



# Public Service Commission of Wisconsin

Ellen Nowak, Chairperson  
Phil Montgomery, Commissioner  
Mike Huebsch, Commissioner

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

October 24, 2016

Re: Application of Consolidated Water Power Company for  
Approval of a Corporate Restructuring

1330-EI-101

Comments Due:

**Monday, October 31, 2016 – Noon**

This docket uses the Electronic Regulatory Filing  
(ERF) system.

Address Comments To:

**Sandra Paske**  
Public Service Commission  
P.O. Box 7854  
Madison, WI 53707-7854

The Commission intends to consider the application of Consolidated Water Power Company for approval of a corporate restructuring. The Commission has the authority to investigate and approve this application under Wis. Stat. ch. 196. The Commission intends to conduct this investigation without a hearing.

To view the application: (1) go to the Commission's website at <http://psc.wi.gov>, (2) enter "1330-EI-101" in the box labeled "Link Directly to a Case," and (3) select "GO."

Commission staff drafted a memorandum concerning the application, and this memorandum is being provided to the public for comment. Members of the public and other interested persons or organizations may file comments on the application and memorandum. Comments may be filed using the ERF system, in person, or by mail at Public Service Commission, 610 North Whitney Way, P.O. Box 7854, Madison, WI 53707-7854.

Members of the public may also file comments using the Commission's web site at <http://psc.wi.gov>, click on the "Public Comments" button on the side menu bar. On the next page select the "File a comment" link that appears for docket 1330-EI-100. Web comments shall be received no later than noon on Monday, October 31, 2016.

**Wisconsin Environmental Policy Act.** This is a Type III action under Wis. Admin. Code § PSC 4.10(3). The Commission will review the potential environmental effects of the project. Type III actions normally do not require the preparation of an environmental impact statement under Wis. Stat. § 1.11 or an environmental assessment.

Please direct questions about this docket or requests for additional accommodations for the disabled to the Commission's docket coordinator, Enrique Bacalao, at [enrique.bacalao@wisconsin.gov](mailto:enrique.bacalao@wisconsin.gov).

Sincerely,

Jeffrey J. Ripp  
Administrator  
Division of Energy Regulation

JJR:AC:jlt:DL: 01472496

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

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## **Memorandum**

October 24, 2016

### **FOR COMMISSION AGENDA**

TO: The Commission

FROM: Jeff Ripp, Administrator  
Carrie Templeton, Assistant Administrator  
Enrique Bacalao, Economist  
Division of Energy Regulation

RE: Application of Consolidated Water Power Company for 1330-EI-101  
Approval of a Corporate Restructuring

Suggested Minute: The Commission (approved/approved with conditions/did not approve) the application of Consolidated Water Power Company for approval of a corporate reorganization.

### **Introduction**

On September 7, 2016, Consolidated Water Power Company (CWP) filed an application for Commission approval of a corporate reorganization under Wis. Stat. § 196.79. ([PSC REF#: 291161](#).) Specifically, CWP seeks approval for the internal restructuring of the Verso Corporation (Verso) holding company system under which CWP's direct corporate parent would be renamed and converted from a corporation to a limited liability company. In addition, four companies upstream of CWP's direct corporate parent would be consolidated into one limited liability company. The primary purpose of the reorganization is to allow Verso, CWP's ultimate corporate parent and largest customer, to realize substantial federal income tax savings by utilizing net operating losses generated by CWP's direct corporate parent. The reorganization would also streamline Verso's corporate structure by eliminating various corporations that are no longer used.

On September 15, 2016, the Commission issued a Notice of Investigation in this docket. No parties requested to intervene. Commission staff submitted this memorandum for comments from any interested persons.

## Background

CWP is an investor-owned electric public utility, as defined in Wis. Stat. § 196.01(5)(a), engaged in the production, transmission, distribution, and sale of electricity to approximately 114 customers in the village of Biron and adjacent areas of Wood County, Wisconsin. CWP also owns and operates five hydroelectric generating facilities on the Wisconsin River which have a total generating capacity of approximately 33 megawatts (MW). Currently, more than 99 percent of CWP's retail sales are made to three paper mills owned by its parent company, Verso, and an unaffiliated industrial customer, Catalyst Paper Operations, Inc.

