196 FERC ¶ 61,075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Morgantown Power, LLC | Docket No. EC26-58-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued July 29, 2026)

1. On February 2, 2026, pursuant to FPA section 203(a)(1)(A)[1] and Part 33 of the Commission's regulations,[2] Morgantown Power, LLC (Morgantown) filed an application (Application) requesting Commission authorization for a transaction in which Chesapeake Data LLC (TeraWulf Buyer) will purchase from Lanyard Power Holdings, LLC (GenOn Seller) 100% of the membership interests in Morgantown (Proposed Transaction).

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.[3] As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

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[1] 16 U.S.C. § 824b(a)(1)(A).

[2] 18 C.F.R. pt. 33 (2025).

[3] *Inquiry Concerning the Comm'n's Merger Pol'y Under the Fed. Power Act: Pol'y Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Pol'y Statement*, 120 FERC ¶ 61,060 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008); *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006); *Revised Filing Requirements Under Part 33 of the Comm'n's Reguls.*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

I. Background

A. Description of Parties and Relevant Affiliates

1. Morgantown

3. Morgantown states that it is the direct owner of the four oil-fired generating units with a combined generating capacity of approximately 216 megawatts (MW) at the Morgantown Generating Station (Morgantown Station) located in the PJM Interconnection, L.L.C. (PJM) market and the 5004/5005[4] and AP South submarkets. It further states that it is an exempt wholesale generator (EWG) under the Public Utility Holding Company Act of 2005 (PUHCA 2005)[5] and holds market-based rate authority.[6] Morgantown represents that it does not own or control any facilities that are used for the transmission of electric energy in interstate commerce in the United States, other than limited and discrete interconnection facilities required to connect the Morgantown Station to the transmission grid. It also states that it is 100% owned by GenOn Seller.[7]

4. Morgantown states that GenOn Seller is an EWG[8] with market-based rate authority[9] that previously owned and operated the Morgantown Station. It explains that, pursuant to a Commission-approved transaction,[10] all of GenOn Seller's generating assets were either transferred to Morgantown or were permanently deactivated. Therefore, Morgantown represents that GenOn Seller does not currently own or operate any

[4] At the time the Application was filed, the 5004/5005 submarket was a Commission-recognized geographic submarket within the PJM market. Since then, the Commission has determined that the 5004/5005 submarket is no longer a relevant default submarket for purposes of evaluating a proposed transaction's effect on competition. *See KMC Thermo, LLC*, 195 FERC ¶ 61,082, at PP 2, 39 (2026).

[5] 42 U.S.C. §§ 16451-63.

[6] Application at 4 (citing *Chalk Point Power, LLC*, 175 FERC ¶ 61,230 (2021)).

[7] *Id.*

[8] *Id.* at 5 (citing *S. Energy Mid-Atl., LLC*, 94 FERC ¶ 62,070 (2001) (delegated order)).

[9] *Id.* (citing *S. Co. Energy Mktg., L.P.*, Docket No. ER00-3760-000 (Nov. 21, 2000) (delegated order)).

[10] *Id.* (citing *Chalk Point Power, LLC*, 174 FERC ¶ 62,182 (2021)).

generating facilities and does not control any facilities that are used for the transmission of electricity in interstate commerce in the United States.[11]

5. Morgantown states that all of the membership interests of GenOn Seller are owned by GenOn Holdings, LLC (Holdings LLC), which is an indirect, wholly controlled subsidiary of GenOn Holdings, Inc. (GenOn Holdings). Morgantown states that there are only three investors or investor groups that hold 10% or more of the voting securities of GenOn Holdings: Strategic Value Partners, LLC (Strategic Value) which owns approximately 58.2%, MacKay Shields, which manages funds that own approximately 13.6%, and BofA Securities, Inc. (BofA Securities), which owns approximately 16%.[12]

a. Strategic Value

6. Morgantown states that Strategic Value is a privately held firm specializing in alternative investments and that the interests of Strategic Value are owned by: (1) Midwood Holdings, LLC (Midwood Holdings), which owns an approximately 1% interest in, and is the managing member of, Strategic Value; and (2) Midwood LP (Midwood), which owns an approximately 99% interest in Strategic Value. Morgantown states that the membership interests of Midwood Holdings and Midwood are owned and controlled indirectly by Strategic Value's founder, Victor Sanjay Khosla, and entities formed for the benefit of his family members.[13] Additionally, Morgantown states that Strategic Value has the right to nominate two of GenOn Holdings' board members. Morgantown represents that no other GenOn Holdings investor has the right to appoint a non-independent director to GenOn Holdings' board.[14]

b. MacKay Shields

7. Morgantown states that MacKay Shields is a multi-product investment management firm that serves pension funds, governmental and financial institutions, family offices, high net worth individuals, endowments, and foundations. It further states that MacKay Shields is a wholly owned subsidiary of New York Life Investment Management LLC (Investment Management), a full-service global asset manager, and that Investment Management is a wholly owned subsidiary of New York Life Insurance Company (New York Life), a mutual life insurance company. It represents that no entity

[11] *Id.*

[12] *Id.* at 6.

[13] *Id.*

[14] *Id.* at 6 n.14.

or individual owns, controls, or holds with power to vote 10% or more of the outstanding voting securities of New York Life.[15]

c. BofA Securities

8. Morgantown states that BofA Securities is an indirect, wholly owned subsidiary of Bank of America Corporation (Bank of America), a financial holding company. Morgantown further states that BofA Securities operates as a brokerage firm that offers the buying and selling of securities and other investment products.[16]

9. Morgantown states that BofA Securities is affiliated with Merrill Lynch Commodities, Inc. (Merrill Lynch), which has market-based rate authorization[17] but does not own or control electric generation or transmission facilities, or inputs to electric power production in any market.[18]

10. Morgantown states that affiliates of BofA Securities, such as BAL Investment & Advisory, Inc. (BAL Investment), own direct and/or indirect, passive, tax-equity interests of greater than 10% in renewable electric generation facilities throughout the United States. It states that the non-managing, passive interests held by BofA Securities' affiliates are substantially similar to the tax equity interests held by the investors in *AES Creative Resources, L.P.*,[19] and do not provide BofA Securities' affiliates with any day-to-day control over these facilities or create an affiliate relationship between BofA Securities and these facilities.[20]

11. Additionally, Morgantown states that affiliates of BofA Securities may hold other debt and equity positions from time to time in energy companies in connection with their broker/dealer, financial trading, banking, or market making activities. It asserts that these

[15] *Id.* at 6-7.

[16] *Id.* at 7.

[17] *Id.* (citing *Merrill Lynch Commodities, Inc.*, Docket No. ER04-925-000 (July 20, 2004) (delegated order)).

[18] *Id.*

[19] 129 FERC ¶ 61,239 (2009).

