

DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH

PUBLIC SERVICE COMMISSION

MERGERS AND ACQUISITIONS

(By authority conferred on the public service commission by section 6q of 2008 PA 286, MCL 460.6q.)

R 460.301 Scope.

Rule 1. (1) The prior approval of the commission is required when any of the following occurs:

(a) A person acquires or merges with a jurisdictional regulated utility.

(b) A transaction involves the transfer of control of a jurisdictional regulated utility.

(c) A jurisdictional regulated utility sells, assigns, transfers, or encumbers assets to another person, except if such sale, assignment, transfer, or encumbrance of assets occurs in the normal course of business.

(2) The prior approval of the commission is not required for the issuance of securities or other financing transactions that are not directly or indirectly involved in an acquisition, merger, encumbrance, or transfer of control.

History: 2011 AACS.

R 460.302 Definitions.

Rule 2. As used in these rules:

(a) "Acquire" or "acquisition" means to obtain an interest in a jurisdictional regulated utility through a transaction that results in a transfer of control of the jurisdictional regulated utility. An underwriter or broker-dealer that obtains an interest in securities solely for the purpose of facilitating a distribution of securities does not thereby acquire or make an acquisition of an interest in the jurisdictional regulated utility for purposes of MCL 460.6q and these rules.

(b) "Applicant" means any person seeking approval from the commission under MCL 460.6q and these rules.

(c) "Asset" means real and personal property, including natural gas and electric distribution facilities, electric transmission and generation facilities, and natural gas transmission and storage facilities, owned by a jurisdictional regulated utility and used to directly provide natural gas or electric utility services to end users at rates regulated by the commission. For purposes of these standards, asset does not include accounts receivable.

(d) "Assign" or "assignment" means the transfer to another person of any of the interest held in an asset or assets.

(e) "Encumber" or "encumbrance" or "encumber assets" means subjecting an asset or assets of a jurisdictional regulated utility to a lien or security interest for purposes other than to facilitate, directly or indirectly, financing of utility operations, or for purposes other than to facilitate, directly or indirectly, the provision of utility service. It does not include a refinancing of existing secured debts or securities to the extent that the amount refinanced is equal to or less than the amount of the existing secured debt or security.

(f) "Jurisdictional regulated utility" means a utility whose rates are regulated by the commission. Jurisdictional regulated utility does not include a telecommunications provider as defined in the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2604, or a motor carrier as defined in the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(g) "Merge" or "merger" means the combination or consolidation of a jurisdictional regulated utility with another person in a manner that results in a transfer of control of the jurisdictional regulated utility.

(h) "Original book cost" means the amount at which an asset is recorded in the books of accounts of the jurisdictional regulated utility, plus additions, without deduction of related provisions for accrued depreciation,

amortization, securitization, write-downs, impairments, or for other purposes.

(i) "Person" means an individual, corporation, association, partnership, utility, or any other private or public entity. Person includes a jurisdictional regulated utility.

(j) "Normal course of business" means a transaction that is related to the transfer, sale, assignment, or encumbrance of assets and that satisfies any 1 of the following criteria:

(i) With respect to utilities having 500,000 or more retail customers, a transaction that involves the transfer, sale, or assignment of assets having an original book cost equal to or less than the dollar threshold identified in the following table:

Transaction Date	Dollar Threshold
Prior to December 31, 2020	\$50 million
January 1, 2021 to December 31, 2030	\$65 million
January 1, 2031 to December 31, 2040	\$85 million
January 1, 2041 to December 31, 2050	\$105 million
January 1, 2051 to December 31, 2060	\$135 million
January 1, 2061 to December 31, 2070	\$175 million
January 1, 2071 to December 31, 2080	\$225 million
January 1, 2081 and beyond	\$275 million

(ii) With respect to utilities having fewer than 500,000 retail customers, a transaction that involves the transfer, sale, or assignment of assets having an original book cost equal to or less than the dollar threshold identified in the following table:

Transaction Date	Dollar Threshold
Prior to December 31, 2020	\$10 million
January 1, 2021 to December 31, 2030	\$12.8 million
January 1, 2031 to December 31, 2040	\$16.4 million
January 1, 2041 to December 31, 2050	\$21 million
January 1, 2051 to December 31, 2060	\$26.9 million
January 1, 2061 to December 31, 2070	\$34.4 million
January 1, 2071 to December 31, 2080	\$44 million
January 1, 2081 and beyond	\$56.3 million

(iii) With respect to all utilities, a transaction, regardless of amount, that constitutes a sale, assignment, transfer, or encumbrance of interests in fuel, natural gas, purchased power, electric or natural gas transmission capacity, natural gas storage services, or other commodities, if such transaction is otherwise subject to review for reasonableness and prudence in a gas cost recovery or power supply cost recovery proceeding, or a successor thereof.