CWP has a long history intertwined with Wisconsin's paper making industry. While its origins date back to 1894, CWP took its current name in 1926. CWP was owned by the Consolidated Water Power and Paper Company, later renamed Consolidated Papers, Inc. (CPI), until 2000 when CPI was acquired by Swedish papermaker Stora Enso. In docket 1330-DR-100 by Final Decision dated August 1, 2000, the Commission determined that Stora Enso succeeded CPI's exemption under the Wisconsin Holding Company Act, Wis. Stat. § 196.795(8).<sup>1</sup>

In 2008, Stora Enso's North American operations, including CWP, were acquired by NewPage Corporation. The Commission approved the acquisition of Stora Enso by NewPage Corporation with various conditions designed to protect CWP and its ratepayers in docket 1330-DR-101 by Final Decision dated December 11, 2007. ([PSC REF#: 86937](#).) The Commission approved the acquisition under Wis. Stat. §§ 196.795(3) and 196.79, noting that similar standards govern applications under both sections. The Commission did not address the exemption of the upstream holding companies under Wis. Stat. § 196.795(8)(a), finding that the exemption remained with the entity now known as NewPage Wisconsin System, Inc. (NPWS),

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<sup>1</sup> The Wisconsin Holding Company Act was enacted in 1985 and, as noted by the application, the exemption held by NPWS is the only remaining exemption under Wis. Stat. § 196.795(8)(a).

CWP's immediate corporate parent. On September 7, 2011, NewPage Corporation and 13 of its subsidiaries filed for a Chapter 11 bankruptcy reorganization and emerged at the end of 2012. CWP was not included in that reorganization.

In 2015, NewPage Corporation was acquired by Verso. Verso's acquisition of the holding company system of which CWP is a part was approved by the Commission, with conditions, in docket 1330-EI-100 by Final Decision dated April 3, 2014. ([PSC REF#: 201584.](#)) Again, the Commission did not address the exemption of the upstream holding companies under Wis. Stat. § 196.795(8)(a), finding that the exemption remained with NPWS. In 2016, Verso filed for a Chapter 11 bankruptcy reorganization and emerged from bankruptcy on July 15, 2016. CWP was not included in the reorganization.

### **Proposed Reorganization**

The proposed reorganization differs from the previous transactions related to CWP and its holding company that the Commission has approved under Wis. Stat. §§ 196.79 and 196.795, as in this case CWP's ultimate corporate parent, Verso, would remain the same. The proposed reorganization includes two parts: 1) conversion of NPWS, CWP's immediate corporate parent, and NewPage Corporation from corporations limited liability corporations (LLC); and 2) consolidation of three other corporations in the direct line of ownership between Verso and CWP, into Verso Paper Holdings LLC.

The proposed corporate reorganization is governed by Wis. Stat. § 196.79, which provides in full:

**196.79 Reorganization subject to commission approval.** The reorganization of any public utility shall be subject to the supervision and control of the commission. No reorganization may take effect without the written approval of the commission. The commission may not approve any plan of reorganization unless the applicant for approval establishes that the plan of reorganization is consistent with the public interest.

Thus, under Wis. Stat. § 196.79, the key issue the Commission must determine is whether the plan of reorganization is consistent with the public interest.<sup>2</sup> Pursuant to Wis. Stat. §§ 196.02 and 196.395, if the Commission approves the reorganization it may impose any condition necessary to protect the public interest.

