ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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| VERIFIED JOINT PETITION OF AEP GENERATING COMPANY, LIGHTSTONE GENERATION LLC, AND LAWRENCEBURG POWER, LLC FOR APPROVAL OF THE SALE OF THE LAWRENCEBURG GENERATING FACILITY AND FOR SUCCESSION TO THE DECLINATION OF THE COMMISSION'S JURISDICTION IN ACCORDANCE WITH THE COMMISSION'S ORDERS IN CAUSE NOS. 43212 AND 41757 | CAUSE NO. 44868<br><br>APPROVED: JAN 04 2017 |

**ORDER OF THE COMMISSION**

**Presiding Officers:**
**Sarah E. Freeman, Commissioner**
**Jefferson S. Garn, Administrative Law Judge**

On October 12, 2016, AEP Generating Company ("AEG"), Lightstone Generation LLC ("Lightstone Generation"), and Lawrenceburg Power, LLC ("Lawrenceburg Power") (collectively, "Joint Petitioners") filed their Verified Joint Petition and Request for Administrative Notice in this Cause. The Joint Petitioners request that the Indiana Utility Regulatory Commission ("Commission") approve AEG's sale of its power generating facility in Lawrenceburg, Indiana to Lightstone Generation and Lawrenceburg Power (collectively, "Lightstone Entities"). AEG also filed the direct testimony of Stephen T. Haynes, and the Lightstone Entities filed the direct testimony of William Lee Davis.

On October 28, 2016, the presiding officers took administrative notice of the April 18 and August 8, 2007 Orders in Cause No. 43212 (the "43212 Order"), and the December 20, 2000 Order in Cause No. 41757 (the "41757 Order").

Following an extension of time, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed the prepared direct testimony of Ronald L. Keen, on November 17, 2016.

An evidentiary hearing was held at 2:00 p.m. on December 8, 2016, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Joint Petitioners and the OUCC presented their respective evidence without objection, and no member of the public appeared or participated at the hearing.

Based on the applicable law and evidence presented, the Commission now finds the following:

**1. <u>Notice and Jurisdiction.</u>** The Commission gave and published notice of the hearing in this Cause as required by law. In the 41757 Order, the Commission determined PSEG Lawrenceburg (the original owner of the facility that is the subject of this Cause) was a public utility as defined by Ind. Code § 8-1-2-1(a). In the 43212 Order, the Commission found that AEG was also a public utility as defined in Ind. Code § 8-1-2-1(a) and was subject to the jurisdiction of the Commission. Likewise, after the transfer of the facility that is the subject of this proceeding, the Commission finds that the Lightstone Entities will be public utilities as defined in Ind. Code § 8-1-2-1(a) and energy utilities as that term is defined in Ind. Code § 8-1-2.5-2.

Under Ind. Code ch. 8-1-2.5 and the 41757 and 43212 Orders, the Commission has continuing jurisdiction over any transfers of the Lawrenceburg generating facility. Consequently, the Commission has jurisdiction over the Joint Petitioners and this proceeding's subject matter.

2. **Joint Petitioners' Characteristics.** AEG is a wholly owned subsidiary corporation of American Electric Power Company, Inc. ("AEP") organized under the laws of the State of Ohio, registered with the Indiana Secretary of State, and authorized to do business in the State of Indiana. AEG owns and operates the Lawrenceburg Generating Facility ("Facility"), located in Lawrenceburg, Indiana.

The Lightstone Entities are limited liability companies organized under the laws of the State of Delaware. Lawrenceburg Power is a wholly owned subsidiary of Lightstone Generation, and Lightstone Generation is a joint venture of the Blackstone Group L.P. ("Blackstone") and ArcLight Capital Partners, LLC ("ArcLight"). After filing the Verified Joint Petition, the Lightstone Entities filed with the Commission their Certificates of Authority issued by the Indiana Secretary of State, demonstrating that both companies are authorized to do business in the State of Indiana.

3. **Background.** In 2000, PSEG Lawrenceburg Energy Company LLC ("PSEG Lawrenceburg") filed a petition requesting that the Commission decline jurisdiction over its proposed construction of a power generating facility in Lawrenceburg, Indiana. The Commission, through the 41757 Order, found that PSEG Lawrenceburg and its proposed power generating facility were "public utilities" within the meaning of Indiana Code § 8-1-2-1, and declined to exercise its jurisdiction except to those areas expressly stated in the order, such as requiring PSEG Lawrenceburg not to sell at retail and to provide to the Commission certain reports related to the status of the facility's construction.