[20] Application at 8.

are transitory non-controlling interests that change frequently and are passive, and do not give BofA Securities' affiliates any discretion as to how and when power may be sold.[21]

12. Morgantown represents that other than their interests in GenOn Holdings and its subsidiaries, none of the entities holding 10% or more of the shares of GenOn Holdings' common stock own or control: (1) generation facilities in PJM, where the generation facilities that are owned by Morgantown are located, or in any market first tier to the relevant geographic market; (2) any transmission facilities in the United States or outside of the United States that can be used to reach markets in the United States; (3) any "inputs to electric power production," as that term is defined in section 35.36(a)(4) of the Commission's regulations,[22] in the United States; or (4) any franchised public utility.[23]

2. TeraWulf Buyer

13. Morgantown states that TeraWulf Buyer is a direct, wholly owned subsidiary of TeraWulf, Inc. (TeraWulf), a publicly traded developer and operator of data centers. It represents that neither TeraWulf Buyer nor any of its affiliates own or control any interests in any jurisdictional electric generation facilities or in electric transmission facilities that are used for the transmission of electricity in interstate commerce in the United States or outside of the United States that can be used to reach markets in the United States. Additionally, Morgantown states that neither TeraWulf Buyer nor any of its affiliates own or control any essential inputs to electricity products or electric power production in the United States, as defined in sections 33.4 and 35.36 of the Commission's regulations, except with respect to trading activities in the ordinary course of its business operations.[24] Morgantown further states that TeraWulf Buyer is not affiliated with any public utility with a franchised electric service territory in the United States.[25]

B. Description of the Proposed Transaction

14. Morgantown states that the Proposed Transaction will be conducted in accordance with the Equity and Asset Purchase Agreement among TeraWulf Buyer, GenOn Seller,

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[21] *Id.* at 8-9 (citing *Morgan Stanley Cap. Grp., Inc.*, 69 FERC ¶ 61,175 (1994), *order on reh'g*, 72 FERC ¶ 61,082 (1995)).

[22] 18 C.F.R. § 35.36(a)(4) (2025).

[23] Application at 9.

[24] *Id.* at 10 (citing 18 C.F.R. §§ 33.4, 35.36 (2025)).

[25] *Id.* at 9-10.

and TeraWulf as Purchaser Guarantor, dated December 27, 2025 (Purchase Agreement), and will involve the sale by GenOn Seller of 100% of the membership interests in Morgantown to TeraWulf Buyer. Morgantown states that, following the Proposed Transaction, it will become affiliated with TeraWulf Buyer and its affiliates and will cease to be affiliated with GenOn Seller and its affiliates.[26]

II. Notice of Filing and Responsive Pleadings

15. Notice of the Application was published in the *Federal Register*,[27] with interventions and protests due on or before February 23, 2026.

16. On February 10, 2026, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (PJM IMM), and Public Citizen, Inc. (Public Citizen) filed timely motions to intervene. On February 11, 2026, TeraWulf filed a timely motion to intervene.

17. On February 10, 2026, the PJM IMM filed an answer opposing Morgantown's request for a 21-day comment period. On February 11, 2026, Morgantown filed an answer and the PJM IMM filed a motion for extension of time to file comments.

18. On February 17, 2026, an errata notice was issued extending the comment due date to March 4, 2026. On the same day, Public Citizen filed a motion for extension of time to file comments.

19. On February 20, 2026, Maryland Office of People's Counsel (Maryland People's Counsel) filed a timely motion to intervene. On February 24, 2026, Latina Wilson filed a timely motion to intervene.

20. On March 3, 2026, John W. Anderson filed a timely motion to intervene and comments (John W. Anderson March 3, 2026 Comments).

21. On March 4, 2026, NAACP National Office (NAACP) and Port Tobacco River Conservancy (Port Tobacco) filed timely motions to intervene, Molly E. Moore filed a timely motion to intervene and comments, and Public Citizen filed a protest and motion to deny privileged treatment (Public Citizen Protest).[28] On the same day, Shelly Posey,

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[26] *Id.* at 10.

[27] 91 Fed. Reg. 6835 (Feb. 13, 2026).

[28] In the Public Citizen Protest, Public Citizen explains that it includes as Exhibit A comments from concerned citizens that were unable to submit comments on their own.

Marcia Greenberg,[29] John V. Dennis, Jay E. Condon, John W. Anderson, the PJM IMM, Erin Norris, and Anthony Damron filed comments.

22. On March 4, 2026, Maryland People's Counsel filed a motion for extension of time to file comments. Jay E. Condon and Shelly Posey also requested that the Commission provide more time for comments.

23. On March 5, 2026, a notice of extension of time was issued extending the comment date to March 16, 2026. On the same day, Charles County Against Data Centers Coalition[30] and Jamie Larson filed comments.[31]

24. On March 6, 2026, the Maryland Public Service Commission filed a timely motion to intervene. On March 9, 2026, American Electric Power Service Corporation filed a timely motion to intervene. On March 13, 2026, Sierra Club and Sierra Club of Maryland (collectively, Sierra Club) filed a timely motion to intervene. On March 16, 2026, PJM filed a timely motion to intervene.

25. On March 16, 2026, Public Citizen and Port Tobacco filed a joint protest (Joint Protest), Sierra Club filed a joint protest (Sierra Club Protest), and Maryland People's Counsel filed a protest (Maryland People's Counsel Protest).

26. On March 20, 2026, Morgantown filed an answer (Morgantown Answer).

27. On April 1, 2026, Public Citizen, NAACP, and Port Tobacco (collectively, Joint Movants) filed a joint motion to dismiss the Application (Joint Motion to Dismiss).

28. On April 6, 2026, the PJM IMM filed an answer to the Morgantown Answer (PJM IMM Answer).

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[29] Marcia Greenberg is the name of the individual on the name of the electronic file and the document description in eLibrary, but the name of the individual to whom the comment is attributed in the document is Marcia D. Coe. We will refer to this commenter as Marcia Greenberg for consistency.

[30] Charles County Against Data Centers Coalition's comment included an attachment that includes comments from residents of Southern Maryland, which we refer to as "Constituent Comments."

[31] Jamie Larson filed two comments on March 5, 2026. One is Accession No. 20260305-5019; the other is Accession No. 20260305-5018. We reference the corresponding Accession No. when addressing each comment below.

29. On April 8, 2026, TeraWulf filed an answer to the Joint Motion to Dismiss (TeraWulf Answer).

30. On April 14, 2026, Morgantown filed an answer to the PJM IMM Answer (Morgantown Second Answer).

31. On April 29, 2026, the PJM IMM filed an answer to the TeraWulf Answer and the Morgantown Second Answer (PJM IMM Second Answer).

32. On May 1, 2026, Morgantown filed a response to the PJM IMM Second Answer.

33. On June 4, 2026, Public Citizen filed a motion to deny a claim of privilege (Public Citizen June Motion to Deny Privilege). On June 8, 2026, Morgantown filed an answer to the Public Citizen June Motion to Deny Privilege (Morgantown Third Answer).

A. Joint Motion to Dismiss

1. Summary of the Joint Motion to Dismiss

34. Joint Movants argue that the Application conceals from the Commission that Google LLC (Google) owns a 14% equity stake in TeraWulf. Joint Movants assert that the omission of Google's status as a partial owner and affiliate of TeraWulf is a material omission under section 35.36(a)(9)(i) of the Commission's regulations[32] necessitating that the Commission reject the Application. Joint Movants claim that the Commission granted Google market-based rate authority, and the "omission impacts [the Commission's] governance."[33]

35. Joint Movants contend that Google, TeraWulf, and Fluidstack, an artificial intelligence (AI) cloud company, have entered into a series of financial arrangements involving TeraWulf's bitcoin/data center facility in New York and a data center project in Texas. Joint Movants explain that Fluidstack is the primary tenant of both projects while Google backstops Fluidstack's lease obligations and certain loan commitments. Joint Movants allege that, in exchange for taking on those obligations, Google obtained warrants controlling 73.5 million TeraWulf voting shares, equal to 14% of TeraWulf's equity.[34] According to Joint Movants, Google obtains strategic control over AI infrastructure capacity without owning real estate, building data centers, or appearing as a

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[32] 18 C.F.R. § 35.36(a)(9)(i).

[33] Joint Motion to Dismiss at 1.

