

144 FERC ¶ 61,030  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Bangor Hydro Electric Company  
Maine Public Service Company

Docket No. EC13-81-000

ORDER AUTHORIZING DISPOSITION OF  
JURISDICTIONAL FACILITIES

(Issued July 18, 2013)

1. On March 19, 2013, as amended on June 26, 2013, Bangor Hydro Electric Company (Bangor Hydro) and Maine Public Service Company (Maine Public) (collectively, Applicants), filed a joint application under sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA).<sup>1</sup> Applicants request Commission authorization to permit Bangor Hydro to acquire, among other things, all of the jurisdictional assets of its affiliate Maine Public (Proposed Transaction).
2. The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.<sup>2</sup> As discussed below, we will authorize the Proposed Transaction as consistent with the public interest.

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<sup>1</sup> 16 U.S.C. § 824b(a)(1) & (a)(2) (2006).

<sup>2</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008) (Supplemental Policy Statement). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200

(continued...)

## I. Background

### A. Description of the Parties

#### 1. Bangor Hydro

3. Bangor Hydro, a Maine corporation, is an electric utility engaged in the transmission and distribution of electric energy and related services to retail and wholesale customers in eastern and coastal Maine. Emera Incorporated (Emera), a Canadian-based utility company, owns all the issued and outstanding common stock of Bangor Hydro, as well as greater than 99 percent of its preferred stock. Bangor Hydro owns approximately 869 miles of transmission lines and approximately 4,850 miles of distribution lines. Open access to Bangor Hydro's transmission lines is provided pursuant to the ISO New England, Inc. (ISO-NE) Transmission, Markets and Services Tariff (ISO-NE Tariff). Bangor Hydro states that it does not have a franchise service area for the sale of electricity, but owns diesel-fired internal combustion units that produce 14 megawatts (MW) of generating capacity,<sup>3</sup> all of which are committed to New Brunswick Power Generation (NBP Generation) pursuant to long-term contract. In addition, Bangor Hydro has long-term energy contracts with five qualifying facilities (QF) located in Maine. All energy purchased by Bangor Hydro from these QFs is sold to NBP Generation under long-term agreements. Bangor Hydro also holds a 14.2 percent voting interest in Maine Electric Power Company (MEPCO), a transmission-only public utility.

#### 2. Maine Public

4. Maine Public, a Maine corporation and wholly-owned subsidiary of Emera, is an electric utility that provides transmission and distribution service to retail and wholesale customers located in Aroostook County and a small portion of Penobscot County in Maine. The total load in Maine Public's service territory is approximately 125 MW, with a peak load of approximately 141 MW. It owns approximately 380 miles of transmission lines and approximately 1,806 miles of distribution lines. Maine Public provides transmission service pursuant to the Maine Public Open Access Transmission Tariff

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(2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

<sup>3</sup> Bangor Hydro states that it divested virtually all of its generation assets as part of Maine's restructuring of its electric industry. See *Bangor Hydro-Elec. Co.*, 86 FERC ¶ 61,281, *clarified*, 87 FERC ¶ 61,057 (1999).

(Maine Public OATT).<sup>4</sup> Maine Public's facilities are not directly interconnected with Bangor Hydro or any other portion of the United States transmission grid. Rather, Maine Public's only access to the United States transmission grid is over transmission facilities in Canada owned by New Brunswick Power Transmission and Algonquin Tinker Gen Co. Maine Public, along with Eastern Maine Electric Cooperative, Inc., is a transmission-owning member of the Northern Maine Independent System Administrator, Inc. (Northern Maine ISA). Applicants state that Northern Maine ISA provides for the impartial administration of the reservation, scheduling, and dispatch of the Northern Maine transmission systems, as well as the administration of certain Northern Maine markets, including markets for energy, ancillary, and related services. Maine Public does not own generation and does not engage in wholesale marketing of generation.<sup>5</sup> Maine Public also owns a 7.5 percent voting interest in MEPCO.

### **B. Proposed Transaction**

5. The transaction will be effectuated in accordance with the Plan of Merger adopted by Applicants. Pursuant to the Plan of Merger, Maine Public will be merged into Bangor Hydro with Bangor Hydro as the surviving entity.<sup>6</sup> The result of the transaction will be a single electric utility with operations in both central and northern Maine. All subsidiaries of Bangor Hydro and Maine Public will remain or become, as appropriate, subsidiaries of the surviving entity.

