

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John A. Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request for Approval of the
Merger Agreement between Integrys Energy
Group, Inc. and Wisconsin Energy Corporation

ISSUE DATE: February 24, 2015

DOCKET NO. G-011/PA-14-664

ORDER FINDING JURISDICTION,
GRANTING VARIANCE, AND
ESTABLISHING PROCEDURES

PROCEDURAL HISTORY

On August 6, 2014, Minnesota Energy Resources Corporation (MERC) petitioned the Commission to approve a proposed merger between its parent company, Integrys Energy Group, Inc. (Integrys), and Wisconsin Energy Corporation (WEC).

By December 12, 2014, the Commission had received comments, reply comments, and supplemental reply comments from MERC, the Minnesota Department of Commerce (the Department), and the Minnesota Office of the Attorney General – Antitrust and Utilities Division (OAG).

On February 5, 2015, the Commission met to consider this matter. During the hearing the parties proposed a procedural schedule for this matter.

FINDINGS AND CONCLUSIONS

I. Summary

In this order the Commission does the following:

- Finds that it has jurisdiction to determine if the proposed merger is consistent with the public interest;
- Varies its filing requirements to eliminate the provision of unnecessary data; and
- Adopts the parties' schedule for MERC to provide information regarding how other jurisdictions are evaluating the proposed merger, and for interested parties to comment.

II. The Petition

WEC is a public-utility holding company headquartered in Milwaukee, Wisconsin. It serves 1.1 million electric customers and 1.1 million natural gas customer throughout Wisconsin and the Upper Peninsula of Michigan.

Integrus is a public-utility holding company headquartered in Chicago, Illinois. It owns and operates six regulated natural gas and electric utilities serving a total of 2.1 million customers in Illinois, Michigan, Minnesota, and Wisconsin.

MERC, a wholly owned subsidiary of Integrus, is a corporation providing natural gas service to approximately 214,000 customers in Minnesota.

WEC proposes to trade some of its stock and cash to acquire Integrus's stock, resulting in Integrus's entire holding company structure becoming a subsidiary of WEC. WEC would finance the \$9.1 billion acquisition by issuing new stock and borrowing \$1.5 billion, and would assume \$3.3 billion in Integrus's debt. The merging firms are seeking the approval of the Federal Energy Regulatory Commission (FERC) and of every state in which Integrus and WEC operate -- Illinois, Michigan, Minnesota, and Wisconsin.

III. Commission Jurisdiction

The Department and the OAG argue that Minn. Stat. §§ 216B.48 and 216B.50 give the Commission jurisdiction over the proposed merger. MERC states that it does not contest the Commission's jurisdiction.

Minn. Stat. § 216B.50 bars a public utility from selling its system or merging without Commission authorization. And Minn. Stat. § 216B.48, subd. 3, bars a public utility from entering into nearly any arrangement with an affiliated interest until the Commission finds that the arrangement is reasonable and consistent with the public interest. The term "affiliated interest" includes any corporation owning, directly or indirectly, five percent or more of the public utility's voting shares.¹

Having reviewed the statutes and the arguments of the parties, the Commission concludes Minn. Stat. §§ 216B.48 and 216B.50 give the Commission jurisdiction over the proposed merger.

IV. Variance of Minn. R. 7825.1800

Minn. R. 7825.1800 lists the information that a party must include in a petition to acquire property:

A. Petitions for approval of a merger or of a consolidation shall be accompanied by the following: the petition signed by all parties; all information, for each public utility, as required in parts 7825.1400 and 7825.1500; the detailed reasons of the petitions and each party for entering into the proposed transaction, and all facts warranting the same; the full terms and conditions of the proposed merger or consolidation.

¹ Minn. Stat. § 216B.48, subd. 1.

B. Petitions for approval of a transfer of property shall be accompanied by the following: all information as required in part 7825.1400, items A to J; the agreed upon purchase price and the terms for payment and other considerations.