In 2007, PSEG Lawrenceburg and AEG filed a joint petition seeking Commission approval of PSEG Lawrenceburg's sale of the facility to AEG and requesting that the Commission continue to decline jurisdiction over the facility. The Commission, through its 43212 Order, granted that request, unconditionally releasing PSEG Lawrenceburg from all duties and obligations imposed by the 41757 Order; AEG assumed those relevant duties, including the requirement to seek approval before any future transfer of ownership of the facility.

4. **Relief Requested.** Joint Petitioners ask the Commission to approve AEG's sale of the Facility to the Lawrenceburg Entities. Joint Petitioners also ask the Commission to approve the Lawrenceburg Entities' succession to the declination of jurisdiction set forth in the 41757 Order. Finally, Joint Petitioners ask the Commission to release AEG from all duties imposed on it by the 43212 Order, including the financial assurance, decommissioning obligations, and periodic update and reporting requirements.

## 5. Evidence Presented

**A. AEG's Evidence.** Stephen Haynes, Senior Vice President-Strategic Initiatives and Chief Risk Officer at AEP, provided testimony to support Joint Petitioners' request for approval of the sale of the Facility from AEG to the Lightstone Entities and succession to the declination over the Facility. Mr. Haynes described the Facility as a natural-gas-fired, combined-cycle electric generating facility with a summer net capacity of 1,096 MW. The Facility comprises four combustion turbine generators and two steam turbine generators, and its primary water source is Tanners Creek. The power generated by the Facility is sold on a strictly wholesale basis under a market-based rate certificate approved by the Federal Energy Regulatory Commission ("FERC").

Mr. Haynes also testified that AEG and Lightstone Generation entered into an agreement for the sale of the Facility to Lightstone Generation, subject to the satisfaction of certain conditions, including the receipt of applicable regulatory approvals. AEG and Lightstone Generation agreed that Lightstone Generation will assume the liabilities and obligations of AEG relating to the Facility, except for limited liabilities expressly retained by AEG.

Mr. Haynes testified that AEG acquired the Facility to serve the Ohio market through a power sales agreement with Ohio Power Company. Subsequently, the power sales agreement was transferred to AEP Generation Resources, and the Facility began selling all of its power into the wholesale power market with no direct customers or price assurance. He further testified that AEP's long-term strategy is to become a fully regulated, premium energy company focused on investment in infrastructure and the energy innovations that its customers want and need, and that the present transaction advances that strategy and reduces some of the business risks associated with operating competitive generating assets.

Mr. Haynes testified that the criteria set forth in the 41757 Order for a third-party owner and operator to succeed to the declination of jurisdiction apply in this case, specifically that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility and that the successor agrees to the same terms and conditions that had been imposed on AEG as owner of the Facility.

Mr. Haynes testified that when the sale of the Facility is concluded, Lightstone Generation will succeed to AEG's rights and obligations under the 43212 Order; therefore, AEG requests to be relieved of any obligations in the 43212 Order. If AEG no longer controls the Facility, AEG will have no way of complying with those obligations. AEG entered into the transaction that is the subject of this Order with the understanding that AEG and its affiliates will be free and clear of any residual obligations under the 43212 Order, and AEG's release and termination from those obligations is a condition precedent to closing the transaction. Mr. Haynes also testified that a condition imposed on AEG by the Commission related to affiliate transactions between AEG and Indiana Michigan Power Company ("I&M") would not be necessary going forward because the Lightstone Entities are not affiliates of any AEP companies.

**B. Lightstone Entities' Evidence.** William Lee Davis, the Lightstone Entities' Chief Executive Officer, testified that he has over 25 years of experience in the U.S. power industry, including overseeing commercial, operating, and business-development activities for a 22,000 MW generation fleet across ten states and, more recently, serving as a Senior Advisor with

Blackstone and CEO of Kindle Energy LLC ("Kindle Energy"), which provides strategic advice to Blackstone about electric generation.

Mr. Davis testified that Lightstone Generation is a newly established joint venture of Blackstone and ArcLight, organized under the laws of the State of Delaware. He also testified that Blackstone and ArcLight are two leading private equity funds focused on energy infrastructure, with significant investments and experience owning and operating power generation in North America and Europe. Combined, they have managed, owned, or operated over 38,000 MW of power generation globally, including operations in multiple U.S. competitive markets. Neither Blackstone nor ArcLight currently own any utility property in Indiana and they are not currently affiliated with any other utility in Indiana.