## **II. Notices of Filing and Responsive Pleadings**

6. Notice of the application was published in the *Federal Register*, 78 Fed. Reg. 18,580 (2013), with interventions and protests due on or before April 9, 2013. Houlton Water Company filed a timely motion to intervene. Northern Maine ISA filed a timely motion to intervene and comments. On May 3, 2013 Applicants filed an answer to Northern Maine ISA's comments.

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<sup>4</sup> Maine Public Service Company, FERC Electric Tariff, 1<sup>st</sup> Revised Volume No. 4.

<sup>5</sup> Maine Public divested all of its generation assets as part of Maine's electric restructuring of its electric industry. *See Me. Pub. Serv. Co.*, 87 FERC ¶ 62,053 (1999).

<sup>6</sup> Applicants refer to the surviving company as Bangor Hydro, though the ultimate name of the consolidated utility has not been determined.

7. On June 26, 2013, Applicants filed an amendment to their application. Notice of the June 26, 2013 amended application was published in the *Federal Register*, 78 Fed. Reg. 40,472 (2013), with interventions and protests due on or before July 8, 2013. No comments were filed.

### **III. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept Applicant's answer because it has provided information that assisted us in the decision-making process.

#### **B. Standard of Review Under Section 203**

10. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a 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.<sup>7</sup> Section 203(a)(4) also requires the Commission to find that the 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-subsidization, pledge, or encumbrance will be consistent with the public interest."<sup>8</sup> The Commission's regulations establish verification and informational requirements for Applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>9</sup>

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<sup>7</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

<sup>8</sup> 16 U.S.C. § 824b(a)(4) (2006).

<sup>9</sup> 18 C.F.R. § 33.2(j) (2012).

**C. Analysis Under Section 203**

**1. Effect on Competition**

**a. Applicants' Analysis**

11. Applicants state that the Proposed Transaction will not have an adverse effect on competition because the Proposed Transaction involves the intra-corporate consolidation of two affiliated operating companies, both of which are subsidiaries of Emera. Applicants assert that the Proposed Transaction will have no impact on horizontal or vertical market concentration because, when viewed as a corporate whole, the amount of generating capacity or transmission facilities owned or controlled by Applicants and their affiliates will not change as a result of the Proposed Transaction. Further, Applicants state that their transmission assets are subject to open access tariffs.

**b. Commission Determination**

12. Applicants have demonstrated that the Proposed Transaction does not raise any horizontal or vertical market power concerns. The Proposed Transaction will not eliminate a competitor or materially increase market concentration in the relevant market because it involves an internal corporate reorganization in which Maine Public will be merged into its affiliate Bangor Hydro. Also, the Proposed Transaction does not raise vertical market power concerns because Applicants' transmission assets are subject to open access tariffs. Therefore, we find that the Proposed Transaction does not raise horizontal or vertical market power concerns.

**2. Effect on Rates**

**a. Applicants' Analysis**

13. Applicants state that the Proposed Transaction will have no adverse effect on the rates of wholesale power or transmission customers. Applicants state that Maine Public has no wholesale power customers. Applicants state that, since January 1, 2012, Bangor Hydro has at times sold wholesale power to three entities pursuant to the terms of its market-based rate tariff on file with the Commission.<sup>10</sup> Applicants state that presently, however, Bangor Hydro only sells wholesale power pursuant to long-term agreements with NBP Generation and the rates in these agreements are fixed and will be unaffected by the Proposed Transaction. Applicants also assert that, to the extent relevant, the

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<sup>10</sup> See Applicants' March 19, 2013 Joint Application, Exhibit F.

Proposed Transaction will have no adverse effect on the wholesale power rates of Applicants' present or future affiliates because such sales are either at negotiated rates or cost-based rates that will be unaffected by the Proposed Transaction.