C. A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.

D. Other pertinent facts or additional information that the commission may require.

MERC petitioned the Commission to authorize the proposed merger. As required by Minn. R. 7825.1800, MERC included with its petition MERC's reasons for the merger, the reasons each party entered into the proposed transaction, pertinent facts surrounding the proposed transaction, and the transaction's terms and conditions. But MERC asks the Commission to vary Minn. R. 7825.1800 to suspend the rest of the requirements listed in subparts B, C, and D.

Subpart B provides for MERC to file information required under part 7825.1400, which pertains to stock issuances. Since neither MERC nor its parent company Integrys will be issuing stock as part of the proposed merger, MERC argues that this requirement is unnecessary.

Subpart C provides for reporting the book value of MERC's assets to be transferred. Since MERC will retain all the same assets after the merger as before, MERC argues that this requirement is unnecessary.

Subpart D provides for reporting other pertinent facts or information that the Commission may require. Since the Commission has not identified specific additional information for MERC to include with its application, MERC argues that this filing requirement is also unnecessary.

The Department agrees with MERC's analysis and supports MERC's variance request.

The Commission varies a rule when it determines that --

- enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
- granting the variance would not adversely affect the public interest; and
- granting the variance would not conflict with standards imposed by law.²

Here, the Commission finds it appropriate to vary the remaining requirements of subparts B, C, and D. To the extent that these subparts pertain to security issuances, the transfer of assets into or out of a utility's control, or additional filing requirements imposed by the Commission, they do not apply to the proposed transaction. Thus, enforcing these requirements would impose an

² Minn. R. 7829.3200, subp. 1.

excessive burden on MERC without a corresponding benefit to the public. Because the public has no interest in compelling MERC to assemble and file irrelevant information, varying these rules to omit these requirements would not adversely affect the public interest. Finally, no legal standard precludes granting the variance sought.

For the foregoing reasons, the Commission concurs with MERC and the Department and will grant the request to vary the remaining requirements of Minn. R. 7825.1800, subps. B, C, and D.

V. Future Proceedings

Prospectively, the parties propose the following procedural schedule:

April 5, 2015: Deadline for MERC to file updates on the Integrys and WEC merger proceedings in the jurisdictions of FERC and other states, including –

- a list of witnesses, a summary of topics addressed, and a summary of testimony,
- a list of issues raised,
- any agreements made,
- electronic links to any available briefs and briefing papers, and
- any decisions rendered.

April 20, 2015: Deadline for interested parties to file comments on MERC's filing and the proceedings in other jurisdictions.

April 27, 2015: Deadline for MERC and other interested parties to file reply comments.

To facilitate analysis of competitively sensitive information, the parties agree that MERC should provide trade secret information in this proceeding to the Department, the OAG, and the Commission upon reasonable request.

Because these arrangements are well designed to develop the record to enable the Commission to evaluate the public interest of the proposed merger, the Commission will approve them.

ORDER

1. The Commission has jurisdiction to approve or reject the proposed merger of Integrys Energy Group, Inc., and Wisconsin Energy Corporation under Minn. Stat. §§ 216B.48 and 216B.50.
2. The Commission varies Minn. R. 7825.1800 to suspend the remaining filing requirements set forth in subparts B, C, and D.
3. By April 5, 2015, Minnesota Energy Resources Corporation shall file updates on the Integrys and WEC merger proceedings in the jurisdictions of the Federal Energy Regulatory Commission and other states, including --

- a list of witnesses, a summary of topics addressed, and a summary of testimony,
 - a list of issues raised,
 - any agreements made,
 - electronic links to any available briefs and briefing papers, and
 - any decisions rendered.
4. By April 20, 2015, interested parties may file comments on MERC's filing and the proceedings in other jurisdictions.
 5. By April 27, 2015, MERC and other interested parties may file reply comments.
 6. MERC shall provide trade secret information in this proceeding to the Minnesota Department of Commerce, the Minnesota Office of the Attorney General – Antitrust and Utilities Division, and the Commission upon reasonable request.
 7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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