[34] *Id.*

regulated utility while TeraWulf carries construction and operational risk.[35] Joint Movants thus argue that Morgantown's concealment of TeraWulf's affiliation with Google is a material omission that must result in the Commission rejecting the Application.[36]

2. TeraWulf Answer to Joint Motion to Dismiss

36. TeraWulf requests that the Commission deny the Joint Motion to Dismiss. TeraWulf claims that there is no affiliation between TeraWulf and Google, and that Google is neither an upstream owner nor an affiliate of TeraWulf Buyer, TeraWulf's direct upstream owner, or TeraWulf Buyer's parent company. According to TeraWulf, Google does not own any equity in TeraWulf. TeraWulf states that, under two agreements it has with Google, TeraWulf issued warrants to Google representing the right to purchase shares of TeraWulf common stock, but those do not confer any present ownership interest, voting rights, nor control over TeraWulf Buyer or TeraWulf. TeraWulf represents that the warrants do not provide Google with any rights of a stockholder unless and until exercised, and therefore, do not make Google an affiliate of TeraWulf.[37] TeraWulf concludes that it was not required to identify Google in the Application.[38]

3. Commission Determination

37. We deny the Joint Motion to Dismiss. As it pertains to the Commission's review of the Proposed Transaction, Morgantown has clarified Google's current relationship to TeraWulf and that the unexecuted warrants do not convey to Google control or ownership of TeraWulf. Therefore, there are no material omissions that would support the Commission rejecting the Application on procedural grounds.[39]

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[35] *Id.*

[36] *Id.* at 2.

[37] TeraWulf Answer at 3.

[38] *Id.* at 2.

[39] However, we note that the analysis and findings regarding this Proposed Transaction, discussed further below, rely on the representation that Google is not currently an affiliate of TeraWulf under the Commission's regulations. Should circumstances change, we emphasize that Morgantown must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances. The Commission retains authority

III. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.[40]

39. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2025), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the Morgantown answers and the PJM IMM answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

40. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.[41] The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[42] FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-

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under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

[40] Entities that filed comments or protests but did not file a notice of intervention or motion to intervene are not parties to this proceeding. *See* 18 C.F.R. § 385.211(a)(2) (2025) ("The filing of a protest does not make the protestant a party to the proceeding.").

[41] 16 U.S.C. § 824b(a)(4). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application at 21. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

[42] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

subsidization, pledge, or encumbrance will be consistent with the public interest."[43] The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.[44]

2. Analysis of the Proposed Transaction

41. Morgantown states that it seeks authorization of the Proposed Transaction pursuant to FPA section 203(a)(1)(A).[45]

a. Effect on Horizontal Competition

i. Morgantown's Analysis

42. Morgantown argues that the Proposed Transaction does not raise horizontal market power concerns. According to Morgantown, the Commission does not require the filing of a horizontal market power analysis "if the applicant '[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is de minimis[.]'"[46] Morgantown states that TeraWulf Buyer does not own or control any generation in markets in which Morgantown operates. Accordingly, Morgantown represents that it and TeraWulf Buyer do not conduct business in the same geographic market, that no overlaps in affiliated generation will be created by the

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[43] 16 U.S.C. § 824b(a)(4).

[44] 18 C.F.R. § 33.2(j) (2025).

[45] *See* Application at 1. Although the Application does not request authorization pursuant to FPA section 203(a)(2) because Applicants represent that TeraWulf Buyer is a newly formed entity that is not a "holding company" within the meaning of FPA section 203(a)(2), Applicants state that TeraWulf Buyer will be a holding company as of consummation of the Proposed Transaction. We do not make findings on whether the Proposed Transaction requires authorization under FPA section 203(a)(2), but we assume jurisdiction over the Proposed Transaction under all applicable provisions of FPA section 203 for purposes of our analysis. *See EnergyMark, LLC*, 181 FERC ¶ 61,062, at P 26 (2022); *FirstEnergy Corp.*, 179 FERC ¶ 61,058, at P 26 (2022).

[46] Application at 12 (quoting 18 C.F.R. § 33.3.(a)(2)(i) (2025)).

Proposed Transaction, and that no horizontal market power analysis is required for any geographic markets relevant to the Proposed Transaction.[47]

ii. Protests and Comments

43. The PJM IMM argues that Morgantown Station is located in the PEPCO transmission zone (PEPCO Zone), which is a constrained area of the PJM market where the market needs existing generation to be retained and new generation to be built. The PJM IMM argues that TeraWulf Buyer's plans for new data center load at the Morgantown Station site fail to address whether the Morgantown Station will be removed from the PJM capacity market to serve data center load. The PJM IMM argues that removing the Morgantown Station from the market would be directly counter to the statement of principles issued by the National Energy Dominance Council and the PJM Governors (the Principles),[48] shift risks and costs to PJM customers, and would not be consistent with the public interest.[49] Maryland People's Counsel expresses the same concern.[50]

44. According to the PJM IMM, if TeraWulf intends to remove the Morgantown Station from the PJM capacity market to serve data center load, it would constitute physical withholding of supply, exacerbate capacity shortfalls, diminish system reliability, and elevate capacity and energy market prices.[51] The PJM IMM argues that the Commission should reject the Proposed Transaction, and require Morgantown to resubmit its application, clarifying that its plan for the Morgantown Station does not include removal of the Morgantown Station to serve data center load.[52] The PJM IMM further asserts that TeraWulf should be required to commit to not removing the Morgantown Station units from the PJM market to serve data center load.[53]

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[47] *Id.*

[48] PJM IMM Comments at 2 (citing National Energy Dominance Council, *Statement of Principles Regarding PJM* (Jan. 16, 2026), https://www.energy.gov/documents/statement-principles-regarding-pjm).

[49] *Id.*

[50] Maryland People's Counsel Protest at 5.

[51] PJM IMM Comments at 2, 5.

[52] *Id.* at 2-3, 6.

[53] *Id.* at 6.

45. Maryland People's Counsel argues that the Application: (1) provides no assurances that Morgantown will bring its own generation; (2) if Morgantown does bring its own generation, it does not explain how, or if, this generation will participate in the PJM markets; and (3) raises the risk that Morgantown could remove the existing Morgantown generation from the PJM markets.[54]

46. Sierra Club argues that Morgantown has not met its burden under FPA section 203 to demonstrate that the Proposed Transaction is consistent with the public interest because it omitted facts necessary to evaluate the Proposed Transaction, including stating whether the Morgantown Station will continue to participate in PJM capacity and energy markets following the Proposed Transaction.[55]

iii. Morgantown Answer

47. Morgantown states the Proposed Transaction does not involve the development of a data center facility or the sale of energy to a data center, the withdrawal of energy or capacity from PJM markets to serve a behind-the-meter data center, the repowering of coal generation units at the Morgantown Station site, and does not extend to any other activity beyond an upstream change of ownership of Morgantown Power.[56]

48. Morgantown disputes the PJM IMM Comments, arguing that they provide no new rationale for the Commission to deviate from Commission precedent finding that the Commission does need to consider data center claims when there is no specific evidence of potential market withdrawals.[57] Morgantown asserts the PJM IMM's allegation that generation capacity from the Morgantown Station could be withheld from and disrupt the PJM market is baseless.[58] Morgantown explains that it is subject to the rules of PJM's open access transmission tariff (PJM Tariff) and the Commission's regulations. Specifically, Morgantown notes that PJM requires generators to offer capacity into the market and prohibits the withholding of supply,[59] and notes the Commission's enforcement authority to police fraudulent behavior. Morgantown further notes that any

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[54] Maryland People's Counsel Protest at 3.

[55] Sierra Club Protest at 3.

[56] Morgantown Answer at 1, 6.

[57] *Id.* at 5 (citing *Constellation Energy Corp.*, 192 FERC ¶ 61,074, at P 134 (2025) (*Constellation*)).

[58] *Id.* at 5-6.