14. Applicants also assert that the Proposed Transaction will have no adverse effect on the transmission service rates of the Applicants or their affiliates. Applicants provide transmission service pursuant to formula rates set forth in their respective OATTs. Specifically, Applicants state that: (1) the rates, terms, and conditions for use of Bangor Hydro's pool transmission facilities (PTF) are set forth in Section II of the ISO-NE Tariff; (2) the rates, terms, and conditions for use of Bangor Hydro's local transmission facilities are set forth in Schedule 21-BHE of the ISO-NE Tariff; and (3) the rates, terms, and conditions for the use of Maine Public's transmission facilities are set forth in the Maine Public OATT. Further, Applicants state that the charges for transmission service over all three sets of transmission facilities - Bangor Hydro PTFs, Bangor Hydro local transmission, and Maine Public transmission - are established based on transmission rate formulas which largely use FERC Form 1 data as inputs. Applicants explain that, currently, Bangor Hydro and Maine Public file separate FERC Form 1s insofar as they are separate legal entities. This approach allows Bangor Hydro's FERC Form 1 data to be used as inputs for the Bangor Hydro transmission rates and Maine Public's FERC Form 1 data to be used as inputs to the Maine Public OATT rates. However, following consummation of the Proposed Transaction, Bangor Hydro will be required to file a single FERC Form 1,<sup>11</sup> which will cover both former Maine Public transmission facilities (the Bangor Hydro "Northern Division") and legacy Bangor Hydro facilities (the Bangor Hydro "Southern Division").<sup>12</sup> Absent changes to the formula rates for Bangor Hydro's and Maine Public's transmission services, Applicants explain that the consolidation of FERC Form 1s, eventually, would result in a mismatch between charges and associated costs insofar as certain Northern Division costs would be a portion of the inputs to Bangor Hydro's ISO-NE Tariff formulas and certain Southern Division costs would be a portion of the inputs to the former Maine Public OATT formula. In order to avoid

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<sup>11</sup> 18 C.F.R. § 141.1(b) (2012) (requiring a FERC Form 1 to be filed by each Major electric utility). Applicants state that their first "consolidated" FERC Form 1 will be submitted in April 2015 reflecting calendar year 2014 data. Applicants intend to submit separate FERC Form 1s for Bangor Hydro and (former) Maine Public in April 2014 reflecting calendar year 2013 data.

<sup>12</sup> Bangor Hydro states that it has not decided how to refer to its two sets of transmission assets following consummation of the Proposed Transaction. It states that it uses the terms "Northern Division" and "Southern Division" as placeholders for ease of discussion in the application.

such a mismatch and to have the transmission rate formulas produce charges as close as reasonably practicable to those that would otherwise result absent the Proposed Transaction, Applicants make the following commitments:

- (1) No later than 60 days prior to consummation of the Proposed Transaction (which is scheduled to occur January 1, 2014), Bangor Hydro will file a Notice of Succession to the Maine Public OATT in accordance with 18 C.F.R. § 35.16, along with, to the extent necessary, those limited changes to the Maine Public OATT necessary to reflect this succession. In this regard, Applicants state that they anticipate that no elements of the Maine Public OATT will be changed other than the name of the transmission provider and the address(es) for service or notifications.<sup>13</sup>
- (2) While, in large part, the inputs to the Bangor Hydro and Maine Public formula rates are historical data from the prior calendar year FERC Form 1, the exception to this general approach is that both Schedule 21-BHE and the Maine Public OATT include limited forward-looking inputs for plant in service. To ensure that Schedule 21-BHE and the Northern Division OATT (formerly, the Maine Public OATT) formula rates include the appropriate forward-looking inputs, Applicants commit that: (a) any forward-looking inputs to Schedule 21-BHE will reflect only Southern Division data and (b) any forward-looking inputs to the Northern Division OATT will reflect only Northern Division data.
- (3) No later than April 1, 2015, Bangor Hydro will file changes under FPA section 205 and 18 C.F.R. Part 35 to amend both Schedule 21-BHE and the Northern Division OATT to adjust the formulas so that the resulting charges reflect as accurately as practicable the costs of providing transmission service over the respective transmission systems. Applicants state that they are continuing to develop the details of the changes to be made but anticipate changing the formulas so that charges effective June 1, 2015, will be based on direct assignment of values or costs where doing so is practicable and, otherwise, charges will reflect the allocation of values or

