

166 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

NextEra Energy Transmission, LLC
Trans Bay Cable LLC

Docket No. EC19-36-000

ORDER AUTHORIZING DISPOSITION AND ACQUISITION OF JURISDICTIONAL
FACILITIES

(Issued March 21, 2019)

1. On December 14, 2018, pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² NextEra Energy Transmission, LLC (NEET) and Trans Bay Cable LLC (Trans Bay) (together, Applicants) filed an application for approval of a transaction by which NEET will acquire ownership of Trans Bay (Proposed Transaction).
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.³ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ 16 U.S.C. § 824b(a)(1), (a)(2) (2012).

² 18 C.F.R. pt. 33 (2018).

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

I. Background**A. Description of Applicants****1. NEET**

3. Applicants state that NEET is an indirect, wholly owned subsidiary of NextEra Energy, Inc. (NextEra) and was formed in 2007 to develop, own, and operate transmission facilities across the United States and Canada. The operational transmission assets of NEET and its subsidiaries include transmission projects and facilities in Texas and the Seabrook Substation in New Hampshire. ISO New England Inc. has operational control over the transmission facilities associated with the Seabrook Substation. NEET's subsidiary, NextEra Energy Transmission West, LLC (NEET West), is currently developing transmission projects within the California Independent System Operator Corporation (CAISO) market.

4. Applicants state that NextEra also owns Florida Power & Light Company (FPL), a franchised public utility with approximately 26,600 megawatts (MW) of generating capacity that provides wholesale and retail electric service to customers in Florida.⁴ FPL's transmission facilities are located within the state of Florida and are administered pursuant to the FPL Open Access Transmission Tariff (OATT).

5. Applicants also state that NextEra's competitive power subsidiary is NextEra Energy Resources, LLC (NextEra Resources). Applicants state that NextEra Resources' subsidiaries currently own or operate generating facilities with a combined gross generating capacity of approximately 21,000 MW.⁵ In addition, NextEra Resources' subsidiaries own various interconnection facilities, and one of NextEra Resources' subsidiaries, Sky River LLC (Sky River), has an OATT on file with the Commission.

6. Applicants explain that NextEra indirectly owns a number of Hinshaw Pipelines that are exempt from Commission jurisdiction. Applicants state that NextEra also has interests in two Commission-regulated interstate natural gas pipelines, and that NextEra owns Florida City Gas, a gas local distribution company.

Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

⁴ December 14 Joint Application of NEET and TransBay for Authorization of Disposition of Jurisdictional Transmission Facilities (Application) at 5.

⁵ *Id.* at 4.

2. Trans Bay

7. Applicants state that Trans Bay is a public utility that owns and operates a 53-mile, approximately 400 MW high-voltage direct current submarine transmission line buried beneath the San Francisco Bay (Trans Bay Cable).⁶ The Trans Bay Cable provides electric transmission between two substations owned by Pacific Gas and Electric Company (PG&E) and is under CAISO's operational control. Applicants state that Trans Bay does not own or operate any generation or distribution facilities and does not engage in the sale or brokering of energy or ancillary services.⁷

8. Applicants explain that Trans Bay is one of the portfolio companies of SteelRiver Infrastructure Partners, an infrastructure investment management firm. Applicants state that Trans Bay is an indirect, wholly owned subsidiary of TransBay Funding II LLC (TransBay Funding), which is in turn a wholly owned subsidiary of TransBay AIV II LP (TransBay LP). TransBay LP is managed and controlled by its general partner, SteelRiver Infrastructure Associates LLC (SteelRiver Associates), with SteelRiver SLP LLC (SteelRiver SLP) and TBAIV II Feeder LLC (TBAIV) owning the limited partnership interests.

B. Description of the Proposed Transaction

9. Applicants state that the Proposed Transaction will occur in three stages whereby (1) NEET's subsidiaries, NextEra Transmission Investments, LLC (NETI) and NEET Investment Acquisition LP, LLC (NEET LP), will acquire 100 percent of the partnership interests in Trans Bay's indirect parent, TransBay LP, from SteelRiver Associates, SteelRiver SLP and TBAIV (collectively, Sellers); (2) TransBay LP will merge into its wholly-owned direct subsidiary, TransBay Funding, with TransBay Funding emerging as the surviving entity; and (3) NETI and NEET LP will distribute their membership interest in TransBay Funding to NEET.⁸ Following the consummation of the Proposed Transaction, Trans Bay will become an indirect, wholly-owned subsidiary of NEET and will no longer be affiliated with Sellers.

