167 FERC ¶ 62,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Emera Maine Docket No. EC19-80-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued June 25, 2019)

On April 24, 2019, Emera Maine (Applicant) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)[1] requesting authorization for a transaction whereby Applicant will become an indirect, wholly owned subsidiary of ENMAX Corporation (ENMAX) and Applicant's public utility subsidiaries Maine Electric Power Company (Maine Electric) and Maine Yankee Atomic Power Company (Maine Yankee) will become indirect, partially owned subsidiaries of ENMAX (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of the whole of the jurisdictional facilities owned by Applicant.

Applicant states that it is engaged in the transmission and distribution of electric energy and related services to retail customers in Maine. Applicant explains that it operates in two districts, with open access to transmission facilities in each district provided under a separate open access transmission tariffs (OATT). Open access to transmission facilities in the Bangor Hydro District in eastern and coastal Maine is provided pursuant to Section II and Schedule 21-EM of the ISO New England, Inc. (ISO-NE) Transmission, Markets and Services Tariff (ISO-NE Tariff) and open access to transmission facilities in the Maine Public District in northern Maine is provided pursuant to the Emera Maine Open Access Transmission Tariff for Maine Public District. Applicant states that it is a transmission owning member of the Northern Maine Independent System Administrator, Inc. (Northern Maine ISA), a regional transmission group. Applicant also states that it owns two megawatts of generating capacity and has long-term energy purchase contracts from certain qualifying facilities. Applicant has received market-based rate authority from the Commission.

Applicant explains that it owns 21.7 percent of Maine Electric and 12 percent of Maine Yankee. Applicant states that Maine Electric is a transmission company that provides open access transmission service pursuant to the ISO-NE Tariff. Maine Yankee is the owner and licensee of the Maine Yankee Nuclear Facility, a retired nuclear generating facility.

[1] 16 U.S.C. § 824b (2012).

Applicant states that all of its common stock, which constitutes over 99.5 percent of its voting interests, is owned by BHE Holdings, Inc., which is an indirect, wholly owned subsidiary of Emera Incorporated, a publicly traded Canadian utility holding company.

According to Applicant, ENMAX is a Canadian corporation that is wholly owned by the City of Calgary, Alberta. ENMAX generates, transmits, distributes, and sells electricity to residential, small business and large commercial customers. Applicant states that ENMAX Energy Marketing Inc. (ENMAX Marketing), a wholly owned subsidiary of ENMAX, markets electricity in Canada and exports and imports electricity between the United States and Canada for sales to utilities, power marketers and wholesale customers. ENMAX Marketing has market-based rate authority, however, all of ENMAX Marketing's transactions are completed within Canada. In addition, Applicant states that ENMAX currently has no affiliated generation or transmission assets in the United States.

Pursuant to the Proposed Transaction Emera US Holdings, Inc. a subsidiary of Emera Incorporated, will sell to ENMAX of all interests in BHE Holdings, the immediate parent company of Applicant such that ENMAX will indirectly own, hold, and control all of the voting securities of Applicant.

Applicant asserts that the Proposed Transaction will not have an adverse effect on competition. With respect to horizontal competition, Applicant states that it operates exclusively in New England, whereas ENMAX and its affiliates operate primarily in Western Canada. Since the assets and operations of Applicant and ENMAX do not overlap in any market, Applicant concludes that the Proposed Transaction will have no impact on horizontal market power.

With respect to vertical competition, Applicant represents that the transmission facilities it owns are operated in accordance with Commission-approved OATTs. In addition, ENMAX owns or controls no electric transmission facilities and no upstream inputs to electricity products or electric power production in the United States. Applicant concludes that no vertical market power concerns are raised by the Proposed Transaction and no vertical market power analysis is required.

Applicant represents that the Proposed Transaction will not have an adverse effect on rates because all of its wholesale sales of power are made pursuant to its market-based rate authority. In addition, Applicant and Maine Electric provide unbundled transmission service pursuant to the rates, terms, and conditions of OATTs, and the charges for such service are determined through formula rates set forth in those OATTs. In order to ensure that the Proposed Transaction will have no adverse effect on the rates, Applicant

pledges generally to hold harmless all current transmission customers from any costs associated with the Proposed Transaction for a period of five years to the extent that such costs exceed savings related to the Proposed Transaction.

We accept Applicant's commitment to hold customers harmless from costs related to the Proposed Transaction. We interpret Applicant's hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction's consummation.[2]

The Commission has established that, where applicants make hold harmless commitments in the context of FPA section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under sections 203 and 205[3] of the FPA.[4] Consistent with those clarifications, and given the commitment by Applicant to hold wholesale power and transmission customers harmless from transaction-related costs, if Applicant seeks to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then Applicant must make that filing in a new FPA section 205 docket[5] and submit that same filing as a concurrent information filing in this FPA section 203 docket.[6] The Commission will notice the new FPA section 205 filing for public comment.

In the FPA section 205 proceeding, the Commission will determine first, whether Applicant has demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the hold harmless commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, Applicant must: (1)

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[2] *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016) (Hold Harmless Policy Statement).

[3] 16 U.S.C. § 824d (2012).

[4] *Exelon Corp.*, 149 FERC ¶ 61,148, at PP 106-09 (2014).

[5] The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates.

[6] Upon receipt, the Commission will not act on or notice the concurrent informational filing.

specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. Applicant must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been offset by transaction-related savings in order to recover those transaction-related costs and comply with its hold harmless commitment. Those savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.[7] The Commission will consider rates not to be "just and reasonable" if they include recovery of costs subject to a hold harmless commitment made in connection with an FPA section 203 application and if applicants fail to show offsetting savings due to the transaction.[8]

According to Applicant, the Proposed Transaction will have no adverse effect on regulation because Applicant, Maine Electric, and Maine Yankee will continue to be subject to the jurisdiction of the Commission and any state commission following consummation of the Proposed Transaction. Applicant notes that consummation of the Proposed Transaction is conditioned on approval by the Maine Public Utilities Commission.

Applicant verifies that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission

[7] *See Exelon Corp.*, 149 FERC ¶ 61,148 at P 107 (citing *Audit Report of National Grid, USA*, Docket No. FA09-10-000, at 55 (Feb. 11, 2011)); *see also Ameren Corp.*, 140 FERC ¶ 61,034, at PP 36-37 (2012).

[8] *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on April 25, 2019, with comments, protests, or interventions due on or before May 15, 2019. Northern Maine Independent System Administrator, Inc. and Eastern Maine Electric Cooperative, Inc. filed motions to intervene. Maine Public Utilities Commission filed a notice of intervention. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214(2018)).

Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. 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, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA 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. The approval of the Proposed Transaction is based on such examination ability.

Order No. 652 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.[9] 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

[9] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

requirements of Order No. 652.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

(1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

(2) Applicant 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;

(3) 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;

(4) 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;

(5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicant's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2018) shall be made;

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

(7) Applicant shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

(8) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2018). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2018).

Carlos D. Clay, Acting Director
Division of Electric Power
Regulation - West

Document Content(s)