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<sup>13</sup> In Bangor Hydro's filing in Docket No. ER13-1125-000, it seeks waiver of the Commission's regulations, 18 C.F.R § 35.28(c)(3) (2012), to maintain two OATTs following consummation of the Proposed Transaction, including one OATT for the former Maine Public transmission facilities and one OATT for the legacy Bangor Hydro transmission facilities. The Commission addresses this filing, in Docket No. ER13-1125-000, in a separate order issued concurrently with this order.

costs.<sup>14</sup> Applicants state that they cannot commit to post-June 1, 2015 transmission charges that would be no different than if the companies did not merge, but note that it is their intent to establish formulas that will result in charges as close as reasonably practicable to those that would otherwise have resulted absent the merger.

- (4) Also, Applicants explain that the ISO-NE Tariff's charges for use of PTFs are also based on FERC Form 1 data, as calculated through a formula rate set forth in Attachment F of the ISO-NE Tariff. Applicants state that certain changes may need to be made to the ISO-NE Tariff so that costs associated with Bangor Hydro's Northern Division are not included in ISO-NE PTF charges via this formula rate. Therefore, Applicants state that they commit to working with ISO-NE to file any such necessary changes by April 1, 2015.

15. Finally, Applicants state that the Proposed Transaction will have no adverse effect on the rates for transmission service provided by their affiliates. Specifically, Applicants state that their only affiliate that provides jurisdictional transmission service (other than service over generator lead lines) is MEPCO. Applicants note that MEPCO's facilities are classified as PTF by ISO-NE and thus rates for their use are established by Section II of the ISO-NE Tariff and will be unaffected by the Proposed Transaction.

16. In addition, Applicants and their public utility affiliates pledge to hold harmless all current transmission and wholesale customers from any costs associated with the Proposed Transaction (e.g., transaction costs) for a period of five years to the extent that such costs exceed savings related to the Proposed Transaction. Applicants state that, consistent with Commission precedent,<sup>15</sup> "transaction costs" in this context includes all transaction-related costs, not only costs related to consummating the Proposed Transaction.

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<sup>14</sup> Applicants state that the charges that are effective June 1, 2015 will be the first charges based on a FERC Form 1 of the consolidated Bangor Hydro, including both the Northern Division and Southern Division. Applicants explain that, although the charges that are effective June 1, 2014 will go into effect after the consummation of the Proposed Transaction, they will still be based on the individual FERC Form 1s filed separately by Bangor Hydro and Maine Public.

<sup>15</sup> See, e.g., *BHE Holdings*, 133 FERC ¶ 61,231, at P 37 (2010) (authorizing indirect acquisition of Maine Public by Emera).



**b. Commission Determination**

17. We note that our analysis of rate effects under section 203 of the FPA differs from the analysis of whether rates are just and reasonable under section 205 of the FPA. Our focus here is on the effect that the Proposed Transaction will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the transaction.<sup>16</sup> We find that the Proposed Transaction will not have an adverse effect on rates, as discussed more fully below.

18. In reviewing an application under section 203, the Commission looks at the effects of the transaction on rates, not the rate changes that may occur regardless of the transaction.<sup>17</sup> Applicants state that Maine Public has no wholesale power customers. Applicants state that, since January 1, 2012, Bangor Hydro has at times sold wholesale power to three entities pursuant to the terms of its market-based rate tariff on file with the Commission.<sup>18</sup> Applicants state that presently, however, Bangor Hydro only sells wholesale power pursuant to long-term agreements with NBP Generation and the rates in these agreements are fixed and will be unaffected by the Proposed Transaction. Applicants also state that the Proposed Transaction will have no adverse effect on the wholesale power rates of Applicants' present or future affiliates because such rates are either at negotiated rates or at cost-based rates that will be unaffected by the Proposed Transaction. Therefore, we find that no wholesale power customers will be affected by the Proposed Transaction.

19. We also find that Applicants have provided adequate assurances that the Proposed Transaction will not have any adverse effect on jurisdictional transmission rates, and we note that no party has argued otherwise. Our finding is based on Applicants' representations and commitments, as described in paragraphs 13 through 15 of this order, including Applicants' commitment that the transmission rate formulas will be amended so that they will produce charges as close as reasonably practicable to those that would have otherwise resulted absent the Proposed Transaction.