II. Notice of Filing and Responsive Pleadings

10. Notice of the Application was published in the *Federal Register*, 83 Fed. Reg. 65,655 (2018), with interventions and protests due on or before January 4, 2019.

⁶ *Id.* at 2.

⁷ *Id.* at 8.

⁸ *Id.* at 1-2; 8-9.

On January 7, 2019, the Commission granted a motion requesting an extension of the comment deadline to January 11, 2019.⁹ Motions to intervene were filed by the City of Santa Clara, California and the M-S-R Public Power Agency; the Transmission Agency of Northern California (TANC); Modesto Irrigation District; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); the State Water Contractors; PG&E; and the California Department of Water Resources State Water Project. The California Public Utilities Commission (CPUC) and the People of the State of California filed a notice of intervention and submitted comments.¹⁰

11. Northern California Power Agency filed a motion to intervene and comments. California Municipal Utilities Association filed a motion to intervene and comments. The City and County of San Francisco (San Francisco) submitted a motion to intervene and protest. Six Cities and TANC filed protests. On January 22, 2019, Applicants filed an answer.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

14. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the

⁹ Notice of Extension of Time, Docket No. EC19-36-000 (issued Jan. 11, 2019).

¹⁰ In its comments, the CPUC states that it will not at present provide comments on the merits of the Application because it does not want to risk pre-judgment of Applicants' pending state application. However, the CPUC states that it reserves the right to comment further at a later time.

proposed transaction will be consistent with the public interest.¹¹ The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹² FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."¹³ The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹⁴

2. Analysis of the Proposed Transaction

a. Effect on Horizontal Competition

i. Applicants' Analysis

15. Applicants state that the Proposed Transaction raises no horizontal market power concerns because it does not involve the disposition of any generating assets and, thus, will not result in any change in market concentration for generation.¹⁵

ii. Commission Determination

16. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation

¹¹ 16 U.S.C. § 824b(a)(4). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application at 15. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

¹² Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹³ 16 U.S.C. § 824b(a)(4).

¹⁴ 18 C.F.R. § 33.2(j) (2018).

¹⁵ Application at 11.

markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.¹⁶

17. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. Because the Proposed Transaction involves only transmission assets, it does not involve any change in ownership or control of generating facilities. Further, the Proposed Transaction will not change market concentration in the CAISO market.

b. Effect on Vertical Competition

i. Applicants' Analysis

18. Applicants state that the Proposed Transaction does not raise any vertical market power concerns because it involves an upstream change in control over transmission and related assets, and Applicants do not own or control any generating facilities in CAISO. Applicants explain that, while affiliates of NEET own and operate generation capacity in the CAISO market, all of those resources are fully committed to purchasers under long-term contracts or have financial contracts associated with the output of the facilities.¹⁷ Applicants state that, with the exception of Sky River, which has a Commission-approved OATT, no other NEET affiliate owns Commission jurisdictional transmission facilities in the CAISO market. According to Applicants, the NEET West transmission facilities that are currently under development in CAISO will be turned over to CAISO's operational control upon completion.

19. Applicants further state that they do not own or control within the CAISO market (i) any intrastate natural gas transportation, storage or distribution facilities; (ii) physical coal supply sources or access to transportation of coal supplies; or (iii) any generation capacity development sites that would constitute barriers to entry to the generation market.¹⁸ According to Applicants, although NEET is affiliated with two interstate natural gas pipelines, they are not located in the same geographical market as the assets in the Proposed Transaction.

ii. Commission Determination

20. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as

¹⁶ *Nev. Power Corp.*, 149 FERC ¶ 61,079, at P 28 (2014).

¹⁷ Application at 12.