[59] *Id.*

change to interconnection agreements or capacity rights thereunder to support co-located load would also be subject to Commission review and authorization separate and apart from the Proposed Transaction.[60]

iv. PJM IMM Answer

49. The PJM IMM argues that plans, or the potential, to withhold capacity from the PJM market are relevant to a review of the market power implications of the Proposed Transaction.[61] The PJM IMM asserts that there are no rules in the PJM Tariff that adequately address the market power implications of the Proposed Transaction given TeraWulf's plans to add data center load at the Morgantown Station site with no assurances regarding the treatment of existing capacity. The PJM IMM asserts that this proceeding is the proper venue for review of the market power effects of the Proposed Transaction, including the future of existing capacity resources.[62]

50. The PJM IMM argues that the Morgantown Answer and the Application include evidence that TeraWulf has plans for major changes at the Morgantown Station that have not been clearly disclosed in any substantive way to the Commission. The PJM IMM argues that TeraWulf has announced a plan to develop both onsite load and generation while remaining a net-positive energy supplier, but does not define a MW level, the timing of the supply, the duration of the supply, or the asserted cost of the supply.[63]

51. The PJM IMM reiterates that if TeraWulf plans a reduction in the availability of the Morgantown Station's capacity to the PJM markets through the addition of a data center load, it should disclose the plan to the Commission in this proceeding. The PJM IMM argues that every individual capacity resource is pivotal, and that the possibility that TeraWulf could remove some or all of the Morgantown Station capacity from the capacity and energy markets to serve co-located load in a constrained area would be an exercise of market power and a threat to the reliability of the PJM system and to the competitiveness of the market.[64]

52. The PJM IMM argues that the current market power mitigation rules in the PJM Tariff do not explicitly address the removal of capacity resources from the capacity

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[60] *Id.*

[61] PJM IMM Answer at 3.

[62] *Id.* at 3.

[63] *Id.*

[64] *Id.* at 4-5.

market to serve data center load. The PJM IMM acknowledges that FPA section 203 proceedings do not present an opportunity to correct flaws with the existing market rules, but that any market power issues resulting from the Proposed Transaction that are not addressed by the existing market rules can only be resolved in FPA section 203 proceedings.[65] Similarly, the PJM IMM acknowledges the Commission's recent order addressing co-location issues,[66] but asserts that while that order creates new transmission options, such rules do not address generation reliability issues, including the potential removal of existing resources to serve data center load and the associated adverse reliability and affordability impacts on existing customers. As a result, the PJM IMM argues that the Commission should condition the Proposed Transaction on the Morgantown Station units not being removed from the capacity market to serve data load and be withheld from the PJM markets.[67]

v. <u>Morgantown Second Answer</u>

53. Morgantown disputes the PJM IMM's arguments and claims, alleging that the PJM IMM is again attempting to address general market concerns in a section 203 proceeding. According to Morgantown, the Commission and PJM are reviewing the PJM IMM's concerns in broader and generally applicable proceedings. Morgantown asserts that if there are any project-specific changes to, for example, capacity interconnection rights, such a change would be the subject of other proceedings in which the PJM IMM can intervene. Morgantown notes that the Commission recently explained that "'an existing generating facility may not begin serving Co-Located Load that is not Network Load until it has delisted its [capacity interconnection rights] for the portion of the generating facility' that will service the co-located load and to effectuate such change the generator 'must revise its [interconnection service agreement] or [generator interconnection agreement.'"[68] Morgantown concludes that any future removal of capacity or similar change to serve a co-located data center will be subject to a separate proceeding in which the PJM IMM would have the opportunity to participate.[69]

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[65] *Id.* at 6.

[66] *Id*. (citing *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217 (2025)).

[67] *Id.*

[68] Morgantown Second Answer at 3 (quoting *Indep. Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 194 FERC ¶ 61,227, at P 16 (2026)).

[69] *Id*.

vi. PJM IMM Second Answer

54. The PJM IMM restates its recommendation that the Proposed Transaction include a condition that Morgantown and TeraWulf be required to commit to not remove the capacity owned by Morgantown from the PJM capacity market to serve data center load.[70] The PJM IMM argues that the Morgantown Second Answer suggests that the removal of the capacity from the PJM market could be addressed in other proceedings. However, the PJM IMM argues that none of the suggested proceedings would timely address the issues raised by the Proposed Transaction.[71] Furthermore, the PJM IMM argues that Morgantown does not dispute the PJM IMM's position that removing capacity is an issue, but rather wants to proceed without any limits.[72]

vii. Commission Determination

55. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.[73]

56. Based on Morgantown's representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition in the PJM market. As a threshold matter, the relevant geographic market for purposes of evaluating the Proposed Transaction's effect on competition is the PJM market. Under section 33.3(a)(2) of the Commission's regulations, applicants seeking authorization under FPA section 203 are not required to submit a horizontal market power analysis where the combining "entities do not currently conduct business in the same geographic markets or . . . the extent of the business transactions in the same geographic markets is *de minimis*" and "no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other."[74] Consistent with Commission precedent, based on Morgantown's representations and the facts of this case, we find that TeraWulf Buyer does not conduct business in PJM because it does not own or control any generation in the markets in which Morgantown operates, or otherwise. Thus there is no overlap in the

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[70] PJM IMM Second Answer at 3.

[71] *Id*. at 8.

[72] *Id*. at 9.

[73] *Nev. Power Co*., 149 FERC ¶ 61,079, at P 28 (2014).

[74] 18 C.F.R. § 33.3(a)(2); *see also* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,902 (stating same).

same geographic market, and therefore, Morgantown need not provide any further analysis.[75]

57. We are not persuaded by the PJM IMM's argument that the Commission should reject the Proposed Transaction, and require Morgantown to resubmit its application nor require TeraWulf to commit to not remove the Morgantown Station from the PJM capacity market to serve data center load. The PJM IMM argues that removal of the Morgantown Station from the PJM capacity market to serve data center load would constitute physical withholding of supply, exacerbate capacity shortfalls, diminish system reliability, and elevate capacity and energy market prices. The Commission's evaluation of a proposed transaction's effect on competition, and in particular, economic withholding, considers whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.[76] TeraWulf Buyer does not have generation in PJM that would provide it with an incentive to physically withhold generation capacity or forego sales from Morgantown Station to increase prices in the capacity market to benefit itself. Thus, based on the facts of this case, the Proposed Transaction does not result in an incentive for TeraWulf Buyer to withhold Morgantown station as the Commission evaluates that issue under its FPA section 203 policy.

58. For similar reasons, we reject the PJM IMM's request that the Commission condition approval of the Proposed Transaction on TeraWulf committing not to remove the Morgantown Station units from the PJM market to serve data center load. Moreover, we note that removal of the Morgantown Station from the PJM market is governed by the PJM Tariff, including any revisions and changes to the PJM Tariff directed by the Commission in Docket No. EL25-49-000, where, among other things, the Commission addressed the rates, terms, and conditions of service that apply to Interconnection Customers serving Co-Located Load, or in response to the Commission's

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[75] *Chalk Point Power, LLC*, 189 FERC ¶ 61,042, at P 29 (2024) (*Chalk Point*); *Landrace Holdings, LLC*, 194 FERC ¶ 61,269, at P 41 (2026); *Troy ParentCo LLC*, 194 FERC ¶ 61,134, at P 25 (2026).