(iv) With respect to cooperative utilities whose rates are regulated by the commission, an encumbrance of assets in which the total aggregate proceeds to the jurisdictional regulated utility from all of the currently outstanding encumbrances immediately following the encumbrance will not exceed 5 million dollars.

A transaction described in subdivision (j) (i), (ii), (iii), or (iv) of this rule shall not be classified as in the normal course of business if the transaction, either directly or indirectly, is in connection with the acquisition, transfer of control, or merger of a jurisdictional regulated utility, or if the transaction involves the transfer or sale of an electrical generating plant that has a total installed generating capacity (nameplate rating) of more than 20 megawatts.

(k) "Sell assets" means the transfer to another person of any of the interest in an asset or assets.

(l) "Transaction" means an acquisition, merger, transfer of control, sale, assignment, transfer, or encumbrance as provided in R 460.301.

(m) "Transaction date," for purposes of the tables found in subdivision (j) (i) and (ii) of this rule only, means the date on which a jurisdictional regulated utility and another party to the transaction execute a final agreement for the transfer, sale, or assignment of an asset of the jurisdictional regulated utility.

(n) "Transfer assets" means the sale or assignment to another person of any of the interest in an asset or assets. It does not include the transfer of pension plan or other retirement assets done to facilitate a change in the management of such assets.

(o) "Transfer of control" means the transfer to another person of the power to direct or cause the direction of the management and policies of a jurisdictional regulated utility, whether through the ownership of voting interests or voting securities, by contract including acquisition of assets, or otherwise. Transfer of control is presumed to occur under either of the following conditions:

(i) After the transfer, the transferee, by formal or informal arrangement, device, or understanding, directly or indirectly, owns, controls, holds with the right to vote, or holds proxies representing 50% or more of the outstanding voting interests or voting securities that are entitled to elect a majority of the board of directors or other governing body of the jurisdictional regulated utility.

(ii) After the transfer, the transferee, by formal or informal arrangement, device, or understanding, directly or indirectly, owns, controls, holds with the right to vote, or holds proxies representing 20% or more of the outstanding voting interests or voting securities that are entitled to elect a majority of the board of directors or other governing body of the jurisdictional regulated utility, if such transferee is, after the transfer, the largest holder of such voting interests. The presumption of a transfer of control described in subdivision (o) (i) and (ii) of this rule may be rebutted.

History: 2011 AACs.

R 460.303 Application for approval.

Rule 3. (1) Applications for commission approval filed under MCL 460.6q shall contain pre-filed testimony addressing the requirements of MCL 460.6q(3) and MCL 460.6q(7), and shall include all of the following information for each applicant and each jurisdictional utility whose assets or securities are involved in the proposed transaction:

(a) The exact name of the applicant(s) and principal business address(es).

(b) The name and address of the person authorized to receive notices and communications regarding the application, including phone and fax numbers, and the e-mail address.

(c) A description of the applicant, including all business activities and jurisdictional real and personal property owned, operated, or controlled by the applicant and its parent companies.

(d) Organizational charts depicting the applicant's current and proposed post-transaction corporate structures.

(e) A description of the proposed transaction including the identity of all the parties involved, the terms and conditions of the transaction, and a detailed explanation of the reasons for entering into the transaction.

(f) A detailed description of the projected impact of the transaction on customer rates and electric and/or gas service.

(g) All documents related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction.

(h) A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest. The applicant shall include a general explanation of the effect of the transaction on competition and rates. The applicant may also file any other information it believes relevant to the commission's consideration of the transaction.

(i) Pro forma financial statements resulting from the transaction.

(j) Copies of the parties' public filings with other state or federal regulatory agencies regarding the same transaction, including any regulatory orders issued by those agencies regarding the transaction.

(k) Proposed accounting entries showing the effect of the transaction with sufficient detail to indicate the effects on all account balances, on the income statement, and on other relevant financial statements. The applicant shall explain how the amount of each entry was determined.

(l) A description of the capital structure of all parties to the transaction prior to the closing of the transaction, including all of the following:

(i) The amounts and types of equity.

(ii) The terms of preference stock, whether cumulative or participating, or on dividends or assets, or otherwise.

(iii) The amount of bonds authorized and issued, describing each class separately and giving the date of issue, par value, rate of interest, date of maturity, and how secured.

