

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

FortisOntario, Inc. and
FortisUS Energy Corporation

Docket Nos. ER03-775-004
ER00-136-003

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS
AND TARIFF REVISION AND PROVIDING GUIDANCE

(Issued April 25, 2006)

1. On July 7, 2005, as amended on March 7, 2006, FortisOntario, Inc. (FortisOntario) and FortisUS Energy Corporation (FortisUS) (collectively, Petitioners) filed a notice of change in status, a request for clarification of the Commission's reporting requirement for changes in status for public utilities with market-based rate authority,¹ and a tariff revision² incorporating the Commission's change in status reporting requirement.³ In this order, the Commission will accept Petitioners' notice of change in status and will accept Petitioners' revised tariff sheets. The Commission also provides guidance concerning foreign sellers with market-based rate authorization.

Background

2. Petitioners state that they are notifying the Commission of a non-material change in status regarding the purchase by their parent, Fortis Inc. (Fortis Parent), of Princeton Light and Power Company, Limited (Princeton), a Canadian utility. Petitioners state that

¹ *Reporting Requirement for Changes in Status For Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31, 175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

² FERC Electric Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 1-1A, First Revised Sheet No. 2-5.

³ This revision is made in compliance with the Commission's order accepting Petitioners' updated market power analysis. *FortisOntario, Inc.* 110 FERC ¶ 61,119 (2005).

this change in status does not reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority to either FortisOntario or FortisUS. Petitioners state that they believe that this notice is not required but are submitting it “out of an abundance of caution because Order No. 652 does not, by its express terms, exclude changes in status resulting from the acquisition of electric generation and transmission facilities located wholly outside of the United States.”⁴

3. Petitioners state that, as more fully explained in their updated market power analysis accepted by the Commission,⁵ FortisOntario has no generating capacity in the United States and that its only jurisdictional facility is its market-based rate tariff on file with the Commission. Petitioners explain that FortisOntario is a corporation organized under the laws of the province of Ontario, Canada, having its principal place of business in Ontario, Canada. Petitioners state that FortisOntario is a wholly-owned subsidiary of Fortis Parent, a publicly-traded holding company existing under the laws of Newfoundland and Labrador, Canada.⁶

4. FortisUS states that it directly owns a total of approximately 22.5 MW of qualifying small power production facilities (QFs), located in New York. Petitioners explain that FortisUS is wholly-owned by a subsidiary of Fortis Parent, and is a corporation organized under the laws of the State of New York, having its principal place of business in the Canadian city of Charlottetown, Prince Edward Island.

5. Petitioners state that other generation owned by affiliates is located exclusively within Canada, and that none of these affiliates have tariffs or rate schedules on file with the Commission for power sales or transmission of electric energy in the United States. Petitioners explain that they do not possess any transmission facilities in the United States other than step-up transformers and other interconnecting transmission facilities needed to effect sales from the QFs, and that none of these interconnection facilities could be used by any other party to effectuate sales of electric energy, capacity, or ancillary services at wholesale.

6. Petitioners state that Fortis Parent has acquired Princeton, a utility serving 3,200 customers in British Columbia. Petitioners state that Princeton does not own generation or transmission facilities and is exclusively engaged in the business of distributing

⁴ Request for Clarification at 1.

⁵ *FortisOntario, Inc.*, 110 FERC ¶ 61,119 (2005).

⁶ On January 31, 2003, the Commission authorized the intracorporate transfer of the jurisdictional assets of Canadian Niagara Power Company to a newly formed entity, FortisOntario, pursuant to an amalgamation under Canadian law. *Canadian Niagara Power Co.*, 102 FERC ¶ 62,068 (2003).

electric energy to its customers. Petitioners also state that Princeton's distribution operations are located exclusively within Canada and are not directly interconnected with the United States, and that none of Princeton's facilities could be used by any other party to effectuate sales of electric energy, capacity or ancillary services at wholesale in the United States or the transmission of electric energy, capacity, or ancillary services in the United States.