[76] *See* Supplemental Policy Statement, 120 FERC ¶ 61,060 at PP 60, 65 ("In horizontal mergers, if an applicant fails the Competitive Analysis Screen (one piece of the Appendix A Analysis), the Commission's analysis focuses on the merger's effect on the merged firm's ability and incentive to withhold output in order to drive up the market price. The ability to withhold output depends on the amount of marginal capacity controlled by the merged firm, and the incentive to do so depends on the amount of infra-marginal capacity that could benefit from higher prices.").

order in Docket No. EL26-67.[77] For these reasons, we conclude that any additional specific commitment requirements are not necessary here.[78]

b. Effect on Vertical Competition

i. Morgantown's Analysis

59. Morgantown explains that the Proposed Transaction will not have an adverse effect on vertical competition and that no vertical market power analysis is required because the Proposed Transaction does not involve any transmission facilities or any essential inputs to electricity products or electric power production. Morgantown states that the Proposed Transaction does not involve any electric transmission facilities, other than the limited and discrete transmission facilities used to interconnect the Morgantown Station with the transmission grid, or any upstream inputs to electricity products. Morgantown explains that neither TeraWulf Buyer, nor any of its affiliates, own or control electric transmission facilities, other than limited and discrete interconnection facilities associated with individual generation facilities, in or into the PJM market where the Morgantown Station is located, or any essential inputs to electricity products or inputs to electric power production. Morgantown further states that the Proposed Transaction does not create the ability to erect barriers to entry or adversely affect prices and outputs, and thus does not raise vertical market power issues. Morgantown affirms that it has not erected, nor will TeraWulf Buyer or its affiliates erect, barriers to entry into any relevant market. For the above reasons, Morgantown asserts that the Proposed Transaction does not raise any vertical market power concerns.[79]

ii. Commission Determination

60. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as natural gas transmission or natural gas supply or fuel, with downstream generating capacity and transmission. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede

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[77] *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217, at P 175 (2025), *order on reh'g, clarification, compliance and paper hearing*, 195 FERC ¶ 61,209 (2026); *see also PJM Interconnection, LLC*, 195 FERC ¶ 61,211 (2026).

[78] *Darby Power*, *LLC*, 195 FERC ¶ 61,168, at P 43 (2026).

[79] Application at 13-14.

entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.[80]

61. Based on Morgantown's representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition because the Proposed Transaction will not involve any electric transmission facilities other than the limited and discrete facilities used to interconnect the Morgantown Station with the transmission grid.[81] In addition, TeraWulf Buyer and its affiliates do not own or control any electric transmission facilities in the PJM market or any essential inputs to electricity products or electricity power production. Thus, the Proposed Transaction raises no vertical market power concerns because it does not involve transmission facilities. Furthermore, the Proposed Transaction will not result in a combination of generation facilities with transmission facilities or other upstream relevant products in the relevant market.[82]

c. Effect on Rates

i. Morgantown's Analysis

62. Morgantown argues that the Proposed Transaction will not have an adverse effect on wholesale ratepayers or transmission customers. Morgantown states that neither Morgantown nor its affiliates provide third-party jurisdictional transmission service or have captive wholesale requirements customers in the United States. Morgantown also states that it makes wholesale sales of electric energy, capacity, and ancillary services at market-based rates pursuant to its market-based rate tariff, and will continue to do so following the consummation of the Proposed Transaction.[83]

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[80] *Upstate N.Y. Power Producers*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

[81] *See, e.g., Chalk Point*, 189 FERC ¶ 61,042 at P 35. We note that, although Morgantown identifies that TeraWulf Buyer and its affiliates own limited and discrete interconnection facilities associated with individual generating facilities, Morgantown at the same time represents that TeraWulf Buyer and its affiliates own no generation in the PJM market.

[82] Application at 13. *Elliott Assocs., L.P.*, 186 FERC ¶ 61,022, at P 37 (2024) (finding that vertical market power analysis is not required where parties and their affiliates do not provide inputs to electricity products in the same geographic markets and no applicant or affiliate is a perceived potential competitor in the same geographic market).

[83] Application at 14.

ii. Protests and Comments

63. Commenters raise concerns regarding potential rate impacts associated with the Proposed Transaction and anticipated data center operations at the Morgantown Station site. Several commenters, including Molly E. Moore and John W. Anderson, argue that Morgantown's assertion that no economic analysis is required because the Proposed Transaction will not adversely affect prices in downstream electricity markets is unsupported.[84]

64. Multiple commenters assert that large scale data center load has the potential to increase electricity prices for consumers by straining local and regional supply. Sacoby M. Wilson, for example, notes that federal legislation has been proposed to ensure that large energy users bear the costs of associated grid impacts, rather than shifting those costs to ratepayers.[85] Anthony Damron similarly references ongoing regulatory efforts aimed at preventing large industrial loads from undermining grid stability or causing increased costs to residential customers.[86] Jamie Larson contends that the potential shift from power generation to high-density electricity consumption may contribute to higher capacity prices that are ultimately borne by ratepayers, and that the shift may also require transmission or substation upgrades, the costs of which may be socialized across the region.[87]

65. Other commenters assert that the proposed use of the Morgantown Station will necessitate substantial transmission or distribution upgrades, and they argue that such costs should not be imposed on residential or small-commercial customers.[88] They argue that the costs should be borne by TeraWulf or a private company.[89]

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[84] Molly Moore Comments at 2; John W. Anderson March 3, 2026 Comments at 2.

[85] Public Citizen Protest, Ex. A, Sacoby M. Wilson at 2-3.

[86] Anthony Damron Comments at 1.

[87] Jamie Larson Comments at 1.

[88] *See, e.g.*, Public Citizen Protest, Ex. A, Sacoby M. Wilson Comments at 2 & Jaqueline Moore Comments at 1.

[89] *See*, *e.g.*, Public Citizen Protest, Ex. A, Jaqueline Moore Comments at 1; Public Citizen Protest, Ex. A, Charlotte Barnhardt Comments at 1; Public Citizen Protest, Ex. A, Beverlie Ludy Comments at 1; Shelly Posey Comments at 1; Marcia Greenberg Comments at 1; Public Citizen Protest, Ex. A, Anna Antoine Comments at 1.

66. Charles County Against Data Centers contends that increased data center load may reduce energy availability for local consumers, leading to an increase in energy prices. It argues that data centers' 24/7 energy requirements could increase costs and strain the grid, ultimately resulting in higher bills for county residents.[90] Maryland People's Counsel argues that removing the Morgantown Station from market participation to serve new large load would itself shift costs to PJM customers due to the inelastic nature of demand in the PJM market.[91] Noting the adoption of the Principles by policymakers and PJM stakeholders, which prompted proposals to require new data centers to bring new generation rather than syphoning off existing resources, Sierra Club and Maryland People's Counsel express concerns regarding cost increases for existing customers.[92]

iii. Commission Determination

67. Based on Morgantown's representations, we find that the Proposed Transaction will not have an adverse effect on rates. With respect to wholesale power rates, the Commission has previously stated that when there are market-based rates, the effect on wholesale rates is not of concern "because market-based rates will not be affected by the seller's cost of service and, thus, will not be adversely affected by the [proposed transaction]."[93] Here, Morgantown represents that all wholesale sales of electric energy, capacity, and ancillary services will continue to be made pursuant to its market-based rate tariff.[94] Furthermore, Morgantown represents that it does not provide transmission service, and as such, the Proposed Transaction will have no effect on rates for transmission service. Additionally, Morgantown represents that neither it nor its affiliates have any captive wholesale requirements customers.

68. We acknowledge that rising electricity rates, or retail rates, are a concern to retail customers in the PJM market footprint. However, any argument that the Proposed Transaction could have an effect on retail rates is outside the scope of this proceeding, as retail rates are not within the Commission's jurisdiction.[95] Further, as explained, the

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[90] Charles County Against Data Centers Coalition, Constituent Comments at 3.

[91] Maryland People's Counsel Protest at 4-5.

[92] Sierra Club Protest at 4; Maryland People's Counsel Protest at 5.