- (iv) Other indebtedness, if any.
 - (m) A description of the capital structure of all parties to the transaction after the closing of the transaction, including any new entities created as a result of the transaction, including the following:
 - (i) The amounts and types of equity.
 - (ii) The terms of preference stock, whether cumulative or participating, or on dividends or assets, or otherwise.
 - (iii) The amount of bonds authorized and issued, describing each class separately and giving the date of issue, par value, rate of interest, date of maturity, and how secured.
 - (iv) Other indebtedness, if any.
 - (n) A description of the applicant's commitment, if any, to maintaining existing levels of corporate charitable contributions and community support after the transaction.
 - (o) A description of the effect of the transaction on the degree of risk assumed by utility customers for liabilities associated with activities that are not regulated by the commission.
 - (p) A description of the applicant's commitment, if any, to maintaining existing corporate offices located in Michigan.
 - (q) An explanation of whether the applicant or any party to the transaction intends to seek rate recovery of transaction costs, acquisition premiums, goodwill, or control premiums, and the projected amount.
 - (r) A detailed description of the effect of the transaction on the affected utility's regulatory cost of capital.
 - (s) A description of transaction related savings credits for customers, if any.
 - (t) A description of the effect of the proposed transaction on market power.
 - (u) A description of the effect of the proposed transaction on the affected utility's state and local tax liability.
 - (v) A description of any projected labor force reduction associated with the transaction.
 - (w) A description of any proposed safeguards for stabilizing wages and benefits associated with the transaction.
 - (x) A description of any additional commitments the applicant is making to the commission that are not included in the transaction documents.
 - (y) A description of any new entities created to facilitate the transaction.
 - (z) Applicants, and each jurisdictional utility whose assets or securities are involved in the proposed transaction, shall not rely upon any models or data subject to proprietary constraints for their applications filed under MCL 460.6q, unless the applicant or utility provides, upon request of any party, a mutually agreed upon time and place for the party's inspection of the proprietary model or data, along with operating manuals necessary to allow the inspecting party to use the model or data. For purposes of this subdivision, "party" includes, but is not limited to, any person who has filed a petition to intervene in the proceeding to which no objection has been filed.
- (2) On the date that the application is filed, the applicant shall serve a copy of the application on the attorney general and on all parties to the applicant's or the affected utility's most recently completed general rate case. The application shall include a notice informing the public of the opportunity to comment on the application. The applicant shall publish the notice in 3 newspapers of general circulation in the applicant's service territory, or in the service territory of the affected utility if the utility is not the applicant, not later than 7 days from the date of filing the application. The notice shall provide that comments are due within 60 days of the date the application was filed.
- (3) After notice and hearing and within 180 days from the date an application is filed under this rule, the commission shall issue an order approving or rejecting the proposed transaction. In the absence of a showing of good cause, determined by the executive secretary or the presiding officer on a case-by-case basis, for more exigent treatment, milestones for filings during the 180-day period are as follows:
- (a) The executive secretary and the presiding officer shall endeavor to schedule the initial prehearing conference not later than 24 calendar days after the filing of an application for approval under MCL 460.6q. Failure to comply with this subdivision shall not be a basis for any party to appeal to the commission.
 - (b) At the initial prehearing conference the presiding officer shall establish a schedule that will allow the commission to issue a final order within 180 days of the filing of an application. The schedule established by the presiding officer may be amended by the presiding officer or the commission as provided by law. Both of the following apply:

(i) At the initial prehearing conference the presiding officer shall establish a schedule that will allow the commission to issue a final order within 180 days of the filing of an application. The schedule established by the presiding officer may be amended by the presiding officer or the commission as provided by law.

(ii) Discovery shall, as far as practicable, be conducted in the same manner as in the circuit courts of this state under the Michigan court rules or as otherwise provided by law. The party on whom interrogatories, requests for production of documents and other things, and requests for admission is served shall serve the answers and objections, if any, on all other parties within 5 business days after the discovery is served. When appropriate, the presiding officer may set different time limitations for the conduct of discovery. For purposes of this subdivision, "party" includes the applicant, a person who has filed a petition to intervene to which no objection has been filed, a person who is permitted to intervene, and the staff of the commission.

(c) In establishing a schedule under subrule (3) (b) of this rule, the presiding officer shall attempt the following calendar day milestones:

(i) Direct testimony by the commission staff and intervenors filed within 50 calendar days following the initial prehearing conference.

(ii) Rebuttal testimony filed within 10 calendar days after the filing of direct testimony by the commission staff and intervenors.

(iii) Cross-examination beginning not later than 7 calendar days after the filing of rebuttal testimony and concluding not later than 14 calendar days after the filing of rebuttal testimony.

(iv) Initial post-hearing briefs filed within 14 calendar days following the originally scheduled date for conclusion of cross-examination.

(v) Reply briefs filed within 10 calendar days after the filing of the initial post-hearing briefs.

(vi) Proposal for decision issued approximately 24 calendar days after the filing of the reply briefs.

(vii) Exceptions filed within 7 calendar days after the issuance of the proposal for decision.

(viii) Replies to exceptions filed within 5 calendar days after the filing of exceptions.

(ix) Commission's final order issued approximately 22 calendar days after the filing of the replies to exceptions.

History: 2011 AACS.