20. Further, we accept Applicants' commitment to hold harmless transmission and wholesale customers from transaction-related costs for a period of five years, consistent

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<sup>16</sup> *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 23 (2010); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 25 (2008); *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 120 (2007).

<sup>17</sup> *Boston Generating, LLC, et al.*, 113 FERC ¶ 61,016, at P 26 (2005).

<sup>18</sup> See Applicants' March 19, 2013 Joint Application, Exhibit F.

with Commission precedent.<sup>19</sup> We interpret Applicants' commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction and transition costs (both capital and operating) incurred to achieve merger synergies.<sup>20</sup> The Commission will be able to monitor Applicants' hold harmless provision under its authority under section 301(c) of the FPA and the books and records provision of PUHCA 2005,<sup>21</sup> and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.<sup>22</sup>

21. If Bangor Hydro, Maine Public and/or the surviving company of the Proposed Transaction<sup>23</sup> seek to recover transaction-related costs through their wholesale power or transmission rates, they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Bangor Hydro, Maine Public and/or the surviving company of the Proposed Transaction seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant section 203 docket. In this case the filings would be a separate compliance filing in the section 203 docket and an e-tariff filing in the section 205 docket. If Bangor Hydro, Maine Public and/or the surviving company of the Proposed Transaction seek to recover transaction-related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant 203 docket. In this case the filing would be a separate compliance filing in the section 203 docket, but an e-tariff rate filing application in the section 205 docket. The Commission will notice such filings for public comment. In such filings, Bangor Hydro, Maine Public and/or the surviving company of the Proposed Transaction must: (1) specifically identify the

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<sup>19</sup> See, e.g., *Exelon Corp.*, 138 FERC ¶ 61,167, at P 118 (2012); *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 24 (2010). We also accepted the same hold harmless commitment in Emera's application to indirectly acquire Maine Public. *BHE Holdings*, 133 FERC ¶ 61,231 at P 37.

<sup>20</sup> *Exelon Corp.*, 138 FERC ¶ 61,167 at P 118.

<sup>21</sup> Public Utility Holding Company Act of 2005, 42 U.S.C. § 16451 *et seq.* (2006) (PUHCA 2005).

<sup>22</sup> See, e.g., *Exelon Corp.*, 138 FERC ¶ 61,167 at P 119; *PPL Corporation and E. ON U.S. LLC*, 133 FERC ¶ 61,083, at P 26 (2010).

<sup>23</sup> As previously noted, the ultimate name of the surviving, consolidated utility has not been determined. *Supra* note 6.

transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under section 205. Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the Proposed Transaction.

### 3. Effect on Regulation

#### a. Applicants' Analysis

22. Applicants argue that the Proposed Transaction will not have an adverse impact on regulation, at either the federal or state level. Applicants state that the Proposed Transaction will not diminish federal regulatory authority over them or their public utility affiliates because Bangor Hydro, Maine Public and their public utility affiliates will remain subject to the Commission's jurisdiction. In addition, Applicants state that the Proposed Transaction will have no adverse effect on state regulation because consummation of the Proposed Transaction is conditioned on approval by the Maine Public Utilities Commission (Maine Commission).

#### b. Commission Determination

23. We find that neither state nor federal regulation will be impaired by the Proposed Transaction. The Commission's review of a transaction's effect on regulation is focused on ensuring that it does not result in a regulatory gap at the federal level or the state level.<sup>24</sup> We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its authority over the surviving, consolidated utility after consummation of the Proposed Transaction. We also find that the Proposed Transaction will not create a regulatory gap at the state level because consummation of the Proposed Transaction is conditioned on approval by the Maine Commission.

24. In the Merger Policy Statement, the Commission stated that it ordinarily will not set the issue of the effect of a transaction on the state regulatory authority for a trial-type hearing where a state has authority to act on the transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission stated that it may set the issue for hearing, and that it will address such circumstances on a case-by-case basis.<sup>25</sup> We note that no party alleges that regulation will be impaired by the

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<sup>24</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,125.