[93] *Cinergy Corp.*, 140 FERC ¶ 61,180, at P 41 (2012) (*Cinergy*) (citing *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326, at P 25 (2006) (*Duquesne*)); *accord The Dayton Power & Light Co.*, 160 FERC ¶ 61,034, at P 31 (2017) (*Dayton*)).

[94] Application at 14.

[95] *Crius Energy Corp.*, 168 FERC ¶ 61,010, at P 29 (2019); *PPL Corp.*, 176 FERC

Proposed Transaction will not result in an adverse effect on wholesale rates, and thus there is no mechanism for costs of the Proposed Transaction to be passed along to retail ratepayers.

d. Effect on Regulation

i. Morgantown's Analysis

69. Morgantown explains that the Proposed Transaction will not have an adverse effect on the effectiveness of federal or state regulation. Morgantown states that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Morgantown. It represents that, upon completion of the Proposed Transaction, Morgantown and its affiliates will continue to be subject to the jurisdiction of the Commission to the same extent as before the Proposed Transaction. Additionally, Morgantown states that the Proposed Transaction will not affect the extent to which any state authority regulates retail rates.[96]

ii. Commission Determination

70. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.[97] As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.[98]

71. Based on Morgantown's representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. There is no evidence that the Proposed Transaction will create a regulatory gap. Morgantown represents that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Morgantown. Additionally, Morgantown states that upon completion of the Proposed Transaction, it and its affiliates will continue to be subject to the jurisdiction of the Commission to the same extent as

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¶ 61,175, at P 25 (2021).

[96] Application at 15.

[97] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

[98] *Id.*

before the Proposed Transaction. Morgantown also states that the Proposed Transaction will not affect the extent to which any state authority regulates retail sales. Finally, we note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

e. **Cross-Subsidization**

i. **Morgantown's Analysis**

72. Morgantown asserts that the Proposed Transaction does not pose a risk of cross-subsidization and does not pledge or otherwise encumber utility assets. Morgantown represents that the Proposed Transaction meets the safe harbor for transactions that do not involve a franchised public utility with captive customers. Morgantown states that even though it satisfies the conditions of the safe harbor, it provides in Exhibit M representations that, based on the facts and circumstances known to Morgantown or those that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.[99]

ii. **Commission Determination**

73. Based on Morgantown's representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

f. **Other Issues Raised by Commenters**

74. Public Citizen maintains that the Commission's public interest standard includes the broad protection of the public interest, which includes an array of issues and is not restricted to financial considerations.[100] John W. Anderson asserts that Morgantown's definition of "public interest" is too narrowly focused on market and competition concerns and saving the buyer and seller money, while ignoring the impact of the

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[99] Application at 16.

[100] Public Citizen Protest at 2.

Proposed Transaction on nearby residents, communities, economies and the environment.[101]

75. Several commenters contend that data centers consume significant amounts of energy, which results in data centers having an unpredictable and largely negative impact on local communities and economies.[102] Several commenters maintain that the Proposed Transaction will negatively impact the environment, including water supply and air pollution.[103] John W. Anderson, Jay E. Condon, and Molly E. Moore contend that the Commission should require a more detailed site assessment and environmental study before allowing the Proposed Transaction to move forward.[104] Public Citizen argues that TeraWulf will assume liabilities for the reclamation and remediation of the toxic legacy of the coal power plant operations at the Morgantown Station, but the Application is silent on how TeraWulf plans to manage these obligations. As such, Public Citizen requests that the Commission compel TeraWulf to detail how it plans to adhere to its public interest environmental responsibilities.[105]

76. Sierra Club argues that the potential reactivation of retired coal-fired generation at the Morgantown Station site and greater operation of oil-fired units to serve co-located load would be inconsistent with Maryland's Climate Solutions Now Act of 2022, which requires a 60% reduction in greenhouse gas emissions by 2031 and net-zero emissions by

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[101] John W. Anderson March 3, 2026 Comments at 2.

[102] *See*, *e.g.*, Molly E. Moore Comments at 2; Public Citizen Protest, Ex. A, Bonnie Bick Comments at 1, and Anna Antoine Comments at 1; Jay E. Condon Comments at 1; Erin Norris Comments at 1; Charles County Against Data Centers Coalition, Constituent Comments at 2, 5; Public Citizen Protest, Ex. A, Sacoby M. Wilson Comments at 1-2 and Brandi Richards Comments at 4.

[103] *See*, *e.g.*, John W. Anderson March 3, 2026 Comments at 2; Jay E. Condon Comments at 1; Public Citizen Protest, Ex. A, Gabrielle Tayac Comments at 1; Michael Blau Comments at 1, Jacquiline Moore Comments at 1, Charlotte Barnhardt Comments at 1, Brandi Richards Comments at 1-2; Beverlie Ludy Comments at 1; Bonnie Bick Comments at 1; Shelly Posey and Marcia Greenberg Comments at 2; Erin Norris Comments at 1; Charles County Against Data Centers Coalition at 1, Constituent Comments at 1-4, 6; Sierra Club Protest at 5; Molly E. Moore Comments at 3; Jamie Larson Comments (Accession Number 20260305-5018) at 1-2.

[104] John W. Anderson March 3, 2026 Comments at 3; Jay E. Condon Comments at 1-2; Molly E. Moore Comments at 4.

[105] Public Citizen Protest at 4-7. Sierra Club also makes a similar argument. Sierra Club Protest at 6.

2045. It maintains that the impact of the Proposed Transaction on state clean energy policies is a relevant consideration under the public interest standard and not addressed by the Application.[106]

77. Commenters also raise concerns related to landowners and potential impacts on property values.[107] Charlotte Barnhardt similarly argues that the project would use community resources, pollute waterways, and lower property prices.[108] Sierra Club argues that Morgantown has not met its burden under FPA section 203 because it omitted facts as to TeraWulf's ability to manage the complex, costly, and significant impacts on an already overburdened community.[109]

78. Several commenters including Public Citizen, Shelly Posey, John V. Dennis, and Charles County Against Data Centers Coalition argue that TeraWulf's financial record raises doubts about its suitability to own or operate the Morgantown Station.[110] Public Citizen claims that TeraWulf has never been profitable, reporting consecutive annual net losses since becoming publicly traded and deriving almost all of its revenue from cryptocurrency mining. Commenters question whether TeraWulf has the financial competence, stability, or governance integrity required to operate a Commission-jurisdictional facility in the public interest. Additionally, commenters express concern about TeraWulf's operational experience and technical qualifications.[111]

79. Sierra Club argues that Morgantown failed to meet its burden under FPA section 203 because it omitted facts such as: (1) whether existing interconnection rights will be used to serve co-located load rather than wholesale market sales; (2) what co-located load TeraWulf intends to develop at the site, including its size, timing, and source of power;

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[106] Sierra Club Protest at 5-6.

[107] *See*, *e.g.*, Public Citizen Protest, Ex. A, Michal Blau Comments at 1, Jacqueline Moore Comments at 1, & Beverlie Ludy Comments at 1; Marcia Greenberg Comments at 1.

[108] Public Citizen Protest, Ex. A, Charlotte Barnhardt Comments at 1.

[109] Sierra Club Protest at 3-4.

[110] Public Citizen Protest at 3-4; Shelly Posey Comments at 1; John V. Dennis Comments at 2-3; Charles County Against Data Centers Coalition Constituent Comments at 3.

[111] *See*, *e.g.*, Shelly Posey Comments at 1; Public Citizen, Ex. A, Jacqueline Moore Comments at 1; Jamie Larson Comments (Accession Number 20260305-5018) at 2; John V. Dennis Comments at 2-3.