Mr. Davis testified that Lawrenceburg Power is a wholly owned subsidiary of Lightstone Generation, organized under the laws of the State of Delaware to hold the ownership interests in the generating facilities that Lightstone is acquiring from AEG and AEP Generation Resources, Inc. Mr. Davis sponsored Attachment 1 to his Direct Testimony, which is an organizational chart showing the corporate relationships of the Lightstone Entities.

Mr. Davis testified that after the close of the transaction, Lightstone Generation will contribute its ownership interest in the Facility to Lawrenceburg Power, but will retain responsibility for operation and management of the Facility, including ongoing regulatory compliance responsibilities. Lightstone Generation will rely on the collective management and capital resources of Blackstone and ArcLight, which include the Kindle Energy asset management team and the operations teams of ArcLight's affiliates Consolidated Asset Management Services ("CAMS") and Eastern Generation, LLC ("Eastern Generation"). The Lightstone Entities will operate the Facility and sell energy, capacity, and ancillary services exclusively at wholesale. All power sales will be made in accordance with market-based rate authority, except for reactive power sales which will be made in accordance with a cost-of-service rate schedule. All rates for the sale of power from the Facility will be subject to FERC regulation.

Mr. Davis testified that the Lightstone Entities have the technical, financial, and managerial capability to properly own and operate the Facility. Blackstone has invested or committed more than $48 billion of equity in 184 separate private equity transactions, with an aggregate transaction value of over $360 billion. In 2015, Blackstone reported approximately $4.65 billion in total revenues. As of 2016, Blackstone has owned and operated 20,056 MW of power generation assets globally. ArcLight has committed over $16 billion of private equity in 99 transactions since its founding in 2001. It has deep, project-level knowledge with significant experience managing the ownership and operations of power generation facilities in North American and Europe. ArcLight has invested $8 billion in the power sector, and funds managed by ArcLight have owned interests in approximately 30,000 MW of electric generating and transmission capacity (with approximately 17,000 MW net to ArcLight's ownership).

Mr. Davis testified that Kindle Energy will provide executive and asset management services, with primary responsibility for managing the Facility. He further testified that Kindle is comprised of seasoned power industry executives and skilled professionals. CAMS, which currently manages over 30 power plant facilities with over 8,000 MW of capacity, will provide the operating services at the Facility. Eastern Generation, which owns and operates seven facilities totaling approximately 5,000 MW of capacity through its Astoria Generating, New Covert, Lincoln, Crete, and Rolling Hills subsidiaries, will provide select operating and management services in connection with CAMS and will provide asset management services to ArcLight.

In addition, Mr. Davis testified that the Lightstone Entities have the capability and resources to own and operate the Facility in a reliable, safe, environmentally-compliant, and efficient manner based on their access to the Blackstone and ArcLight resources.

Mr. Davis testified that AEG's ownership of the Facility will be transferred to Lightstone Generation subject to satisfaction of closing conditions, including regulatory approvals. Lightstone will assume the liabilities and obligations of AEG related to the Facility, except for certain limited liabilities expressly retained by AEG. The agreement also provides AEG guarantees by Blackstone and ArcLight of certain obligations of Lightstone Generation.

Mr. Davis testified that, under the terms of the agreement, the Lightstone Entities will make offers of employment to the employees now operating the Facility, ensuring continuity of service and operating knowledge at the Facility. The agreement also specifies that, at closing, Lightstone Generation will enter into a Transition Services Agreement with AEP Service Corporation for human resource, payroll, information technology support, and other services on a transitional basis to support transition of business data and processes related to the operation of the Facility. Finally, the agreement provides for a FERC-jurisdictional power purchase agreement between Lightstone Generation and AEP Energy Partners, Inc., under which Lightstone Generation will provide 500 MW of capacity for a limited term through May 31, 2017.

Mr. Davis testified that he is familiar with the conditions of the 43212 Order, which allowed AEG to succeed to the Commission's declination of jurisdiction over the Facility. Mr. Davis testified that the Lightstone Entities agree to abide by the terms and conditions previously imposed by the Commission, but that some of the terms and conditions applied to AEG are no longer applicable, specifically those related to AEG's affiliate relationship to AEP and I&M, AEG's relationship with and sale of electricity to I&M, compliance with affiliate guidelines established in a separate docket, and any transfers of the Facility to other AEP subsidiaries. Mr. Davis asserted that these conditions are not applicable to Lightstone Generation because it is not affiliated with any regulated Indiana utilities.