¹⁸ *Id.* at 13.

transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.¹⁹

21. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. As Applicants note, all of NEET's affiliated transmission facilities are governed by an OATT.²⁰ Further, the Commission has previously found that anticompetitive effects are unlikely to arise with regard to transactions that only involve the transfer of transmission facilities.²¹ Because the Proposed Transaction does not involve the transfer of generation facilities or inputs to electric power generation, we find that it will not have an adverse effect on vertical competition.²²

c. Effect on Rates

i. Applicants' Analysis

22. Applicants state that Trans Bay does not have any wholesale or retail power sales customers. Applicants explain that transmission service over the Trans Bay Cable is currently provided under a stated rate that can only be changed through a filing under section 205 of the FPA. Applicants note that, pursuant to a settlement reached in a 2016 rate case, Trans Bay is required to file a new rate case with the Commission by September 20, 2019.²³ Applicants assert that no ratepayer protections are necessary

¹⁹ *Upstate N.Y. Power Producers, Inc.*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

²⁰ In addition, the transmission facilities owned by NEET's affiliate FPL are located within the state of Florida and are administered pursuant to the FPL OATT.

²¹ See, e.g., *Tucson Electric Power Co.*, 151 FERC ¶ 61,089, at P 30 (2015) (*Tucson Electric*); *ITC Holdings Corp.*, 143 FERC ¶ 61,256, at P 60 (2013).

²² *Tucson Electric*, 151 FERC ¶ 61,089 at P 30. See also *Idaho Power Co.*, 151 FERC ¶ 61,233, at P 33 (2015).

²³ Application at 14, n.33.

beyond those embedded in section 205 and the general ratemaking principles that the Commission applies to its cost-based regulation.²⁴

ii. Protests and Comments

23. Northern California Power Agency commented that NEET has not provided any information on acquisition costs or purchase price. Noting that the current fixed rates were negotiated as part of a settlement agreement that will expire in 2020, Northern California Power Agency states that the Commission should not permit NEET to recover acquisition costs or the purchase price in rates after expiration of the settlement rates.²⁵

24. Six Cities²⁶ notes that, despite the current moratorium on rates, Trans Bay is required to make a filing under section 205 of the FPA to establish a revised transmission revenue requirement by September 20, 2019, with new rates to become effective on November 23, 2019. Six Cities states the Application fails to provide any information on how the Proposed Transaction will affect those new rates. Six Cities requests that the Commission make clear that any action approving the Proposed Transaction will not constitute authorization or approval of any specific costs or charges to be included in the transmission revenue requirement subject to the future section 205 filing. In particular, Six Cities argues that NEET should not be permitted to recover through its upcoming section 205 filing an acquisition adjustment for the premium it will pay under the Proposed Transaction unless a showing of offsetting benefits is demonstrated.²⁷

25. San Francisco requests that the Commission require additional information from Applicants to specify what costs are being paid to acquire the assets in question in order to ensure that no unlawful acquisition premium will be included in rates.²⁸

26. California Municipal Utilities Association comments that Applicants have chosen to withhold key financial data from parties in this proceeding and that, without that information, parties are forced to rely upon public news reporting regarding the terms of the Proposed Transaction. California Municipal Utilities Association states that, given

²⁴ *Id.* at 14.

²⁵ Northern California Power Agency Comments at 3.

²⁶ TANC joins in and adopts the comments submitted by Six Cities. *See* TANC Protest at 2.

²⁷ Six Cities Protest at 4.

²⁸ San Francisco Comments at 4.

that the Applicants have chosen to request confidential treatment of financial data, it is difficult to test their assertion that the Proposed Transaction will have no adverse effect on rates.

iii. Applicants' Answer

27. In response to commenters' concerns, Applicants explain in their answer that there will be no acquisition premium recorded on Trans Bay's jurisdictional books and records that could be recovered in rates in a future test period.²⁹ Applicants explain that Trans Bay's net plant associated with the Trans Bay Cable will remain at the original cost less accumulated depreciation, and that NEET does not intend to push down any acquisition premium or goodwill to the books and records of Trans Bay following the Proposed Transaction, nor does it intend to seek recovery of any such premium in the future from CAISO ratepayers.