(3) whether the buyer intends to reactivate the retired coal-fired units at the Morgantown Station site and how it plans to use those units; and (4) the scope and timeline of the large-scale site development TeraWulf has described in public statements but omitted from this filing.[112]

i. Commission Determination

80. We find that the comments and protests raise issues that are outside the scope of our analysis of the Proposed Transaction under FPA section 203. The matters referred to by commenters relate to, among other things, environmental concerns, other issues that the comments and protests characterize as public interest issues, issues related to data centers, and landownership issues rather than the effects of the Proposed Transaction on competition, rates, regulation, or prohibited cross-subsidization in Commission-jurisdictional markets.[113]

81. Consistent with Commission precedent, we find that general environmental concerns, such as the potential for an increase in air pollution, or the potential environmental effects of a proposed transaction are not part of the Commission's review of a proposed transaction under FPA section 203 and are beyond the scope of this proceeding.[114] The Commission's public interest analysis also does not require a separate demonstration of "public benefits."[115]

82. While the Commission can consider the effect of a proposed transaction on reliability when making an evaluation under FPA section 203, the arguments related to future reliability concerns are speculative and intervenors here have not offered any evidence that the Proposed Transaction will have any adverse effects on reliability.[116] Additionally, the Commission will retain the ability to address any reliability issues that may arise in the future as part of our authority to oversee reliability.[117] Our approval

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[112] Sierra Club Protest at 3-4.

[113] *PowerMinn 9090 LLC*, 151 FERC ¶ 61,111, at P 52 (2015).

[114] *See Constellation*, 192 FERC ¶ 61,074 at P 234 (citing 18 C.F.R. § 2.26(b) (2025)); *Duke Energy Corp.*, 118 FERC ¶ 61,077, at P 35 & n.58 (2007) (explaining that FPA section 203 does not contemplate that the Commission consider the potential environmental effects of proposed transactions).

[115] *Constellation*, 192 FERC ¶ 61,074 at P 234 (citing 18 C.F.R. § 2.26(b)).

[116] *See Edison Mission Energy*, 96 FERC ¶ 61,032, at 61,083 (2001).

[117] *Verso Bucksport LLC*, 150 FERC ¶ 61,017, at P 26 (2015) (citing *Nat'l Grid plc*, 117 FERC ¶ 61,080, at P 77 (2006); *BHE Holdings Inc.*, 133 FERC ¶ 61,231, at P 54

of the Proposed Transaction only pertains to the transfer of jurisdictional assets as described in the Application, not the need to obtain any other approvals of the Proposed Transaction or TeraWulf Buyer's use of that generation.

g. Request for Public Disclosure of Information Submitted as Privileged

i. Morgantown's Request for Confidential and Privileged Treatment

83. Morgantown requests privileged treatment under 18 C.F.R. § 388.112 for the Purchase Agreement submitted as confidential Exhibit I. It states that the Purchase Agreement contains "[t]rade secrets and commercial or financial information obtained from a person [that are] privileged or confidential."[118] Therefore, Morgantown maintains that the information in the Purchase Agreement is commercially sensitive and not publicly available, and public disclosure of the Purchase Agreement would cause harm to the competitive positions of the parties, including an impediment to future negotiations of similar transactions. Morgantown further states that it has included as Attachment 2 a proposed protective agreement as required by 18 C.F.R. §§ 33.8 and 388.112(b).[119]

ii. Public Citizen Protest

84. Public Citizen argues that section 2.03 of Exhibit I details the purchase price and other important transaction details regarding the change in control of Morgantown. It contends that the community and leaders in Charles County, Maryland, where the Morgantown Station is located, have a direct interest in knowing the market value of Morgantown, including the purchase price, in order to determine the current value of the land and property. Public Citizen maintains that because the Morgantown Station is a public utility under the FPA, it is "affected with a public interest"[120] and that "the market value as recorded in a purchase price of a public utility is quite clearly in the public

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(2010)).

[118] Application at 3 (quoting 18 C.F.R. §§ 388.107(d) (f)).

[119] *Id.* (citing 18 C.F.R. §§ 33.8, 388.112(b) (2025)).

[120] Public Citizen Protest at 7 (quoting 16 U.S.C. § 824(a)).

interest."[121] Public Citizen moves that the entire contents of section 2.03 of the Purchase Agreement be made public.[122]

iii. Morgantown Answer

85. In response to Public Citizen's request, Morgantown states that it included a form protective order and non-disclosure certificate to allow access to the Purchase Agreement and that it is available to any individual that executes a non-disclosure certificate. Morgantown contends that Public Citizen has not set forth any rational justification for public release of section 2.03 of the Purchase Agreement. It further argues that Public Citizen made a similar request in *Canal Generating, LLC*,[123] where the Commission denied public disclosure of the purchase price because the purchase price is commercial or financial information that is customarily treated as privileged and public disclosure of the purchase price is "'not necessary to meet the Commission's regulatory objectives. . . .'"[124] Morgantown maintains that the same rationale equally applies to this proceeding and the Commission should deny Public Citizen's request to make a portion of the Purchase Agreement public.[125]

iv. Commission Order and Morgantown Response

86. On April 20, 2026, under 18 C.F.R. § 388.112(d), the Commission issued an order notifying Morgantown that the Commission received a request to make public section 2.03 of Exhibit I to the Purchase Agreement for which Morgantown requested confidential treatment and filed as privileged and/or confidential.[126] The Commission stated that because Morgantown asserted a privileged and/or confidential interest in the information requested, the Commission solicited Morgantown's comments regarding the

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[121] *Id.*

[122] Sierra Club states that it supports Public Citizen's motion to deny privileged treatment. John W. Anderson and Molly E. Moore also commented on the request for privileged treatment and how the cost of the Proposed Transaction is hidden.

[123] 181 FERC ¶ 61,157 (2022) (*Canal Generating*).

[124] Morgantown Answer at 11 (quoting *Canal Generating*, 181 FERC ¶ 61,157 at P 57).

[125] *Id.*

[126] *Morgantown Power*, *LLC*, 195 FERC ¶ 61,055 (2026) (April 20 Order).

request for public release of the information. Morgantown filed a response to the April 20 Order on April 27, 2026.[127]

87. In the Morgantown Response, Morgantown asserts that the Commission should reject Public Citizen's request because continued privileged treatment of section 2.03 of the Purchase Agreement is warranted as it constitutes information that is protected from public disclosure under FOIA Exemption 4, which pertains to "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[128] According to Morgantown, the purchase price fits squarely within the terms "commercial or financial information," the purchase price was obtained "from a person,"[129] and it has been treated as privileged by the parties to the Purchase Agreement in which it is contained.

88. Morgantown notes that the Supreme Court has held that information is "confidential" under FOIA Exemption 4 if that information is "'(1) both customarily and actually treated as private by its owner and (2) provided to the government under an assurance of privacy.'"[130] According to Morgantown, Commission precedent is consistent with guidance from the Department of Justice regarding FOIA Exemption 4, which provides that if the government did not at least imply that the information would be publicly disclosed at the time of filing, then the "'submitter's practice of keeping the information private will be sufficient to warrant confidential status.'"[131]

89. Additionally, Morgantown states that although Public Citizen argues that the purchase price should be disclosed publicly so that the community and leaders can determine the current value of the land and property, neither the purchase price of the Proposed Transaction, nor the value of the land or property has any bearing on the

[127] Morgantown Power, LLC, Response to Commission Letter Regarding Public Release of Confidential Information, Docket No. EC26-58-000 (filed Apr. 27, 2026) (Morgantown Response).

[128] *Id.* at 2 (citing 5 U.S.C. § 552(b)(4)).

[129] Morgantown notes that "'person' includes an individual, partnership, corporation, association or public or private organization other than an agency." *Id.* at 2 n.9 (quoting 5 U.S.C. § 551(2)).

[130] *Id.* at 3 (quoting *Food Mktg. Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019) (*Argus*)).