Mr. Davis stated that the Lightstone Entities agree to comply with the following conditions, which represent their understanding of the remaining applicable conditions from the 43212 Order:

(1) The Lightstone Entities do not intend, nor do they request authority, to sell electricity generated by the Facility to the general public or to any retail customer.

(2) The Lightstone Entities agree to operate the Facility in a manner consistent with good utility practice.

(3) The Lightstone Entities do not seek or request authority to exercise any of the rights, powers, or privileges of an Indiana public utility in the operation of the Facility, e.g., the power of eminent domain, the use of pubic rights of way, etc.

(4) The Lightstone Entities' costs will not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

(5) The Lightstone Entities' wholesale rates and charges for the sale of energy will be subject to FERC jurisdiction and are required to be just and reasonable in conformity with FERC standards.

(6) The Lightstone Entities will, before operating the Facility, obtain all appropriate air, water, and other permits in accordance with the law.

(7) The Lightstone Entities will not engage in retail electric sales.

(8) The Lightstone Entities will seek Commission approval before transferring ownership of the Facility.

(9) The Lightstone Entities will file an Annual Report with the Commission under Ind. Code § 8-1-2-49.

(10) The Lightstone Entities agree to provide other information regarding the Facility as the Commission may periodically request.

(11) The Lightstone Entities agree to obtain approval from the Commission before taking action to increase, decrease, or otherwise materially change the Facility's capacity or operation.

(12) The Lightstone Entities agree to establish and maintain an independent financial instrument to ensure that funds will be available to decommission the sight in the event of abandonment, financial failure, or bankruptcy.

Mr. Davis testified that Lightstone Generation agrees to select a financial instrument that complies with the 43212 Order and submit it to the Commission for approval within 60 days of the date the Commission approves the transfer of the Facility. As the 43212 Order requires, the financial instrument will take the form of either (1) a surety bond; (2) a letter of credit; (3) a certificate of insurance; (4) a financial test; (5) a corporate guarantee; or (6) other financial guarantee approved by the Commission. In addition, the Lightstone Entities agree to update the cost estimate and instrument every five years, with the first update in 2021.

Finally, Mr. Davis asserted that, based on the Lightstone Entities' demonstrated technical, financial, and managerial capability to own and operate the facility, and their acceptance of the specified conditions, it is in the public interest for the Commission to approve the transfer of the Facility and to continue its declination of jurisdiction over the Facility.

**C. <u>OUCC's Evidence</u>.** Robert L. Keen, Director of the OUCC's Resource, Planning, and Communication Division, testified that he reviewed the petition and direct testimony filed by AEG and the Lightstone Entities in this Cause. Mr. Keen recounted the information about related prior Commission orders, specifically the Commission's conditional and partial declination of jurisdiction over the Facility in the 41757 Order.

Mr. Keen testified that in Cause No. 43212 the Commission approved the transfer of the Facility to AEG and continued its partial declination of jurisdiction over the Facility. In Mr. Keen's opinion, the facts and evidence presented in this case for continued partial declination of jurisdiction do not materially differ from the facts and evidence presented in Cause Nos. 41757 and 43212.

Mr. Keen agreed that the Lightstone Entities have the technical, financial, and managerial capabilities to own and operate the Facility. The Lightstone Entities and their affiliates have successfully owned and operated power plants for years. Mr. Keen noted that Blackstone has been an active investor in the power industry over the past 15 years, investing more than $48 billion of equity in 184 separate transactions. Mr. Keen further noted that Blackstone has demonstrated financial expertise by sponsoring over $21 billion of successful greenfield energy projects around the world.

Mr. Keen testified that the Joint Petitioners agree to abide by each material term and condition imposed by the Commission in Cause Nos. 41757 and 43212, noting that certain conditions related to the construction of the Facility and affiliate interests of the Facility's owner do not apply in this case. These agreed-to conditions are very specific and completely address all issues the OUCC has raised in prior proceedings and in other declination of jurisdiction cases brought before the Commission.

Mr. Keen concluded that the OUCC does not oppose the transaction if the recommended conditions and post-compliance filings are implemented.