28. Applicants note that the Commission already has a policy prohibiting recovery of acquisition premiums except in very narrow circumstances. Applicants argue that no further restrictions should be required in this section 203 proceeding.

29. Applicants also state that the Commission's regulations provide that any party that has intervened in the proceeding may request a copy of confidentially-filed materials by providing to applicants an executed copy of the protective agreement and a statement of the person's right to party or participant status or a copy of their motion to intervene or notice of intervention.³⁰ Applicants note that no party has executed the protective agreement or non-disclosure certificate, or requested a copy of confidential Exhibit I.

iv. Commission Determination

30. Based on the record in this proceeding, we find that the Proposed Transaction will not have an adverse effect on rates. Our analysis of rate effects under FPA section 203 differs from the analysis of whether rates are just and reasonable under FPA section 205. Rather, the Commission addresses the rate treatment of assets in proceedings under FPA section 205, not in proceedings under FPA section 203.³¹ With regard to commenters

²⁹ Applicants Answer at 10.

³⁰ *Id.* at 5.

³¹ *NV Energy, Inc.*, 145 FERC ¶ 61,170, at P 51 (2013) ("Generally, the Commission does not address the rate treatment of assets in section 203 proceedings, but instead reserves such discussion for a section 205 proceeding"). *See also Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261, at P 67 (2013) (concluding that FPA section 203 proceeding was not the appropriate forum for addressing rates applicants would charge for post-transaction transmission); *FirstEnergy Generation Corp.*, 141 FERC ¶ 61,239, at P 32 (2012) (issues

concerns that NEET will seek to recover an acquisition premium, we note that to the extent NEET seeks to recover an acquisition premium in a future rate case under section 205 of the FPA, it must demonstrate that the acquisition provides specific, measurable, and substantial benefits to ratepayers, consistent with Commission precedent.³² In any event, Applicants state that they do not intend to seek recovery of any acquisition premium in the future from CAISO customers. In response to California Municipal Utilities Association's interest in confidentially filed financial data, we note that such information is available upon execution of the protective agreement or non-disclosure certificate.³³

d. Effect on Regulation

i. Applicants' Analysis

31. Applicants state that the Proposed Transaction will have no adverse effect on federal regulation because the Commission will continue to have the same jurisdiction over Trans Bay and its FPA-jurisdictional facilities upon consummation of the Proposed Transaction.³⁴ Applicants state that the Proposed Transaction also will not adversely affect regulation of Trans Bay or its utility assets by the CPUC. However, Applicants note that CPUC approval of the Proposed Transaction is required under sections 851 through 854 of the California Public Utilities Code and such approval is a condition precedent to the closing of the Proposed Transaction.

ii. Commission Determination

32. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.³⁵ As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed

related to rate treatment of assets at issue to be addressed in future rate proceeding); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009) (whether post-transaction rates are just and reasonable to be addressed in separate FPA section 205 proceeding).

³² See *Duke Energy Progress, Inc.*, 149 FERC ¶ 61,220, at P 67 (2014); *Pub. Serv. Co. of N.M.*, 142 FERC ¶ 61,168, at P 25 (2013).

³³ See 18 C.F.R. 385.410 (2018).

³⁴ Application at 15.

³⁵ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.³⁶ Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. We also note that Applicants state that CPUC approval of the Proposed Transaction is required under sections 851 through 854 of the California Public Utilities Code and such approval is a condition precedent to the closing of the Proposed Transaction.

e. Cross-Subsidization

i. Applicants' Analysis

33. Applicants claim that the proposed Transaction qualifies for "safe harbor" treatment because it does not involve a franchised public utility associate company that has captive ratepayers. Applicants verify 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 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.³⁷

ii. Commission Determination

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

3. Property License

a. Comments

35. San Francisco states that the Application fails to identify the key Trans Bay Cable agreements and entitlements that will be affected by the Proposed Transaction or the counterparties to those agreements or the grantors to the entitlement. In particular, San Francisco comments on property owned or under the jurisdiction and control of the Port of San Francisco pursuant to a 25-year Non-Exclusive License to Use Port Property

³⁶ *Id.*

³⁷ Application at 16.