The Commission most recently evaluated a corporate reorganization in the Final Decision in *Application for Approval of a Corporate Reorganization of American Transmission Company LLC and ATC Management Inc.*, docket 137-BE-100 (June 2, 2016). ([PSC REF#: 286797](#).) In the Final Decision in that docket, the Commission explained the guiding principles it uses to determine whether a reorganization involving the formation of a holding company is in the public interest:

1. Utility ratepayers should not be made worse off by the formation and operation of the holding company in any way;
2. Utility ratepayers should benefit from the activities of the holding company, at least indirectly, as taxpayers and community members;
3. Nonutility operations of the holding company or its nonutility subsidiaries should not be regulated; and
4. The formation and operation of the holding company shall in no way diminish the Commission's authority over the utility.

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<sup>2</sup> The application argues in a footnote that no aspect of the transaction constitutes the reorganization of a public utility under Wis. Stat. § 196.79 or a takeover or formation of a holding company under Wis. Stat. § 196.795(2) or (3). As the ultimate corporate parent, Verso, remains the same after the proposed transaction and the LLCs also continue to be the same entities after conversion from corporations to LLCs, the application is likely correct that this alone does not trigger Wis. Stat. § 196.795(2) or (3). However, the consolidation of the upstream companies may trigger these requirements if the merging of these entities constitutes a takeover or formation of a new holding company. Indeed, as noted by the application, transfer of ownership of CWP to a new subsidiary would constitute formation of a new holding company. Based on the specific facts of this case discussed below, the entities being merged into the newly converted LLC are essentially shell companies no longer serving any useful purpose. Thus, the specific transactions in this case likely do not constitute the formation or takeover of a holding company. However, CWP's narrow reading of Wis. Stat. § 196.79 is incorrect. The plain language of the statute and the Commission's long-standing interpretation and application of Wis. Stat. § 196.79 make clear Commission approval of the reorganization is required.

While the present reorganization does not involve the formation of a new holding company, the above principles are equally relevant in this case as a guideline for assessing whether the reorganization of the Verso holding company is consistent with the public interest.

### **Ratepayer Effects of the Reorganization**

The first two guiding principles address the effect of the reorganization on utility ratepayers. Under these criteria, utility ratepayers should not be made any worse off and should benefit, at least indirectly, from the activities of the holding company. The application identifies two specific ratepayer benefits resulting from the proposed reorganization. First, the application states that the proposed reorganization will enhance the financial strength and management of CWP's ultimate corporate parent and its largest customer, primarily by enabling it to utilize consolidated net operating losses (NOL) that would otherwise expire. Second, the application states that the proposed reorganization would improve the efficiency of Verso's management and reduce its costs.

### **Conversion of NPWS and NewPage Corporation to LLCs**

Verso emerged from a Chapter 11 bankruptcy reorganization on July 15, 2016. The application states that as a result of the bankruptcy reorganization, Verso is now a financially stronger company. Under tax rules applicable to Verso's current situation, it could use more of its NOLs that were generated before its emergence from bankruptcy to reduce its consolidated income for federal income tax purposes in periods following its emergence. However, this option is only available if NPWS and NewPage Corporation are converted from corporations to LLCs by December 31, 2016. The application notes that "if the LLC conversions did not occur the NOLs would remain trapped in the subsidiaries and unavailable for use, such that the vast majority of the NOLs would expire unused over time."

The conversion of NPWS and NewPage Corporation to LLCs is not expected to have any negative impact on existing customers or adversely impact CWP's operations or financial condition. Rather, the conversion would directly and tangibly benefit CWP's largest ratepayer, Verso, by allowing it to achieve significant federal tax savings by utilizing NOLs that resulted from NPWS' papermaking operations. These tax savings in turn are expected to improve Verso's cash flow and financial strength, enhancing its ability to fund CWP's capital investments and operating requirements.

The proposed reorganization would also indirectly benefit CWP's other ratepayers, and the community as a whole, as Verso is the utility's largest customer and its increased financial strength would help ensure continued operation and payment for utility service. Continued operation of Verso's papermaking business also helps avoid employee lay-offs and maintain the local tax base. This would in turn promote other economic activity in the community.

CWP was excluded from Verso's recent bankruptcy reorganization. Inclusion of CWP in a bankruptcy organization may have negative impacts on ratepayers. Thus, Verso authorized CWP to represent that CWP would be excluded from any future bankruptcy filing by Verso. Should such a future bankruptcy occur, this exclusion may benefit ratepayers.