**6. <u>Commission Discussion and Findings</u>.** Joint Petitioners request approval of the proposed sale and transfer of the Facility from AEG to the Lightstone Entities and the Lightstone Entities' succession to the Commission's declination of jurisdiction described in the 41757 and 43212 Orders. In the 41757 Order, the Commission found that PSEG Lawrenceburg was a public utility as defined in Ind. Code § 8-1-2-1(a), but determined under Ind. Code § 8-1-2.5-5 that it was in the public interest to decline to exercise jurisdiction except for a few limited provisions. In the 43212 Order, the Commission approved the sale of the Facility to AEG and found that it was in the public interest for AEG to own and operate the facility in accordance with the continuing declination of jurisdiction.

In the 41757 Order, the Commission reserved its jurisdiction over any future transfer of the Facility and found that a third-party owner and operator may succeed to the declination of jurisdiction, provided:

(1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and
(2) the successor agrees to the same terms and conditions imposed on [PSEG Lawrenceburg] as set forth in this Order.

The evidence in this case shows that the Lightstone Entities have the necessary technical, financial, and managerial capability to own and operate the Facility through their access to the substantial resources of Blackstone and ArcLight. Blackstone, ArcLight, and their respective affiliates have extensive experience in owning and operating generating facilities throughout North America and Europe. In addition, Mr. Davis, who is the CEO of both Lawrenceburg Power and Lightstone Generation, has over 25 years of experience in the power industry.

The Lightstone Entities have also accepted the terms and conditions of the 41757 and 43212 Orders still applicable and necessary as discussed above, including the financial assurance condition. We agree with the parties that those terms related to the construction of the Facility in the 41757 Order and to AEP's affiliate guidelines in the 43212 Order are not applicable to the Lightstone Entities.

Therefore, we approve the sale of the Facility by AEG to the Lightstone Entities. Upon completion of the sale transaction, the Lightstone Entities will succeed to the declination of the Commission's jurisdiction granted by the 41757 and 43212 Orders subject to the conditions listed in Mr. Davis's testimony above. We find that it is in the public interest for the Lightstone Entities to own and operate the Facility in accordance with the declination of jurisdiction.

In addition, the Commission finds that it is in the public interest that the Lightstone Entities establish and maintain an independent financial instrument to ensure that funds will be available to return the site to its original condition in the event of abandonment, financial failure, or bankruptcy. The financial instrument used may, at the Lightstone Entities' option, be established by one of the following:

1. Surety bond.
2. Letter of credit.
3. A certificate of insurance.
4. Financial test.
5. Corporate guarantee.
6. Other financial guarantee approved by the Commission.

The Lightstone Entities must submit one of the above listed financial instruments sufficient to cover the costs detailed in AEG's cost estimate submitted in Cause No. 43212 on September 8, 2016. Then, to account for inflation, the Lightstone Entities must submit a revised cost estimate and financial instrument in this Cause to the Commission's Energy Division staff every five years beginning in 2021. The Commission, by the Presiding Officers, may modify this requirement for good cause.

We further find that upon conclusion of the sale transaction, AEG and its affiliates shall be fully released, without condition, from all duties and obligations contained in the 41757 and 43212 Orders, including the financial assurance and decommissioning obligations, without any further action from the Commission.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The sale and transfer of the Facility by AEG to the Lightstone Entities is approved.

2. Upon conclusion of the sale of the Facility to the Lightstone Entities, the Lightstone Entities shall succeed to the declination of jurisdiction granted by the 41757 and 43212 Orders, subject to the terms and conditions set forth in Mr. Davis's testimony and described above.

3. Within 60 days of the date of approval of this Order, the Lightstone Entities shall submit in this Cause a financial instrument sufficient to cover the costs contained in the cost estimate submitted by AEG in Cause No. 43212 on September 8, 2016. Beginning in 2021, and every five years thereafter until modified by the Commission, the Lightstone Entities shall submit a revised cost estimate and financial instrument in this Cause to the Commission's Energy Division staff.

4. Upon completion of the sale of the Facility to the Lightstone Entities, AEG and its affiliates shall be fully released, without condition, from all duties and obligations contained in the 41757 and 43212 Orders as described above.

5. This Order shall be effective on and after its date of approval.

**HUSTON, FREEMAN, WEBER, AND ZIEGNER CONCUR:**

**APPROVED:** JAN 04 2017

**I hereby certify that the above is a true and correct copy of the Order as approved.**

Mary M Becerra

**Mary M. Becerra**
**Secretary of the Commission**