<sup>25</sup> *Id.*

Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

#### 4. Cross-Subsidization

##### a. Applicants' Analysis

25. Applicants state that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the closing 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.<sup>26</sup> In support thereof, Applicants state that in the Supplemental Policy Statement, the Commission established several categories of “safe harbors” for transactions that are not likely to present cross-subsidization concerns or are not likely to require the Commission-mandated protections from cross-subsidization.<sup>27</sup> Applicants state that among the “safe harbors,” the Commission established a safe harbor for transactions that are subject to review by state commissions.<sup>28</sup> Applicants assert that the Proposed Transaction qualifies for this “safe harbor” because the Maine Commission will review this transaction and consummation of the transaction is conditioned on the Maine Commission’s approval. According to Applicants, the Maine Commission’s review will protect against any inappropriate cross-subsidization that could result from the Proposed Transaction.<sup>29</sup> In light of the foregoing, Applicants state that there is no need for a further examination of cross-subsidization and encumbrance concerns related to the Proposed Transaction.<sup>30</sup>

26. In addition, in Exhibit L of their application, Applicants submitted a copy of their application to the Maine Commission concerning the Proposed Transaction (Maine Application). In the Maine Application, Applicants state that there are ring-fencing and other conditions that currently apply to Bangor Hydro and Maine Public, and that those conditions resulted from certain past reorganization approvals by the Maine Commission. Applicants state that it is necessary to harmonize several of those conditions upon the

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<sup>26</sup> Applicants’ March 19, 2013 Joint Application, Exhibit M.

<sup>27</sup> *Id.* (citing Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 18).

<sup>28</sup> *Id.*

<sup>29</sup> Applicants’ March 19, 2013 Joint Application, Exhibit M.

<sup>30</sup> *Id.*

consolidation of Bangor Hydro and Maine Public.<sup>31</sup> Applicants state that they intend to address those conditions in the Maine Application proceeding, and they will submit to the Maine Commission a proposal to harmonize the ring-fencing, service quality and other conditions within 45 days of the filing of the Maine Application.<sup>32</sup>

**b. Commission Determination**

27. In the Supplemental Policy Statement, the Commission recognized three safe harbor categories of transactions unlikely to raise cross-subsidization concerns.<sup>33</sup> One of the classes of transactions granted safe harbor status is those that are subject to review by a state commission.<sup>34</sup> In these cases, the Commission will defer to state commissions where the state adopts or has in place ring-fencing measures to protect customers against inappropriate cross-subsidization or the encumbrance of utility assets for the benefit of the “unregulated” affiliates.<sup>35</sup>

28. We find that the Applicants’ safe harbor qualifies under the Supplemental Policy Statement, with one condition. According to Exhibit L of their application, Applicants state that they will submit a proposal to the Maine Commission, within 45 days of the filing of the Maine Application, to harmonize the ring-fencing and other conditions with the consolidation of Bangor Hydro and Maine Public. In the Supplemental Policy Statement, the Commission indicated that state approval would provide a safe harbor.<sup>36</sup> Here, however, the transaction is still under review at the Maine Commission. Accordingly, consistent with the Supplemental Policy Statement, we are conditioning our approval in this order on Applicants submitting an informational filing in this docket within 10 days of the Maine Commission’s approval of the proposed changes to the ring-fencing provisions and other conditions.<sup>37</sup>

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<sup>31</sup> Applicants’ March 19, 2013 Joint Application, Exhibit L at 14.

<sup>32</sup> *Id.*

<sup>33</sup> Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 16.

<sup>34</sup> *Id.* at 18.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* *Puget Energy, Inc., et al.*, 123 FERC ¶ 61,050, at P36 (2008) (*Puget Energy*).

<sup>37</sup> *Puget Energy*, 123 FERC ¶ 61,050 at P 36.

29. 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 this transaction is based on such examination ability.