### **Consolidation of Unused Corporations**

The application states that Verso's current corporate structure includes a number of corporations and LLCs, primarily acquired through mergers and acquisitions, that include entities that no longer serve any function. The specific corporate structure involving CWP involves multiple layers of corporations primarily established by NewPage Corporation. Under the proposed reorganization, four of these unused corporations in the direct corporate line between Verso and CWP would be merged.

The consolidation that Verso is proposing is intended to streamline its management structure, and in the future, it may propose separating its papermaking operations from its energy operations. This consolidation should promote the quality of management decisions and improve operating efficiency for CWP and for its largest industrial customer. The proposed consolidation is not expected to harm ratepayers, and would benefit directly Verso and indirectly other ratepayers and the community.

### **Regulation of Nonutility Operations of the Holding Company**

In reviewing reorganizations, the Commission has considered the nonutility operations of the holding company. Based on prior Commissions decisions, the Commission has emphasized that insulating the utility business from the nonutility business is important to ensure nonutility costs and risks are not borne by ratepayers.<sup>3</sup> In the present situation, the regulated utility business, CWP, is a distinct corporation operated separately from Verso. No changes would result to this structure as a result of the proposed reorganization.

The Commission does not regulate the nonutility operations of the Verso holding company. This would not change under the proposed reorganization. The nonutility operations of the Verso holding company are substantial and are primarily related to the manufacture and conversion of paper products into various grades and types of products. The pulping and papermaking processes are energy-intensive and CWP provides only part of the power required to operate the various plants.

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<sup>3</sup> *Re Wayside Telephone Company, Wayside Telecommunications, Inc., Citizens Utility Board*, docket 6340-TO-100, 1987 WL 256496 (Wis. PSC Feb. 19, 1987) (noting that “diversification into cellular service may permit the spreading of the risk involved to the operation of Wayside Telephone Company”).



## **The Commission's Continuing Authority Over Verso and CWP**

The application states that the proposed reorganization will not have any impact on the Commission's current oversight and regulation of CWP and the Verso holding company system. Under the proposed reorganization, CWP will remain a Wisconsin corporation, and the ultimate ownership and control of CWP will remain with Verso. However, CWP's direct corporate parent, NPWS, and NewPage Corporation would become Delaware LLCs. Delaware law provides that in the case of a conversion, "the limited liability company shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existing other entity in the form of a domestic limited liability company." Del. Code § 18-214(g). Thus, conversion of NPWS and NewPage Corporation to LLCs should not have any impact on the Commission authority over Verso and CWP.

In addition, the conditions imposed by the Commission on Verso when it acquired the NewPage Wisconsin holding company system in 2015 and on CWP in its most recent race case will not change if the proposed reorganization is approved. Verso and CWP will continue to be bound by the financial provisions previously imposed on CWP by the Commission in its prior orders, including:

- Prohibitions against CWP lending money to, or guaranteeing the obligations of, Verso or any of its subsidiaries or affiliates;
- Prior Commission authorization being required before CWP could pay any dividends to its corporate parent or any affiliate in its utility holding company system;
- Ongoing Commission oversight over CWP's capital structure, including prior approval before CWP could repurchase any of its shares from its parent company; and
- Prior Commission approval of any financing transaction to be undertaken by CWP.

## **Commission Alternatives**

**Alternative One:** Approve the application of CWP for a corporate reorganization as filed.

**Alternative Two:** Approve the application of CWP for a corporate reorganization, with conditions.

**Condition A:** Accept Verso's representation that CWP would be excluded from any future bankruptcy filing by Verso.

**Condition B:** Accept Verso's and CWP's agreement to continue to adhere to all prior conditions imposed by the Commission in the acquisition and CWP's rate case.

**Alternative Three:** Deny the application of CWP for a corporate reorganization.

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Key Background Documents

[Restructuring Application - PSC REF#: 291161](#)