED that the Commission grants its consent and approval to the Companies entering into the Other Affiliate Agreements, without approving the specific terms and conditions thereof.

IT IS FURTHER ORDERED that MP/PE shall (i) file as a closed entry in this docket a schedule showing the calculation of the Net Payment within ninety days of the Closing of the Transaction, (ii) file revised tariff sheets reflecting the Surcharge and the adjustment to ENEC rates within ten days of Closing, with those tariffs being deemed effective on the day of Closing, and (iii) file a general base rate case not later than April 30, 2014.

IT IS FURTHER ORDERED that the Commission Executive Secretary continue to segregate and keep filed under seal the Confidential Information.

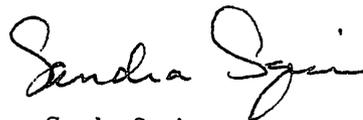
IT IS FURTHER ORDERED that the request to excuse the MP/PE 2013 ENEC filing is hereby granted.

IT IS FURTHER ORDERED that upon entry of this Order these cases shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

Commissioner Ryan B. Palmer dissents from the decision of the majority in this case and files a dissenting opinion.

A True Copy, Teste:



Sandra Squire
Executive Secretary

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