**D. Other Considerations**

**1. Northern Maine ISA's Comments**

30. Northern Maine ISA requests that the Commission confirm its understanding of Section 6 of the Plan of Merger. Specifically, Northern Maine ISA understands that Section 6 of the Plan of Merger would require Bangor Hydro, following the merger, to assume all of MPS' obligations to comply with the Northern Maine ISA Tariff and Northern Maine Market Rules, including MPS' obligations as the Northern Maine Area Operator (NMAO).<sup>38</sup> Based on this understanding, Northern Maine ISA does not oppose the Proposed Transaction. Northern Maine ISA asks the Commission to confirm this understanding of Section 6 of the Plan of Merger.<sup>39</sup>

**2. Applicants' Answer**

31. In their answer, Applicants confirm Northern Maine ISA's understanding of Section 6 of the Plan of Merger and state that, following their Proposed Transaction, "the surviving entity will assume all of MPS' obligations to comply with the [Northern Maine ISA] Tariff and Northern Maine Market Rules, including MPS' obligations as the Northern Maine Area Operator."<sup>40</sup>

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<sup>38</sup> The NMAO functions include the scheduling, dispatching and facilitating of all energy, capacity and ancillary services transactions in the Northern Maine Market.

<sup>39</sup> Northern Maine ISA's April 9, 2013 Motion to Intervene and Comments at 3.

<sup>40</sup> Applicants' May 3, 2013 Answer at 2.

### 3. Commission Determination

32. Applicants' answer contains the specific assurances that Northern Maine ISA seeks.<sup>41</sup> Therefore, we find that the Northern Maine ISA's request that we confirm the North Maine ISA's understanding of Section 6 of the Plan of Merger is moot.

#### E. Accounting Analysis

33. Applicants commit for a period of five years, to hold transmission and wholesale customers harmless from transaction-related costs, which we have interpreted to include all transaction-related costs, including costs related to consummating the Proposed Transaction and transition costs incurred to achieve merger synergies. Consistent with Commission precedent,<sup>42</sup> transaction-related costs incurred to effectuate the merger are non-operating in nature and must be recorded in Account 426.5, Other Deductions.<sup>43</sup> Account 426.5 includes miscellaneous expense items which are non-operating in nature. Additionally, transition costs are generally considered to be operating in nature and may be recorded in an operating expense account or capitalized in an asset account, as appropriate.<sup>44</sup> This accounting for transaction-related costs, including transition costs, does not permit recovery through Applicants' wholesale power or transmission rates during the hold harmless period without first making a section 205 filing and receiving authorization from the Commission, consistent with the hold harmless requirements discussed above.

34. In Appendix 2 to the Application, Applicants provided *pro forma* accounting entries to record the acquisition by Bangor Hydro of all jurisdictional facilities, and all other assets and liabilities, of its affiliate Main Public. However, Applicants did not use Account 102, Electric Plant Purchased and Sold, to record the transaction, as required by Electric Plant Instruction (EPI) No. 5, Electric Plant Purchased or Sold.

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<sup>41</sup> We also note that the joint application states that “[a]ll contracts, joint ventures or strategic alliances entered into by Applicants and/or their affiliates will be honored after consummation of the Transaction in accordance with their terms.” Applicants’ March 19, 2013 Joint Application at 17 and Exhibit D.

<sup>42</sup> See, e.g., *Exelon Corp.*, 138 FERC ¶ 61,167, at P 133 (2012).

<sup>43</sup> Transaction costs may include, but are not limited to, internal and external third party costs for legal, consulting, and professional services incurred to consummate the merger.

<sup>44</sup> Transition costs generally include integration and other operational costs incurred to achieve merger synergies.

35. Account 102 is used as an interim control account to record all aspects of a transaction involving the acquisition or transfer of operating units or systems. The use of this account is an important accounting control that helps ensure that acquisitions and transfers of operating units or systems are properly accounted for, whether or not the entities involved in the transaction are members of the same corporate family. Therefore, we will require Applicants to record the Proposed Transaction through Account 102 consistent with the instructions of Electric Plant Instruction No. 5 of the Commission's Uniform System of Accounts.

**F. Additional Standards**

36. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cyber security 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 cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

The Commission orders:

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

(B) Applicants must inform the Commission within 30 days of any material change in circumstances that departs from the facts the Commission relied upon in granting the application.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or 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) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall make an informational filing within 10 days of the date on which the Maine Commission approves the proposed changes to the ring-fencing provisions and other conditions, as discussed in the body of this order.

(H) Applicants shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. Applicants shall submit their final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the Proposed Transaction along with narrative explanations describing the basis for the entries.

(I) If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates, they must first submit a compliance filing in this docket that details how they are satisfying the hold harmless requirement in addition to a section 205 filing. In particular, in such a filing, Applicants must: (1) 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.

(J) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.