7. Petitioners further state that Princeton is solely interconnected with and solely obtains its power from FortisBC Inc. (FortisBC), another affiliate, which provides distribution service in surrounding areas of British Columbia, Canada. Petitioners state that FortisBC is primarily a distribution facility and is not directly interconnected to the United States. FortisBC is interconnected with British Columbia Transmission Corporation (BCTC), which is not affiliated with Petitioners or Princeton. BCTC is a corporation owned by the province of British Columbia and is an independent transmission system operator which is interconnected to the United States. Petitioners state that BCTC offers wholesale transmission service under its open access transmission tariff (OATT) that is based on the Commission's Order No. 888 pro forma tariff and is regulated by the British Columbia Utilities Commission.⁷

8. Petitioners assert that Fortis Parent's acquisition of Princeton does not and cannot raise any generation or transmission market power concerns with respect to Petitioners. Petitioners request clarification from the Commission as to whether notification of a change in status is required where generation and/or transmission assets acquired by a jurisdictional facility or its affiliates are located exclusively within Canada and are not and cannot be used to make sales of electric energy at wholesale into the United States or for the transmission of electric energy in interstate commerce in the United States.

Procedural Matters

9. Notice of Petitioners' July 7, 2005, filing was published in the *Federal Register*, 70 Fed. Reg. 41,698 (2005), with interventions and protests due on or before July 28, 2005. None was filed. Notice of Petitioners' March 7, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 14,195 (2006), with interventions and protests due on or before March 28, 2006. None was filed.

⁷ BCTC operates the British Columbia Hydro and Power Authority's transmission system (BC Hydro). BC Hydro's OATT was reviewed by the Commission in 1997, in *British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997). The Commission found that the tariff's terms and conditions were identical to the Commission's pro forma tariff in all material respects.

Discussion

10. As discussed below, the Commission accepts Petitioners' notice of change in status and provides guidance concerning foreign sellers with market-based rate authorization.

11. The Commission requires that market-based rate sellers report any changes in status that would reflect a departure from the characteristics the Commission relied upon in its existing grant of market-based rate authority.⁸ The baseline determination of whether a change in status filing is required is whether the change in status in question would have been reportable in an initial application for market-based rate authority under the Commission's four-part analysis.⁹

12. Petitioners in this case have market-based rate tariffs on file with the Commission. The change in status, described by Petitioners as "non-material," involves the acquisition of a Canadian utility characterized as distant and small that has no generation, and whose transmission and distribution is limited to Canada. Petitioners state that this change in status does not reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. Petitioners state their belief that notice of the change in status is not required, but that they filed the instant request for clarification "out of an abundance of caution", arguing that Order No. 652 does not expressly preclude change in status filings arising from "the acquisition of electric generation and transmission facilities located wholly outside of the United States."

13. The Commission has clarified that its concerns are more limited for foreign transmission-owning entities than for transmission-owning entities in the United States. The Commission has further stated that its concern is transmission to serve United States load¹⁰ as well as access for United States competitors into Canadian markets on a reciprocal basis.¹¹ Thus, the Commission seeks to assure reciprocal service into and out of Canada when Canadian entities seek access to United States markets, but the Commission is not seeking to open intra-Canada electric markets through the imposition of open access tariffs for transactions wholly within Canada.¹² Therefore, the

⁸ See Order No. 652 at P 5.

⁹ See *Id.* at P 8, 51.

¹⁰ *Energy Alliance Partnership*, 73 FERC ¶ 61,019 at 61,031 (1995) (*Energy Alliance*).

¹¹ *TransAlta Enterprises Corp.*, 75 FERC ¶ 61,268 at 61,875 (1996) (*TransAlta*).

¹² See *British Columbia Power Exchange Corp.*, 78 FERC ¶ 61,024 at 61,100 (1997).

Commission requires a Canadian entity seeking market-based rate authority to demonstrate that its transmission-owning affiliate offers non-discriminatory access to its transmission system that can be used by competitors of the Canadian seller to reach United States markets.¹³

14. Fortis Parent has acquired Princeton, whose transmission and distribution facilities are located exclusively within Canada and are not directly interconnected with the United States. Princeton is interconnected to its affiliate, FortisBC, whose facilities are entirely in Canada, and the transactions between Princeton and FortisBC are wholly within Canada. FortisBC is not directly interconnected to the United States but is interconnected with BCTC, a non-affiliate that offers non-discriminatory access under its OATT to reach United States markets.

15. The Commission clarifies herein that, with regard to market-based rate authorization, the Commission does not consider transmission and generation facilities that are located exclusively outside of the United States and that are not directly interconnected to the United States. However, the Commission would consider transmission facilities that are exclusively outside the United States but nevertheless interconnected to an affiliate's transmission system that is directly interconnected to the United States.

The Commission orders:

(A) Petitioners' notice of change in status and tariff sheets are accepted for filing.

(B) The Secretary is directed to publish a copy of this order in the *Federal Register*.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹³ See *TransAlta*, 75 FERC ¶ 61,268 at 61,875; *Energy Alliance*, 73 FERC ¶ 61,019 at 61,030-31.