[131] *Id.* at 3-4 (quoting U.S. Dept. of Justice: Office of Information Policy, *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA*, https://www.justice.gov/oip).

Commission's jurisdictional responsibilities under FPA section 203. Morgantown asserts that the Commission has previously reached the same conclusion in response to nearly identical arguments from Public Citizen.[132]

v. Public Citizen June Motion to Deny Privilege

90. Public Citizen argues that Morgantown's argument that the purchase price and payment structure for the Morgantown Station is protected from public disclosure under FOIA Exemption 4 should be denied. Public Citizen argues that the purchase prices of Commission jurisdictional power plants are routinely available to the public, citing several examples of companies that publicly disclosed the purchase price of their transactions.[133]

91. Public Citizen further claims that Morgantown ignores amendments to FOIA from 2016, 5 U.S.C. § 552(a)(8)(A)(i), which impose on agencies that seek to prevent disclosure of information an "independent and meaningful burden" to show that the disclosure would result in foreseeable harm to an interest protected by Exemption 4.[134] Public Citizen contends that Morgantown offers no justification as to how harms to the interest to confidentiality arising from disclosure are reasonably foreseeable, given the fact that dozens of competing power plants in the same geographic market have freely publicized their purchase price in the last few months.[135] Public Citizen argues that the purchase price for Morgantown specifically, has been publicly reported in other prior transactions.[136]

92. Public Citizen asserts that non-public communications between TeraWulf's CEO and the governor of Maryland reveal that TeraWulf is seeking $100 million in taxpayer money to help cover costs associated with the Proposed Transaction. Public Citizen cites to *Insider Inc. v. Gen. Servs. Admin.*, for the premise that Congress enacted FOIA "to

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[132] *Id.* at 4 (citing *Canal Generating*, 181 FERC ¶ 61,157 at P 57, n.69).

[133] Public Citizen June Motion to Deny Privilege at 1-2.

[134] *Id.* at 2 (quoting *Leopold v. DOJ*, 94 F.4th 33, 337 (D.C. Cir. 2024)).

[135] *Id.*

[136] *Id.* at 3 (citing The Wall Street Journal, *Fight With Power Plant Owners Snarls GenOn's Restructuring* (Sept. 2017), https://www.wsj.com/articles/fight-with-power-plant-owners-snarls-genons-restructuring-1505330723).

pierce the veil of administrative secrecy and open agency action to the light of public scrutiny."[137]

93. Lastly, Public Citizen claims that TeraWulf has several potential options for immediately converting the Morgantown Station for alternate use. Public Citizen argues that TeraWulf's planned improvements will fundamentally transform the existing Morgantown Station units, rendering any claim of confidentiality moot.[138]

vi. Morgantown Third Answer

94. Morgantown responds by arguing that it provided a well-founded rationale for the privileged and confidential treatment of the Purchase Agreement, including the financial aspects therein, and that Public Citizen ignores that record evidence.[139] Morgantown asserts that the examples provided by Public Citizen of other energy industry entities disclosing the prices of recent acquisitions "equates to an ad populum fallacy, i.e., because other entities release acquisition price information, it must be true there is no harm and the information is not commercially sensitive."[140] Additionally, Morgantown maintains that Public Citizen fails to acknowledge the Supreme Court's precedent that provides confidentiality is determined based on whether the information is "customarily and actually treated as private *by its owner*."[141] Morgantown contends that Public Citizen's remaining arguments about the facility's purchase price 26 years ago, that natural gas unit conversions or site improvements render any claim of confidentiality moot, and that the purchase price is a critical part of the Commission's public interest evaluation of the Proposed Transaction are irrelevant, illogical, and contradicted by precedent.[142]

vii. Commission Determination

95. We have considered Morgantown and Public Citizen's arguments and will not publicly release section 2.03 of Exhibit I to the Purchase Agreement. Based on relevant precedent, we find here that the information sought constitutes "commercial or financial

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[137] *Id.* (quoting 92 F.4th 1131, 1133 (D.C. Cir. 2025)).

[138] *Id.* at 4.

[139] Morgantown Third Answer at 1.

[140] *Id.* at 2.

[141] *Id.* (quoting *Argus*, 139 S. Ct. 2356, 2363 (emphasis added)).

[142] *Id.* at 2-3.

information"[143] and was "obtained from a person."[144] Moreover, consistent with *Argus*, information submitted to a government agency such as the Commission will be protected from disclosure under FOIA Exemption 4 if: (1) the information is customarily treated as confidential by the submitter; and (2) the government agency provides assurance that the information will be treated as confidential.[145]

96. Based on Morgantown's response, we agree that the purchase price is information customarily treated as confidential by Morgantown. Although Public Citizen notes that other parties to other transactions have publicly disclosed the purchase prices of those transactions, Morgantown has explained that it customarily keeps the purchase price of transactions private and confidential and has done so with respect to the purchase price of the Commission-jurisdictional assets at issue here.

97. We note, however, that while the purchase price is protected in a manner consistent with FOIA Exemption 4, "[t]he Commission retains the right to make determinations with regard to any claims of privilege status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities."[146] Based on our consideration of the record in this proceeding, the public disclosure of section 2.03 of Exhibit I to the Purchase Agreement, which contains the purchase price, is not necessary to meet the Commission's regulatory objectives in this proceeding.[147] Notwithstanding

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[143] *See*, *e.g.*, *Baker & Hostetler LLP v. U.S. Dep't of Com.*, 473 F.3d 312, 319-20 (D.C. Cir. 2006) (rejecting argument that Exemption 4 is confined only to records that reveal basic commercial operations or relate to the income-producing aspects of a business; and noting that the exemption "reaches more broadly and applies (among other situations) when the provider of the information has a commercial interest in the information submitted to the agency").

[144] *See, e.g., EPIC*, 117 F. Supp. 3d 46, 63 (D.D.C. 2015) ("Information is considered 'obtained from a person' [under Exemption 4] if the information originated from an individual, corporation, or other entity, and so long as the information did not originate with the federal government.").

[145] *Argus*, 139 S. Ct. 2356, 2363.

[146] 18 C.F.R. § 388.112(c)(1)(i).

[147] In proceedings such as *Paper Birch Energy*, *LLC*, the Commission found that, because the information filed as privileged, which included the identity of upstream ownership, is "central to the Commission's analysis," public disclosure "enables members of the public to determine whether to participate in the proceeding to protect their interests and to understand what the Commission relies on in making its determination." *Paper Birch Energy*, *LLC*, 172 FERC ¶ 61,035, at P 34 (2020) (quoting *Ambit Ne., LLC*, 167 FERC ¶ 61,237, at P 28 (2019)). In contrast, the purchase price of

this determination, we reiterate that Public Citizen has otherwise obtained the information pursuant to a protective agreement in this proceeding, which is a procedure also available to any other party to this proceeding.

h. Other Considerations

98. Information and/or systems connected to the Bulk Power System involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.[148] Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the Bulk Power System, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the Bulk Power System. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, the North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

99. FPA section 301(c) gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility.[149] The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to PUHCA 2005 are subject to the record-keeping and books and records requirements of PUHCA 2005.

100. Section 35.42 of the Commission's regulations requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[150] To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of section 35.42.

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the Commission-jurisdictional assets does not, in this particular case, include information that is central to the Commission's analysis in this proceeding or that is necessary for the public to determine whether to participate in the proceeding.

[148] 16 U.S.C. § 824o.

[149] *Id.* § 825(c).

[150] 18 C.F.R. § 35.42 (2025).

<u>The Commission orders</u>:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Morgantown must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

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

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

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

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

(G) Morgantown shall notify the Commission within 10 days of the date or dates on which the Proposed Transaction is consummated.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.