No. 14325 that was entered into in 2007 (License). San Francisco states that it has a strong interest in ensuring that the eventual holder of the License is adequately staffed and capitalized and will be able to fulfill the terms and conditions of the License, including its License fees and other payment obligations to the Port of San Francisco and the San Francisco Public Utilities Commission.³⁸ San Francisco requests that the Commission require Applicants to file a statement detailing how they intend to comply with relevant agreements, including the License.³⁹

b. Applicants' Answer

36. Applicants respond that San Francisco's concerns are based on a misunderstanding of the Proposed Transaction. Applicants state that the Proposed Transaction will not involve Trans Bay merging with any entity. Therefore, Trans Bay will remain a party to all existing project-related agreements and entitlements and will continue to honor those agreements, including the License. Nevertheless, for the avoidance of doubt, Applicants state that Trans Bay will continue to honor and abide by all project permits, including the License, following the Proposed Transaction.⁴⁰

c. Commission Determination

37. We find that San Francisco's concerns about honoring pre-existing agreements and the License are addressed by Applicants' clarification and commitments discussed in its answer.

4. Accounting Analysis

a. Applicants' Waiver Request

38. Applicants state that the Proposed Transaction will have no effect on Trans Bay's accounting, but for the possibility of the need to extinguish deferred tax balances. Accordingly, Applicants request waiver of any requirement to present proposed accounting entries. Applicants add that, if jurisdictional accounts are affected, Trans Bay will submit, within six months of closing of the Proposed Transaction, a filing showing

³⁸ San Francisco Comments at 3.

³⁹ *Id.* at 4.

⁴⁰ Applicants Answer at 4-5.

the impact on Trans Bay's jurisdictional accounts along with narrative explanations describing the basis for the entries.⁴¹

b. Comments

39. The CPUC objects to Applicants' request for waiver of certain filing requirements, including the requirement to submit accounting entries showing the effect of the Proposed Transaction on all account balances. The CPUC states that in order to have a meaningful assessment of the Application, Applicants should be required to provide the information required by the Commission's regulations.⁴²

40. Six Cities states that without the accounting entries as required by section 33.5 of the Commission's regulations, it is not possible to confirm Applicants' representation that the Proposed Transaction will not impact Trans Bay's accounting. Six Cities adds that without these accounting entries, it is not possible to determine whether Applicants have appropriately accounted for excess accumulated deferred income taxes that would be owed to ratepayers in accordance with the Commission's policy.⁴³

c. Applicants' Answer

41. In their answer, Applicants state that the Commission has in the past approved applications that lacked proposed accounting entries for transactions that, like the present one, involve only a change in upstream ownership.⁴⁴ Applicants reiterate that they requested waiver of the need to provide proposed accounting entries because the Proposed Transaction will have no effect on Trans Bay's accounting but for the possibility of the need to extinguish deferred tax balances. Applicants nevertheless submitted proposed journal entries in their answer to demonstrate revisions to the Trans Bay deferred tax account balances based on the understanding that the Proposed Transaction will be treated as a sale for income tax normalization requirements.⁴⁵

⁴¹ Application at 21.

⁴² CPUC Comments at 2-3.

⁴³ Six Cities Protest at 3.

⁴⁴ Applicants Answer at 6.

⁴⁵ *Id.* at 7.

d. Commission Determination

42. Based on Applicants' representations, there are no accounting effects as a result of the transaction to be recorded on the books of Trans Bay, which is the only entity in this transaction required to follow the Commission's Uniform System of Accounts.⁴⁶ We accept Applicants' commitment to file a report within six months of the closing of the transaction if jurisdictional accounts are affected.

5. Other Considerations

43. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.⁴⁷ 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.

44. FPA section 301(c) gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, Applicants are subject to the record-keeping and books and records requirements of the Public Utility Holding Company Act of 2005.⁴⁸

45. 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.⁴⁹

⁴⁶ See 18 C.F.R. § 33.5 (2018).

⁴⁷ 16 U.S.C. § 824(o).

⁴⁸ 42 U.S.C. § 16451 *et seq.* (2012).

⁴⁹ *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). See 18 C.F.R. § 35.42 (2018).

To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

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

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

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or 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 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.